

OA, NO. 82/96

1.C.T.Kutty
2.H.K.Chaubey
3.P.M.Ramakrishnan
4.G.S.Kudtarkar

All presently working as
Foremen of Transport in
Naval Transport Pool,
Colaba, Bombay.

...Applicants

By Advocate Shri A.I.Bhatkar

V/S.,

1. Union of India . . .
through Secretary,
Ministry of Defence,
South Block, New Delhi.

2. The Flag Officer Commanding-in-
Chief, Headquarters,
Western Naval Command,
Shahid Bhagat Singh Road,
Fort, Bombay.

3. The Officer-in-Charge,
Naval Transport Pool,
Colaba, Bombay.

... Respondents

By Advocate Shri V.S.Masurkar

ORDER

(Per : Shri D.S.Bawej, Member (A))

All the three OAs., namely, 1498/95, 1499/95 & 82/96 have
been heard together and are being disposed of by a common order
as the facts are more and less same and the same questions of law
are involved in all the three OAs.

2. Brief particulars of the three OAs. are as follows :-

DA.NO.1498/95

This DA. is filed jointly by 14 applicants who are working as Motor Transport Supervisors in Naval Transport Pool, Colaba, Mumbai. In the naval Transport Pool, the cadre comprises of the following grades and posts as per the Recruitment Rules :-

<u>S.No.</u>	<u>Grade</u>	<u>Pre-Revised Scale</u>	<u>Revised Scale</u>
1.	Motor Transport Driver(MTD) Gr.II	260-6-326-EB-8-350	950-20-1150-EB-25-1500.
2.	Motor Transport Driver Gr.I	320-6-326-8-390-10-400.	1150-25-1500
3.	Motor Transport (MT) Supervisor	330-8-370-EB-10-480	1200-30-1440-EB-30-1800
4.	Head M.T. Supervisor	380-12-500-EB-15-560	1320-30-1560-EB-40-2040.

~~Some of the applicants were directly appointed as Motor Transport Driver (MTD) Grade-II and some of them were promoted to this grade from other grades. All the applicants were thereafter promoted as MTD Grade I and then as MT Supervisors through process of selection on various dates between 1984 to 1990. As per order dated 5.7.1990, a new scale of Rs.1320-2040 from 1.1.1988 was provided by upgrading a certain percentage of the posts of MT Driver Grade I with designation of MT Driver Grade I~~

(Selection grade). In this order dated 5.7.1990, it is also provided that there will be no change in duties attached and they will continue to perform the duties of MT Driver Grade I and posting in selection grade will not be treated as promotion. These stipulations as per the applicants imply that MT Supervisors who supervise MT Drivers continue to have higher status than the MT Driver Grade I (Selection Grade). But by the order dated 5.7.1990, the applicants though higher in status have been continued with the scale of Rs.1200-1800 which is lower than that of the MT Driver grade I (Selection grade). Aggrieved by this action, the applicants made a representation in March, 1993. The Respondent No. 3 also as per his letter dated 29.1.1994 referred the matter to higher authority for giving due consideration to the grievance of the MT Supervisors by upgrading their pay scale also. However, subsequently as per order dated 7.7.1994 & 16.8.1994 (extend to Naval organisation) applicants have been further hit. As per this order, the MT Driver Grade I (Selection Grade) if promoted as MT Supervisor will continue to be in the scale of Rs.1320-2040 as a personal to the incumbent as long as he continues as MT Supervisor. These orders are also made effective retrospectively from 1.1.1988. Thus the applicants have been further discriminated as those promoted from selection grade as MT Supervisors and performing same duties as the applicants are in higher scale. As per the letter dated 6.11.1995 addressed to the respondent No. 3, it is advised that the matter is still under examination of Ministry of Defence. The applicants have filed the present OA. on 29.11.1995 seeking the following reliefs :-(1)

(a) to set aside the order dated 6.11.1995 and direct the respondents to take the appropriate decision at the earliest.

(b) referring to the orders dated 7.7.1994 and 16.8.1994, direct respondents to grant pay scale of Rs.1320-2040 or an appropriate higher scale to the applicants as compared to the pay scale granted to the feeder cadre from 1.1.1988.

(c) to direct respondents to grant all consequential benefits including the arrears of pay and allowances.

OA.NO.1499/95

This OA. is filed jointly by the five applicants who are working as Head Motor Transport (Head MT) Supervisors in the scale of Rs.1320-2040. Referring to the same orders as brought out above in the case of OA.NO. 1498/95, the applicants are aggrieved by the action of the respondents by allocating scale of Rs.1320-2040 to MT Driver Grade I (Selection grade) which is the same as that of the applicants as Head MT Supervisor. The applicants have sought the following reliefs through this OA. filed on 5.12.1995 :-

(a) to set aside the order dated 6.11.1995.

(b) to place the applicants in an appropriate higher pay scale/in the scale of Rs.1320-2040 w.e.f. 1.1.1988 till they ^{were} ~~are~~ promoted as Head MT Supervisors.

(c) to direct respondents to allow appropriate higher scale of pay to the applicants compared to the pay scale granted to MT supervisors and MT Driver Grade I (Selection grade) w.e.f. 1.1.1988, the date they have been promoted as Head MT Supervisors.

(d) to grant all consequential benefits including arrears of pay and allowances.

DA.NO.82/96

This application is filed jointly by four applicants who are presently working as Foremen in Naval transport Pool at Mumbai. They were appointed as Motor Transport Driver Grade II and in due course have been promoted as Foremen in the grade of Rs.550-750 after being promoted as MT Supervisor and Head MT Supervisor in between. The applicants are aggrieved by the same order dated 16.8.1994 ^{as} in the other two OAs. as

detailed above through which the MT Supervisors who are promoted from the post of MT Driver grade I (Selection Grade) have been allowed the scale of Rs. 1320-2040 from 1.1.1988. It is the grievance of these applicants who were working as MT Supervisors at that time have not been allowed this scale from 1.1.1988. Their representation made against this grievance is pending as per order dated 6.11.1995. Thereafter, the present OA. has been filed on 3.1.1996 seeking the following reliefs :-

- (a) to quash the order dated 6.11.1995.
- (b) to direct respondents to place the applicants in an appropriate higher scale/in the pay scale of rs.1320-2040 from 1.1.1988 till being promoted as Head MT Supervisor
- (c) to direct respondents to place the applicants in the appropriate higher pay scale as Head MT Supervisor as compared with the scale of Rs.1320-2040 allowed to MT Supervisors and MT Driver Grade I (selection Grade).
- (d) to direct respondents to place the applicants in the appropriate pay scale of Foreman of Transport compared to the pay scale granted to Head MT Supervisors, MT Supervisors and MT Driver Grade I (Selection Grade) w.e.f. dates they are holding the said post of Foreman.

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(e) to grant all consequential benefits including the payment of arrears of pay and allowances.

3. The respondents have opposed all the three OAs. by filing separate written statements. First referring to the Written statement in OA.1498.95 filed in 1996, the respondents at the outset have taken the plea that the OA. is barred by limitation stating that the first cause of action arose with the issue of letter dated 5.7.1990 and OA. has been filed in 1995 only. On merits, the respondents submit that, ^{for} the anomaly arising on account of allocating scale of Rs.1320-2040 to MT Driver Grade I (Selection grade), the matter has been referred to Fifth Pay Commission for review of cadre structure and pay scales of the MT Drivers. This position is already made known to the applicants and therefore the present application is premature. In view of this, the question of placing the applicants in the pay scale of Rs.1320-2040 and above from 1.1.1988 onwards does not arise. Same written statement has been filed in the other two OAs., i.e. 1499/95 and 82/96.

4. During the pendency of the OAs., the recommendations of the Fifth Pay Commission have been received and the same have been implemented for the MT Drivers cadre. The applicants in all the three OAs. have filed amendment applications in September, 1999 to make additional averments with regard to the implementation of the Fifth Pay Commission recommendations. These amendment

applications were allowed. The applicants have brought out that revised/replacement scales as per Fifth Pay Commission have been allowed as under :-

S.No.	Existing Post	Pre-revised scale	Replacement 4th Pay scale	Designation	Revised scale as per 5th Pay Commission
1.	MT Driver	Rs.950-1500	Rs.950-1500	MT Driver	Rs.3050-4590 Grade III
2.	MT Driver	Rs.1150-1500	Rs.1320-2040	MT Driver	Rs.4000-6000 Grade II
3.	MT Driver	Rs.1320-2040	Rs.1400-2300	MT Driver	Rs.4500-7000 Grade I
					(Selection Grade)
4.	MT Supervisor	Rs.1200-1800	Rs.1600-2660	MT Supervisor	Rs.5000-8000
5.	Head MT Supervisor	Rs.1320-2040	Rs.1600-2660	"	Rs.5000-8000
6.	Foreman	Rs.1600-2660	Rs.1640-2900	Foreman	Rs.5500-9000

The applicants have further brought out that while implementing the above recommendations, the MT Supervisors, Head MT Supervisors and Foremen Transport have been discriminated. MT Driver's Grade II, Grade I and selection grade have been allowed the scales as per Fifth Pay Commission from 1.1.1998. In respect of MT Supervisors and Foreman, however from 1.1.1996 to 18.1.1999, the scales of Rs.4000-6000 instead of Rs.5000-8000 and Rs. 5000-8000 instead of Rs.5500-9000 respectively have been allowed and thereafter the revised scales have been granted. The

applicants allege that granting of the revised scales to the MT Supervisors and Foremen from 18.1.1999 instead of 1.1.1996 is discriminatory, arbitrary, irrational and violative of Article 14 & 16 of the Constitution of India. The applicants have accordingly prayed for the relief of grant of pay scale of Rs.5000-8000 to MT Supervisors and head MT Supervisors and the scale of Rs.5500-9000 to Foremen from 1.1.1996 onwards.

5. The applicants have not filed any rejoinder reply for the written statement in all the three OAs.

6. Heard the arguments of Shri A.I.Bhatkar, learned counsel for the applicants in all the OAs. and Shri V.s.Masurkar for the respondents in all the OAs.

7. The learned counsel for the applicant during the hearing made a submission that the relief of implementing of 5th Pay Commission recommendations of Pay Scales in respect of MT Supervisors, Head MT Supervisors and Foreman from 1.1.1996^{by} not pressed as the respondents have since decided to implement the same from 1.1.1996 instead of 18.1.1999. In view of this, present OAs. are confined to the original reliefs.

From the rival submissions detailed earlier, it is noted that the controversy surrounds the letters dated 5.7.1990 and 7.7.1994 and 16.8.1994 (extension of the benefit of letter dated 7.7.1994 to defence Services.). As per letter dated 5.7.1990, 20 MT Drivers Grade I have been promoted w.e.f. 1.1.1988 to the

grade of Rs.1320-2040 with the designation of MT Driver grade I (Selection Grade) by upgrading a certain percentage of the post of MT Drivers Grade I. This letter refers to earlier letter dated 28.8.1989 which of course is not brought on record by the applicants. Reference to this letter shows that ^{the} original upgradation orders were issued in 1989. Letter dated 5.7.1990 also provides that there will be no change in duties attached to the upgraded posts and grant of scale of pay of Rs. 1320-2040 will not be treated as promotion for the purpose of pay fixation. The second letter dated 16.8.1994 (Ex-8) provides that those of the MT Drivers Grade I (Selection Grade) who are promoted as MT Supervisors will continue to be in the scale of Rs.1320-2040 as personal to such incumbents as long as they continue on the post of MT Supervisor. This order has been also made effective from 1.1.1988. In all the three OAs., the applicants are aggrieved by these orders. IN OA.NO.1498/95 filed by the applicants working as MT Supervisors, the grievance which arises is that though they are supervising the work of the MT Drivers Grade I (selection grade) and higher in status but are lower in the pay scale. Further, by allowing the scale of Rs.1320-2040 to those of the MT Supervisors promoted from the post of MT Driver Grade I (Selection Grade), equal^s have been treated unequal^s and the applicants have been ^{discriminated} treated. In view of this, the applicants have claimed the grant of pay scale of Rs.1320-2040 or an appropriate higher scale as compared with the scale of MT Drivers Grade I (Selection grade). In OA. 1499/95 filed by the Head MT

Supervisors advancing the same reasons as in OA.NO.1498/95, the grievance leads to the claim of grant of grade of Rs.1320-2040 from 1.1.1988 when they were working as MT Supervisors and appropriately higher scale on promotion to the post of Head MT Supervisor above the MT Supervisors.

In the OA.NO.82/96 filed by the Foremen, the grievance is made out claiming scale of Rs.1320-2040 from 1.1.1988 as MT Supervisors till their promotion as head MT Supervisors, their appropriate higher scale when compared with that of MT Supervisor as Head MT Supervisor and thereafter appropriate higher scale on promotion as Foreman when compared with the pay scale allowed to the Head MT Supervisors.

The reliefs prayed for therefore involve the issue of deciding the appropriate higher scales for the post of MT Supervisors, Head MT Supervisors and Foremen when compared with the scale of Rs.1320-2040 of the MT Driver. The applicants have not claimed any specific higher scales.

8. The Hon'ble Supreme Court has dealt with the issue of equation of posts and fixation of pay scales etc through catena of judgements. The Apex Court has laid down the law that the matters of fixation of pay scales and equation of posts etc. are within the domain ^{of} policy decision and this is forbidden field for judicial review. We cite here some of these judgements :-

(a) State of U.P. vs. J.P. Chaurasia
(1989) 1 SCC 121.

In para 18, it is held as under :-

"..... The equation of posts or equation of pay must be left to the Executive Government. It must be determined by the expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts."

(b) Union of India vs. P.V. Hariharan,
1997 (1) SC 61J 598.

In para 5, the Apex Court has observed as under:-

"5. Before parting with this appeal, we feel impelled to make a few observations. Over the past few weeks, we have come across several matters decided by Administrative Tribunals on the question of pay scales. We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full Picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is also being mis-understood and mis-applied, freely revising and enhancing the pay scales across the board. We hope and trust that the tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales."

9. It is noted that with the upgradation of the posts of MT Drivers Grade I to selection grade of Rs. 1320-2040 resulted in an anomalous situation which called for review of cadre and pay scales structure of the MT Drivers and Supervisors. Respondents have brought out that since 5th Pay Commission had been set up by then, as per the policy decision, all the matters relating to pay scales revision were to be referred to the 5th Pay Commission. Accordingly, the respondents submit that cadre review proposal was referred to for the consideration of the 5th Pay Commission. During the pendency of the OA., recommendations of 5th Pay Commission have been received. The applicants in all the three OAs. through the amendment application have brought on record the implementation of the recommendations. It is noted that MT Drivers' and Supervisors' cadre has been restructured and higher pay scales have been granted as detailed in para 4. It is noted that higher pay scales have been first allowed as per 4th Pay Commission scales and then the corresponding replacement scales as per 5th Pay Commission recommendations. Thus the grievance of the applicants has been gone into by the Expert Body and higher scales have been provided. The reliefs prayed for by the applicants through these OAs. have thus been granted.

Once the expert body, i.e. 5th Pay Commission has gone into the issue agitated through these OAs. and has laid down the appropriate higher pay scales, then the Tribunal is not required to go into the issue on merits for determination of appropriate higher scales.

Here we refer to the judgement of the Hon'ble Supreme Court in the case of Delhi Veterinary Association vs. Union of India & Ors., 1984 (2) SLR 144. In this case the petitioners had raised issue of parity in pay scales with reference to the pay scale ^{as a ~~matter~~ of} with reference to the implementation of 3rd Pay Commission recommendations. By that time 4th Pay Commission had been set up. The respondents pleaded that the matter under challenge should be allowed to be examined by the 4th Pay Commission. The Hon'ble Supreme Court accepted this plea observing as under in para 4 :-

"4. The Development Commissioner, Delhi has filed a counter-affidavit justifying the impugned pay scale and at the same time he has pleaded that this is a matter which should be allowed to be examined by the Fourth Pay Commission. In view of the latter plea, we feel that it is not appropriate to deal with the merits of the claim of the Veterinary Assistant Surgeons of Delhi in the course of this order although we feel that *prima facie* their grievance appears to be a legitimate one. Since any alteration in their pay scale would involve modification of the pay scales of officers in the higher cadres in the same department and in the corresponding cadres in other departments, the work of refixation of the pay scale should not ordinarily be undertaken by the Court at this stage because the Fourth Pay Commission is required to consider the very same question after taking into consideration all the relevant aspects."

In the present cases the situation is the same and the same plea has been also taken by the respondents. In fact the situation is much better in the present OAs. as the recommendations of 5th Pay Commission have been received and implemented during the pendency of the OAs. The applicants in

all the categories have been allowed appropriate high scales as claimed. The only issue which remains to be deliberated is whether the applicants are entitled for the higher scales from 1.1.1988 and thereafter on promotion to the next grade.

10. The respondents have taken the plea that the OAs ~~is~~ ^{are} barred by limitation as the grievance has arisen with the issue of letter dated 5.7.1990. The applicants have in the OAs stated that OAs ~~is~~ ^{are} within the limitation as per Section 21 of the Administrative Tribunals Act, 1985. However, the plea of limitation taken by the respondents has not been contested by the applicants by filing rejoinder reply. Considering the facts of the case, we are persuaded to see merit in the stand of the respondents. On referring to the letter dated 5.7.91, it is noted that it refers to earlier letter dated 28.8.1989. Since the benefits are given from 1.1.1988 as per letter dated 5.7.1990, it is apparent that letter dated 28.8.1989 is the starting point of the grievance of the applicants. Even taking that the cause of action arose with the letter dated 5.7.1990, it is noted that representations in all the three OAs. have been made first time in March, 1993, i.e. after a period of 4 years after the issue of letter dated 28.8.1989 and about 3 years with reference to letter dated 5.7.1990. Subsequently, the second letter dated 16.8.1994 has caused further grievance but we find that neither any representation made with reference to this letter has been brought on the record nor there is any averment to this effect in all the three OAs. This shows that applicants

kept quiet for a considerable time. No explanation has been given for this delay in agitating the matter for legal remedy. No application has been made for condonation of delay in filing the present OAs. Here we again refer to the judgement in the case of Delhi Veterinary Association (Supra) wherein the aspect of delay and limitation has been also gone into, this. The petitioner in this case had pleaded that since the 4th Pay Commission would not be making any recommendation in respect of the period between 1973 and the date on which the new pay scales to be fixed on the recommendations of the 4th Pay Commission would come into force, the Court should consider the relief of entitlement of the retrospective benefits. The Hon'ble Supreme Court rejected this plea of the petitioner ^{observing} in para 10 "having regard to the long delay in approaching this court after fixation of their pay scales earlier, we do not propose to grant any relief in respect of that period". In the present case, we have already recorded observations with regard to delay and the bar of the limitation in filing the present OAs. Keeping in view what is held in the above cited judgement, we are constrained to conclude that the relief of claiming higher scales from 1.1.1988 onwards is barred by limitation.

11. The applicants have relied upon the order of the Tribunal in the case of Kamal Tara & Ors. vs. U.T.Chandigarh Administration & Ors., 1989 (10) ATC 459. We have carefully gone through this order. Keeping in view our deliberations above,

with reference to recommendations of 5th Pay Commission and the law laid down by the Hon'ble Supreme Court in the cited judgements, we are of the view that the ratio of what is held in this cited order does not hold good for the present OAs.

In the result of the deliberations above, the OAs not only lack^s merit but ^{is} also barred by limitation. All the three OAs. are accordingly dismissed with no order as to costs.

(D.S.BAWEJA)

MEMBER (A)

(R.G.VAIDYANATHA)

VICE CHAIRMAN

mrj.