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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

ORIGINAL APPLICATION NO. 708/95

DATE OF ORDER : 20-11-1997.

Between :-

Santi Ranjan Biswas

... Applicant

And

1. Union of India, rep. by its Secretary to Govt., M/o Food Processing Industries, Panchashael Bhavan, Khelgaon Marg, New Delhi - 110044.
2. The Director General, Fishery Survey of India, Botawala Chambers, Sir P.M.Road, Bombay-400 001.
3. The Zonal Director, Fishery Survey of India, Beach Road, Visakhapatnam-1.

... Respondents

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Counsel for the Applicant : Shri N.Ram Mohan Rao

Counsel for the Respondents : Shri N.R.Devaraj, Sr.CGSC

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CORAM:

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

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (J)

(Order per Hon'ble Shri R.Rangarajan, Member (A)).

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(Order per Hon'ble Shri R.Rangarajan, Member (A) ).

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Heard Sri Shiva for Shri N.Ram Mohan Rao, counsel for the applicant and Shri N.R.Devaraj, standing counsel for the respondents.

2. The applicant while working as a Sr.Deckhand-cum-Greaser in the scale of Rs.975-1540 substantially, appeared for competency examination of Engine Driver (F.N) conducted by the Govt. of India, Merchantile Marine Department and passed the same. Consequent on passing that test, the applicant was promoted to the post of Chief Engineer, Gr.II by Respondent No.2 with effect from 8-9-87 as per order No.F.2-29/87-E.III dt.24-8-87 (Annexure-I to the OA). But his pay was restricted/<sup>as</sup> per provision under F.R.35. Later the applicant made a representation and that restriction was removed and his pay was fixed at Rs.2,375/- in the scale of Rs.2375-3500 as Chief Engineer Gr.II. But by the impugned order No.G.10-1/93-Ett. dt.25-5-95 (Annexure-5 to the OA) the annual increment in/<sup>the</sup> scale of Rs.2375-3500 was cancelled and the initial increment due to him under FR 35 in the scale of Rs.975-1150 was granted.

3. This O.A. is filed praying for a declaration that the applicant is entitled to have his pay fixed on his appointment as Chief Engineer Gr.II in the scale of pay of Rs.2,375-3500 under FR 22(1)(a)(i) and for a consequential declaration that the action of the respondents in fixation of his pay through office order No.F.2-2/93-Ett., Dt.25-5-95 of the 3rd respondent and the Memo No.F.27-1/95-96-A-CS dt.5-6-95 whereunder recovery was sought to

be made as arbitrary and unjust and unsustainable.

4. A reply has been filed in this O.A. In para-2 of the reply, it has been stated that the applicant has not submitted any representation to the respondents seeking fixation of pay under F.R.22(I)(a)(i) and not to invoke the provision of FR 35 and he has filed the above O.A. without exhausting the alternative remedy available to him under the service rules. Thus the OA is hit by section 19 of the A.T.Act, 1985.

5. The learned counsel for the applicant brought to our notice the judgement of Calcutta Bench of this Tribunal in OA 13/AN/92 decided on 26-11-1993 (S.K.Datta Rai Vs. Union of India & others). The applicant submits that the present case is similar initially to the case referred to. In that case also though the pay was restricted as per FR 35, the same was set aside by the Calcutta Bench of the Tribunal and the respondents were directed to fix the pay of the applicant in that OA in the scale of Rs.2375-3500 from the date he took over charge as Chief Engineer.

6. When we enquired from the ~~applicant~~ counsel for the applicant whether this fact ~~is~~ has been brought to the notice of the respondents, the learned counsel for the applicants submits that he got this judgement much later ~~than~~ <sup>after</sup> the filing of this O.A. and hence ~~has not brought~~ <sup>he</sup> ~~to~~ <sup>this judgment</sup> to the notice of the respondents. He further submitted that the present case of the applicant is exactly ~~the~~ same as that of the applicant in the O.A. on the file of the Calcutta Bench of this Tribunal and if his case is not treated alike that ~~as~~ <sup>as</sup> Datta Rai's case, then he ~~will~~ <sup>would</sup> be discrimination against Datta Rai, which is not justified. Hence he submits a

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similar order may be passed in this O.A. also.

7. The Respondents have stated as indicated above that the applicant had approached this Tribunal without exhausting the normal grievance channel for redressal of his grievance. If the applicant had brought to the notice of the respondents the judgement of the Calcutta Bench of the Tribunal, probably the respondents would have examined the case in the light of that judgement and would have taken a suitable decision. Because of the failure of the applicant in not filing a representation with the judgement referred to above, the respondents may not have come to a proper decision.

8. Hence we are of the opinion that ~~the~~ it is for the applicant now to submit a detailed representation for considering his case in the light of the judgement in OA 13/AN/92 on the file of the Calcutta Bench of the Tribunal <sup>K</sup> and take a suitable decision in accordance with the law.

9. The above will also be in accordance with the submission made by the respondents in the reply. The above course of action will also enable the applicant to get a quicker relief as the Tribunal has to obtain the necessary information from the department before passing any orders in this connection, in view of the new facts brought to our notice.

10. However, we find that an interim order has already been passed on 19-6-95 by staying the recovery. Hence the applicant may not be put to any dis-advantage if the O.A. is disposed of directing the applicant to submit a representation. No doubt

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till the representation is disposed of, the interim order already passed will be inforce.

11. In the result, the following direction is given :-

The applicant may, if so advised, submit a detailed representation to Respondent No.2 for fixation of his pay as Chief Engineer Gr.II in the light of the judgement in OA 13/AN/92 on the file of the Calcutta Bench of this Tribunal within a period of one month from the date of receipt of a copy of this order. If such a representation is received, within that stipulated time, then the respondent No.2 should dispose of the same within a period of 105 days from the date of receipt of that representation. Till the representation is disposed of, the interim order in this O.A. dt. 19-6-95 shall be inforce.

12. With the above directions, the O.A. is disposed of.

No order as to costs.

  
(B.S.JAI PARAMESHWAR)  
Member (J)

20.11.97

  
(R.RANGARAJAN)  
Member (A)

Dated: 20th November, 1997.  
Dictated in Open Court.

  
D.R.

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OA.708/95

Copy to:-

1. The Secretary to Govt., Ministry of Food Processing Industries, Panchsheel Bhavan, Khelegao Margh, New Delhi.
2. The Director General, Fishery Survey of India, Botawala Chambers, Sir P.M.Road, Bombay.
3. The Zonal Director, Fishery Survey of India, Beach Road, Visakapatnam.
4. One copy to Mr. N. Ram Mohan Rao, Advocate, CAT., Hyd.
5. One copy to Mr. M.R. Devaraj, SR.CGSC., CAT., Hyd.
6. One copy to O.R.(A), CAT., Hyd.
7. One duplicate.

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S.12/97~~

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TYPED BY  
COMPARED BY

CHECKED BY  
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD

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

AND

THE HON'BLE SHRI B.S.JAI PARAMESHWAR :  
M (J)

Dated: 20/11/97

ORDER/JUDGMENT

M.A./R.A./C.A.NO.

in  
O.A.NO. 708/96

Admitted and Interim Directions  
Issued.

Allowed

Disposed of with Directions

Dismissed

Dismissed as withdrawn

Dismissed for Default

Ordered/Rejected

No order as to costs.

YLR

II Court

