

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Applications No 351 of 2004

Indore, this the 19th day of October, 2005.

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

Vijay Kumar Singh,
S/o Late M.L. Singh
DOB April 10th 1949
Presently Assistant Foreman,
Vehicle Factory, Jabalpur
R/O House No.3484-B
Sector-2 VFJ Estate Jabalpur

Applicant

(By Advocate – Shri S.Paul)

V E R S U S

1. Union of India,
Through its Secretary
Ministry of Defence
New Delhi.
2. Chairman,
Ordnance Factory Board
10-A S.K. Bose Marg
Kolkata.
3. General Manager,
Vehicle Factory Jabalpur
Jabalpur

Respondents

(By Advocate – Shri P.Shankaran)

O R D E R

By M.P.Singh, Vice Chairman–

By filing this Original Application, the applicant has sought the following main reliefs :-

“(ii) Set aside the order dated 7.1.2004.



(iii) The above holding is that the applicant is entitled to get the pay scale of Rs. 550-750 w.e.f. 13.5.1982 notionally and from 1.11.1983 actually and ^{to} command the respondents to grant the same to the applicant with all consequential benefits including the arrears of pay, seniority and other benefits asking from thereto."

2. The brief facts of the case are that the applicant was working as Senior Draughtsman in Vehicle Factory Jabalpur. Earlier he had filed OA No.12/89 before this Tribunal claiming that he is entitled to get the benefit of pay scale of Rs.550-750 which was granted, to Draughtsman Grade-I in CPWD in terms of the Award of Board of Arbitration (hereinafter referred to as the 'CPWD Award'). According to the applicant he became Senior Draughtsman on 3.9.1981 and was given the pay scale of Rs. 425-700 from the date of his promotion as Sr. Draughtsman. The benefit of the CPWD Award was made effective to all Government of India Offices in terms of the orders issued by the Ministry of Finance vide their OM dated 13.3.1984 (Annexure-A-2). Number of petitions were filed in this Tribunal claiming parity with Draughtsman Grade-I of CPWD by the Senior Draughtsman. The matter travelled up to the Hon'ble Supreme Court and the Hon'ble Supreme Court in the case of Union of India and others Vs. Debarshish Kar and others, (1995) 31 ATC 210 = 1995 SCC (L&S) 1303 = 1995 Suppl.(3)SCC 528 has held that the Draughtsman in the Ordnance Factories are entitled to parity in pay with Draughtsman Grade-II in CPWD. Thereafter, Mumbai Bench of this Tribunal in the case of Prabir Kumar Mondal Vs. Union of India and others, OA.518/1988 decided on 29.3.1995 (Annexure-A-3) directed the department to grant the scale of Rs.550-750 to the Senior Draughtsman of the Ordnance Factory. The said decision of Mumbai Bench has since been implemented vide Annexure-A-4. Original Application No. 12 of 1989 (P.S.Rai & 36 others Vs. Union of India and others), which was filed by the applicant along with other persons, was earlier rejected by the Tribunal vide order dated 19.5.1999 (Annexure-A-5). The said order dated 19.5.1999 of the



Tribunal, was challenged before the Hon'ble High Court in Writ Petition No.4364/2000, and the Hon'ble High Court remitted the case back to this Tribunal to decide it afresh. The Tribunal vide its order dated 27.1.2003 (Annexure-A-7)in OA 12/1989 directed the respondents to review the present set up of the Sr. Draughtsman of the Ordnance Factory Organization, as per the directions contained in the said order. Finally, the respondents have passed order dated 7.1.2004 (Annexure-A-8) rejecting the claim of the applicants in OA 12/1989. Hence this Original Application.

3. The respondents in their reply have stated that the applicant has been claiming the benefit of higher pay scale in the post of Senior Draughtsman at par with Draughtsman Grade-I of CPWD on the cover of Ministry of Finance OM dated 13.3.1984. He was one of the applicant in OA 12/1989, which was once dismissed by this Tribunal. The order of the Tribunal was challenged before the Hon'ble High Court and subsequently the Hon'ble High Court remitted the matter back to this Tribunal for consideration. Thereafter, the Tribunal disposed of the said OA with a direction to review the set up of Draughtsman of OF organization. In compliance of this direction, the respondents had appointed a committee of expert to review the set up of the Draughtsman category in OF Organization and also the job requirement, qualification, pay scale and next promotional line etc. and passed a speaking order on 7.1.2004, which is under challenge in the present O.A.

3.1 The respondents have further stated that number of petitions were filed in various Benches of this Tribunal by Draughtsman for the pay scale of Draughtsman Grade-II in CPWD. Only the Mumbai Bench of the Tribunal held that the applicants in that case were entitled to get the pay scale of Rs.550-750. The relief granted by the Mumbai Bench of the Tribunal in OA 518/1988 was also examined by the Principal Bench of the Tribunal in OA 1047/1990 (P.Savita & 173 others Vs. Union of India and another, decided on 5.6.1997, however, the said OA was dismissed by the Principal Bench.

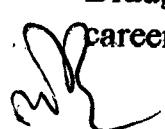


4. Heard the learned counsel of parties and carefully perused the records.

5. The learned counsel for the applicant has submitted that the applicant was working as Chargeman Grade-I. The Ministry of Finance vide OM dated 13.3.1984 has issued instructions that the scales of pay of Draughtsman Grade-I, II and III in all Government of India offices other than CPWD may also be revised, as per the CPWD Award. He has also drawn our attention to the case of **Debashis Kar** (supra) whereby the Hon'ble Supreme Court has held that the Draughtsman ^{Grade-II} ~~Grade-II~~ are entitled for the revised scale under the CPWD Award. He has also submitted that the respondents while rejecting the claim of the applicant vide impugned order dated 7.1.2004 have held as under:-

"There is no post of Senior Draughtsman in Ordnance Factories Organization now. However, in compliance with the directions of the Hon'ble Tribunal, a review was carried out with reference to the qualifications, method of recruitment, length of service in the feeder grade, scales of pay etc. of the now non-existent but erstwhile post of Senior Draughtsman in Ordnance Factories vis-à-vis the similar aspects relevant to the Draughtsman Grade-I of CPWD and also in conformity with the scheme of things of the Government of India order dated 13.03.1984.

It is revealed that Draughtsman category in Ordnance Factories has been finally and conclusively equated with Draughtsman Grade-II of CPWD. This has been settled by the Hon'ble Supreme Court vide order dated 20.07.1995. Draughtsman grade was a feeder grade to Senior Draughtsman in Ordnance Factories. Taking into consideration the minimum incumbency period required for Draughtsman for promotion to Senior Draughtsman, their nature of job & syllabus for training in Ordnance Factories, the post of Senior Draughtsman, as it existed prior to 1980 might be equal to Draughtsman Grade-I of C.P.W.D. prior to 1980(sic). However, this is purely hypothetical because of two reasons, viz. (1) the post of Senior Draughtsman did not exist as on the crucial date (i.e.) 13.05.1982; and (2) based on the equivalence no further benefit could be availed by these erstwhile Senior Draughtsman. These erstwhile Senior Draughtsman can not earn any further benefit because (a) they are no more Senior Draughtsman and (b) they have branched off in a different career progression path viz. Chargeman Grade-II/ Technical to



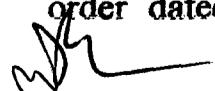
Chargeman Grade-I/Technical and thereafter to Assistant Foreman/ Technical etc. It may not be possibly legally, administratively or practically to put the clock back by more than twenty years. And even if the clock is put back thus, they would only stagnate as Draughtsman Grade-I or Senior Draughtsman which would put them to no financial or career benefit.

Hence the extension of similar dispensation as explained above would neither be in the interest of the applicants nor in the interest of the organization".

5.1 The learned counsel for the applicant has submitted that while rejecting the claim of the applicant, the very fact taken by the respondents into consideration was that the post of Senior Draughtsman did not exist after 1980 is patently wrong. He has drawn our attention to the order dated 3.9.1981 (Annexure-A-1) passed by the respondents, whereby the applicant has been promoted with effect from 3.9.1981. The learned counsel has submitted that the applicant had continued to hold the post of Senior Draughtsman from 3.9.1981 to 27.10.1990, when he was redesignated vide order dated 27.10.1990 (Annexure-A-9). In the order dated 27.10.1990 it has been mentioned that "the seniority of Shri V.K.Singh in the grade of Ch'man Gr.II. (Tech) will be assigned from the date of his holding the post of Sr.Draughtsman, i.e. from 3.9.81 and he will not draw any financial benefits on account of the above arrangement". Apart from this, the Mumbai Bench of the Tribunal in the case of Prabir Kumar Mondal (supra) had granted the benefit to the applicants, who were working as Sr.Draughtsman. In the said case, the Mumbai Bench has passed the following order:

"O.A. is allowed. Respondents are directed to give to the applicants the scale of pay of Rs.550-750 and the replacement scale of 4th Pay Commission, namely Rs.1600-2600. Other consequential benefits should be given in the same terms as in Jabalpur & Calcutta Bench judgments. In the circumstances of the case, however, we do not concede the prayer for interest. There would be no order as to costs".

The said order of the Mumbai Bench has also been implemented vide order dated 29.9.1995 (Annexure-A-4). The applicant has further



submitted that the judgment of the Principal Bench in the case of P.Savita (supra), which is the sole ground of rejecting the claim of the applicant is distinguishable and is not applicable in the present case as in that case the applicants have claimed the benefit of CPWD Award with effect from 1.1.1973, whereas in the present case the applicant is claiming the benefit of CPWD Award in terms of the OM dated 13.3.1994 issued by the Ministry of Finance, notionally w.e.f.13.5.1982 and actual benefits from 1.11.1983.

5.2 The learned counsel has further submitted that from the order of the Principal Bench in the case of P.Savita (supra) it is clear, that the applicants 174 in number in the said case, were working in different Ordnance Factories and they had claimed that at the relevant time i.e. 1.1.1973, that is the date when the recommendations of the 3rd Pay Commission were given effect to, they were working as Senior Draughtsmen and hence they claimed equation with the Draughtsmen Grade-I of CPWD, by revising their pay scales from 425-700 to Rs.550-750 from the date of their appointment/promotion to the post of Senior Draughtsmen in terms of the CPWD Award dated 10.11.1980. This judgment is, therefore, not applicable as the benefit of the CPWD Award has been granted to other departments by the Ministry of Finance vide OM dated 13.3.1984 notionally w.e.f.13.5.1982 and actual benefit w.e.f. 1.11.1983.

5.3 On the other hand, the learned counsel for the respondents has submitted that the Principal Bench has controverted the submissions made by the learned counsel for the applicant. He has submitted that the Principal Bench has considered the judgment of the Hon'ble Supreme Court in the case of Debasis Kar (supra), and has rejected the claim of the applicants in the said case. He has also submitted that the earlier OA filed by the applicant along with other persons, had been dismissed by the Tribunal. When the case was remitted back by the Hon'ble High Court, the respondents have constituted a Committee and the Committee has not found any merit in the claim of

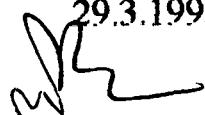
the applicant and hence the same has been rejected by the impugned order.

5.4 On our specific query as to how the Committee has come to a finding that the post of Senior Draughtsman did not exist in the Ordnance Factories after 1980, in the face of the evidence produced by the applicant, i.e. the applicant himself was promoted to the post of Senior Draughtsman vide order dated 3.9.1981 (Annexure-A-1) and continued in that post till 1990 when he was redesignated vide order dated 27.10.1990 (Annexure-A-9), the learned counsel for the respondents has submitted that a decision was taken in the year 1980 itself not to make recruitment to the post of Senior Draughtsman and it is because of this policy decision taken by the Government, the Committee has come to the conclusion.

6. We have given careful consideration to the rival contention made on behalf of both the sides.

7. We find that the applicant had earlier filed OA 12 of 1989 along with other persons, which was rejected by the Tribunal. However, the order of the Tribunal was set aside by the Hon'ble High Court and the case was remitted back to this Tribunal. Thereafter, the Tribunal has directed the respondents to reconsider the matter and in compliance to the said order, the matter was reconsidered by a Committee which has given its report and rejected the claim of the applicant, on the ground that the post of Senior Draughtsman existed before the year 1980 and the applicant was not working as Senior Draughtsman on the crucial date i.e. 13.5.1982. It is only on these grounds, ^{that} the claim of the applicant has been rejected.

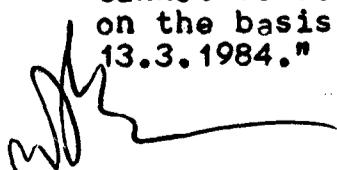
8. It is not in dispute that the claim of the similarly placed persons for granting the pay scale of Rs.550-750, was granted by the Mumbai Bench of the Tribunal, notionally w.e.f. 13.5.1982 and actual benefit w. e. f. 1.11.1983, in terms of OM dated 13.3.1984 (Annexure-A-2) of the Ministry of Finance, vide order dated 29.3.1995 in the case of Prabir Kumar Mondal (supra) and the said



decision has also been implemented by the respondents vide order dated 28.9.1995 (Annexure A-4). It is also not in dispute that the applicant has been promoted to the post of Senior Draughtsman vide order dated 3.9.1981 (Annexure A-1) and he continued as such till 1990 when vide order dated 27.10.1990 (Annexure A-9) he was redesignated as Chargeman Grade-II, from a prospective date. However, by ^{the} order dated 27.10.1990 the applicant has been given seniority of Chargeman Grade-II from 3rd September, 1981. This might have been given due to the fact that the post of Chargeman Grade-II and the post of Sr. Draughtsman were in the identical scale of pay and rules did not permit re-designation from a retrospective date. It is, therefore, abundantly clear that the applicant remained as Senior Draughtsman from the date of his appointment i.e. from 3rd September, 1981 to 26th October, 1990.

8.1 In the judgment of the Hon'ble Supreme Court in the case of Debasish Kar (supra), it has been observed by the Hon'ble Supreme Court as under :

....As regards the post of Chargeman Grade-II being a promotional post for Draughtsmen in Ordnance Factories and it being in the scale of Rs. 425-700/- at the relevant time, we are of the view that merely because of promotional post for Draughtsmen in Ordnance Factories was in the scale of Rs. 425-700/- cannot be a justification for denying the revision of pay scale to Draughtsmen and there being placed in the scale of Rs. 425-700/- on the basis of the Office Memorandum dated 13.3.1984 if such Draughtsmen are otherwise entitled to such revision in the pay scale on the basis of the said memorandum. Moreover, the provision regarding promotion of Draughtsmen in Ordnance Factories was introduced by the Indian Ordnance Factories Group-C Supervisory and Non-Gazetted Cadre (Recruitment and Conditions of Service) Rules, 1989 issued vide notification dated 4.5.1989. The said rules are not retrospective in operation. Here we are concerned with the revision of pay scales with effect from 13.5.1982 on the basis of the Office Memorandum dated 13.3.1984 and at that time, the said Rules were not operative. Therefore, on the basis of the aforesaid Rules, Draughtsmen in Ordnance Factories cannot be denied the benefit of revision of pay scales on the basis of the Office Memorandum dated 13.3.1984."



9. Thus, in view of the facts mentioned above, the finding of the Committee that no post of Senior Draughtsman existed after 1980 is wrong and the impugned order dated 7.1.2004 (Annexure A-8) passed by ^{the respondents 2} them in respect of the applicant is not sustainable.

10. We also find that the order of the Principal Bench of the Tribunal in the case of P. Savita (supra) relied upon by the respondents is distinguishable and is not applicable in the present case. In that case, the applicants had sought the revision of pay scale of Sr. Draughtsman ^{with} w.e.f. 1.1.1973 on the basis of the CPWD Award. The CPWD award was in existence at that point of time i.e. 1973. The Award itself has been made applicable notionally w.e.f. 13.5.1982 and actual benefit w.e.f. 1.11.1983.

11. From the discussions made above it is quite clear that the respondents by not granting the benefit to the applicant of the CPWD award as claimed by him in his relief have made a hostile discrimination, which is not sustainable in the eye of law.

12. In the result, for the reasons discussed above, the present OA is allowed. The impugned order dated 7.1.2004 so far as it relates to the applicant is quashed and set aside. We direct the respondents to fix the pay of the applicant in the grade of Rs. 550-750/- w.e.f. 13.5.1982 and actual benefit be granted w.e.f. 1.11.1983. The respondents are directed to implement this order within a period of three months from the date of communication of this order. No costs.

(Madam Moham)
Judicial Member


(M.P. Singh)
Vice Chairman