

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 288/97

Date of Decision: 29.11.2001

Shri S.U. Kabade & 7 Ors.

Applicants

Shri S.P. Saxena.

Advocate for Applicants

Versus

Union of India & 3 others

.. Respondents

Shri R.K. Shetty.

Advocate for Respondents

CORAM: HON'BLE SHRI S.L. JAIN. MEMBER (J)
HON'BLE SMT. SHANTA SHAstry. .. MEMBER (A)

- (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 S.
(SMT. SHANTA SHAstry)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 288/97

THIS THE 29 TH DAY OF NOVEMBER, 2001

CORAM: SHRI S.L. JAIN. . MEMBER (J)
SMT. SHANTA SHAstry . MEMBER (A)

1. S.U. Kabade,
Junior Scientific Officer,
C.Q.A. (E.E.) Aundh Camp,
Pune-411 027.
2. R.A. Kulkarni,
Junior Scientific Officer,
C.Q.A. (E.E.) Aundh Camp,
Pune-411 027.
3. R.P. Gautam,
Junior Scientific Officer,
C.Q.A. (E.E.) Aundh Camp,
Pune-411 027.
4. S.N. Poredi,
Junior Scientific Officer,
C.Q.A. (E.E.) Aundh Camp,
Pune-411 027.
5. Mehboob Khan,
Junior Scientific Officer,
C.Q.A. (E.E.) Aundh Camp,
Pune-411 027.
6. N.K.A. Rahiman, SSO II,
C.Q.A. (E.E.) Aundh Camp,
Pune-411 027.
7. P.S. Waghmare,
Junior Scientific Officer,
C.Q.A. (E.E.) Aundh Camp,
Pune-411 027.
8. Rajendra Singh,
Junior Scientific Officer,
C.Q.A. (E.E.) Aundh Camp,
Pune-411 027. . . Applicants

By Advocate Shri S.P. Saxena.

Versus

1. The Union of India,
Through the Secretary,
Ministry of Defence,
DHQ PO, New Delhi-110 011.

2. The Director General of Quality Assurance (DGQA), Department of Defence Production, D.G.Q.A.(Adm 6B), DHQ PO, New Delhi-110 011.
3. The Controller, Controllerate of Quality Assurance (Engg. Equipments), Aundh Camp, Pune-411 027.
4. Controller, C.Q.A. (F.E.) Aundh Camp, Pune-2. Respondents

By Advocate Shri R.K. Shetty.

ORDER

Smt. Shanta Shastry. Member (A)

The applicants in this OA are presently working as Junior Scientific Officers (JSO for short) in the office of the Controllerate of Quality Assurance (CQE), Kirke, Pune. Respondent No.3 under the Ministry of Defence. The post of JSO is a promotional post to be filled from amongst the feeder cadres of Senior Scientific Assistants (SSA for Short), Foremen and Chief Draughtsmen (CDM for short) according to the applicants. It is stated by the applicants that these feeder posts are in the pay scale of Rs.2375-3500 after the pay scales were revised with effect from 01.01.1986; whereas the pay scale of JSO was kept at Rs. 2000-3500 after the revision of the pay scales from 01.01.1986. According to the applicants, the pay scales of the posts of foremen and some posts of SSA and CDM were higher i.e. Rs.2375-3500 and the remaining posts of SSA and CDM were respectively in the revised pay scale of Rs.1640-2900 and Rs.2000-3200. Prior to the

recommendations of the IV Pay Commission, the post of JSO carried the scale of pay of Rs.600-1200; whereas the post of CDM and SSA carried the scale of pay of Rs.700-900 and that of the Foremen carried the scale of Rs.840-1040. According to the applicants, the JSO post being a Group "B" post and the promotional post should receive higher pay scale than the pay scales attached to the feeder category posts which are Group "C".

2. Some of the JSOs from the Defence Research and Development Organisation (DRDO for short) filed an original application NO.751/91 before the Principal Bench of the Tribunal asking for the higher pay scale as in the present case. The said original application was disposed of by order dated 26.02.1992. A direction was given to the respondents that the anomaly in the case with regard to the pay scale of JSO vis-a-vis those of the Foremen, SSA and CDM should be referred to the Anomalies Committee and further action be taken in the light of the recommendation of the Committee. Accordingly, in pursuance of the direction, the Government constituted an Anomalies Committee and the matter was referred to the said Committee. The Committee in its meeting held on 30.10.1992 found that the issue raised before them did not come within the purview of the definition of anomaly. Therefore, the respondents did not give any relief to the officers in the cadre of JSO. The applicants in OA No.751/91 again filed the OA No.912/93 before the Principal Bench

(Rameshwardass & Ors Vs. Union of India & Ors) again seeking the relief that they should get higher pay scale as JSO. The Principal Bench after considering the previous order as well as the decision taken by the anomalies committee gave the following direction.

"With effect from the date of promotion of the applicants, as mentioned in para 4.2 of the O.A., to the post of Junior Scientific Officers, they are entitled to be given a pay scale higher than the pay scale from which they were promoted. In respect of those persons who have been promoted before 1.1.1986, the concerned applicants would also be entitled to higher revised pay scale than the revised pay scale applicable to the feeder category posts from which they were promoted before 1.1.1986. However, in respect of all the applicants, they would be entitled to the arrears of pay only from the date of this judgement. We notice that the new recruitment rules have a provision in Rule 6 (8) which enables persons like the applicants to opt for the old pay scales under FR-23. We are, therefore, of the view that it is not necessary for us to pass any further directions in so far as the scheme is concerned. We make it clear that this order does not purport to either interfere with the recruitment rules or pronounce upon their validity."

3. The respondents implemented the above mentioned direction by their letter dated 11.6.1996 and granted the pay scale of Rs.2375-3750 to the JSOs in DRDO. The Principal Bench of the Tribunal relied on another judgment of the Tribunal in OA No.731/87 which concerned a similar anomaly in the Railways and which was disposed of on 30.7.93.

4. It is the contention of the applicants that there are numerous posts of JSO under Respondent No.2. All along the post of JSOs in all the Ministries/Departments of the Government of India were placed in the same scale of pay. However, due to Tribunal's order and acceptance of the same by the DRDO, only the JSOs of DRDO have been granted the higher pay scale of Rs.2375-3500. The applicants also belong to the same Ministry as JSOs under the DRDO. There is patent disparity and action of Respondent No.1 is discriminatory. The applicants represented to the Ministry of Defence, Directorate General of Quality Assurance vide a combined application dated 16th December, 1996 regarding the revision of the pay scales of the applicants. Even the Defence Science Service Officers' Association took up the case of the applicants vide their letter dated 24.12.1996. There was no response. Aggrieved by the same, the applicants have approached this Tribunal.

5. The applicants have further submitted that Mumbai Bench of this Tribunal in OA 511/94 also granted the revised pay scale of Rs.2375-3750 to the JSOs of CQA(A) of Ministry of Defence working at Kirkee, Pune vide order dated 08.7.1999. The Mumbai Bench relied on the order of the Principal bench of the Tribunal in OA 912/93. The applicants state that their case is ~~in~~ all

fours with the judgment of the Mumbai Bench and submit that they should also be granted the revised pay scale of Rs.2375-3750.

6. The respondents have opposed the same in the written statement filed on 11.8.97. The respondents submit that the demand of the applicants for revision in the pay scale, which has been fixed by the Central Government after the acceptance of the recommendations of the IV Central Pay Commission and further by way of the Presidential order under Article 309 of the Constitution of India in the form of CCS (Revised Pay) Rules, 1986, it falls within the domain of the Executive function of the Central Government and this is not a fit case for adjudication by the Tribunal. further, the date from which the revised scale of pay should be given effect to is again a policy matter and is beyond the jurisdiction of this Tribunal. The respondents have relied on several judgments in this connection namely Union of India Vs. Vasudevan Nair reported in AISLJ 1990 (3) 124 (SC, Union of India Vs. Mallikarjun Rao reported in AIR 1990 (SC) 1251. According to the respondents even the Principal bench of the Tribunal in its decision in the case of Sonelal & Ors Vs. Union of India decided on 06.8.1992 have directed the applicants on the question of pay revision and periodical pay revision to higher scale of pay, to approach the Central Government thereby conceding that the Tribunal has no jurisdiction in the matter of policy or to revise the

scale of pay of Central Government employees after the same have been fixed on the basis of the recommendation of the Central Pay Commission.

7. The learned counsel for the respondents has also distinguished the judgment of the Principal bench of the Tribunal in OA No.912/93. According to him the applicants belong to the Directorate General of Quality Assurance; whereas the pay scale of Rs. 2375-3750 has been granted to the JSOs of the DRDO. It is a distinct organisation with different objectives and functions than those of the DGQA. Although no doubt both come under the administrative control of the Ministry of Defence, the duties and responsibilities of JSO in DGQA are totally different from the duties and responsibilities of the JSO under the DRDO. The respondents have annexed copy of the constitution of the DRDO as well as that of the DGQA for comparison. Also recruitment rules have been produced. Therefore, the judgment of the Principal Bench cannot be said to be applicable in the case of the applicants who hail from the DGQA.

8. The learned counsel for the respondents submits that the fifth Central Pay Commission has already recommended higher scale of Rs.2500-4000 to the JSO of the DGQA, the same has been accepted by the Government. However, whether to give any retrospective effect to this decision is entirely left to the Central Government

being a major policy matter involving heavy financial implication. Since the applicants' demand has already been met, nothing survives.

9. On merits, the respondents submit that the demand of the applicants has been examined duly and considered in consultation with the Department of Personnel and Training and the Ministry of Finance, who in turn advised that since the question of pay revision career advancement etc., was under the examination of the 5th Pay Commission, it would be advisable to wait for the submission of the report as already stated. The 5th Pay Commission has already recommended a higher pay scale higher than what applicants demanded and the same has been accepted. The learned counsel for the respondents reiterated that where matters have been considered by the Expert Bodies like the Pay Commission and the recommendations have already been accepted, it would not be proper for the Tribunal to interfere. The learned counsel has produced copies of the judgment in the case of Sonelal Vs. Union of India in OA No.481/88 and Shyam Sundar Sharma Vs. Union of India in OA 100/96 decided by Allahabad Bench of the Tribunal in support of this contention. The learned counsel further points out that similar matter has been decided by the Bangalore Bench of the Tribunal wherein the applicants JSOs, also belonged to the DGQA. Therefore, more than the order of the Principal Bench in OA 912/93 which applied to the JSOs of DRDO, the judgment of the Bangalore Bench in OA

No.576/96 is more appropriately applicable in the case of the applicants. The Bangalore Bench has adopted the same stand as that of the Allahabad Bench of the Tribunal.

10. The respondents, in the reply have also pointed out that the post of JSO is required to be filled from four feeder grades and not three, namely Foremen, SSA, CDM and Senior Technical Assistants. It is also not correct that all the feeder grades have been granted Rs.2375-3500 from 01.01.1986. Only one feeder grade namely Foremen has been given replacement scale of Rs.2375-3500 against pre revised scale of Rs.840-1040. The other three feeder cadres namely SSA, CDM and STA were recommended the scales of Rs.1640-2900, 2000-3200 and 1640-2900 respectively as against their pre revised scales of Rs.550-900, 700-900 and 550-900 respectively. It is also to be noted that even prior to the recommendation of the IVth Pay Commission there was disparity in the pay scale of JSO and the pay scales of the feeder posts. Though the JSO is supposed to be a promotional post, still the feeder posts carried much higher scale than that of the JSO, while the JSO supervises over the feeder posts. In fact, it was only during 1988 that by an Arbitration Award 41% of SSAs and CDM were placed in the selection grade of Rs.2375-3500 with the same status as Group "C" with no change in duties. The remaining 59% posts of SSA and CDM remained in the scales of Rs.1640-2900, 2000-3200 respectively.

The disparity in the pay scales had been there even during the Third Pay Commission. The Anomalies Committee which had met on 30.10.1992 also had ruled that the promotion to the post of JSO as per the recruitment rules was from the SSA and CDM which were not in the grade of Rs.2375-3500, it is only because of the Arbitration Award that the higher pay scale was given to some posts in the feeder grades. There is no anomaly in the recruitment rules. The post of Foreman all along carried higher pay scale than that of the JSO.

11. The learned counsel for the respondents has also produced copies of the judgments in the case of Union of India & Ors. Vs. P.V. Hariharan & Ors, J 1997 (3) SC 569, Kshetriya Kisan Gramin Bank & Ors. Vs. D.B. Sharma & Ors 2001 (1) SCSLJ (12) to reiterate that it is only for the Expert Bodies to decide upon the scales etc. and not for the courts and Tribunals. In the case of Kshetriya Kisan Gramin Bank the Supreme Court held that "the Equation Committee consisting of specialised personnel having examined the relevant data and having made the equation with their expertise, the same could not have been interfered with by the High Court particularly when neither there had been any allegation of malice or extraneous consideration nor any material on that score was placed before the court." (para 7).

12. We have heard the learned counsel for both the parties and have given careful consideration to the rival pleadings.

13. The applicants are aggrieved because though they were promoted to the post of JSO and they had to supervise over the SSAs, CDM, Foremen i.e. the posts of feeder cadre in Group "C", they were granted a lower pay scale compared to the pay scales granted to the feeder posts. It is seen that even prior to the recommendations of the IVth Pay Commission, the applicants were in the lower pay scale as compared to the Foremen, CDM, SSAs etc., and the Foremen were drawing a much higher scale even prior to the IV Pay Commission's Report. Further, it is not that all the posts of SSAs and CDM were granted the higher pay scale. It is only a certain percentage of posts which carried the higher pay scale. The respondents have also brought out in their reply that in the case of JSOs in DRDO the cadre of JSOs in DRDO had been declared as dying cadre with effect from 26.8.1995 much prior to the judgment of the Principal Bench of the Tribunal passed on 08.11.1995 and the scale of Rs.2375-3750 was granted to the JSO of DRDO as personal to them with effect from 26.8.95 as no post of the nomenclature of JSO exists in the DRDO. The cadre of JSO in the DRDO has been merged in an identical pay scale of the categories of the Industrial and Technical nature called as Defence Research and Technical Officers cadre with effect from 26.8.1995.

Contrary to this, the cadre of JSO still exists in the Directorate General of Quality Assurance Organisation. Therefore, there cannot be any comparison between the JSO in DRDO and the JSO in the DGQA. Therefore, the judgment of the Bangalore Bench of the Tribunal in OA No.576/96 is more appropriately applicable to the case of the applicants rather than the judgment of the Principal bench in OA No.912/93. It has already been pointed out that the duties and responsibilities of the JSO in the DRDO are different than those of the JSO in the DGQA. As rightly pointed out by the learned counsel for the respondents, it is not for us to go into the revision or fixation of pay scales of these JSOs, that is rightly within the domain of the Expert Body and the IV Pay Commission did go into the matter, but gave only a lower pay scale to the JSO in DGQA. Further, it has also now been brought to our notice that the 5th Pay Commission has recommended a much higher pay scale of Rs.2500-4000 for the JSO in DGQA also and the same has been accepted by the Government. In fact, the scale granted is much higher than what was demanded. This being so, the only question is whether the retrospective effect can be given to the aforesaid decision by granting the revised scale from 01.01.1986. In our considered view, it is a policy decision of Government whether to grant the revised scales from a date prior to the date of the recommendations of the Central Pay Commission. Now that the recommendation of the 5th Pay Commission is available we do not consider it necessary

to interfere in this matter. The applicants have pointed that their case is squarely covered by the judgment in the case of M.P.Sahasrabudhe in OA No.511/94 (supra) we find in this judgment, the Tribunal relied merely on the judgment in OA No.912/93 without going into the individual merits of the case. As already pointed out the judgment of the Principal Bench in OA No.912/93 was in respect of JSOs of DRDO which cadre was a dying cadre and the revised pay scale was granted as personal to the JSOs with effect from 26.8.1995. This being so, the judgment in OA 511/94 cannot be made applicable in the present case. The respondents have cited certain judgments of the Supreme Court wherein the Supreme Court have time and again made it amply clear that it is for the Expert Bodies to go into the matters of pay fixation, revision of pay scale etc., and not for the Tribunal. They have also drawn our attention to the Full Bench judgment of this Tribunal in the matter of lift operators of MES in OA No.525/98 decided on 09.10.2000 which has taken the same view of not interfering in matters of pay fixation. We abide by the same. We leave it to the respondent department to take their own decision regarding the date from which the revised pay scale should be made available to the JSOs in the DGQA. In the result, the OA is dismissed. No costs.

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

S.L. Jain
(S.L. JAIN)
MEMBER (J)