CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NOS: 51/97, 52/97 AND 53/97.

Dated the 17th day of February, 1999.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA, VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

B. G. Gujar,
Senior Chargeman,
T. No. 5852,
512 Army Base Workshop,
Kirkee, Pune - 411 003. ... Applicant in O.A. No. 51/97.

P. A. Jose,
Senior Chargeman,
No. 14691495 Engine Shop,
512 Army Base Workshop,
Kirkee, Pune - 411 003. ... Applicant in O.A. No. 52/97.

S. N. Jadhav,
Senior Chargeman,
No. P/3886 C Veh Section,
512, Army Base Workshop,
Kirkee,
Pune - 411 003. ... Applicant in O.A. No. 53/97.

(By Advocate Shri Suresh Kumar)

VERSUS

1. Union Of India through
The Secretary to
Government of India,
Ministry of Defence,
South Block,
New Delhi - 110 011.

2. The Director General of EME,
Directorate General of EME,
Master General of the
Ordinance Branch,
Army Headquarters,
NEW DELHI - 110 011.

3. The Commander (Headquarters),
Technical Group EME,
Delhi CANNT. 110 010. ... Respondents in all the O.As.

4. The Officer-in-Charge,
EME Records,
Secunderabad - 500 021.

5. The Commandant,
512 Army Base Workshop,
Kirkee, Pune - 411 003.

(By advocate Shri R.K. Shetty).

(PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN)

These are three applications filed under Section 19 of the Administrative Tribunals Act, 1985. The respondents have filed reply opposing the applications. We have heard the Learned Counsels appearing on both sides. Since the point involved is a common point , all the three cases are being disposed of by this common order.

2. The applicant in O.A. No. 51/97 joined the Army Base Workshop as an Industrial Worker and after some promotions came to be promoted as Master Craftsman in the pay scale of Rs. 425-15-560-EB-20-640 (subsequently revised as Rs. 1400-2300 on the basis of Fourth Pay Commission Report). Subsequently, the applicant came to be promoted to the post of Senior Chargeman (Non-gazetted) w.e.f. 10.10.1992 after being found suitable and eligible by the D.P.C., which also is in the revised scale of Rs. 1400-2300 but it is stated that this post of Senior Chargeman carries duties and responsibilities of higher degree than the post of Master Craftsman. In view of the applicant's promotion to another post with an higher responsibility, but, however, having the same scale of pay as the feeder cadre, the applicant is entitled to fixation of pay under Fundamental Rules 22 (I)(a)(1). The applicant has made representations to the administration for fixing his pay scale under this relevant rule but there was no response from the respondents on his representation. Hence, he has approached this Tribunal praying for a direction to the respondents to fix his

pay as per Fundamental Rules 22(I)(a)(1) with effect from 10.10.1992 in the grade of Sr. Chargeman with all consequential benefits and arrears.

The case of applicant in O.A. No. 52/97 is also identical but the only thing is, he was promoted as Senior Chargeman w.e.f. 28.02.1991. Except for this change, his case is similar to the applicant in O.A. No. 51/97.

Similarly, even in O.A. No. 53/97, the case of the applicant is similar to the above two cases except that he came to be promoted as Senior Chargeman on 10.10.1992.

3. In all the cases, the respondents have filed reply opposing the application. Their main stand is that, since the feeder post and the promotion post are having common scales of pay, there is no question of fixing pay under Fundamental Rules 22 (I)(a)(i). They have also denied the allegation that promotion to the post of Senior Chargeman involves higher responsibilities and duties. In view of the Fourth Pay Commission Report, when the two scales are merged, there is no question of pay fixation under the old F.R.-22-C, which is now equivalent to the new F.R. 22(I)(a)(i). The representations of the applicants have been suitably replied stating that they are not entitled to pay fixation under Fundamental Rules. Hence, it is stated that the applicants are not entitled to any of the reliefs prayed for.

Hence, it is prayed that all the three applications be dismissed with costs.

4. After hearing both the counsels, we find that the only point that falls for determination in these cases is - whether the applicants are entitled to fixation of pay under Fundamental Rules 22(I)(a)(i) or not ?

5. There was some arguments at the bar, whether F.R.22 can be applied to Civilians in Defence Services or not. The Learned Counsel for the respondents contended that F.R.-22 cannot be applied to Civilians in Defence Services and placed strong reliance on a judgement of the Supreme Court reported in 1998 SCC (L&S) 1623 (All India Defence Estate Employees' Association V/s. Union Of India & Others) where no doubt, the Supreme Court has observed that for Civilians in Defence Services there are specific rules and, therefore, general provision under F.R-22-C is not applicable. The Learned Counsel for the applicant relied on some authorities to say that F.R.-22 is applicable to Civilians in defence services.

In our view, it is not necessary to go into this legal question, since even if F.R.-22 is applicable to Civilians in defence services, the applicants would not be entitled to get fixation of pay under that rule. Hence, we need not go into that question about applicability of F.R.-22-C to the Civilians in defence services in these cases.

6. All the applicants were working as Master Craftsman in the revised pay scale of Rs. 1400-2300 and they were promoted as Sr. Chargeman having the same revised pay scale of Rs. 1400-2300. The question is, when both, the feeder post and the promotional post have identical scales of pay, whether fixation of pay can be done under F.R.-22-C or not ? At this stage, we may notice that rules have been amended and F.R.-22-C is no longer on the statute book but it is now made as F.R.-22(I)(a)(1). In this rule, it is mentioned, that whenever there is a promotion from one post to another post involving duties and responsibilities of greater importance, then the pay fixation has to be done as mentioned in that rule.

Now the question therefore is, whether the duties and responsibilities of Sr. Chargeman is of greater importance than those attached to the post of Master Craftsman. The respondents have denied this fact in their written statement.

The Learned Counsel for the applicant placed strong reliance on a decision of a Learned Single Member of this bench dated 09.06.1997 in O.A. No. 1435/95, where nodoubt, the Learned Single Member (A) has formed a opinion that Senior Chargeman has greater duties and responsibilities than the Master Craftsman. He has, nodoubt referred to the duties of Sr. Chargeman, then he has also made reference to F.R. 30(2) in para 5 of the judgement stating that this rule, nodoubt placed a restriction in granting benefit under Rule F.R. 22-C to posts having identical time scale but he has noted that the rule has been deleted. Therefore, one of the reasons

which promoted
the Learned Single Member to take that view is that the rule which prescribes restriction on this point, namely - F.R. 30(2) has been deleted from the Statute Book. In our view, though this statement that F.R.-30 has been omitted from the Statute Book is correct, it is not totally deleted from the Rules but whatever that was contained in F.R.-30 has been added to F.R.-22 itself as sub-clause III. Probably, both the counsels did not bring to the notice of the Hon'ble Learned Member that though F.R.-30 has been deleted, it has been included by way of amendment to Rule F.R.-22 as sub-clause III.

7. We have already seen how even F.R.-22-C has been deleted and included in F.R. 22(I)(a)(1). As already stated, F.R.-22(I)(a)(1) prescribes the mode of fixing pay whenever a person is promoted from one post to another, involving duties and responsibilities of greater importance.

Then we come to F.R.22(III) which reads as follows :

> "For the purpose of this rule, the appointment shall not be deemed to involve the assumption of duties and responsibilities of greater importance if the post to which it is made is on the same scale of pay as the post, other than a tenure post, which the Government servant holds on a regular basis at the time of his promotion or appointment or on a scale of pay identical therewith."

The rule clearly says that in cases where the pay scales in both the feeder post and the promotional post have same scale of pay, then it shall not be deemed that the promotional post involves duties and responsibilities of greater importance. Therefore, here

a presumption is raised by the statute itself that it shall not be presumed that the promotional post involves higher responsibilities or greater importance if the scales of pay of both, the lower post and promotional post, are identical. In view of this statutory position, the applicants who were promoted from one post to another and both having the same scales of pay, cannot get the benefit of F.R. 22(I)(a)(1) (old F.R.-22-C).

8. Now in this connection, we may again refer back to the Supreme Court judgement mentioned earlier, namely - 1998 SCC (L&S) 1623, where also the official had been promoted from the post of technical assistant to the post of Office Superintendent in 1988. The Fourth Pay Commission Report had been accepted from 01.01.1986. The Supreme Court has observed that when scales of pay of both the posts stood merged from 01.01.1986 and had identical pay scales, there is no question of any promotion to a post carrying higher responsibilities as mentioned in F.R.-22-C(now F.R. 22(I)(a)(1) and, therefore, the claim of the applicants seeking fixation of pay under F.R.-22-C is not maintainable.

9. The Learned Counsel for the applicant also placed reliance on a judgement of a Full Bench of this Tribunal reported in 1994-96 A.T. Full Bench Judgements 13 ‡ Bajrang Sitaram Wanjale & Others V/s. Union Of India & Others ‡. In our view, this decision has no bearing on the point under consideration. The question of application of F.R.-22-C in a case of feeder post and promotional post having identical scales of pay, was neither raised nor decided by the

Full Bench. The question in that case which was raised and decided was, where when Tradesman Grade 'A' has been promoted as Master Craftsman and again promoted as Chargeman Grade-II, then when the pay has to be fixed under F.R.-22-C, the pay to be considered is of the lower post or that of the Master Craftsman or Tradesman Grade 'A'. The administration took the view that for applying F.R.-22-C, the pay of Tradesman Grade 'A' should be taken into consideration but the Full Bench held that pay of Master Craftsman to be taken into consideration. Therefore, the point which we are now considering, was neither raised nor decided by the Full Bench.

10. In the result, all the three applications are dismissed. No order as to costs.

(D. S. Baweja)
Member (A).

(R. G. Vaidyanatha).
Vice-Chairman.

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