

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 791 of 2003

Jabalpur, this the 29th day of October, 2004

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

1. Ayudh Nirmani Vahan Chalak Sangh through it's Secretary Shri K.S. Raghuvanshi, age about 46 years, S/o. Shri K.S. Raghuvanshi, P.No. 2039130d, Vehicle Factory, Jabalpur (MP).
2. Premalal Prajapati, age 52 years, S/o. Shri Kandhilal Prajapati, Driver Fire Brigade, P. No. 070392, Grey Iron Foundry, Jabalpur (MP). ... Applicants

(By Advocate - Shri S. Nagu)

V e r s u s

1. Union of India through Secretary, Department of Defence Production & Supplies, Ministry of Defence, South Block, New Delhi.
2. Chairman, Ordnance Factory Board, 10-A, Shaheed Khudiram Bose Road, Kolkata (WB).
3. General Manager, Vehicle Factory, Jabalpur (MP). ... Respondents

(By Advocate - None)

O R D E R

By M.P. Singh, Vice Chairman -

By filing this Original Application the applicants have claimed the following main reliefs :

"8.1 to quash the impugned letter/decision dated 17.10.2003 as being void arbitrary and unlawful,

8.2 to direct the respondents to give effect to the "promotion scheme" as given effect to in the case of CMDs of Ordnance Factories i.e. w.e.f. 8.11.1996,

8.3 to declare that the discriminative policy adopted by respondents between the CMDs and FEDs of Ordnance Factories is unsustainable in law,

8.4 to direct respondents to consider creation of atleast 9% vacancies for the Special Grade as provided for drivers in the Railways,

8.5 to direct respondents to consider creation of adequate quota in the highergrades of Chargeman-I, Assistant Foreman, Foreman etc. for the FEDs without restricting the eligibility for such promotion to FED Special Grade only."

M.P.S.

2. The brief facts of the case as stated by the applicants are as follows :-

2.1 The applicant No. 1 in the present case is a registered Union of the Drivers working in the Ordnance Factories. The applicant No. 2 is working as a Fire Engine Driver (for Short FED) in the Grey Iron Foundry, Jabalpur. The FEDs were earlier having two scales i.e. Fire Engine Driver-I (Rs. 320-400/-) and Fire Engine Driver-II (260-400/-). The Vth Central Pay Commission has recommended a singular pay scale of Rs. 3050-4590/- replacing the earlier two scales. The Staff Car Drivers (for short SCDs) who were working in the Secretariat had filed OA No. 2957/1991. They had also approached the Principal Bench of the Tribunal by filing OA No. 2529/1996- (Central Govt. Staff Car Drivers' Association & Bikram Singh Vs. Union of India), seeking relief for restructuring the pay scales to remove the stagnation. The relief was granted by the Tribunal in the said OAs. Consequent to the direction given by the Tribunal, the Department of Personnel and Training had introduced 4 tier pay scales promotion scheme for SCDs which was made effective from 8.11.1996.

2.2 The Drivers of the Ordnance Factories also raised the similar grievance of stagnation and sought the same benefit as extended to SCDs. The Union of India had issued two separate letters extending the same benefit for Civilian Motor Drivers (for short CMDs) and FEDs functioning in the same Ordnance Factories. The CMDs promotion scheme was introduced vide letter dated 9th April, 2001 and 22nd May, 2001 (Annexure A-1) and had the silent features of restructuring which is as under :

"(a) Pay structure

3050-4590	Ordinary grade
4000-6000	Grade II
4500-7000	Grade I
5000-8000	Special Grade."



2.3 The aforesaid scheme was made effective from 8.11.1996 and the pay fixation and the arrears of salary was granted with effect from the same date. In the case of FEDs the respondent No. 1 introduced the same benefit which were extended to the CMDs vide letter dated 17th September, 2002 (Annexure A-2). However, in the case of FEDs the scheme was made effective from 2nd May, 2002. Thereafter, the respondent No. 1 had issued a clarification dated 15th January, 2003 (Annexure A-4) directing that the benefit under the promotion scheme will be extended with effect from the actual placement of individuals. Aggrieved by this the applicants' association made representation and later issued a legal notice dated 4.3.2003 (Annexure A-5). The legal notice dated 4.3.2003 has been rejected by the respondents vide impugned order dated 17.10.2003 (Annexure A-6). Hence, this OA.

3. The respondents in their reply have stated that the Vth Central Pay Commission recommended a singular pay scale of Rs. 3050-4590/- for the then existing two scales of pay Rs. 950-1500/- and Rs. 1150-1500/- for the FEDs. In the meanwhile the cadre of CMDs underwent a major change. In pursuance to the judgment of the Principal Bench of the Tribunal in OA No. 2957/1991, the Government of India introduced a three grade structure for the SCDs vide DOPT OM dated 30.9.1993 i.e. Staff Car Driver (Ordinary Grade) Rs. 950-1500/-, Staff Car Driver Grade-II (Rs. 1200-1800/-) and Staff Car Driver Grade-I (Rs. 1320-2040/-). The said cadre structure i.e. the higher pay scale of Rs. 1200-1800/- in place of Rs. 1150-1500/- and change of designation was extended to the CMDs of the Ordnance Factories vide Ministry of Defence letter dated 30.7.1996. Since the CMDs in Ordnance Factories already had a three grade structure, the Ministry of Defence order dated 30th July, 1996

only led to the upgradation and revision of ratio of various grades. Thus after the Vth Central Pay Commission's recommendations, the cadre of CMDs had the following three pay scales i.e. Rs. 3050-4590/-, Rs. 4000-6000/- and Rs. 4500-7000/-, whereas the FEDs had only one pay scale in their cadre i.e. Rs. 3050-4590/-. Subsequently, pursuant to the order of the Principal Bench of the Tribunal in the case of Staff Car Driver Association and Bikram Singh (supra), the Government of India introduced a new grade called 'Special Grade' in the pay scale of Rs. 5000-8000/- and also revised the inter grade ratio for SCDs vide DOPT OM dated 15.2.2001. The benefits of the revised inter-grade ratio as well as new grade of 'Special Grade' were extended to the cadre of CMDs in the Ordnance Factories vide Ministry of Defence letter dated 9.4.2001. After the introduction of the special grade a comparative chart of cadre structure in both the cadre was as under :

<u>S.No.</u>	<u>Post/Designa- tion</u>	<u>Pay Scale (Rs.)</u>	<u>Post/Desi- gnation</u>	<u>Pay Scale (Rs.)</u>
1.	Civilian Motor Driver (Ordinary Grade)	3050-4590	Fire Engine Driver, Grade-II, Fire Engine Driver-Gr.I	3050-4590
2.	Civilian Motor Driver, Grade-II	4000-6000	-	-
3.	Civilian Motor Driver, Gr. II	4500-7000	-	-
4.	Civilian Motor Driver (Special Grade)	5000-8000	-	-"

3.1 The respondents have further stated that earlier temporary ban of cadre reviews/cadre restructuring was imposed by the Government. This ban was lifted vide Ministry of Finance OM dated 7.1.1999 and cadre controlling authority was directed to submit proposals for cadre reviews if due. Accordingly, the Ordnance Factory Board

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carried out cadre reviews/cadre restructuring of various categories of posts including that of FEDs. The proposal of cadre review for FEDs in Ordnance Factory was considered by the Government and approval for introduction of a four grade structure was issued vide Ministry of Defence letter dated 17.9.2002. The proposal of Ordnance Factory Board was based on the cadre structure of CMDs which was approved by the Government. As mentioned earlier the cadre re-structuring of CMDs was carried out on the basis of direction of the Principal Bench of the Tribunal and the date of effect of such cadre restructuring was w.e.f. 8.11.1996 i.e. from the date the application was filed before the CAT, Principal Bench. The cadre review proposal of FEDs is based on the CMD model but it was a separate and independent cadre review proposal all the same. Hence, the cadre review proposal of FEDs can be given effect to only prospectively from the date of its approval by the Government. In view of the above submissions the applicants are not entitled for any relief as prayed for by the applicants and the application deserves to be dismissed with costs.

4. None is present for the respondents. Since it is an old case of 2003, we proceed to dispose of this Original Application by invoking the provisions of Rule 16 of CAT (Procedure) Rules, 1987. Heard the learned counsel for the applicants.

5. We have given very careful consideration to the rival contentions. We find that earlier the CMDs working in the Ordnance Factories were having 3 different scales of pay i.e. Rs. 950-1500/-, Rs. 1150-1500/- and Rs. 1320-2040/-, whereas the FEDs were having two scales of pay i.e. Rs. 950-1500/- and Rs. 1150-1500/-. The recommendations of the 5th Central Pay Commission with regard to the pay scales

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of CMDs were accepted by the Ministry of Defence vide their letters dated 5th December, 1996 and 29th June, 1998. In modification of those orders the Ministry of Defence has issued instructions on 9th April, 2001, whereby the benefit of the promotional scheme of SCDs introduced under DOPT OM dated 15th February, 2001 was extended to the CMDs in the Defence Establishments. A new grade of CMDs called as 'Special Grade' was also introduced in the pay scale of Rs. 5000-8000/-.. These order issued on 9th April, 2001 were made effective from 8.11.1996. It was also stated in this letter that the posts of CMDs as on 8.11.1996 should be apportioned among the four grades and promotion should be made to different grades accordingly with effect from 8.11.1996 to the extent of short fall in the relevant grades. The arrears of pay and allowances should also be allowed with effect from 8.11.1996. In pursuance of this letter dated 9th April, 2001 issued by the Ministry of Defence, the Ordnance Factory Board extended these benefits to CMDs vide their letter dated 22.5.2001 making it effective from 8.11.1996. Subsequently the Ministry of Defence vide their letter dated 17th September, 2002 have revised the structure of FEDs into four grades on the same lines as has been done in the case of CMDs in Ordnance Factories. The Chairman, Ordnance Factory Board in turn vide its letter dated 25.11.2002 addressed to the General Manager/Sr. General Manager have issued instructions regarding introduction of promotion scheme to FEDs in the Ordnance Factories. The Ordnance Factory Board has issued clarification vide their letter dated 15th January, 2003, whereby it has been stated that the orders are applicable from 2.5.2002. However, the actual benefits would be admissible from the date of actual placement of the individuals in different grades.



5.1 The main grounds taken by the respondents for introducing the restructuring scheme in the case of FEDs are as follows : (a) Earlier the CMDs were having three scales and the FEDs were having two scales of pay. After the recommendation of the Vth Central Pay Commission the FEDs were given single scale of pay of Rs. 3050-4590/-. The cadre of CMDs in the meanwhile underwent a major change. In pursuance of the judgment of the Principal Bench of CAT, DOP&T introduced 3 grade structure to the SCDs vide the OM dated 30.9.1993. The said cadre structure of higher pay scale of Rs. 1200-1800 in place of 1150-1500/- and change of designation was extended to CMDs of the Ordnance Factories vide letter dated 30.7.1996, (b) The cadre review proposal of FEDs is based on the CMD model but it was a separate independent cadre review all the same and (c) The cadre review proposal of FEDs can be given effect to only prospectively from the date of its approval by the Government.

6. We find that the grounds taken by the respondents for introducing the restructuring scheme for the CMDs with effect from 8.11.1996 and in the case of FEDs with effect from 2.5.2002 or from the date the actual placement of the individuals in the different grades is made, are not tenable. It is an admitted position that the CMDs working in the Ordnance Factories were not party before the Principal Bench of the Tribunal and only the SCDs of the Secretariat filed the application before the Principal Bench of the Tribunal. It is also not in dispute that the orders extending the benefits of restructuring scheme for different pay scales for CMDs were issued on 22nd May, 2001 by the Ordnance Factory Board giving effect from 8.11.1996. The orders extending the same benefits to FEDs have also been issued by the same Ordnance Factory Board on 25.11.02,



but giving them the benefit only from 2.5.2002. It is also admitted by the respondents in their reply that the cadre review proposals of FEDs is based on the CMD model. It is also an admitted position that both the FEDs and CMDs are working in the same Ordnance Factories but have been treated differently with regard to the date of effect of restructuring of the pay scales and payment of arrears of pay and allowances. The grounds taken by the respondents for this discriminatory treatment meted out to the FEDs working in the Ordnance Factories are not rational and logical. The Ordnance Factory Board has extended the benefit of new pay structure as granted to the SCDs of Secretariat to the CMDs working in the Ordnance Factories from a retrospective date i.e. from 8.11.1996, whereas the same benefits have been extended to the FEDs working in the same Ordnance Factories with effect from a prospective date i.e. 2.5.2002. It is a clear case of hostile discrimination and is not sustainable as it violates the provisions of Articles 14 and 16 of the Constitution.

7. For the reasons recorded above, the Original Application is partly allowed and the impugned order dated 17.10.2003 (Annexure A-6) is quashed and set aside. The respondents are directed to grant the benefit of restructuring scheme including arrears of Pay and Allowance to Fire Engine Drivers also from the date it has been extended to the Civilian Motor Drivers working in the Ordnance Factories i.e. w.e.f. 8.11.1996. This exercise should be done within a period of six months from the date of receipt of a copy of this order. As regards the other reliefs claimed by the applicants in paras 8.4 and 8.5, the same are not found justifiable and are accordingly rejected. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman