

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO.963/97

the 27th day of FEB. 2002

CORAM: Hon'ble Shri M.P. Singh, Member(A)

Hon'ble Shri J.K. Kaushik, Member(J)

Avinash Harichand Kholam
Residing at Dehu Gaon,
Near Vithal Temple,
Taluka Haveli, At Post Dehu Road,
District Pune.

...Applicant.

By Advocate Shri S.P. Saxena.

V/s

1. The Union of India
Through the Secretary
Ministry of Defence,
DHQ, PO, New Delhi.
2. The Chief Engineer,
Poona Zone,
Pune.
3. The Garrison Engineer (NW)
Karanja, Post : Naval
Armament Depot,
Karanja, Uran,
Dist. Raigad.
4. The Garrison Engineer
(Central), Kirkee, Pune.
5. Assistant Accounts Officer
Garrison Engineer (Central),
Kirkee, Pune.

...Respondents.

By Advocate Shri R.K. Shetty.

O R D E R (ORAL)

{ Per M.P. Singh, Member(A) }

In this O.A. the applicant is challenging the order dated
30.6.1997 (Exhibit A-1) issued by respondent No.3 and order dated
13.9.1997 (Exhibit A-2) issued by respondent No.5.

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2. The brief facts of the case are that the applicant was initially appointed to the post of Refrigeration Mechanic (Skilled) in the pay scale of Rs.950 - 1500 by respondent No.2 on 9.1.1988. His pay was fixed at the minimum of the scale of Rs.950/- and he was sanctioned yearly increments on 1st of January each year from 1989 to 1997. Respondent No.3 vide impugned order dated 30.6.1997 changed the pay scale of the applicant to his disadvantage retrospectively with effect from the date of initial appointment i.e.9.1.1988. By the said impugned order dated 30.6.1997 the applicant is now shown to have been appointed as Refrigeration Mechanic (Skilled) in the lower scale of pay of Rs.800 - 1150. This reduction of applicant's pay is done after about 9 and 1/2 years in 1997 and that too without any show cause notice or information to the applicant. Respondent No.5 vide letter dated 13.9.1997 had reduced the pay fixation of the applicant retrospectively from 1988 to 1997 and has ordered a recovery of Rs.12,427/- from the applicant on account of excess payment made on refixation of pay in the lower scale of pay. A sum of Rs.1000/- has already been deducted from the pay of the applicant for the month of September 1997 as the first instalment of recovery. The applicant had submitted a representation against the impugned order. No reply from the respondent was received by him. Hence the applicant has filed this O.A. to declare that the action of the respondent in placing the applicant from the higher scale of Rs.950 - 1500 to lower scale of Rs.800 - 1150 is illegal. He has also sought a direction to quash and set aside the impugned order issued by respondent No.5 to make recovery of Rs.12,427/- and direct respondent No.3 to 5 to refund the amount already recovered from him.

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3. The respondents have contested the case and have stated that the applicant was appointed in the pay scale of Rs.950 - 1500 vide letter dated 9.1.1988. The respondents are now seeking to amend the original letter of appointment by their order being the impugned order whereby the applicant is being placed in the post of Refrigeration Mechanic (semi skilled) in the pay scale of Rs.800 - 1150 as provided in the Engineering Chief's Branch letter dated 11.1.1985. According to the said letter, all recruitments have to be initially made in the semi-skilled post in the pay scale of Rs.800 - 1150 and on completion of two years of service, a person is promoted to the skilled post of Refrigeration Mechanic in the scale of pay of Rs.950 - 1500 . Accordingly when this anomaly was noticed by the Chief Engineer, Southern Command, in 1997, the respondents have sought to amend the original letter of appointment of the applicant in order to place him in the scale of Rs.800 - 1150 for the first two years of his service from 9.1.1988 onwards and where he will stand promoted to the post of Refrigeration Mechanic (Skilled) in the scale of Rs.950 - 1500. In view of these submissions, OA deserves to be dismissed.

4. Heard the rival contesting parties and perused the records.

5. During the course of the argument the learned counsel for the applicant has submitted that the applicant was appointed as Refrigeration Mechanic (Skilled) in the scale of Rs.950 - 1500 in 1988. The respondents cannot now place him in the lower scale of

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Rs.800 - 1150 (semi skilled) after a lapse of 9 and 1/2 years retrospectively and effect recovery of difference of pay from his salary. In support of his claim he has relief upon the judgement dated 20.7.2000 of this Tribunal in a similar case (O.A.858/93 and other connected OAs). This judgement of this Tribunal has been confirmed by the Hon'ble High Court in Writ Petition No.1279/2001 vide their judgement dated 9.4.2001. On the other hand the learned counsel for the respondents has submitted that as per the letter dated 11.1.1985 issued by the Engineering Chief's Branch, New Delhi all the posts of Refrigeration Mechanic are first required to be filled up in the pay scale of Rs.210 - 290 (semi-skilled) and on satisfactory completion of two years service in that grade, the person will be considered for promotion to Refrigeration Mechanic (skilled) in the pay scale of Rs.260-400. He further submits that the applicant was appointed to the post of Refrigeration Mechanic (skilled) in the ^{pay}~~ap~~ scale of Rs.950 - 1500 erroneously which mistake has been rectified by them now. The respondents in support of their claim had relief upon a catena of judgements including the judgement of this Tribunal in O.A.88/95 decided on 12.1.2000 and that of the Hon'ble Supremen Court (JT 1997 (3) SC 569) in the case of Union of India and others V/s P.V. Hariharan and ors.

6. After hearing the learned counsel for both sides and on perusal of the record, we find force in the contention of the learned counsel for the applicant. The respondents had appointed the applicant on 9.1.1988 in the post of Refrigeration Mechanic (skilled) in the pay scale of Rs.950 - 1500. He was also granted regular increments every year upto 1997. It was only after 9 and 1/2 years that the respondents had issued letter dated 30.6.1997

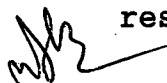
whereby the reduction in pay scale of the applicant was made with retrospective effect i.e. from January 1988. This has been done without giving an opportunity of hearing to the applicant. The respondents thus violated the principle of natural justice.

7. Moreover, the respondents are relying on the letter of Engineer's-in-Chief's (E-in-C) Branch letter dtd 11.1.1985 which provides that Direct Recruits will be recruited in the semi-skilled grade of Rs.210 - 290 (800 - 1150) and on completion of two years service in the grade will be considered for promotion to the skilled grade by DPC. Necessary amendment to Recruitment Rules(RRs) will be issued separately. It is an undisputed fact that RRs were amended only in the year 1991. It is also beyond dispute that the applicants were offered appointment to the post of refrigeration mechanic which was a skilled grade in the pay scale of Rs.260 - 400 (Rs.950 - 1500, revised) as per the then existing RRs. The letter issued on 11.1.1985 by the E-in-C's Branch was in the nature of administrating Executive instructions and cannot take precedence over SRRs which are framed under Article 309 of the constitution. Thus action taken by the respondents in reducing the pay scale of the applicant from retrospective date is not sustainable in law. With other hand the judgements of the Tribunal and Hon'ble Supreme Court relief by the respondents are not applicable in the present

case.

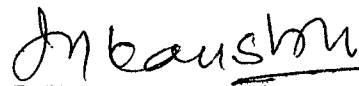
8. In a similar case, the Tribunal vide its judgement dated 20.7.2000 in O.A.No.64/99 and O.A.No.858/93 had set aside the order of the respondents whereby the applicants in these OAs were placed in the lower scale of pay from a retrospective date without amending RRs. This judgement of the Tribunal has been upheld by Hon'ble High Court in Writ Petition No.1279/2001 decided on 9.4.2001. The Hon'ble High Court has held as under:

After hearing the learned counsel for the parties we are satisfied that the impugned order does not call for any interference. The respondent was appointed vide appointment letter dated 28th May 1985 in the scale of skilled grade. The respondent continued to work for more unilaterally the terms of the respondent's appointment have been sought to be amended prejudicial to the respondent's interest by the order dated 16th December 1998 which was apparently illegal and therefore the Tribunal cannot be said to have erred in quashing such an illegal order. The principles of natural justice were not at all adhered to. Moreover, the terms and conditions on which the respondent was appointed could not have been amended prejudicial to the interest of the respondent. No case for interference is made out.



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9. On perusal of the above judgement, we find that the present OA is covered on all forms by the aforesaid judgement of the Hon'ble High Court of Bombay. In view of the ratio laid down by the Hon'ble High Court's in the aforesaid judgement, we allow this O.A. and quash the orders dated 30.6.1997 and 13.9.1997 in so far as it relates to the applicant. The recovery already made by the respondents from the pay of the applicant shall be refunded to the applicant. This exercise shall be done within a period of four months from the date of receipt of a copy of this order. No order as to costs.


(J.K. KAUSHIK)
MEMBER (J)


(M.P. SINGH)
MEMBER (A)

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