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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

D.A. 1190/93.

DT. of Decision : 10.11.94.

1. G. Gurumurthy
2. E. Prabhakara Rao
3. E.L. Martin
4. C.J. Vincent
5. B. Saibaba
6. N.V. Narasimham

.. Applicants.

Vs

1. Secretary, Ministry of Defence, Govt. of India, South Block, D.H.P. Post Office, New Delhi.
2. The Flag Officer, Commanding-in-chief, Eastern Naval Command, Naval Base, Visakhapatnam.
3. The Chief Inspector of Naval Armament, Naval Armament Depot, Post Office, Visakhapatnam.
4. The Controller General of Defence Accounts, D.H.P. Post Office New Delhi.
5. The Dy. Controller of Defence Accounts, Navy, Naval Armament Depot, Post Office, Visakhapatnam.

.. Respondents.

Counsel for the Applicants : Mr. P.S.N. Murthy

Counsel for the Respondents : Mr. V. Bhimanna, Addl. CGSC

CORAM:

THE HON'BLE SHRI A.B. GORTHI : MEMBER (ADMN.)

DA 1190/93.

Dt. of Order: 10-11-94.

(Order passed by Hon'ble Shri A.B.Gorthi, Member (A)).

* * *

The relief claimed by the applicants is for a direction to the Respondents to fix the pay of the applicants/^{on} their promotion from the grade of Chargeman (Ammunition) to the grade of Sr.Chargeman (Ammunition) by applying FR 22(c) (now numbered as FR 22(1)(a)(i)).

2. The applicants while working as chargeman (Ammunition) were promoted to the higher post of Sr.Chargeman (Ammunition) on different dates between 1986 and 1992. Prior to the implementation of the IV Pay Commission Recommendations, the pay of Chargeman (Ammunition) was in the scale of Rs.380-560, and the pay of Sr.Chargeman (Ammunition) was in the scale of Rs.425-700. With the implementation of the IV Pay Commission Recommendations, both the aforesaid scales of pay were merged and fixed ~~in the revised scale of pay~~ at Rs.1400-2,300/-. The pay of the applicants ~~which~~ was re-fixed in the revised scale of pay in accordance with the CCS (Revised Pay) Rules, 1986, in the scale of pay of Rs.1400-2300/-. The applicants however was not re-fixed by the Respondents on the promotion of the applicants from the post of chargeman (Ammunition) to Sr.Chargeman (Ammunition). The contention of the applicants is that the post of Sr.Chargeman (Ammunition) is a higher promotional post for which the post of Chargeman (A) is a feeder. Moreover the post of Sr.Chargeman (A) carries responsibilities of greater importance. The claim of the applicants is that they

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are entitled to the benefit of FR 22(c) (now FR 22(1)(a)(i)).

3. The Respondents in their reply affidavit have asserted that with the merger of the scales of pay of Chargeman (A) and Sr. Chargeman (A) to that of Rs.1,400-2,300 with effect from 1-1-86, it could be said that the post of Chargeman (A) and Sr. Chargeman (A) were also merged into one and hence there was no question of re-fixing the pay under FR 22(c) on promotion from Chargeman (A) to Sr.Chargeman (A). The Respondents initially took up the matter with higher authorities. Controller General of Defence Accounts, New Delhi, to whom the matter was referred, clarified as under :-

" The matter was referred to Minister of Defence who in consultation with Ministry of Finance have clarified "that in case where the revised scales for feeder and promotional grades have been merged based on the recommendations of IV Pay Commission w.e.f. 01-1-86 these posts also stand merged and there is no question of promotion from one grade to another on or after 01-1-86. In such cases promotions on or after 1-1-86 are ipso facto null and void. Consequently, there is no question of fixation of pay in such cases."

4. Learned counsel for the applicant has drawn my attention to Naval Headquarter, New Delhi letter Dt.8-4-94, conveying the final decision of the authorities concerned as regards the status of the Chargeman and Sr.Chargeman. Relevant extracts from the said letter are re-produced below :-

" The question of merging the grades of Chargeman (Ammunition) with Senior Chargeman (Ammunition) has been receiving attention in consultation with the user organisations and the Dte. of Naval Armament Inspection at NHQ for quite some time. This issue was also taken up at the NHQ JCM Council and deliberated upon with the staff side.

2. As a result of the discussions held with the Staff side representatives and DNAI, and after considering the present charter of duties of the two grades the following decisions have been taken :-

- a) The grades of Chargeman (Ammunition) and Senior Chargeman (Ammunition) are not to be merged and they will continue to maintain their respective identity.
- b) Senior Chargeman will have the Supervisory status while Chargeman shall be responsible to the Senior Senior Chargeman and carry out the work allotted by the superiors. His status would be determined on his equation with Mastercraftsman."

5. The aforesated letter spells out the respective duties of Sr.Chargeman (Ammunition) and Chargeman (Ammunition) which clearly ~~show~~ that a Sr.Chargeman (Ammunition) is required to supervise the working of Chargeman (Ammunition) placed under him. Accordingly it is obvious that the situation as Sr. ~~settled~~ is that the post of/Chargeman and ~~Chargeman~~ have not been merged and that the former is/promotional post for the later and carries with it duties and responsibilities of a higher degree.

6. Shri K.Sudhakar Reddy, learned counsel for the applicants has drawn my attention to the under mentioned judgments of the Tribunal :-

- (i) S.Ramalingam & others Vs. Union of India & others (1989 (1) SLJ (CAT) 294);
- (ii) DhyaneShwar Nandanwar Vs. Union of India ((1993) 24 ATC 660);
- (iii) Ashoke Kumar Banerji Vs. Union of India & others (OA 241/93 on the file of the Calcutta Bench of the Tribunal).

7. In the case of Sri S.Ramalingam, which came up before Madras Bench of the Tribunal, the applicant who was a Stenographer was promoted from the grade of Rs.550-750 to that of Rs.1000-1200, the Tribunal held that the appointment of Stenographers to the higher scale of pay involved assumption of higher responsibilities and accordingly a direction was given to the Respondents to apply Rule-2018 (b) of the Indian Railway Establishment Code Volume-II which corresponds to FR 22(c).

8. The Jabalpur Bench of the Tribunal in the case of DhyaneShwar Nandanwar Vs. Union of India was required to decide whether a sorting assistant in Lower Selection Grade carrying the pay scale of Rs.425-640 would be entitled to fixation of pay under FR 22(c) on promotion to the post of Inspector RMS carrying the pay scale of Rs.425-700. The question had to be determined in the context of the IV Pay Commission Recommendations, under which both the afore stated pay scales were merged into a single scale of pay of Rs.1400-2300. In the said case though both the posts of

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Sorting Assistant in Lower Selection Grade and Inspector RMS were brought into the same scale of pay of Rs.1400-2300, the Tribunal came to the conclusion that the post of Inspector RMS is a post carrying higher responsibilities/would warrant applying FR 22(c). In other words, the Jabalpur Bench held categorically that even in respect of two different posts carrying the same scale of pay, the question of fixation of pay under F.R.22(c) has to be examined from the point of view whether the promotional post carries higher responsibilities or not.

9. Following the afore stated judgment of the Jabalpur Bench in the case of Dhyaneshwar Nandanwar, the Calcutta Bench of the Tribunal in the case of Ashok Kumar Benerji also came to a similar conclusion. Shri Ashok Kumar Benerji while holding the post of Asst.Engineer in the scale of pay of Rs.2000-3500 was promoted as Asst.Engineer (Civil). The Respondents there contended that the pay of the Ashok Kumar Benerji was already fixed at Rs.2,600/- in the scale of Rs.2,000-3,500 there was no occasion to refix the pay on his promotion to the post of Asst.Engineer (Civil) which carried the same scale of pay. The Tribunal did not accept the Respondents' view and came to the conclusion that the pay of Shri Ashok Kumar Benerji had to be re-fixed in terms of FR 22(c) (now FR 22(1)(a)(i)) as he was promoted to a post that carried higher responsibilities.

10. From the aforesated judgments it is clear that the Tribunal consistently took the view that notwithstanding the fact whether the pay scales of posts are different or

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identical, the question of applicability of FR 22(c) would depend upon the fact whether the promotional post carried duties and responsibilities of greater importance. This ^{tent} ~~consis-~~ view of the Tribunal is clearly in tune with the relevant statutory provision i.e. FR 22(c) (now FR 22(1)(a) (i)), which is reproduced below :-

"F.R.22.(I)(a)(1) : Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity [is promoted or appointed in a substantive, temporary or officiating capacity,] as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty-five only, whichever is more. (underlined portion was in the revised FR 22.(I)(a)(1)).

11. Shri V.Bhimanna, learned counsel for the Respondents argued that the pay scale of both Chargeman (Ammunition) and Sr.Chargeman (Ammunition) being the same, after the implementation of the IV Pay Commission Recommendations, the question of re-fixing the pay under FR 22(c) would not arise if a Chargeman (Ammunition) is appointed to the post of Sr.Chargeman (Ammunition). Although an attempt was made to state that the post of Chargeman (Ammunition) and Sr.Chargeman (Ammunition) got merged and that there would be no question of pro-

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motion from one to the other, the same cannot be accepted in view of the decision of the Naval Headquarters as communicated in their letter dt.8-4-94, which categorically states that the grades of Chargeman (Ammunition) and Sr.Chargeman (Ammunition) are not to be merged and that the latter post will continue to have a higher supervisory status.

12. The learned standing counsel for the Respondents has drawn my attention to the judgment of the Chandigarh Bench of the Tribunal in OA 788/JK/89 dt.9-12-92. The Chandigarh Bench invoked Rule-7(1) of the CCS (Revised pay) Rules, 1986, and came to the conclusion that the said rule had over-riding effect vis-a-vis the provisions of FR 22(c). It further came to the conclusion that the said rule FR 22(c) can be invoked only if the promotional post carried salary higher than the lower post.

12. As regards Rule-7(1) of CCS (Revised Pay) Rules, it applies to "fixation of initial pay in the revised scale" that has come into effect with the implementation of the IV Pay Commission Recommendations. However, for the purpose of deciding the case that is before me, the observations made by the Chandigarh Bench of the Tribunal has no direct relevance. As regards the other observation made by the Chandigarh Bench of the Tribunal to the effect that provisions of FR 22(c) can be invoked only if the promotional post carried salary higher than the lower post, the same appears to be striking a different note when compared to Madras, the decisions of the

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Jabalpur and Calcutta Benches of the Tribunal in the cases:

to which reference has already been made. Under these circumstances, ordinarily the matter would have been referred to a Full Bench. However, the question before me already stands resolved by a pronouncement of the Judgment of the Full Bench in Bajrang Sitaram Wanjale Vs. Union of India & others ((1994) 27 ATC (FB) 680). It would be appropriate if the relevant portion of the judgment is extracted :-

"5. As the controversy in this case is in regard to fixation of petitioners' pay on their promotion to the supervisory grade of Chargeman Grade II we have to examine the relevant statutory provision governing fixation of pay in such situation viz., FR 22-C. For the sake of convenience the same is extracted below:

FR 22-C. Notwithstanding anything contained in these Rules, where a government servant holding a post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued...."

This provision governs fixation of initial pay of the government servant in the time scale of the higher post to which he is promoted or appointed. The scheme of the rules make it clear that the intention of the rule-making authority is to increase the emoluments of the government servant to a reasonable extent when he is promoted or appointed to a post carrying duties and responsibilities of greater importance

than those attached to the post held by him. If the conditions specified in the rule are satisfied the initial pay in the time scale of the higher post has to be fixed in accordance with the formula prescribed therein. As a first step his pay in the lower post has to be increased by adding one increment at the stage at which such pay has accrued. Thereafter the pay of the government servant should be fixed in the scale of the higher post at the stage next above the pay initially arrived at by following the first step. It is the amount so arrived at that would be the initial pay of the government servant on his promotion or appointment. We find that the first part of the rule stipulates three conditions to be satisfied. They are (i) The government servant must be holding a post in substantive, temporary or officiating capacity, (ii) he should be promoted or appointed in a substantive, temporary or officiating capacity to another post and (iii) the post to which he is promoted or appointed should carry duties and responsibilities of greater importance than those attaching to the post held by him. If these three conditions are satisfied the initial pay of the government servant on his promotion or appointment to another post has to be fixed in accordance with the formula prescribed therein. Though the rule opens with a non obstante clause it is not the case of the respondents that there is any other provision which bears on the fixation of the petitioners' pay on their promotion or appointment as Chargeman Grade II. We shall, therefore, proceed to examine if the three conditions specified by Rule FR 22-C are satisfied in this case."

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Copy to:-

1. Secretary, Ministry of Defence, Govt. of India, South Block, DHQ PO Office, New Delhi.
2. The Flag Officer, Commanding-in-chief, Eastern Naval Command, Naval Base, Visakhapatnam.
3. The Chief Inspector of Naval Armament, Naval Armament Depot, Post Office, Visakhapatnam.
4. The Controller General of Defence Accounts, D.H.P. Post Office, New Delhi.
5. Accounts, Navy, Naval Armament Depot, Post Office, Visakhapatnam.
6. One copy to Sri. P.S.N.Murthy, advocate, CAT, Hyd.
7. One copy to Sri. V.Bhimanna, Addl. CGSC, CAT, Hyd.
8. One copy to Library, CAT, Hyd.
9. Copy to Reporters as per standard list of CAT, Hyd.
10. One spare copy.

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13. The three conditions stipulated for inviting fixation of pay under FR 22-C did not refer to the scale of pay of the feeder post/promotional post. So long the promotional post carries duties and responsibilities of greater importance than those attached to the lower post, re-fixation of pay in the promotional post cannot deprive the scale of pay of both the lower and the promotional post is the same.

14. In view of the aforesated circumstances of the case and the decisions of the various Benches of the Tribunal as also that of the Full Bench in the case of Bajrang Sitaram Wanjale Vs. Union of India, there can be no doubt that this application deserves to be allowed. Accordingly the Respondents are directed to re-fix the pay of the applicants by applying FR 22-C (now numbered as FR 22(I)(a)(1)). from the date on which the applicants were promoted to the post of Sr.Chargeman (Ammunition). Arrears accruing shall be paid to the applicants within a period of three months from the date of communication of this order. No order as to costs.

thru/s
(A.B.GORTI)
Member (A)

Dt. 10th November, 1994.
Dictated in Open Court.

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Ambedkar
Dy. Registrar (Jad.)

Contd. --- 12/-

DA-1198793

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

1. TYPING

THE HON'BLE MR. A. V. H. RAO, MEMBER

R-23/11/94

AND

THE HON'BLE MR. A. D. GORTHI, MEMBER

Dated: 16/11/94.

ORDER/JUDGMENT

M.A./R.P.C.D./No.

D.A.N.O.

in
1198793

I.A.N.O.

(W.P.N.O.)

Admitted and Interim Directions
Issued.

Allowed.

Dismissed with Directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

Rejected/Ordered.

No order as to costs.

YUKR

