

CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH

O.A.No.781/1998.

Dated this Friday the 7 Day of July, 2006.

Shri Yeshwant M. Mhangare .. Applicant
(Applicant by Shri S.P. Saxena).

Vs.

Union of India & 2 Others .. Respondents.
(Respondents by Shri R.K. Shetty).

CORAM : Hon'ble Shri A.K. Agarwal, Vice Chairman
Hon'ble Shri Muzaffar Husain, Member (J).

(1)To be referred to the Reporter or not?

(2)Whether it needs to be circulated to other Benches of the
Tribunal?

(3)Library.



(A.K. Agarwal)
Vice Chairman.

H.

Central Administrative Tribunal,
Bombay Bench, Mumbai.

O.A.No.781/1998

Dated this Friday the 7th Day of July, 2006.

Coram : Hon'ble Shri A.K. Agarwal, Vice Chairman
Hon'ble Shri Muzaffar Husain, Member (J).

Yeshwant Mahadeo Mhangare,
Stenographer Grade III,
A.F.M.S. Depot,
Dr.Coyaji Road,
Pune – 411 001.Applicant.

(By Advocate Shri S.P. Saxena).

Vs.

- 1 Union of India, through
the Secretary,
Ministry of Defence,
New Delhi – 110 011.
- 2 The Director General of
Armed Forces Medical Services,
M-Block, New Delhi-110 011.
- 3 The Commanding Officer,
A.F.M.S., Depot,
Dr.Coyaji Road,
Pune – 411 001.Respondents.

(By Advocate Shri R.K. Shetty).


ORDER
(By A.K. Agarwal, Vice Chairman).

This OA has been filed by the applicant seeking direction to the respondents to fix his pay in the cadre of Stenographer Grade-II with effect from 1.1.1986 in accordance with the guidelines contained in DOP&T OM dated 6.2.1989.

2 The facts of the case in brief are as follows: The applicant was initially appointed as Steno-Typist on 11.12.1970 and the post was re-designated as Stenographer Grade-III with effect from 01.01.1973. The applicant has submitted that his post was upgraded to Stenographer Grade-II in the pay scale of Rs.1440-2300 with effect from 01.03.1989. Subsequently the pay scale was revised to Rs.1400-2600 with effect from 01.06.1990 and the applicant's pay was fixed at Rs.1720/- per month.

3 The applicant has stated that the respondents subsequently cancelled the upgradation granted to him vide order dated 27.3.1989 and reverted him to a lower scale of Stenographer Grade-III vide order dated 26.08.1992. Further the respondents also ordered recovery of Rs.7.960/- from the applicant.

4 The learned counsel for the applicant, Shri S.P. Saxena submitted that the upgradation granted to the applicant in pursuance of

the guidelines laid down in DOP&T OM dated 6.2.1989 was absolutely justified and in a few similar cases such upgradation has also been upheld by the Tribunal. The contention put forth by the respondents that the said DOP&T OM will not apply to civilian Stenographers attached to Service Officers has no justification. The DOP&T OM lays down the guidelines for the pay scale of Stenographers in sub-ordinate offices based on the recommendations of the 4th Central Pay Commission. He contended that Central Government Stenographers whether attached to a civilian officer or to an Army Officer do not form different categories. They are one and the same.

5 Learned counsel for the applicant has relied upon the verdict of C.A.T., Mumbai Bench given on 8.8.1995 while disposing of the O.A.No.1023/93 and 729/92 wherein it was held that the Stenographers working in attached/sub-ordinate offices of Ministry of Defence are also entitled for the benefit of DOP&T OM dated 6.2.1989. The learned counsel stated that the SLP filed by the Union of India against this order of the Tribunal was dismissed by the Supreme Court. In view of this the respondents are bound to follow



the ratio laid down by the Tribunal. The learned counsel has also relied upon a decision of C.A.T., Mumbai Bench while disposing of O.A.No.792/89 wherein directions were given to respondents to consider the question of upgrading the post of Stenographer attached to the Commandant, Armed Forces Medical College, Pune.

6 The learned counsel for the applicant argued that firstly the applicant should not have been reverted and secondly there was no question of any recovery since his fixation in the higher pay scale was done by a competent authority and the applicant had no role. The learned counsel contended that in view of the ratio laid down by Apex Court in Shyam Babu Verma & Ors. Vs. Union of India {(1994) 2 SCC 521}, the amount recovered from the applicant should also be refunded.

7 The learned counsel for the respondents submitted that the DOP&T OM dated 6.2.1989 relates to Stenographic assistance for civilian officers. As far as the officers of Armed Forces are concerned for them there are separate instructions. Learned counsel drew our attention towards Ministry of Defence OM dated 19.11.1993 according to which only Brigadier and equivalent rank officers are



entitled for Stenographer Grade-II while Colonel and equivalent has entitlement only of Stenographer Grade-III. He contended that the applicant has never worked with an officer of the rank higher than Colonel. Therefore, upgradation given to him in the pay scale of Stenographer Grade-II was erroneous and such mistake has been rightly rectified. All Army Officers are to be provided with Stenographic assistance as per the instructions issued by Ministry of Defence from time to time. He argued that the OA deserves to be dismissed.

8 We have heard both the 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

dated 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 upgraded and not incumbent. After completion of such exercise the filling 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, ^{* 26.8.1992} quash and set aside the impugned order dated 6.2.1989 and direct the respondents to work out the number of posts of

* Corrected vide Tribunal's
order dated 7.9.2006.


M. Roshan
DEPUTY REGISTRAR
Central Administrative Tribunal
Mumbai Bench, Mumbai

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.


(MUZAFFAR HUSAIN)
MEMBER (J)


(A.K. AGARWAL)
VICE CHAIRMAN.

H.