

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO.257/97

Date of Decision: 28.06.2002

D.T. Makashir

Applicant(s)

Shri M.S. Ramamurthy

Advocate for applicants

Versus

Union of India & another.

Respondents

Shri V.G. Rege

Advocate for Respondents

CORAM: HON'BLE SMT. SHANTA SHAstry. . . MEMBER (A)
HON'BLE SHRI SHANKER RAJU. . . MEMBER (J)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library

Shanta F
(SMT. SHANTA SHAstry)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO. 525/83

Date of Despatch: 28.06.2005

Applicable under Article 214 of the Constitution of India
for the purpose of Article 214 of the Constitution of India

Subject to the following conditions
and subject to the following conditions

NAME: HON. MR. SHANTI SHASTRY MEMBER (A)
HON. MR. SHANT SHANKER RAJU MEMBER (1)

1. To be referred to the Report of the
Commissioner if necessary to be circulated to other
members of the Tribunal
2. To be referred to the Report of the
Commissioner if necessary to be circulated to other
members of the Tribunal

(SMT. SHANTI SHASTRY)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 257/1997

THIS, THE TH DAY OF JUNE, 2002

CORAM: HON'BLE SMT. SHANTA SHAstry. MEMBER (A)
HON'BLE SHRI SHANKER RAJU. MEMBER (J)

1. D.T. Makashir.
2. N.J. Deshpande.
3. D.V. Awale.
4. P.K. Bhavser.
5. M.D. Kable.
6. R.M. Badwe.
7. V.E. Moses.
8. H.S. Pisal.
9. D.S. Kushwah.
10. N.R. Kulkarni.
11. K. Satyamurthy.
12. Satish Kulkarni.
13. Ms. A.A. Kulkarni.
14. S.T. Patil.
15. V. Govindaswamy.
16. D.D. Sansamkar.
17. B.G. Bhapkar.
18. S.K. Telangi.
19. Mukesh Kumar.
20. Kiranpal Singh.
21. Madhuri deshpande.
22. S.N. Taware.
23. B.V. Bhalke.
24. N.B. Kate.
25. S.K. Pore.

26. A.D. Sonawane.
27. Ms. A.N. Jadhav.
28. Sujata Holi.
29. M.V. Masal
30. S.D. Bansode.
31. Ravindra Kulal.
32. P.V. Sathe.
33. Vimalnath Babu.
34. Smt. M.C. Pawar.
35. K. Subaraomurthy.
36. Mrs. R.S. Erande.
37. Mrs. A.R. Kaladkar.
38. Mrs. K.G. Bhone.
39. K. Biradkar.
40. Mrs. C.A. Joshi. Applicants

Applicants 1 to 8 are working as Senior Technicians. Applicants 9 to 35 are working as Technicians and Applicants 36 to 40 are working as Research Assistant in Central Water and Power Research Station at Khadakvasla, Pune.

By Advocate Shri M.S. Ramamurthy.

Versus

1. Union of India,
through the Secretary,
Ministry of Water Resources,
Shramshaakti Bhavan,
Rafi Marg, New Delhi-110 001.
2. The Director,
Central Water and Power Research
Station, P.O. Khadakvasla (RS),
Pune-411 024. Respondents

By Advocate Shri V.G. Rege.

O R D E R
Hon'ble Smt. Shanta Shastry. Member (A)

This application has been filed by 40 applicants belonging to three different categories i.e. applicants 1 to 8 are working as Senior Technician in the pay scale of Rs.1600-2660 (Pre-revised), applicants 9 to 35 are working as Technician in the scale of pay of Rs.1400-2300 and the applicants 36 to 40 are working as Research Assistants in the scale of pay of Rs.1640-2900 in the Central Water Power & Research Station (CWPRS). They have sought the following reliefs:-

- a) that the Respondents be directed to grant the Applicants two time bound promotions as granted to Superintendent II of MES/ Junior Engineers of P & T (Civil) Wing/ Junior Engineers of CPWD and the Overseers of CWPRS i.e. grant them the grade of Rs.1640-2900 on their completing 5 years of service in the recruitment grade of Technician (formerly known as Electrician) scale Rs. 1400-2300, with effect from 1.1.1986 and the scale of Rs.2000-3500 on and from 1.1.1991 on completion of 15 years of service in the said recruitment grade of Technician, and the Applicants be granted all consequential benefits.
- b) that the Applicants 1 to 8 who are presently Senior Technicians in the scale of Rs.1600-2660 be granted the grade of Rs.1640-2900 after 1.1.1986 on completion of five years of service as Technicians/ Electrician and the grade of Rs.2000-3500 after 1.1.1991 on completion of 15 years of service as Technician in the grade of Rs.425-700/ Rs.1400-23-- with all consequential benefits.
- c) that the Applicants 30 to 40 who are presently Research Assistants in the scale of Rs.1640-2900 be granted the said scale on and from 1.1.1986 on completion of five years service as Technicians scale Rs.1400-2300/ Rs.425-700, and all consequential benefits be granted to them.
- d) that the Applicants 30 to 40 be granted on and from 1.1.1991 the scale of Rs.2000-3500 on completion of 1111115 years of service with all consequential benefits.

- (e) that the Applicants be permitted to join in and file this application as Joint Application as they have a common interest in the subject matter of this application and the reliefs sought for are common to all viz. two time bound promotions on the same basis.
- f) that such other and further order or orders be passed as the nature and circumstances of the case may require.
- g) that the costs of this application be provided for.

2. In short what the applicants are seeking is, parity with the Junior Engineers of CPWD/ Overseer of the CWPRS and to grant them the grade of Rs.1640-2900 on completing five years of service and to give them time bound promotions i.e. after five years and 15 years of service.

3. The grievance of the applicants is that though they are possessing the Diploma qualification, they have been placed in the lower scale of Rs.425-700 with effect from 1979 whereas the Overseers with the same qualification have been placed in the scale of Rs.425-700 with effect from 01.01.1973 and further in the scale of Rs.550-900 by order dated 05.02.1992. According to the applicants they were on par with the Overseer and they ought to have been given the same scale as that of the Overseer. According to the applicants as per the recommendations of the 3rd Pay Commission those with Engineering with Diploma as qualification for recruitment were allowed the entry grade scale of Rs.425-700 and the next grade of Rs.550-900. These recommendations of the 3rd Pay

Commission had been accepted by the Government and therefore, the applicants were also entitled to be placed in the scale of Rs.425-700 as Electricians with effect from 01.01.1973 and thereafter on promotion as Radio Technician in the next grade of Rs.550-900. They were allowed this scale from 01.01.1973. The applicants have further submitted that a high level committee was set up to review the scale of pay and the cadre of Research Station under the chairmanship of Dr. Swaminathan. This committee gave its recommendation in 1979. Based on recommendations of this committee the applicants were allowed the scale of Rs.425-700 with effect from 20.8.1979. The same scale was also recommended for Radio Technician which was the promotion post of Electrician. Therefore allowing the scale from 20.8.1979 is arbitrary, discriminatory and violative of Articles 14 and 16 of Constitution of India.

4. According to the applicants, the same Expert Committee under the chairmanship of Dr. Swaminathan recommended the scale of Rs.425-700 for the Overseer with effect from 01.01.1973.

5. The applicants have pointed out further that Junior Engineers(Civil & Elect.) of CPWD were given the pay scale of Rs.1640-2900 on completion of five years of service in the entry grade of Rs.1400-2300 with effect from 01.01.1986 subject to the rejection of the unfit. This was sanctioned vide order dated 27.3.1991, it was

conveyed that the Junior Engineers of CPWD on completion of 15 years of service were also given the higher pay scale of Rs.2000-3500 on personal basis after they were declared fit by the OPC. Based on this the Superintendent Grade-I & II in MES claimed parity with the Junior Engineers of CPWD. They filed an application before Bangalore Bench of the Tribunal, which disposed of the same with a direction to grant higher pay scale of Rs.1640-2900 to Superintendent Grade II in the MES on completion of five years of service with effect from 01.01.1986 as given to Junior Engineers in CPWD and further the scale of Rs.2000-3500 with effect from 01.01.1991 on completion of 15 years of service. Similar applications were filed by Grade I Superintendents in MES and they too got the benefits. The judgment of the Bangalore Bench was carried to the Supreme Court by way of SLPs and the same were summarily rejected by Supreme Court vide order dated 08.4.1996. The judgment was finally implemented.

6. The applicants submit further that their demand was also placed before the 5th Pay Commission. However, the CWPRS misrepresented the position of the applicants to the 5th Pay Commission and therefore, the applicants

did not get any relief from the 5th Pay Commission either, as their chances for the fair deal were damaged by the management. The applicants are claiming therefore that they too are entitled to the same pay scale and the time bound promotions as given to the Junior Engineers in CPWD as well as Overseers in CWPRS.

7. The respondents submit that the entire grievance of the applicants is based on the analogy of the case of Overseers. But the applicants have conveniently omitted to mention the difference in facts between their case and the case of the Overseers. The respondents have produced a table at Exhibit-A showing pay scales which were in existence for the post of Electrician and Radio Technician which came to be merged in the common cadre of Technician with effect from 19.3.1983. According to this table prior to 01.01.1973 the pay scales of Electrician and Radio Technician were Rs.175-280 and 180-380 respectively. Thereafter, the Electricians were placed in the scale of Rs.380-560 with effect from 01.01.1973. Further, the scale of Rs.425-700 was granted to the Technicians as a result of acceptance of the recommendations of Dr. Swaminathan Committee's report. Prior to 1984 the Electricians were provided with promotion to the extent of 50% to the grade of Radio Technician and the Radio Technicians were eligible for promotion to the post of Senior Radio Technician carrying pay scale of Rs.425-700. After the

merger of Electrician and Radio Technician promotion posts of Senior Technician and Superintendent have been created in the higher scales of Rs.550-900 and Rs.700-900 respectively. The 4th Pay Commission granted the pay scale of Rs.1400-2300 for those who were in the scale of Rs.425-700.

8. In the case of the Overseers, the pay scale was Rs.180-380 prior to 01.01.1973. It was revised to Rs.425-700 with effect from 01.01.1973 on the basis of the recommendations of the 3rd Pay Commission. Thereafter, based on the report of Dr. Swaminathan Committee, the Overseers were placed in the scale of Rs.550-900. Thus, the two categories namely Technician and Overseer are not similar. According to the respondents, these pay scales were given after the Expert Committees like 4th Central Pay Commission had gone into the question and the earlier Committee under the Chairmanship of Dr. Swaminathan had considered the same.

9. The respondents have also denied that no promotions were given to the Technicians since their initial appointment. Eight applicants, who were granted the pay scale of Rs.425-700 in the year 1983 have already been promoted to the higher post with effect from 02.01.1989 onwards. Similarly some other applicants were also promoted to the ⁴said pay scale of

Rs.1600-2660. The respondents however submit that the CWPRS is a small organisation and therefore, it is not possible to grant promotion at prescribed intervals to each and every employee. However, the respondents have further stated that the question of granting time bound promotion was under consideration of 5th Pay Commission. Now the Government of India have introduced the ACP Scheme vide OM dated 09th August, 1999. In any case, the post of Technician cannot be compared with that of the Overseer. The respondents again submit that even the post of Overseer no longer exists as it has been redesignated as Research Assistant (Engineering) and separate recruitment rules have been framed and notified for the post. The nature of work, duties etc., are totally different and there cannot be any comparison between the cadre of Technician and Research Assistant.

10. The respondents have also taken the objection that though the scale of Rs.1400-2300 was prescribed for the Technician as far back as 01.01.1986 the present application is filed in 1997 i.e. after 11 years and after the constitution of the 5th Pay Commission and therefore, the present application does not need to be entertained as it is grossly time barred.

11. Further, the respondents submit that the applicants at Sl. No.36 to 40 are not working in the cadre of Overseer but they are Research Assistants in the pay scale of Rs.1640-2900 with effect from 09.9.1996

and the applicant at Sl. No.40 actually is a direct recruit from 18.01.1993. Therefore, the prayer clause "C" is totally misconceived as they were not working in the grade of Research Assistant prior to their date of appointment in the year 1995.

12. The respondents submit that the judgment of Bangalore Bench dated 31.3.1995 has no application whatsoever. It was in connection with the employees working in the Army Headquarters, New Delhi, Ministry of Defence etc., it cannot be made applicable to the applicants, who are working in CWPRS in the Ministry of Water Resources having different duties and responsibilities. It has also been laid down by the Hon'ble Supreme Court that merely on account of one section of employees having been granted the pay scale the other section of employees in other department or organisation cannot be said to be entitled for grant of the same pay scale. Grant or prescription of the pay scale are matters which depend on consideration of various aspects. It cannot be adjudged on the basis of the judgment given in the case of other employees of different organisation. According to the respondents therefore, the applicants have no case.

13. The learned counsel for the applicants submits that recently another judgment was delivered by Hon'ble Shri S.R. Adige, Vice Chairman (A), Principal bench in

OA No.538/93 on 10th January, 2001. The OA was initially heard by a Division Bench of the Tribunal consisting of Hon'ble Chairman and Former Member Shri S.P. Biswas. However, because there was difference of opinion between the two as recorded in the order dated 03.9.97, the matter was referred to a larger Bench. But there was no unanimity of opinion among the Members of the larger Bench as indicated by the order dated 05.12.1997 and therefore, it was again placed before the Vice Chairman (A) Principal Bench. In this judgment after considering the reliefs given to Junior Engineers in CPWD and Superintendent II & I in MES including a judgment of the Jodhpur Bench of the Tribunal in OA No.142/98 in the matter of A.S. Gehlot Vs. Union of India as well as the order dated 22.9.1999 of the Calcutta High court in Writ Petition No. 1730/97 K.R.Basak Vs. CAT Calcutta Bench & Ors., the Hon'ble Vice Chairman, Principal bench expressed respectful agreement with the view of the Former Vice Chairman of CAT and held the applicant entitled to the reliefs claimed. The applicants submit that their case is covered on all fours by this judgment in OA 51j38/93 in the matter of Association of JE, Central Water Commission & 2 Others Vs. Union of India & 2 Others and they should therefore be granted the reliefs as claimed in para eight of the OA.

14. The learned counsel for the respondents, however is relying on the judgment in OA No.842/92 of

the Mumbai Bench of this Tribunal delivered on 14th September, 1998. According to the respondents, the case of the present applicants is squarely covered by this judgment. In this judgment the applicants were Electricians as in the present case. In fact they are identically situated as the applicants in OA No.842/92. Here, the Mumbai Bench held that the application was not only barred by limitation, but was also devoid of merit. In the judgment the Tribunal also relied on the judgment of the Supreme Court in the case of Union of India & another Vs. P.V. Hariharan & another 1997 (1) SCSLJ 598. The judgment of the Tribunal was further upheld by the High Court of Judicature at Bombay. ~~the SC also~~ ~~relied~~ ~~on~~ ~~the~~ ~~same~~ ~~judgment~~ ~~as~~ ~~the~~ ~~Mumbai~~ ~~Bench~~.

15. The respondents have also relied on the judgment of Supreme Court in State Bank of India and another Vs. M.R. Ganesh Babu and others. It was held therein that the principle of equal pay for equal work depends upon the nature of work and not merely on the volume of work. Even where functions are the same the degree of responsibility and reliability expected might be different. Hence the decision of the administration in fixing different pay and conditions of service involves an element of value judgment. According to the respondents the judgment of the Mumbai Bench in OA No. 842/92 is directly related to the applicants. It has already been upheld by the High Court ~~and Supreme Court~~ that needs to be abided by.

16. One of the arguments put forth by the learned counsel for the applicants is that when the judgment was given by the Mumbai Bench of the Tribunal in OA No.842/92 and the same was considered by the High Court and allowed, the point that similarly situated persons in CPWD/MES and the P & T were granted the benefit of higher pay scale was not brought to the notice of the Tribunal. Whereas, in OA No. 538/93 decided by the Principal bench on 10.01.2001 the judgment of the Bangalore Bench in the matter of Superintendent I & II of the MES ^{was} before the Principal Bench, a total picture was available and therefore that judgment is more appropriately applicable. Therefore, the matter needs reconsideration and one cannot go merely by the judgment of the Mumbai Bench.

17. We have heard the learned counsel on both the sides and have perused the judgments cited. It is seen that right from the beginning the cadre of Electricians was in the scale of Rs.175-280 which was raised to Rs.380-560 with effect from 01.01.1973, then further raised to Rs.425-700 with effect from 20.8.1979 on the basis of the report of Dr. Swaminathan Committee and further given the replacement scale of Rs.1400-2300 by the 4th Pay Commission with effect from 01.01.1986. The Radio Technicians on the other hand were in the scale of pay of Rs.180-380 prior to 01.01.1973 and Rs.380-640 as on 01.01.1973 but with effect from 20.8.1979 they were placed in the same scale as Electricians i.e.

Rs.425-700. Then there was cadre restructure on 19.3.1983. In this, Electricians, Radio Technicians and Senior Radio Technicians as well as Driver were all merged into new post of Technician in the scale of Rs.425-700. Whereas, the Overseers were in different scale right from beginning. They were in the scale of Rs.180-380 initially and the same was revised to Rs.425-700 with effect from 01.01.1973 and the further scale of Rs.550-900 was recommended with effect from 20.8.1979 on the basis of the report of Dr. Swaminathan Committee and the 4th pay Commission recommended the replacement scale of Rs.1640-2900. Thus, it can be seen that there was no parity in the pay scales of Technicians and Overseers now redesignated as Research Assistants. Also the Junior Engineers in CPWD or Superintendent I & II or Junior Engineers in P & T belong to different organisations and there is difference in the service condition, duties and responsibilities etc., for the persons promoted in the said organisations. They cannot be made applicable to the applicants in this case. The question of parity does not arise. It is not merely dependent upon the recruitment qualification only. As has been held in the case of State Bank of India (Supra) cited by the respondents, several factors and aspects need to be taken into consideration in matters of equal pay for equal work. In our considered view, since the OA No.842/92 decided by the Mumbai Bench has dealt directly with the issue of the Electrician/ Technician, we are

not persuaded to differ from the aforesaid decision. Also any view contrary to the view taken by this Bench will create discrimination between the same category of employees.

18. The applicants have argued that when the Mumbai Bench decided the case of the Electrician/ Technician the judgment of the Bangalore Bench was not brought to the notice of the Tribunal nor was the plea taken that similarly situated Junior Engineer in CPWD, P. & T and the Superintendent I & II of MES had been granted higher pay scale from 01.01.1973. We have perused the judgment of the Bangalore Bench as well as the Principal Bench. In our considered view there the issue was different i.e. the parity of Superintendent Grade II & Grade I in MES with the Junior Engineer in the CPWD. In the present case, as has already been pointed out, the applicants were not even on par with the Overseers in their own Organisation. The Overseers were granted higher pay scale based on the report of Dr. Swaminathan Committee i.e. an Expert Body. Later on the Overseers were granted parity with the Junior Engineers in CPWD. The Technicians were not given parity with Overseers. The Vth Pay Commission also did not consider it necessary to grant the Technicians parity with Junior Engineers in CPWD. The applicants were initially in a lower scale than the Junior Engineers in CPWD or in P & T or in MES prior to 01.01.1973. There was no parity even till 1979 when the applicants in the present case

got the pay scale of Rs.425-700. The Junior Engineer had got higher scale of Rs.425-700 from 01.01.1973 in CPWD as a result of an Arbitration Award. There being therefore, no parity, merely on the basis of the recruitment qualification the applicants cannot be equated with the Junior Engineers in CPWD or P & T. The applicants contended that their case was misrepresented to the 5th Pay Commission by the Management. but the applicants too had access to the Pay Commission and could have represented their case effectively and they do seem to have represented. But the Pay Commission apparently did not find any substance in their claim for parity with the Overseers and in turn with the Junior Engineers in CPWD. After the Expert Special Body has gone into the matter, we do not find any good reason to interfere with the same. We therefore, hold that the applicants are not entitled to the reliefs sought regarding grant of higher pay scale from 01.01.1973.

19. Also it is very clear that the application suffers from delay and latches and is barred by limitation. The cause of action arose first in 1973 and then in 1979 when Overseers were given higher scale than the applicants. The 4th Pay Commission also did not give any parity as on 01.01.1986. The applicants failed to approach this Tribunal in time. They have come before us in 1997. The OA is thus hopelessly barred by limitation, delay and laches. There is no M.P. for condonation of delay either. The learned counsel for

the applicants referred to the judgments in the case of M.R. Gupta and pleaded that the payment of arrears of pay and allowances could be restricted to one year prior to filing of the OA if it is held that there is delay. Even if this delay were to be condoned for which there is no application by the applicants, still going by the merit, the applicants have no case and their case is fully covered by the judgment of the Mumbai Bench of the Tribunal and the OA deserves to be dismissed and is dismissed accordingly without any order as to costs.

S. Raju

(SHANKER RAJU)
MEMBER (J)

Shanta F

(SMT. SHANTA SHAstry)
MEMBER (A)

Gajan