

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.807/98

Date of Decision: 28.06.2002

Smt. Bridgit S.P.

Applicant(s)

Shri P.A. Prabhakaran. Advocate for applicants

Versus

Union of India & others.

Respondents

Shri R.K. Shetty.

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 ✓

Shanta S.
(SMT. SHANTA SHASTRY)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 807/1998

THIS, THE 28TH DAY OF JUNE, 2002

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

Smt. Bridgit S.P.
L.R. of late V.K. Ramakrishnan,
resident of No.2, "Prem Ashish"
Nahur village, Mulund (West),
Mumbai-400 080. ... Applicant

By Advocate Shri P.A. Prabhakaran.

Versus

1. Engineer-in-Chief
Army Headquarters,
AHQ P.O. Kashmir House,
New Delhi-110 011

on behalf of Union of India,
2. The Chief engineer,
Headquarters Southern Command
Engineering Branch,
Pune-411 001.
3. The Chief Engineer (Navy)
Mumbai, Garrison Engineer
(Naval Works), Mankhurd,
Mumbai-400 088. ... Respondents

By Advocate Shri R.K. Shetty.

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

The original applicant in this OA had initially filed this OA. During the pendency of this OA he expired and as such his legal heir i.e. his wife was brought on record vide order dated 05.12.2001.

Original
The ^{late} applicant in this OA was working in the office of the respondents as Assistant Engineer E/M and

he retired on superannuation on 30.4.1997. He is aggrieved on account of his having drawn lesser pay than his junior Shri K.T. Mathew. The pay of Shri K.T.Mathew was fixed at Rs.2300/- as on 01.6.1986. The applicant's pay was fixed at Rs.2180/- as on 01.01.1986. The original applicant has therefore sought stepping up of his pay to the level of his junior by advancing his date of increment to the date of increment of Shri K.T. Mathew.

2. According to the original applicant he joined earlier than Shri K.T. Mathew and was promoted as Superintendent Grade-II with effect from 15.12.1964, whereas Shri mathew was promoted to the same grade from 29.4.1965. The applicant was regularly promoted to the Superintendent Grade-I with effect from 15.10.1980, whereas Shri K.T. Mathew was regularly promoted to the aforesaid grade on 12.3.1985. The applicant was promoted as Assistant Engineer E/M on 27.01.1995 and retired thereafter. The applicant was drawing Rs.485/in the scale of Rs.425/700 as on 01.01.1973 and Shri Mathew was drawing Rs.470/- in the same scale. After promotion and revision of pay scales based on recommendations of 4th Pay Commission, the applicant's pay was fixed at Rs.2180/- as on 01.01.1986, whereas that of Shri Mathew was fixed at Rs.2300/- as on 01.6.1986. The applicant's date of increment was 01.11.1986, whereas Shri Mathew's date of increment was 01.6.1986. When the Revised Pay

Rules of 1986 came to be applied, option had to be exercised and Shri Mathew exercised his option for his pay fixation from the date of his next increment i.e. 01.6.1986. Accordingly his pay was fixed from that date. Since the applicant had not given any option his pay was fixed as on 01.01.1986 and therefore, the difference in pay has arisen.

3. It is the contention of the ^{original} applicant that since both the applicant and Shri Mathew were working in the same Organisation in the same cadre in the same post in the same pay scale, since Shri Mathew was drawing higher pay, the applicant, senior to him, is entitled for stepping up of his pay to the level of the pay of Shri Mathew. The applicant has referred to para 4.1 to the OM dated 16.6.1989 of the Government of India in this connection. In this OM it has been laid down that where a senior Government servant was promoted after reaching the maximum of the pre revised scale of the lower post before 01.01.1986 he should be deemed to have been drawing equal pay vis-a-vis his junior who was also drawing his pay at the maximum at that date (namely the date of promotion of senior) and promoted after 01.01.1986. In this OM the Government said that even if the anomaly is as a result of increments in terms of proviso 3 and 4 of Rule 8 of CCS (RP) Rules, 1986 combined with application of FR 22-C anomaly may be rectified by stepping up the pay of the senior promoted

before 01.01.1986 equal to junior promoted on or after 01.01.1986 subject to fulfilment of certain conditions. The applicant has further relied on OM dated 22.10.1990 of the DOP&T and the letter dated 21.7.1998 of the respondents. According to this OM, in case where a senior Government servant promoted to higher post before the date of 01.01.1986 draws less pay in the revised scale than his junior, who is promoted to the higher post on or after first January, 1986 the pay of the senior Government servant can be stepped up to an amount equal to the pay as fixed for his junior in that higher post subject to fulfilment of following conditions:

- (a) Both the junior and the senior Govt. servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre.
- (b) The pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical and
- (c) The senior Govt. servant promoted before 1-1-86 has been drawing equal or more pay in the lower post than his junior promoted after 01.01.86.

4. The applicant has further relied on the correspondence between Respondents No.2 and 3 dated 20.02.1997 and 31.5.1997. The applicant made several representations claiming stepping up of pay. His first representation is dated 22.12.1994. He received reply dated 20.4.1995 saying that the anomaly cannot be rectified. he submitted a further representation on

19.11.1996 along with the comparative statement of the pay drawn by him and Shri Mathew. There were further representations from him and he received communication from respondents also in reply. Finally he issued a notice through his advocate on 21.7.1998 and thereafter, he had approached this Tribunal requesting for a direction to the respondents to advance the date of increment of the applicant from 01.11.1986 to the date of increment drawn by/fixation effected in the case of his junior Shri K.T. Mathew who began to draw more pay. He has also requested for arrears of salary and allowances and consequential reliefs. Also he has prayed for consequential retiral due and pension.

5. The respondents submit that the anomaly in the case of the applicant has arisen because of the option given by Shri K.T. Mathew for his pay fixation from 01.6.1986. The applicant opted for pay fixation from 01.01.1986. This has made all the difference. This difference or anomaly is not on account of FR 22-C. The applicant is therefore, not entitled to any relief as claimed by him. The respondents have also taken the plea of limitation in that the anomaly occurred in 1986 and the applicant has approached after a period of 12 years. It is thus grossly barred by limitation and suffers from latches. The respondents have not denied that Shri K.T. Thomas is junior to the applicant but it is only due to option given by Shri K.T. Mathew that

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the anomalous situation has arisen. All his representations were considered and replied to explaining the rule position and the reason for drawal of more pay by Shri K.T. Mathew due to his option, which is not applicable for considering stepping up of pay.

6. We have heard the learned counsel for both the parties and have given careful consideration to the pleadings. It is apparent that the difference in pay of the applicant and Shri K.T. Mathew is due to the pay fixation done in terms of the Revised Pay Rules of 1986 based on the recommendations of the 4th Pay Commission. The difference has arisen because Shri Mathew opted for pay fixation from 01.6.1986 i.e. the due date of his increment and the applicant opted for pay fixation from 01.01.1986, applicant's date of increment is 01.11.1986. We have also perused the Revised Pay Rules, 1986 as well as the OM referred to by the applicant. In our considered view this is not a case where the applicant was promoted prior to 01.01.1986 and Shri Mathew was promoted thereafter, in that both were promoted prior to 01.01.1986. Therefore, there is no pay fixation under FR 22-C. Therefore the OM allowing stepping up of pay to the senior to bring him on par with his junior where pay fixation is done after promotion, does not apply in this particular case. Even the OM of 16th June, 1986 speaks only of stepping up of pay after promotion. The present

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case is not of promotion but of pay fixation as per the Revised Pay Rules and the pay fixation has also been done properly. It is because of the applicant's junior opting for his pay fixation from the next date of his increment that the anomalous situation has arisen. Therefore, we have to hold that the applicant is not entitled to stepping up of pay as his case is not covered by Revised Pay Rules particularly note 7 below Rule 7 of the CCS Revised Pay Rules, 1986.

7. In the facts and circumstances of the case, the OA fails and is dismissed accordingly. We do not order any costs.

S. Raju

(SHANKER RAJU)
MEMBER (J)

Shanta S

(SMT. SHANTA SHASTRY)
MEMBER (A)

Gajan