

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 728 of 1998.

Dated the 9th day of November, 1999.

Mr. A. J. Joshi & 14 others, Applicants.

Shri A. I. Bhatkar, Advocate for the
applicants.

VERSUS

Union of India & Others, Respondents.

Shri V. S. Masurkar, Advocate for
Respondents.

CORAM: Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman.

Hon'ble Shri D. S. Baweja, Member (A).

- (i) To be referred to the Reporter or not ? *Y*
- (ii) Whether it needs to be circulated to other Benches *✓* of the Tribunal ?
- (iii) Library. *Y*

R. G. Vaidyanatha
(R. G. VAIKYANATHA)
VICE-CHAIRMAN.

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Hon'ble Shri D.S. Baweja, Member (A).

1. Mr. Anantray Jatashankar Joshi,
Sr. Chargeman (Ammun.) in
Naval Dockyard, Mumbai.
Residing at -
60/1, N.C.H. Colony, Powai,
Mumbai - 400 078.
2. Mr. Ashok Vithal Kamble,
Sr. Chargeman (Ammun.)
in Khadki, Pune.
Residing at -
D-11, Mohit Barloda Nagar,
Marmurdi, Dehu Road,
Pune - 412 113.
3. Mr. Kanchan Baburao Sarmalkar,
Sr. Chargeman (Ammun.),
in Naval Dockyard, Mumbai.
Residing at Ashirwad, JN 3,
Building No. 17, Flat No. 1,
Sector 9, Juhu Nagar, Vashi,
Navi Mumbai - 400 703.
4. Mr. Vasant D. Joshi,
Sr. Chargeman (Ammun.),
Khadki, Pune.
Residing at -
A-12/12, Priyanka Barloda
Nagar, Marmurdi, Dehu Road,
Pune - 412 113.
5. Mr. Radha Ramanan Nair,
Sr. Chargeman (Ammun.),
Naval Dockyard, Mumbai.
Residing at - P-3/6,
N.A.D. Colony, Mankhurd,
Mumbai - 400 088.

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6. Mr. Ramesh Keshav Karekar,
Sr. Chargeman (Ammun.),
Naval Dockyard, Mumbai.
Residing at -
Parshuram Patil Chawl No. 2,
Room No. 2, Rayan Pada,
Malad (West),
Mumbai - 400 064.
7. Mr. Shrikant Pandurang Joshi,
Sr. Chargeman (Ammun.),
Khadki, Pune.
Residing at -
House No. 6, Jeeveshwar Society,
Ganga Nagar, Sec. 28,
Pradhikaran Nigdi,
Pune - 44.
8. Mr. Rashmikant Tulsidas Thakkar,
Sr. Chargeman (Ammun.),
Naval Dockyard, Mumbai.
Residing at -
C/o. N.T. Thakkar, Flat No. 5,
2nd floor, Riddhi Co.op. Hsg. Scty.,
52, Banglow, Panvel,
Raigad - 410 206.
9. Mr. Hemant Baliram Manore,
Sr. Chargeman (Ammun.),
Naval Dockyard, Mumbai.
Residing at -
34, Amol Apartment,
Jaydeep Nagar, Bhandup Village,
Bhandup (East), Mumbai - 400 042.
10. Mr. Ashok Gopinath Patil,
Sr. Chargeman (Ammun.),
Naval Dockyard,
Residing at - Nagaon,
P.O. Uran, Dist. Raigad.
11. Mr. M. Ismail A. Raof Bhaiji,
Sr. Chargeman (Ammun.)
Naval Dockyard,
Residing at - 253,
Dr. Zakir Hussain Chawl,
Post Uran, Dist. Raigad.
12. Mr. Jaiwant Ramchandra Gharat,
Sr. Chargeman (Ammun.),
Naval Dockyard.
Residing at - Nagaon,
Post Uran, Dist. Raigad.

13. Mr. Murlidhar Sadu Tayade,
Sr. Chargeman (Ammun.),
Naval Dockyard, Mumbai.
Residing at 144/2,
N.A.D. Karanja, Post Uran,
Dist. Raigad.

14. Mr. Mahadev Dharma Patil,
Sr. Chargeman (Ammun.),
Naval Dockyard, Mumbai.
Residing at - Laxmi Niwas,
At Bori, Post Uran,
Dist. Raigad.

15. Mr. Anand Baburao Kadam,
Sr. Chargeman (Ammun.),
in N.D. and residing at 221/7,
N.A.D. Karanja, Chunabhati
Colony, Tal. Uran, Dist. Raigad. ... Applicants.

(By Advocate Shri A.I. Bhatkar).

VERSUS

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

2. The Chief of the Naval Staff,
Naval Headquarters, DHQ PO,
New Delhi - 110 011.

3. The Flag Officer Commanding-
In-Chief, Headquarters,
Western Naval Command,
Shahid Bhagat Singh Road,
Mumbai - 400 001.

4. The Director General of Naval
Armament Inspection,
Naval Headquarters, DHQ PO,
New Delhi - 110 011.

5. The Controller of Naval
Armament Inspection, Naval
Dockyard, Gun Gate,
Mumbai - 400 023. ... Respondents.

(By Advocate Shri V. S. Masurkar)

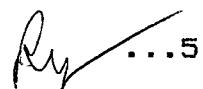
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O R D E R

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

The applicants are claiming fixation of their pay on promotion to the post of Sr. Chargeman (Ammunition) from the respective dates of their promotion. Respondents have filed reply opposing the application. We have heard the Learned Counsel appearing on both sides.

2. There are fifteen applicants who were originally Chargeman (Ammunition) working in Naval Dockyard, Mumbai. They came to be promoted on different dates as Sr. Chargeman (Ammunition). Prior to Fourth Pay Commission Report, there were different pay scales for Chargeman (A) and Sr. Chargeman (A) but after the Fourth Pay Commission Report w.e.f. 01.01.1986 the pay scales of both cadre of Chargeman (A) and Sr. Chargeman (A) came to be merged and there is only pay scale. The different dates of promotion of the applicants as Sr. Chargeman (A) are mentioned in para 4.1 of the O.A. It is seen that all the applicants got promotion as Sr. Chargeman (A) only from 1987 and onwards, which means subsequent to acceptance of the Fourth Pay Commission Report. That means, when the applicants came to be promoted, there were no different pay scales at all for Chargeman (A) and Sr. Chargeman (A). There was only one grade of pay for both the designations. Therefore, the applicants want that on promotion as Sr. Chargeman (A) they should get proper fixation of pay under F.R. 22(c), which is now renumbered as F.R.22(I)(a)(i). The

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applicants are relying on some earlier decisions of this Tribunal where such relief is given to their counter-parts Sr. Chargeman (A) working at different places.

3. The respondents have stated that in view of the merger of the two cadres in one grade of pay, F.R. 22(c) is not attracted and applicants are not entitled to fixation of pay.

4. The Learned Counsel for the applicants relied on earlier unreported judgements of different Benches of this Tribunal, namely - judgement dated 10.11.1994 of a Learned Sr. Member of Hyderabad Bench in O.A. No. 1190/93; another unreported judgement of a Single Bench in O.A. 548/96 of Hyderabad Bench, unreported Division Bench judgement of Ernakulam Bench dated 10.06.1998 in O.A. No. 819/96 and unreported Division Bench Judgement dated 09.01.1998 in O.A. No. 2602/96 of Principal Bench, where view is taken that in a case of this type where Chargeman (A) is promoted as Sr. Chargeman (A), fixation of pay should be allowed under old F.R. 22 (c), though both grades have only one scale of pay. Nodoubt, these judgements support the case of the applicants, namely - that on the basis of F.R.22(c) the applicants are entitled to fixation of pay.

5. On the other hand, the Learned Counsel for the respondents contended that F.R.22(c) is not at all applicable to the applicants who are Civilian in Defence Service and placed

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reliance on a recent judgement of the Supreme Court reported in 1998 SCC (L&S) 1623 (All India Defence Estate State Employees' Association V/s. Union of India & Others). That was also a case where there were earlier two cadres, namely - of Technical Assistant and then Office Superintendent Grade-II. Both these cadres got merged w.e.f. 01.01.1986 and the two pay scales also got merged with one common pay scale. The question was, whether under F.R.22(c) a Technical Assistant who is promoted as Office Assistant Grade-II in the same pay scale is entitled to fixation of pay under F.R.22(c). The Supreme Court rejected the claim on two grounds. The reasoning of the Supreme Court in para 2 of the reported judgement is as follows :

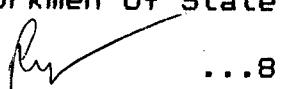
"We are also of the opinion that Appellants 2 and 3 being civilians in defence services, the specific rule applied to them and not the general provision contained in FR 22-C. Moreover, the two cadres of Technical Assistant and Office Superintendent Grade-II stood merged with effect from 1-1-1986 and the two pay scales attached to their cadres also merged with effect from the same date. Therefore, there could not have been any promotion within the cadre in the year 1988. That being so, the situation of granting benefit under Fundamental Rule 22-C did not arise at all because there were no promotions to a higher post or to a post carrying higher duties. As the claim of the appellants was misconceived it was rightly rejected by the Tribunal. We, therefore, dismiss this appeal with no order as to costs."

Therefore, we find that the Supreme Court has given a categorical finding that F.R.22(c) will not apply to civilians in Defence service. Then the Supreme Court has further observed that since the two cadres got merged into one cadre with effect

from 01.01.1986, the two pay scales got merged into one. Therefore, there is no question of any promotion within the cadre in the year 1988, that means, after 01.01.1986. It is clearly pointed out that there is no question of promotion from a lower to a higher post, since both the posts were made equal with a common pay scale.

In view of the law declared by the Apex Court on both the counts, the applicants' claim for fixation of pay is not sustainable. The first ground is, as ruled by the Supreme Court, the applicants being civilians in the Defence Service, cannot claim the benefits of F.R.22(c) or its corresponding number F.R.22(I)(a)(i) in the amendment. Another ground is that, since Chargeman(A) and Sr. Chargeman (A) are no longer two separate cadres and merged into one cadre with one scale of pay, there is no ground for application of F.R.22(c) as held by the Apex Court. Though there are earlier decisions of different Benches of this Tribunal granting that relief, since in view of the later judgement of the Supreme Court on that point, we are constrained to hold that applicants are not entitled to the benefit of fixation of pay scale.

The Learned Counsel for the applicants contended that the decision of the Supreme Court in the above cases cannot be treated as precedent and relied on two judgements, which are - 1999(1)SC SLJ 304 (Government of India V/s. Workmen of State


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Trading Corporation & Others) and 1990 SC SLJ 299 (Krishena Kumar V/s. Union Of India & connected cases). In our view, both the decisions have no application to the facts of the present case.

In the present case, in the decisions earlier referred to, the Supreme Court has given reasons as to why F.R.22(c) is not applicable and why the claim cannot be accepted. It is not a mere general direction given by the Supreme Court without reasons under Article 142 of the Constitution of India. Here the Supreme Court has pointed out that F.R.22(c) is not applicable to civilians in Defence and further, has given reasons as to why the fixation of pay cannot be granted since it is a case of promotion of one employee from one post to another post in the same scale of pay and hence the question of fixation of pay does not arise. The decision of the Supreme Court is binding on all the Courts and Tribunals in India under Article 141 of the Constitution of India. Hence, we find no merit in the contention of the Learned Counsel for the applicant.

6. The only other grievance made is that many employees are already drawing higher pay scale in view of earlier judgements of different Benches of the Tribunal and how can it be denied to the applicants. If some employees are getting some higher pay scales due to judgements of the Tribunal and it is now shown that the judgement of the Tribunals are not correct in view of the latest

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judgement of the Supreme Court, the applicants cannot get the benefit of fixation of pay. We may point out similar instances. We may take judicial notice that many Benches of the Tribunal granted stepping up of pay to Senior officials on the ground that the junior officials were getting more pay due to adhoc/officiating promotion. Hundreds and hundreds of officials got the benefit of this judgement and started getting higher pay. We may also notice that in some cases S.L.P. had been filed and they were dismissed by the Supreme Court. But subsequently, when in another batch of cases the matter went to Supreme Court, the Supreme Court held that in the situation mentioned above, stepping up of pay is not permissible and Supreme Court judgement is reported in Swaminathan's case (1997 SCC L&S 1852). After Swaminathan's case many employees are not getting stepping up of pay but other officials who got the benefit of stepping up of pay by virtue of earlier judgements of the Tribunals which had become final, continued to get the benefit. Therefore, it is quite possible that some people may get benefit of a wrong judgement of a Tribunal and others may not get the same benefit in view of the law declared by the Highest Court of the land.

For the above reasons we hold that the applicants are not entitled to the benefits of pay fixation. We may also notice that though the applicants were promoted in 1987-88, they have approached this Tribunal after ten years in 1998 for fixation of pay.



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2. In the result, the application is disallowed. No order

to costs.

(R. G. Vaidyanathan)

VICE-CHAIRMAN

(D.S. Bamezai)

MEMBER (A)

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