

Central Administrative Tribunal
Mumbai Bench

O.A.1129/95

New Delhi this the 15th day of October, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Smt. Shanta Shastry, Member(A).

O.S.N. Murthy,
Senior Stenographer (Gr.II),
Office of Director General,
Fishery Survey of India,
Botawala Chambers,
Sir P.M. Road,
Bombay-400 001.

... Applicant.

(By Advocate Shri S.P. Saxena)

Versus

1. The Union of India through
the Secretary,
Ministry of Food Processing
Industries,
Panchsheet Bhavan,
Khelgaon Marg,
New Delhi-110 011.
2. The Director General,
Fishery Survey of India,
Botawala Chambers,
Sir P.M. Road,
Bombay-400 001.
3. The Secretary,
Department of Personnel and
Training,
Ministry of Personnel,
New Delhi-110 011.

... Respondents.

(By Advocate Shri V.S. Masurkar)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

The applicant has filed this application stating that
he is aggrieved by the fact that the benefits of the DOP&T

O.M. dated 30.1.1991 have not been granted to him by way of upgradation of his pay scale from Rs.1400-2600 to the scale of Rs.1640-2900 with effect from 1.1.1986. He has, therefore, prayed that a direction may be given to respondents 1 and 2 to upgrade him from the post of Stenographer Grade-II to Stenographer Grade-I in the pay scale of Rs.1640-2900 w.e.f. 1.1.1986 with all consequential benefits of pay and arrears of pay due to such re-fixation.

2. A reference has been made to an order passed by the Tribunal earlier dated 30.10.1996 in OA 673/91, OA 1101/93 and OA 1102/93. Against this order, SLP was filed by the respondents/UOI before the Hon'ble Supreme Court vide SLP Nos. 12809-12812/98. Shri V.S. Masurkar, learned counsel, has submitted that the Supreme Court has passed an order dated 27.10.1998 staying the operation of the impugned orders, copy placed on record. Noting the submissions of the learned counsel for the parties, the O.A. was adjourned sine die, with liberty given to either side to move for revival of the O.A. on the decision of the Hon'ble Supreme Court. Thereafter, the Tribunal in its order dated 3.8.2001 had directed the respondents to ascertain the present status of the pending SLPs mentioned in the aforesaid order. When the

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case was taken up for hearing, Shri V.S. Masurkar, learned counsel has submitted that the decision of the Hon'ble Supreme Court in the aforesaid SLPs in the three O.As is still awaited.

3. Shri S.P. Saxena, learned counsel for the applicant, has very vehemently submitted that the present application does not raise similar issues as have been taken up and are pending before the Hon'ble Supreme Court in the aforesaid SLP Nos. 12809-12812/98. He has, therefore, submitted that the present O.A. may be decided on merits, to which learned counsel for the respondents has also no objection. Accordingly, we have heard both the learned counsel for parties at length and perused the documents on record.

4. Learned counsel for the applicant has contended that unlike the issues raised in the aforesaid SLPs pending before the Hon'ble Supreme Court which deal with the attachment of Stenographers Grade-II with Defence Service Personnel, the present application is one where the applicant has been attached to a Civilian Officer, namely, Respondent 2. He is the Director-General, Fishery Survey of India, Bombay. During the hearing, both the learned counsel have categorically submitted before us that in terms of the DOP&T O.Ms. dated

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6.2.1989 and 30.1.1991, respondent 2 is working in a Subordinate Office of Respondent 1, that is the Ministry of Food Processing Industries, New Delhi. They have accordingly made their submissions in relation to these two O.Ms issued by the Government of India, Ministry of Personnel, PG and Pensions, DOP&T.

5. One of the main contentions raised by the learned counsel for the applicant is that the respondents have denied upgradation of the pay scale to the applicant from Rs.1400-2600 to Rs.1640-2900, in terms of the DOP&T O.M. dated 30.1.1991, merely on the ground that the applicant has not reached the maximum of the pay scale and is not stagnating. He has submitted that that is not the criteria for upgradation, as provided in the above two O.Ms. We have also seen the reply filed by the respondents as well as the rejoinder and sur-rejoinder by the parties. The respondents in paragraph 19 of their reply filed on 15.1.1996 have, inter alia, stated that it is true that the applicant is attached to the Director-General carrying the scale of pay of Rs.4500-5700. They have further submitted that as per the DOP&T O.M. dated 30.1.1991, the Director-General is entitled to stenographic assistance at the level of Rs.1640-2900. They have also stated that accordingly, the applicant's case for

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upgradation of the pay scale of Rs.1640-2900 has already been taken up with the competent authority who in turn had advised that his case may be included in the proposal sent to 5th Central Pay Commission.

6. The DOP&T O.M. dated 6.2.1989 is on the subject of Stenographers in Subordinate Offices - recommendation of the 4th Central Pay Commission and scale of pay for those providing stenographic assistance. In this O.M., it has been stated, inter alia, that in the light of the adoption of common replacement scales of pay for officers, pursuant to the 4th Central Pay Commission recommendations, the entitlement of officers for stenographic assistance in Subordinate Offices has been reviewed in consultation with the Ministry of Finance. It is stated in this O.M. that Stenographer Grade-II in the pay scale of Rs.1400-2300 can be attached to an officer in the grade of Rs.3700-5000 and above and below Rs.5100-5700. It is admitted that the applicant is a Stenographer Grade-II who is attached to the Director-General who is in the pay scale of Rs.4500-5700. Therefore, as per this O.M., the claim of the applicant for upgradation of his pay scale does not appear to be justified. However, paragraph 2(c) of the later O.M. issued by the DOP&T O.M. dated 30.1.1991, reads as follows:

"Stenographic assistance at the level of Rs.1640-2900 (Gr.I) may also be provided to functional posts in the scale of Rs.4500-5700 and 25% of JAG posts in the scale of Rs.3700-5000 after identifying such posts on the basis of stenographic workload".

(Emphasis added)

Learned counsel for both the parties have submitted that the applicant was promoted to the grade of Stenographer Grade-II on 19.2.1984 in the pre-revised scale and is in the pay-scale of Rs.1400-2600 w.e.f. 1.1.1986. Having regard to paragraph 2 (c) of the DOP&T O.M. dated 30.1.1991, it is seen that the respondents themselves have taken a decision that stenographic assistance at the level of Rs.1640-2900 may be provided to functional posts in the scale of Rs.4500-5700. It is further noted that the respondents appear to have, prima facie, agreed to the claim of the applicant and have referred the matter to the competent authority to take a decision which was further referred to the 5th Central Pay Commission. We see force in the submissions made by the learned counsel for the applicant that what the applicant is claiming is the revision/upgradation of his pay from Rs.1400-2600 to Rs.1640-2900 w.e.f. 1.1.1986 which was not part of the reference before the 5th Central Pay Commission. In other words, the respondents ought to have taken an appropriate decision in the matter, taking into account the facts and circumstances of the case. Learned counsel for the respondents has also not been able to show any other orders other than the aforesaid two O.Ms dated 6.2.1989 and 30.1.1991, to show that the applicant is not entitled for replacement in the higher pay scale because he has not reached the maximum of the pay scale and, therefore, is not stagnating.

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7. This O.A. was filed on 21.8.1995 and admitted by the Tribunal's order dated 25.9.1995 before notice was issued to the respondents. With regard to the applicability of the judgement to be pronounced by the Hon'ble Supreme Court in the aforesaid SLP Nos. 12809-12812/98, both the learned counsel have opposed each other. They have also referred to another order of the Hon'ble Supreme Court dated 2.4.1996 in Union of India & Ors. Vs. P.M. Haridas & Ors. arising out of the judgement of the Tribunal in O.A.1023/93, decided on 8.8.1995. The Supreme Court has dismissed the SLP filed by the Union of India in the order dated 2.4.1996. Shri V.S. Masurkar, learned counsel has submitted that in the pending SLP, the order dated 2.4.1996 in P.M. Hari Das's case (supra) is also before the Hon'ble Supreme Court. Therefore, in the facts and circumstances of the case, the judgements of the Hon'ble Supreme Court have to be considered and applied.

8. In the above facts and circumstances of the case, the O.A. is disposed of with the following directions:

"Respondents 1 and 2 are directed to take an appropriate decision in the matter of the claim of the applicant for upgradation of his scale of pay from Rs.1400-2600 to Rs.1640-2900 within two months

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from the date of receipt of a copy of this order, with intimation to the applicant. We, however, make it clear that any arrears which become so payable to the applicant will only be from ~~the~~^{the} two months of the filing of the O.A., that is from 21.10.1995. This will also be paid subject to the outcome of the aforesaid SLPs in the case of Union of India Vs. R.R. Nair & Ors. (supra) (SLP Nos.12809-12812/98).

No order as to costs.

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(Shanta Shastry)
Member(A)

'SRD'

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)