

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.643 /98

Date of Decision: 28.06.2002

Shri P.K. Thombre, & Ors.

Applicant(s)

Shri K.S. Kallappura.

Advocate for applicants

Versus

Union of India & others.

... Respondents

Shri V.S. Masurkar.

Advocate for Respondents

CORAM: HON'BLE SMT. SHANTA SHAstry. ... MEMBER (A)
HON'BLE SHRI SHANKER RAJU. 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

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(SMT. SHANTA SHAstry)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 643/1998

THIS, THE 28 TH DAY OF JUNE, 2002

CORAM: HON'BLE SMT. SHANTA SHAstry. MEMBER (A)
HON'BLE SHRI SHANKER RAJU. MEMBER (J)

1.	PK Thombee, MTD-3	
2.	VS Nipane, Mtd-6	
3.	UD Chauthan, MTD-12	
4.	AM Nipane, MTD-25	
5.	PD Kadam, MTD-38	
6.	H Khan, MTD-65	
7.	PR Godse, MTD-90	
8.	CS Kamble, MTD-91	
9.	SH Gaikwad, MTD-108	
10.	GR Shaikh, MTD 110	
11.	SG Yadav, MTD-159	
12.	ST Pawar, MTD-166	
13.	AD Chavan, MTD-167	
14.	M. Jamnna, MTD-170	
15.	PD Tawre, MTD-180	
16.	DK Pagare, MTD-189	
17.	RF Bhujang, MTD-191	
18.	PH Yadav, MTD-225	
19.	MSM Rafique, MTD-227	
20.	SA Detha, MTD 227	
21.	ZK Inamdar, MTD-237	
22.	AMM Khan, MTD-238	
23.	KA Godse, MTD 240	
24.	SB Hutgi, MTD-245	
25.	MY Bhojane, MTD-285	
26.	SMG Wawre, MTD-293	
28.	TT Patil, MTD-300	
29.	RB Prajapati, MTD0320	I
30.	BV Hande, MTD-333,	I
31.	KB Peje, MTD-140	I
32.	CJ Dhage, NSC02	I
33.	ST Katke, NS0-3	I
34.	BY Chandanshive, NS0-4	II
35.	TB Panda, NS0-5	II
36.	NR Sahu, NS0-6	II
37.	AD Gharat, NS0-7	II
38.	DD Budhwant, NS0-8	I
39.	VD Nandkhile, NS0-9	
40.	DR Katkade, NS0-10	II
41.	AM Khuddus, NS0-11	I
42.	DC Chandramohan, NS0-12	I
43.	KH Gaikwad, NS0-13	I
44.	S. Natarajan, 81	II
45.	BP Selvaraj, MTD-50	
46.	P.S. Mookaiyah, MTD-69	I
47.	DS Pawale, MTD-211	II
48.	K.M.S.A. Aziz MTD-35	I

CIVILIAN MT DRIVERS (NT POOL, COLABA)

49.	K.K.B. Nair, MTD-54	II
50.	Chandran Pillai, MTD-344	I
51.	DT Jadhav, MTD-374	II
52.	SE Devasaagayam, MTD-255	I
53.	GR Poojari, MRS-302	II
54.	A.N. Chavan, MTD-335	I
55.	P. Sugathan, MTD-94	II
56.	C.V.R.. Nandanam, MTD-203	II
57.	BW Nikam, MTD-41	II
58.	MS Nair, MTD-246	II
59.	A.R. Pillai, MTD-210	II
60.	RS. William, MTD-384	II
61.	KL George, MTD-395	
62.	BS Killidar, MTD-363	II
63.	AI Khan, MTD-133	II
64.	PD Swain, MTD-54	II
65.	JJ Patil, MTD-289	I
66.	S.N. Patil, MTD-131	II
67.	S. Subbish, MTD-163	I
68.	D.T. Mandlik, MTD-243	II
69.	Abrahan P. Ganniaa, MTD-368	II
70.	TBR Singh, MTD-135	II
71.	GH Patne, MTD-14	I
72.	LG Matyala, MTD-89	I

By Advocate Shri K.S. Kalappura.

C/o K.S. Kalappura, Sadhana Rayon House, 2nd Floor, D.N. Road, Fort, Mumbai-400 001.

Versus

1. Union of India, through The Secretary, Ministry of Defence, South Block, New Delhi.
2. The Chief of the Naval Staff (CP Director, Naval Headquarters, New Delhi).
3. The Flag Officer Commanding-in-Chief, Headquarters, Western Naval Command, Shahid Bhagat Singh Road, Mumbai-400 001.
4. The Supply Officer-in-Charge Naval Pay Office, Shahid Bhagatsingh Road, Mumbai-400 001.
5. The Controller of Defence Accounts (Navy), Cooperage, Bombay-400 005.
6. Material Superintendent Western Naval Command Ghatkopar, Mumbai

7. Naval Transport Pool Officer-
in-Charge, Talwar Camp, Colaba,
Mumbai-400 005. Respondents

By Advocate Shri V.S. Masurkar.

O R D E R
Hon'ble Smt. Shanta Shastry. Member (A)

The applicants in the OA are civilian employees of Indian Navy working as Motor Transport Driver in different formation in Mumbai under the Ministry of Defence. They are aggrieved by the non-implementation of the directive issued by Government of India, Ministry of Defence vide circular dated 05th December, 1996. The applicants have sought a direction to fix their pay in the revised pay scale of civilian motor driver with retrospective effect from 01.01.1986 and to introduce promotional chance with effect from 05th December, 1996.

2. Earlier OA No.421/93 was filed by one Shri C.P. Pathan, General Secretary of All India MES Kamgar Sanghathan, Mumbai. There were 100 members of the Sanghathan and they had approached the Tribunal stating that they were MT Driver working in MES in the pay scale of Rs.950-1500 and that as per the 4th Pay Commission's report, they were entitled to get revised pay scale of Rs.1200-1800. However, certain developments had taken place thereafter and therefore, during the course of the hearing, they had expressed to give them advantage of the subsequent events which had occurred. They had

brought to the notice of the Tribunal the circular dated 05.12.1996 issued during the pendency of the OA by the Ministry of Defence restructuring the general category of driver into three different grades and therefore, during the course of the hearing the applicants had submitted that they would be satisfied if they can be given the benefits of grades of pay as mentioned in the circular of 05.12.1996. Accordingly, the Tribunal disposed of the OA with direction to the respondents to consider the case of the applicants as to whether they were entitled to any benefit under the circular dated 05.12.1996 and to grant them the relief if available to them. The applicants were also asked to make a detailed representation.

3.. The applicants submit that the circular of 05.12.1996 has conveyed the sanction of the President to the extension of the promotional scheme for staff car drivers as contained in the DOPT OM dated 30.11.1993 to the civilian motor drivers in the defence establishment. The revised structure of the civilian motor driver is as follows:

Civilian Motor Driver Ordinary Grade Rs. 950-1500

Civilian Motor Driver Grade II Rs.1200-1800

Civilian Motor Driver Rs.1320-2040

The method of appointment to the post in Grade II & I will be by promotion on non-selection basis and will be further subject to passing of the trade test of appropriate standard. It was also stated in the circular that while making initial appointment to the newly created scale, screening will be done in respect of the civilian motor driver, who had rendered not less than 15 years of service for considering them for appointment to the post direct, to the extent of availability of vacancy in that grade subject to their being found fit on the basis of seniority cum fitness and passing of trade test. Similarly those who had rendered not less than 9 years service in Grade-I including those who could not be accommodated but who had put in 15 years service would be considered for appointment to Grade-II by following the same eligibility and other criteria prescribed for appointment to this post.

4. The applicants submit that the said circular of 05.12.1996 clearly state that promotional posts in the scale of Rs.1320-2040 and Grade-I have been created implying thereby that the ordinary grade and Grade-II for civilian motor driver were also existing and therefore the applicants' existing pay scale of Grade I i.e. Rs.1150-1500 must be related to Rs.1320-2040. The 4th Pay Commission recommended three grade structure for various categories of workmen with effect from

01.01.1986. At that time civilian motor drivers who were placed in Grade-II were to get the benefit of Rs.1200-1800 with effect from 01.01.1986. Therefore, the applicants have urged that first their pay should be fixed in the scale of Rs.1200-1800 in Grade II with effect from 01.01.1986 and after fixation of the said grade the applicants want their promotional eligibility to be decided in terms of the circular dated 05.12.1996. The applicants have received neither the benefit of the recommendation of the 4th Pay Commission nor that of the circular dated 05.12.1996 which gives the benefit of the pay scales introduced for staff car driver with effect from 30.11.1993.

5. The respondents submit that based on an award given by the Board of Arbitration, Government have introduced the three grade structure creating similar promotion scheme for civilian motor drivers in the Defence establishment. It is actually an extension of the promotion scheme for staff car drivers in various Ministries/ Departments given by DOP&T that OM dated 30th November, 1993 and the order takes effect from the date of issue and promotions are to be made from that date. Headquarters Naval issued order for implementation vide their letter dated 17th July, 1998 enclosing Government of India Ministry of Defence letter dated 29th June, 1998 and the same was circulated vide CE order Part II of 1998 No.34/96 dated 10th August,

1998. This letter conveys designation of the civilian motor driver Grade II (Rs. 950-1500), Grade I (Rs.1150-1500) and Selection Grade (Rs.1320-2040) as being redesignated as civilian motor driver (ordinary grade) civilian motor driver Grade II and civilian motor driver Grade-I respectively. Upon the acceptance of the recommendations of the 5th Pay Commission, the pay scales and designations have been revised as follows: Motor Driver Grade-II Rs.950-1500; Civilian Motor Driver (Ordinary Grade) Rs. 3050-4500, Motor Driver Grade (Rs.1150-1500), Civilian Motor Driver Grade II Rs.4000-6000 and Motor Driver Grade (Selection Grade) Rs.1320-2040 Civilian Motor Driver Grade-I Rs.4500-7000. These scales have been made applicable from 01.01.1996 and the respondents have initiated action to implement the order contained in the Ministry of Defence letter dated 05th December, 1996. A letter was also issued on 25.6.1997 clarifying that the provisions contained in the letter dated 05.12.1996 are equally applicable to Motor Drivers of MES as long as they perform driving duties as those of Civilian Motor Drivers. The respondents submit that in accordance with Government of India, Ministry of Defence letter dated 11th November, 1988 sanction of the President was conveyed for grades of the pay scale of Rs.380560 as given by the 3rd Pay Commission only in respect of 20% of posts in the next lower grade. The new pay scales were to be made applicable to 20% of the civilian motor driver in the next lower grade. The

revised scales to be given for these posts as per 4th Pay Commission Rs.1320-2040. This sanction was with reference to the recommendation of the Board of Arbitration. Thus, only 20% of the posts of Civilian Motor Drivers in the lower scale of Rs.1150-1500 were to be given the scale of Rs.1320-2040. The request of the applicants for grant of scale of Rs.1320-2040 of all the drivers enmass who were in the scale of Rs.1150-1500 is not tenable according to the respondents, because it is not provided for in the Government sanction. In accordance with the Government letter therefore 19 civilian motor driver (SG) in the upgrades scale of Rs.1320-2040 were granted the benefit with effect from 1989 after completion of all formalities. The pay scale of Rs.1150-1500 in the intermediary scale was grouped with effect from 01.01.1988 with reference to Board of Arbitration as already pointed out. The respondents have filed an additional written statement wherein they submit a requisite trade test had been conducted and the qualified candidate has been redesignated and granted upgraded pay scale as per the Government orders. The result of the department qualifying examination to the post of Motor Driver Grade-I and Motor Driver Grade-II have already been declared on 15th April, 1999. 18 applicants are on various serial number of motor driver Grade-I and some others are in Grade-II. The promulgation of three grade structure of motor drivers Grade-I, II & ordinary grade has been declared vide

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Headquarters Western Naval Command, Mumbai dated 18th May, 1999 and 26th May, 1999 (Annexure R2, R3 & R4) enclosed with the written statement. The respondents have also intimated about the candidates who could not qualify and stating that they would be considered as and when they qualify in the trade test as per Government order and would be granted upgraded pay scale subject to fulfilling the conditions laid down. Some of the applicants figured in the list of candidates, who did not qualify. The respondents have therefore prayed for dismissal of the OA.

6. The applicants however, in their rejoinder have amended that in the name of giving upgradation to higher pay scale lot of damage has been done to the applicants in that some of the applicants who were in Grade-I have now been shown in ordinary grade and as well as in Grade-II. Only two persons have been given promotion to the Grade-I i.e. Rs.1320-2040 and that too the grades have been given with effect from 01.01.1996. The applicants have given a detailed statement of on pages 91 to 93 of the OA in the rejoinder to the additional written statement of the respondents shown the names of the applicants, their existing grade and the grade to which they have been demoted. The applicants submit that the circular of 05th December, 1996 gave directions in para 2.3 of the circular that if any civilian motor driver have been promoted to the next higher scale such

civilian motor driver may be allowed to come over to the above scheme. It clearly indicates that the scale of Grade-I shall not be brought down to ordinary grade and the applicant should be allowed to come over to the above scheme in Grade-I. Trade tests are to be conducted for Grade I & II. If they do not pass the trade test they should be allowed to continue in their existing grade and at no reason they shall be brought down to a lower grade from their existing higher grade. According to the applicants there were no such directions and the respondents have brought down the applicants from a higher grade to a lower grade. Such reduction in rank cannot be made without an inquiry and without giving reasonable opportunity to the concerned persons of being heard in respect of those charges. Principles of natural justice need to be followed. The applicants, therefore, once again submit that they are entitled to have the pays scale of Rs.950-1500 for ordinary grade, Rs.1200-1800 for Grade II and Rs.1320-2040 for Grade-I with retrospective effect from 01.01.1986 as per the recommendations of the 4th Pay Commission, which have not been implemented by the respondents and after fixing the same they had to be given promotions in the revised scale as per the circular of 05th December, 1996.

7. We have heard the applicants as well as the respondents and have taken into consideration the

relevant material. The applicants are praying for two things; one is to give them the scale of Rs.1200-1800 with effect from 01.01.1986 and the other prayer is to place them in the revised upgraded scales of rs.950-1500, 1200-1800 and 1320-2040. As far as placing them in the scale of Rs.1200-1800 as per the recommendations of the 4th Pay Commission is concerned it is to be seen that only a certain percentage of motor driver were placed in the higher grade of Rs.1320-2040 as only 20% posts can be considered for upgraded scales. The applicants had no chance. Moreover the applicants are approaching this Tribunal in 1998 for their grievance of pay scales given in 1986. Their prayer is therefore totally barred by limitation, delay and laches. Further, now that the recommendation of the 5th pay Commission had already been received they would prevail over any earlier recommendations. Therefore, in our considered view, no relief as far as the pay scales of Rs.1200-1800 is concerned can be granted at this belated stage. Further, this matter had been brought before this Tribunal earlier in OA No.382/95 and direction was given to consider the claims of the applicants therein in terms of the circular of 5th December, 1996 and accordingly the respondents have taken action and fixed the applicants according to their eligibility and passing of the trade test in the respective revised pay scale pertaining motor driver ordinary grade, Grade-II and Grade-I. While those who

pass the trade test and become eligible to be granted highest scale of Grade of Rs.1320-2040. Majority of the applicants' grievance is that they were down graded from Grade-II to ordinary grade. Those who were already in the ordinary grade, there is no problem about them as they are fixed in the grade of Rs.950-1500 (Rs.3050-4500). While they have not got promotion to the higher grade of the same, they have incurred monetary loss by the action of the respondents. Now the contention of the applicants is that those who were in Grade-I earlier i.e. in the scale of Rs.1150-1500 have now been brought to the ordinary grade of Rs.950-1500 after the trade test, instead of being promoted Grade-I of Rs.1320-2040 the respondents have gone according to the seniority for giving them an opportunity to take trade test and to the extent of the number of posts available have granted the Grade-I as per the revised pay scale. It is to be noted that the grades in which the applicants were prior to introduction of the scheme of 05.12.1996 cannot be compared with the new grades introduced under the scheme of 05.12.1996. They were totally revised scales and the Grade-I of Rs.1150-1500 or the ordinary grade of Rs.950-1500 no longer exists. Since there was total replacement, the applicants cannot make a grievance that they have been down graded. In fact they have been placed according to their eligibility and according to the trade test that they have passed. In the process some of them have been

brought down to the ordinary grade which according to us appears to be uncalled for as it amounts to bringing them to the lowest scale of Rs.950-1500 when they were also in the scale of Rs.1150-1500 they ought to have been given a notice before placing them in the scale of Rs.950-1500. While we cannot accept the contention of the applicants that since they were in the erstwhile Grade-I they ought to be strictly granted the revised Grade-I. At the same time we feel that for those who were brought down to a lower pay scale. Once they have taken the trade test for the revised scale now they cannot grumble. Accordingly we do not find any merit in the OA except to the extent of those applicants who have been down graded to a pay scale which is much lower than what they were drawing earlier. We accordingly direct the respondents not to disturb the applicants who were drawing higher pay scale prior to the trade test and their placement in the revised pay scale until they reach the revised pay scale of Rs.1200-1800 for those who were in the earlier scale of Rs.1150-1500. That pay protection would be personal to only those concerned applicants. With these observations, the OA is dismissed. No costs.

S. Raju
(SHANKER RAJU)

MEMBER (J)

Shanta f-
(SMT. SHANTA SHASTRY)
MEMBER (AO)