

CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI.

O.A.79/98.

Dated this Monday the 31st Day of Dec., 2007.Coram : Hon'ble Smt. Rama Das, Member (A)
Hon'ble Shri Jog Singh, Member (J).

1. Shri S.K. Kulkarni,
Stenographer Gr.III,
2. Mrs. Saudamini Nair,
Stenographer Gr.III,
3. Mrs. Kunjamma George,
Stenographer Gr.III,
4. Ms. Vidya N. Israni,
Stenographer Gr.III,
5. Shri A.C. Sugunan,
Stenographer Gr.III,
6. Shri S. Gaurishankar,
Stenographer Gr.III,
7. Shri M.A. Shaikh,
Stenographer Gr.III,
8. Shri P.R. Warkhade,
Stenographer Gr.III,
9. Shri P.D. Kawade,
Stenographer Gr.III,
10. Mrs. Vinya V. Mandke,
Stenographer Gr.III,
11. Mrs. Mary D'Souza,
Stenographer Gr.III,
All the applicants are
working at Armed Forces
Medical College at Pune.Applicants.

(By Advocate Shri S.P. Saxena)

VERSUS.



1. Union of India, through the Secretary, Ministry of Defence, DHQ, PO., New Delhi - 110 011.
2. The Director General, Armed Forces Medical Services, New Delhi-110 011.
3. The Commandant, A.F.M.C., Pune - 40. ..Respondents.

(By Advocate Shri R.R. Shetty).

O R D E R
{ PER : JOG SINGH, MEMBER (J) }.

The present O.A. has been filed by the 11 applicants in the year 1998 mainly seeking the following reliefs:-

- "a) to direct the Respondents to upgrade the Applicants to higher posts as per the D.O.P.T letter dated 6.2.1989 and to place them in appropriate grade/posts/scale of pay retrospectively with effect from 1.1.1986.
- b) to direct the Respondents to fix the pay of the Applicants on their upgradation as prayed in a) above with effect from 1.1.1986 and to pay them arrears of salary accordingly.
- c) to award interest on the arrears of revised salary from 1.1.1986 at the rate of 12% per annum."

2. On 13.2.2002, this matter was kept in sine-die on the submission of the learned counsel for the parties that one SLP was pending before the Hon'ble Supreme Court involving exactly the identical question of law which was

(F)

filed by Union of India against the order of this Tribunal in O.A.No.1023/93. However, when the matter was taken out of sine-die list it has been revealed that the said SLP No.1126/96 from the order dated 08.08.1995 of this Tribunal in O.A.1023/93 had already been dismissed by the Hon'ble Supreme Court on 02.04.1996. In fact, one more O.A.781/98 filed by the applicant seeking similar relief was also allowed by this Tribunal on 07.07.2006.

3. Briefly stated the facts of the case in hand are that all the applicants were working in Armed Forced Medical College, Pune as Stenographer Gr.III in the pay scale of Rs.1200-2040 at the relevant time. On the basis of recommendations of 4th Pay Commission, the D.O.P.&T., Government of India, which was a nodal Ministry for regulating service matters of all Central Government employees, issued an O.M. dated 06.02.1989 by which the entitlement of various officers of Government of India for Stenographic assistance for all Departments/Ministries was revised as under:-

<u>"Level of Stenographic assistance.</u>	<u>Scale of officer entitled</u>
1. Stenographer Gr.III (Rs.1200-2040)	Rs.3000/- 4500/- and below Rs.3700-5000/-
2. Stenographer Gr.II (Rs.1400-2600)	Rs.3700-5000/- and above but below Rs.5100-5700/-
3. Stenographic Gr.I (Rs.1640-2900)	Rs.5100-5700 and above but below Rs.5900-6700/-



4.Sr.Personal Asstt.
(Rs.2000-3200)

Rs.5900-6700/- and
above (Officers of
Sr.Admin Grade or
equivalent posts)."

The above said O.M. was duly issued with the approval of Ministry of Finance/Union Government. As such the applicant claimed that respondents were duty bound to upgrade the applicant to appropriate cadre and scale of pay in terms of the said O.M. dated 06.02.1989. In fact the Ministry of Defence had accepted and implemented the above O.M., but the applicants have somehow been ignored. The result of the above communication of the respondents is that the applicants are continuously put to prejudice in the matter of pay fixation and future promotions etc. The applicants have relied upon the order of this Tribunal in O.A.No.1023/93 and O.A.729/92 in which it has been categorically held that -

"stenographers are to be given the benefits of the upgradation as in O.M. dt.6.2.89 from 1.1.1986."

It is also submitted by the learned counsel for the applicants that SLP preferred by the respondents (Union of India) against the said order has already been dismissed.

4. The respondents have filed their reply dated 14.03.1998 and stated that OM dated 06.02.1989 is not applicable in the case of the applicants herein as these applicants are rendering Stenographic Assistance only to Professors who are all Doctors for whom Stenographic



assistance are to be provided on the basis of OM No.B/17116/EME Org 3/2593/D(Civ-I) dated 01 May 81, No.9/1/85-SIU dated 25.08.1987, No.28034/1/88-Estt(D) dated 09.02.90 read with OM No.1(1)/89/D(Civ-I) dated 19.11.93. It is also submitted that the above mentioned 4 OMs specifically govern the case of the applicants, they being Stenographers attached to Technical Personnel in the Departments in the office of Respondent No.3 who are all in the rank of Colonel/equivalents and Colonels in accordance with OM dated 19.11.1993 are entitled to Stenographic Assistance at the level of Gde-III only. The Respondents, thus, contend that no discrimination is being meted out to the applicants and that their case is not at all covered by DOPT OM dated 06.02.1989.

5. We have heard the learned counsel for the parties and have gone through the pleadings and the documents annexed therewith. During the course of hearing, the learned counsel for applicant has brought to our notice an order of this Tribunal dated 07.07.2006 passed in O.A.781/1998, Yeshwant Mahadeo Mhangare vs. Union of India & two others. The learned counsel for applicant has contended that this is a similar case and grievance of the applicant is also the same and hence it is covered by the above said order of this Tribunal. We have minutely gone through the above said order of this Tribunal in OA 781/1998. The relevant portion is



reproduced below:-

"8. We have heard both the learned counsel and have gone through the material placed on record. We observe that OM dated 6.2.1989 of DOP&T only lays down entitlement of officers for stenographic assistance. It does not mean that the stenographers working with a senior officer has to be given the pay scale of Stenographer Grade-II irrespective of number of posts in the organisation and his seniority in the cadre of Stenographer Grade-III. In O.A.No.1023/93 a decision relied upon by the applicant, there were as many as 61 persons belonging to different grades. It was held by the Tribunal that these persons are entitled for the benefit in accordance with DOP&T OM 6.2.1989. In such cases the total entitlement of officers in particular organisation has to be worked out and thereafter an appropriate number of posts in various pay scales of Stenographers are to be sanctioned based upon the entitlement of officers. In other words it is the post which (is) upgraded and not incumbent. After completion of such exercise the filing of upgraded post has to be done by following the procedure laid down in the Recruitment Rules. The respondents in their written statement have not given any information about the number of posts upgraded and action taken for filling them up. Keeping in view the number of upgraded post if the applicant qualifies for upgradation on the basis of parameters mentioned in the Recruitment Rules then he would be entitled for the higher grade. The action of the respondents in reverting the applicant from Stenographer Grade-II to Stenographer Grade-III merely on the ground that he is working with an officer of the rank of Colonel who according to Ministry of Defence OM dated 19.11.1993 is only entitled for Stenographer Grade-III is not legally sustainable. We, therefore, quash and set aside the impugned order dated 26.8.1992 and direct the respondents to work out the number of



posts of Stenographer which would be available in the unit on the basis of guidelines contained in DOP&T OM dated 6.2.1989 and then consider the case of the applicant for promotion to Stenographer Grade-II based upon his seniority and recruitment rules. As far as recovery of Rs.7,960/- from the applicant on the ground that his earlier pay fixation not being in conformity with the Ministry of Defence OM dated 19.11.1993 is concerned, the applicant is entitled for the benefit of the ratio laid down by the Apex Court in Shyam Babu Verma Vs. Union of India (Supra). Keeping in view the facts of the case the respondents are directed to refund the amount of Rs.7,960/- in one instalment without any interest.

9. The OA is allowed on above terms, with no order as to costs."

A perusal of the above said judgment clearly shows that the case of the applicant is squarely covered by the above said earlier judgment of this Tribunal dated 07.07.2006 passed in O.A.781/1998. We are in respectful agreement with this order of the Tribunal and following the same.

6. We allow the OA in terms of prayers 'A' and 'B'. The respondents are directed to carry out these directions within a period of three months from the date of receipt of a copy of this order.

No costs.


(Jog Singh)
Member (J)


(Smt. Rama Das)
Member (A).

MP No. 253108
For Extension of
Time Fixed for
hearing on 10/6/08

(R)

42610

M.P.No.253/2008 in
O.A.No.79/98.

Date : 10.06.2008.

None for the applicants.

Respondents by Shri R.R. Shetty:

Heard, Shri R.R. Shetty, learned counsel for applicants who are original respondents. The directions on the Original Application filed by the applicants were to be implemented within a period of 3 months. The case in which the orders were passed pertains to grant of A.C.P. It is stated by the respondents that they are taking steps for implementing the orders for which they need further time. We take note of the fact that they are taking steps for implementing the orders. However, we are not inclined to grant extension. The delay in implementation of order will have to be explained if such eventuality arises.

The MP for extension is dismissed.

Sudhakar Mishra
(Sudhakar Mishra)
Member (A)

A.S. Bagga
(Justice A.S. Bagga)
Member (J).

H.

17/6/2008

CENTRAL ADMINISTRATIVE TRIBUNAL**MUMBAI BENCH, MUMBAI****CONTEMPT PETITION NO 86 OF 2008
IN
ORIGINAL APPLICATION NO.79 OF 1998**

SK Kulkarni & Others : APPLICANT

Versus

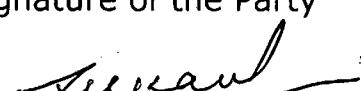
1) Lt Gen Y Singh D.G.A.F.M.S Min of Defence New Delhi - 110 011 // 0075	}	<u>CONTEMNERS</u> RESPONDENTS
2) Lt Gen SK Kaul Director & Commandant Armed Forces Medical College Pune- 411 040		

I, **Lt Gen (Retd) SK Kaul, Ex Director & Commandant, AFMC, Pune 411 040** Respondent No.02 in the above petition do hereby appoint and retain **Shri R.R. Shetty, Advocate** to appear, plead and act for me in the above application/petition and to conduct and prosecute all proceedings that may be taken in respect thereof including Contempt of Court Petitions and Review Applications arising therefrom and applications for return of documents, enter into compromise and to draw any moneys payable to me in the said proceeding.

Place:

Signature of the Party

Date: 13 Feb 2009



 "Accepted"


 (R.R. Shetty)
Advocate

SPECIAL POWER OF ATTORNEY

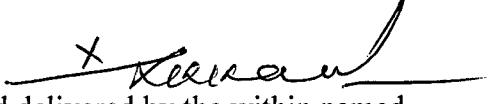
BY THIS POWER OF ATTORNEY I, Lt Gen (Retd) SK Kaul, VSM son of Late SN Kaul residing at 911, New Sansad Vihar, Plot No.4, Sector 22, Dwarka, New Delhi 110 075 plaintiff in Contempt Petition No. 86 of 2008 hereinafter referred to as the said suit, pending in the court of the Central Administrative Tribunal, Mumbai Bench hereby nominate, constitute and appoint Col NS Mani, Officiating Brigadier Administration of Armed Forces Medical College, Pune 411 040 as my attorney for me, in my name and on my behalf to do or execute all or any of the following acts or things in connection with the said suit:

1. To represent me before the said court or in any other, where the said suit is transferred in connection with the said suit.
2. To engage or appoint any solicitor, counsel, advocate pleader or lawyer to conduct the said suit.
3. To prosecute the said suit and proceedings, to sign and verify all plaints, pleadings, applications, petitions or documents before the court and to deposit, withdraw and receive document and any money or moneys from the court or from the defendant either in execution of the decree or otherwise and sign and deliver proper receipts for me and discharges for the same.
4. To apply for inspection and inspect documents and records, to obtain copies of documents and papers.
5. To compromise the suit in such manner as the said attorney shall think fit.

6. To do generally all other acts and things for the conduct of the said suit as I could have done the same if I were personally present.

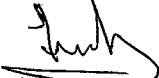
And I hereby for myself, my heirs, executors, administrators and legal representatives, ratify and confirm and agree to ratify and confirm whatsoever our said attorney shall do or purport to do by virtue of these presents.

IN WITNESS WHEREOF, I the said Lt Gen (Retd) SK Kaul has hereunto set and subscribed my hand this13th day ofFeb... 2009


Signed and delivered by the within named

WITNESSES:

1. H. Ravi Telk Sardar

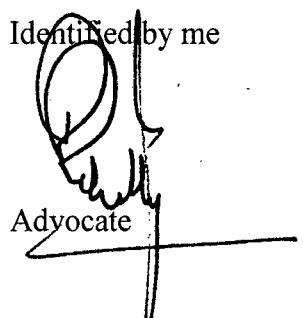


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2. NK/AS. John. W


John
13/2/09/151

Identified by me


Advocate