

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION No.1588 of 1994.
DATE OF DECISION : 22-07-96.

P. Narasimha Rao

.. Applicant.

Vs

1. The Union of India,
Rep. by its Secretary,
Dept.of Space, Govt.of India,
Antariksh Bhavan, New BEL Road,
Bangalore.
2. The Controller, SHAR Centre,
Sri Harikota, Nellore District.
3. The Administrative Officer,
Dept. of Space, ISRO,
SHAR Centre, Srihari Kota,
Nellore District.

.. Respondents.

Counsel for the Applicant : Mr.P.Naveen Rao for
Mr.J.R.Manohar Rao

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

CORAM:-

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)



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ORDER

Oral Order (Per Hon'ble SHRI R.RANGARAJAN : MEMBER (ADMN.))

Heard Mr.P.Naveen Rao for Mr.J.R.Manohar Rao, learned counsel for the applicant and Mr.V.Bhimanna, learned counsel for the respondents.

2. . The applicant in this OA while working as Heavy Vehicle Driver under R-3, was interviewed and was found successful for coming over to the Technical side. By the office memorandum No.RWS/DPC/Drivers/91 dated 28-11-91 (Annexure-V) his appointment as Tradesman on branching off to Technical Trades was approved and he was informed that this approval will be subject to appropriate pay protection as provided for in para 7.1 of the OM dated 23-03-83. He was also asked to convey his acceptance for being absorbed as Tradesman-B in the grade of Rs.1150-1500/- subject to appropriate pay protection as provided for and he was given a proforma to fill up and to send the same back to the respondents. The applicant vide his letter dated 5-12-91 (Annexure-VI) gave his willingness for being absorbed as Tradesman-B under the scheme for branching off of Drivers to Technical Trades, subject to protection of existing pay. However, vide letter No.RWS/1.26/91 dt. 9-1-92 (Annexure-C to the reply) he was asked to give willingness to join the post fixing his pay at Rs.1500/-. He accepted the offer, fixing his pay at Rs.1500/- by his letter dt. 16-1-92 (Annexure-D to the reply). Office order No.SCF:PGA:EST.III J 11393-6 dated 28-7-92 (Annexure-VII) was issued fixing his pay at Rs.1500/- i.e., maximum of the scale of pay of Rs.1150-1500/- on his branching off as per office order No.SCF:PGA:ESTT.III J 11393-6 dated 10-3-92.



3. After joining the service he represented his case vide his representation dt.5-10-94 (Annexure-I) requesting the respondents to fix his pay at Rs.1640/- which he was drawing as Heavy Vehicle Driver at the time of his joining as Tradesman-B following the judgement of the Ernakulam Bench of this Tribunal in OA.No.920/93 decided on 20-12-93 (Annexure-II). No reply has been given to that representation.

4. Aggrieved by the above, he has filed this OA praying for a direction to the respondents to protect his pay on his appointment as Tradesman-B on 1-7-92 in terms of office memorandum dt. 28-11-91 as drawn by him as Senior Heavy Vehicle Driver with all consequential benefits.

5. The main contention of the applicant in this OA is that FR 22(1)(a)(3) read with provision of FR-15 is not attracted in this case and hence his pay has to be protected which he was drawing as Sr.Heavy Vehicle Driver at the time of his branching off to the technical side. He further submits that the Ernakulam Bench of this Tribunal in OA.920/93 dated 20-12-93 in a similar case directed the protection of pay to the applicant in that OA as prayed for in that OA. It was further held by the Ernakulam Bench that FR 22(1)(a)(3) is not applicable in that similar case and the appropriate pay protection as indicated in para 7.1 of the memorandum dt.19-3-83 will mean that the last pay drawn by him as Heavy Vehicle Driver is to be protected. The respondents cannot unilaterally change their stand now and take different view convenient to them to the dis-advantage of the applicant.

6. The respondents submit that the applicant himself has accepted to come over to the technical side accepting his pay fixation at Rs.1500/-, the maximum of

the pay in the pay scale of Rs.1150-1500/- when he was asked to give his willingness in terms of letter dated 9-1-92(Annexure-C to the reply). As he had accepted that offer vide his letter dt.16-1-92 (Annexure-D to the reply) he cannot now go back on his acceptance and ask for higher fixation. If the applicant is not willing to accept the fixation as indicated in the letter dt.9-1-92 he was free to continue as Sr.Heavy Vehicle Driver and nobody forced him to come over to the technical side. As he can continue two more years if he comes to the technical side compared to his retirement age as Heavy Vehicle Driver he chose to come to the technical side even though it involved ^{immediate} monetary loss, because of the extra advantage of having two more years of service. The benefit he will derive because of the two more years of extra service will compensate him more than amply than getting pay of Rs.1640/- as Heavy Vehicle Driver and retiring at an early age. In view of the above, they submit this OA is to be dismissed as having no merits.

7. I have heard both the parties. The applicant informed the respondents by his letter No.5-12-91 (Annexure-VI) that he will accept the post of Tradesman-B in pursuance of the OM dated 28-11-91 (Annexure-V) issued by the respondents only if his existing pay is protected. When he had taken the stand that he will accept the post of Tradesman-B only if his last pay drawn is protected he should have stuck to that position when he was clearly informed vide letter dated 9-1-92 (Annexure-C to the reply) that his pay will be only Rs.1500/- when he joins as Tradesman-B. But for some inexplicable reason he reversed his stand and accepted the offer dt. 9-1-92 in toto

without any murmur. Having accepted to join as Tradesman-B accepting the pay fixation at Rs.1500/- in the scale of pay of Rs.1150-1500/- he is now estopped from going back on his words and ask for higher fixation at the stage of Rs.1640/- protecting his earlier pay when he was working as Sr. Heavy Vehicle Driver. In my opinion the applicant was ^{bound} ~~lined~~ to accept the Tradesman-B post due to higher superannuation age and consequent monetary benefit compared to continuing as Heavy Vehicle Driver and retiring earlier.


8. The judgement of the Ernakulam Bench of this Tribunal in OA.920/93 dt. 20-12-93 (page-10 of the OA) was perused. On reading the facts of that case it reveals that nowhere the applicant in that OA has accepted the maximum fixation of Rs.1500/-. This is evident from the para-4 of the judgement, wherein it is stated that the applicant therein while branching off to technical side insisted on the protection of the pay in terms of conditions in Annexure-II and III in the scale applicable to him in that OA. From the above it can be safely interpreted that the applicant in that OA had insisted for protection of his last pay drawn in the erstwhile category of Heavy Vehicle Driver before joining as Tradesman-B. In view of his insistance, the Ernakulam Bench of this Tribunal took the view that the FR 22(1)(a)(3) read with FR-15 is not applicable in that case and the appropriate pay protection as mentioned in para 7.1 of the memorandum dt.29-8-93 is applicable to the applicant therein. The judgement further held that in view of the fact that he insisted on fixing his pay at a higher stage than the maximum of the scale of pay of Tradesman-B the applicant in that OA had to be given the higher pay in terms of the existing rules and the office memorandum quoted above. But



in this case the applicant had accepted to come over to the technical side accepting maximum pay of Rs.1500/- on his own volition. Hence, the case of the applicant in OA.920/93 on the file of the Ernakulam Bench of this Tribunal can easily be distinguished from the case of the applicant herein.

9. The learned counsel for the applicant strenuously argued that in terms of the office Memorandum dt.28-11-91 (Annexure-V to the OA) he accepted the offer with pay protection as prayed for in this OA. He gave his acceptance on that condition only by his letter dt.5-12-91 (Annexure-VI). Hence, the relief asked for in this OA has to be examined in the light of the above referred correspondence. The letter of the respondents dt.9-1-92 (Annexure-C to the reply) and his reply dt.16-1-92 (Annexure-D to the reply) cannot be taken into account while fixing his pay. These letters are only off shoot of this case and may not be read in continuance of the earlier letters dt.28-11-91 and 5-12-91.

10. This contention was considered. The applicant joined the post only on 10-03-92. Hence the correspondence in this connection from the date when the offer was made to him till he joined the post has to be read as sequence of correspondences. If the letters dt. 9-1-92 and 16-1-92 had been issued after he joined the post on 10-3-92, then there is force in the contention of the applicant. As these letters are issued earlier to his joining the post of Tradesman-B it cannot be said that these letters have no relevance to the office memorandum dt.28-11-91. All the 4

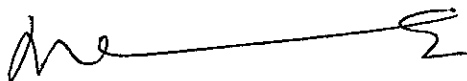


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letters viz., 28-11-91, 5-12-91, 9-1-92 and 16-1-92 have to be read together to see whether the applicant is estopped to ask for higher fixation at an later date after he joined the cadre of Tradesman-B. If those letters are read in the sequence one has to come to the only conclusion that the applicant is estopped from asking for higher fixation as those letters were issued before his joining as Tradesman-B category on 10-3-92. In view of what is stated above, this contention also cannot be upheld.

11. In view of the foregoing, I see no merits in this OA. Hence, the OA is dismissed as having no merits. No costs.



(R. RANGARAJAN)

MEMBER (ADMN.)

Dated : The 22nd July 1996.

Dictated in the Open Court

*Ar. B. in 1996.
Dy. Registrar (3)*

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TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)

DATED: 22/7/94

ORDER/JUDGEMENT
O.A. NO./R.A./C.P. NO.

IN

O.A. NO.

1588/94

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED
DISMISSED AS WITHDRAWN
ORDERED/REJECTED
NO ORDER AS TO COSTS.

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II COURT

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