

**Central Administrative Tribunal, Jabalpur Bench, Jabalpur**  
**Original Application No 157 of 1997**

Jabalpur this the 18<sup>th</sup> day of February 2005.

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

1. K.P. Mallick, aged about 47 years  
S/o Shri P.K. Mallick,  
Supervisor, Ordnance Factory, Khamaria,  
Resident of Diwan Bada,  
(Manegaon),  
Post-Khamaria, Jabalpur And 26 others Applicants

( By Advocate – Shri S.Paul)

**VERSUS**

1. The Union of India,  
through the Secretary,  
Ministry of Defence,  
New Delhi and 14 others. Respondents

(By Advocate – Shri B.da.Silva for official respondents)

**ORDER**

**By M.P.Singh, Vice Chairman -**

By filing this original Application, the applicants, 27 in number, have sought the following main reliefs :-

“(b) Hold that the applicants are entitled to get the benefit of their services rendered as Security Assistant's -B for the post of Supervisor and further promotion;

(c) Direct the respondents to review the seniority list, Annexure-A/4 by directing them to give benefit of seniority stated above and place them over and above the private respondents;

(d) Direct the respondents to grant all consequential benefits arising out of revised seniority of the applicants including increment, promotions and pay revision etc;”

2. The brief facts of the case are that the applicants were initially appointed on different dates as Lower Division Clerks (for short 'LDCs') during the period from 1967 to 1981 as shown in Annexure-A-2. They have opted for their promotion to the grade of Security Assistant in the pay scale of Rs.330-480 (Rs.1200-1800) on different dates between 1.9.1978 and

1.9.1988, as shown in Annexure-R-1. According to the applicants, the private-respondents, who were appointed as LDCs and were junior to the applicants and were also getting lesser pay than the applicants, have been placed above the applicants in the impugned seniority list issued on 13.1.1996 (Annexure-A-1), which has been done only because of the reason that the services<sup>2</sup> rendered by the applicants as Security Assistant-B ~~have~~ <sup>has</sup> not been counted for the purposes of their placement in the impugned seniority list. The applicants being aggrieved with the said seniority list had preferred representations which have been rejected.

3. The respondents in their reply have stated that prior to the Third Central Pay Commission (for short 'CPC'), the pay scale of the post of Security Assistant B and Supervisor 'B' (NT) were the same. The 3<sup>rd</sup> CPC while revising the pay scale, recommended the lower pay scale of Rs.330-480 for the post of Security Assistant-B and the higher scale of Rs.330-560 for Supervisor-B. This difference in the pay scale was maintained by the 4<sup>th</sup> CPC which recommended the revised scale of Rs.1200-1800 for Security Assistant-B and Rs.1200-2040 for Supervisor-B. The individuals appointed on the post of Security Assistant-B, prior to the implementation of the revised pay scale, that is at the time when the scales of pay for both the posts were same, found a separate class and they were given the benefit of services rendered by them in the post of Security Assistant B while counting their seniority in the grade of Supervisor-B (NT). With the implementation of the recommendation of the 4<sup>th</sup> CPC i. e. from 1.1.1986, the pay scale of the post of Security Assistant-A, Supervisor-A(NT) and Chargeman Grade-II were brought at par i.e. Rs.1400-2300. On account of this fact, the post of Security Assistant-A and Supervisor-A were merged with the post of Chargeman Grade-II. However, in the case of Security Assistant-B, their pay scale, which was lower than that of Supervisor-B, was brought at par with that of Supervisor-B, by upgrading the post of Security Assistant-B with effect from 14.12.1993. Accordingly the applicants have been given their seniority in the grade of Supervisor-B (NT) with effect from 14.12.1993. Since the post of Security Assistant-B was lower than Supervisor-B (NT), the services rendered in the post of Security Assistant B could not be taken into account for the purpose of counting the seniority



in the post of Supervisor-B (NT). Accordingly the applicants who were holding the post of Security Assistant B which was carrying a lower pay scale could not have their services counted for the purpose of seniority. The respondents have also stated in their reply that the applicants were fully aware that the post of Security Assistant B is lower than the post of Supervisor-B(NT). It is for this reason that many LDCs senior to the applicants had not exercised their option for the post of Security Assistant B. The applicants had given their willingness in writing and their contention that they were kept in the dark is false and denied. The respondents have also stated that the post of Security Assistant-B is a feeder post for Supervisor-B and A. This fact has not been disputed by the applicants and to this extent they have accepted the order and the decision of the Hyderabad Bench of this Tribunal in the case of D.Surya Narayan Vs.The Chairman and others, O.A.No.964/1995 decided on 25.2.1998. It is further stated by them that Shri C.P.Dongre and 3 others, against whom the applicants have claimed parity, were already holding the post of LDC in the year 1966, they entered the grade of Security Assistant-B in the year 1978 and were holding the post of Supervisor-B in the year 1983. Thus, the applicants and Shri C.P.Dongre & 3 others are not identically placed. The applicants cannot draw any comparison with Shri C.P.Dongre and others as they were all along senior to the applicants, and have been further promoted in the hierarchy of posts to Chargeman Grade-II and Chargeman Grade-I, while the applicants are presently holding the post of Security Supervisor-B. The applicants, who were originally holding the post of LDC carrying the pay scale of Rs.260-400 had opted for the post of Security Assistant-B as it was carrying the pay scale of Rs.330-480. The post of Security Assistant-B was a feeder post for Security Supervisor-B carrying the scale of Rs.330-560, which would have been the original promotional post for the applicants, if they had not opted. The applicants gained financially and having availed the benefits, now they cannot contend that they have suffered irreparable loss. The applicants were fully aware at the relevant point of time that Security Assistant-B is a <sup>feeder 2</sup> promotional post for Security Supervisor-B. The respondents have further submitted that the post of Security Assistant-B carried the pay scale of Rs.330-480 whereas the post of Supervisor-B, Upper Division Clerk (for short UDC) and Security

Supervisor-B carried the pay scale of Rs.330-560. The respondents have further stated that since 1978 Shri C.P.Dongre and others were already holding the post of Security Assistant-B, in 1983 Shri C.P.Dongre was promoted as Supervisor-B. Whereas the applicant Shri K.P.Mallik was appointed in the post of Labour-B in the year 1973 and became Security Assistant-B from the post of LDC, when he exercised his option, in the year 1986. The applicants continued as Security Assistant-B since the year 1986 till the post was upgraded to the post of Supervisor-B w. e. f. 14.12.1993 and, therefore, their seniority has been counted from the said date. Thus, the applicants are not victim of discrimination, as alleged by them, and the present O. A. is misconceived and devoid of substance. The respondents have also contended that there is no distinguishing facts or grounds between the case of the applicants and the case decided by the Hyderabad Bench of the Tribunal in the case of D. Surya Narayan (supra). Therefore, the present O. A. is liable to be dismissed.

4 We find that earlier this Tribunal has dismissed this Original Application vide order dated 23.1.2003 relying on the judgment of the Hyderabad Bench of this Tribunal in the case of D. Surya Narayan (supra). The aforesaid order dated 23.1.2003 of the Tribunal was challenged by the applicants before the Hon'ble Madhya Pradesh High Court in Writ Petition No.1972 of 2003. The Hon'ble High Court of Madhya Pradesh vide its order dated 14.10.2004 quashed aforesaid order dated 23.1.2003 and remitted back the matter to this Tribunal for further disposal. The relevant portion of the order of the Hon'ble High Court is reproduced as under -

"Mr.Sujoy Paul, learned counsel for the petitioner contended.....It is urged by him that the Tribunal has not dwelled upon the aforesaid facet and placing reliance on the judgment of Hyderabad Bench of the Tribunal in O.A.No. 964 of 1995 dismissed the application though the judgment passed by the Hyderabad Bench was distinguishable on facts as the question on discrimination, a hostile one, was not raised before the Bench....

Mr.Brian De Silva, learned counsel for the respondents submitted that though the case of discrimination was not highlighted before the Hyderabad Bench, that will not make much of difference and the petitioners are only making an endeavor, a futile one, with much of sound of fury, signifying nothing ..... At this juncture, we are of the considered opinion that the submission of Mr.De Silva may be right but it is in the world of speculation inasmuch as the Tribunal has not



really adverted to it. While hearing a writ petition under Article 226 and 227 of the Constitution of India, we do not intend to revert to an issue which requires certain adumbration and delineation as that factual exercise has not been done by the Tribunal.

In view of the aforesaid analysis, we quash the order contained in Annexure-P1 and remit the matter to the Tribunal to deal with the aforesaid spectrum..."

5. Accordingly, we have heard the learned counsel of both the parties.
6. The main grievance of the applicants is that the service rendered by them in the grade of Security Assistant B ought to have been counted for the purpose of seniority in the post of Supervisor-B, as has been done in the case of S/Shri C.P.Dongre, S.P. Mishra, Hira Vallabh and Kishan Singh, which amounts to discrimination.
7. It has also been contended by the learned counsel for the applicants that the private-respondents were all along junior to the applicants and were drawing lesser pay in the grade of LDC. The applicants have been promoted to the post of Security Assistant-B i. e. in the higher scale than that of LDC earlier to the private-respondents. Despite this, the applicants have been shown junior to the private-respondents in the seniority list at Annexure-A4.
8. On the other hand, the learned counsel for the respondents has stated that prior to the implementation of the recommendations of the 3<sup>rd</sup> CPC, the post of Supervisor-B and Security Assistant-B were in the identical scale. After implementation of the recommendations of the 3<sup>rd</sup> CPC, the post of Security Assistant B was placed in the lower pay scale of Rs.330-480 whereas the post of Supervisor-B was placed in the scale of Rs.330-560. Shri C.P.Dongre and others, were appointed to the post of Security Assistant-B prior to the implementation of the recommendations of the 3<sup>rd</sup> CPC and, therefore, they were given the benefit of counting the service rendered by them in the grade of Security Assistant-B for the purpose of counting their seniority in the grade of Supervisor. After implementation of the recommendations of the 3<sup>rd</sup> CPC, the post of Security Assistant-B became feeder post for promotion to the post of Supervisor-B. The applicants have been appointed to the post of Security Assistant-B after implementation of the recommendations of the 3<sup>rd</sup> CPC. While working as LDCs, the applicants had opted for promotion to the post of Security Assistant-B knowing fully well that the post of Security Assistant-B is

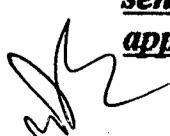


lower than that of Supervisor-B(NT). Had they not opted for their promotion to the post of Security Assistant-B, they would have been eligible and promoted to the post of UDC/Supervisor-B (NT) which was in the higher scale of Rs.330-560. This higher grade/pay scale for the post of Supervisor-B/UDC was maintained by the 4<sup>th</sup> CPC also as the post of Security Assistant-B was placed in the revised pay scale of Rs.1200-1800 whereas the post of Supervisor-B/UDC was placed in the pay scale of Rs.1200-2040.

9. With the implementation of the recommendations of the 4<sup>th</sup> CPC from 1.1.1986, the pay scale of the post of Security Assistant-A, Supervisor-A (NT) and Chargeman Grade-II (NT) were brought at par i. e. at Rs. 1400-2300. On account of this fact, the posts of Security Assistant-A and Supervisor-A were merged with the post of Chargeman Grade-II. The post of Security Assistant-B which was in the lower pay scale than that of Supervisor-B, was brought at par by upgrading that post to the level of Supervisor-B w. e. f. 14.12.1993. Accordingly, the applicants were given the seniority in the grade of Supervisor-B with effect from 14.12.1993.

10. As regards, Shri C.P.Dongre and 3 others are concerned, these persons were promoted to the post of Security Assistant-B prior to the implementation of the 3<sup>rd</sup> CPC. At that relevant point of time, the post of Security Assistant-B and Supervisor-B were in the same scale of pay and, therefore, the implementation of the recommendations of the 3<sup>rd</sup> CPC could not have been given retrospective effect <sup>& as far as Sh. Dongre and others were concerned &</sup> and accordingly Shri C.P.Dongre and others, who were appointed prior to implementation of the recommendations of the 3<sup>rd</sup> CPC, were given the benefit of counting their service rendered by them in the grade of Security Assistant-B for the purpose of their seniority in the grade of Supervisor-B. This fact is also clear from the letter dated 18/22.11.1978 (Annexure-IA/1 to MA 1017/02) issued by the Director General of Ordnance Factories which reads as follows:

“2. Since there are no more vacancies of Security Assistant to promote the Security Assistants 'B' directly to the grade, the remaining Security Assistant 'B' will be promoted to Security Supr.B to the extent vacancies are available. However, for the purpose of their further promotion to Security Asstt.A/ Supr. 'A' (Security) seniority of these Sec. Asstt.B Gr who were holding such appointment from dates prior to 28.6.78 (i.e. Date of Gazette



Notification relating to revised pay scales) will be reckoned from the date of their holding the post of Security Assistant 'B' and not from the subsequent date of promotion to Security Supr.B.

(emphasis supplied by us)

It may be pointed out that the aforesaid instructions were reiterated by the DGOF in their letter dated 18/22.11.1983. As regards the contention of the applicants that Shri C.P.Dongre and 3 others have been granted the benefit of counting their service rendered by them as Security Assistant for the purpose of seniority as Supervisor-B, whereas they have been discriminated, we find that Shri C.P.Dongre was promoted to the post of Security Assistant-B on 30.4.1978, similarly the other two persons, namely, Shri Heera Ballabh and Shri S.P.Mishra were promoted to the post of Security Assistant B on 5.2.1973 and 30.4.1978 respectively, whereas the fourth person namely Shri Kishan Singh was promoted to the higher post of Supervisor-B on 1.8.1977. Thus, we find that all the aforementioned four persons were promoted to the post of Security Assistant-B/ Supervisor B prior to 28.6.1978. At that point of time the post of Security Assistant-B and Supervisor-B were in the same pay scale and the recommendations of the 3<sup>rd</sup> CPC<sup>2 with regard to these posts 2</sup> were not implemented. The order regarding recommendations of the 3<sup>rd</sup> CPC placing the post of Security Assistant-B in the lower pay scale has been issued vide notification dated 28.6.1978. Therefore, the persons who were appointed to the grade of Security Assistant-B prior to this date could not be denied the benefit of service rendered by them in the post of Security Assistant-B for the purpose of granting their seniority in the grade of Supervisor-B. In the case of the applicants, it is not in dispute that they have been promoted to the post of Security Assistant-B after implementation of the recommendations of the 3<sup>rd</sup> CPC i. e. after 28.6.1978. At that relevant point of time, the post of Security Assistant-B has been made the feeder post for promotion to the post of Supervisor-B, as the post of Security Assistant-B was placed in the lower scale. The applicants were, therefore, not identically placed as compared to afore-mentioned persons i.e. S/Shri C.P.Dongre, Heera Ballabh, S.P.Mishra and Kishan Singh. In view of the discussions made above, we are, of the considered view that the present case is fully covered by the judgment of the Hyderabad Bench of the Tribunal in the case of D.Surya Narayan (supra).

11. In any case Shri Dongre and others were appointed to the grade of



Security Assistant-B in the year 1978 or earlier to that year, before the notification for implementing recommendations of the 3<sup>rd</sup> CPC was issued. The notification which was issued on 28.6.1978 while <sup>implementing 2</sup> recommending the recommendations of the 3<sup>rd</sup> CPC, down graded the post of Security Assistant-B and made it a promotional post for Supervisor-B and, therefore, Shri Dongre and others, who were working in the erstwhile pay scale which was equivalent to that of Supervisor-B could not have been relegated to the down-graded post of Security Assistant-B from retrospective date. It is also not clear as to whether the notification regarding the revised pay scale of Security Assistant-B and Supervisor-B was made effective from retrospective date i. e. from 1.1.1973, as no document in this regard has been produced either by the applicants or by the respondents. However, the DGOF has clarified vide their afore-mentioned letter dated 18/22.11.1978 that seniority of these Security Assistant-B who were holding such appointment from dates prior to 28.6.78 (i. e. date of Gazette Notification relating to revised pay scales) will be reckoned from the date of their holding the post of Security Assistant 'B' and not from the subsequent date of promotion to Security Supr.B. It is an admitted position that the applicants have been appointed as Security Assistant-B after the notification issued in 1978 which had down graded the post of Security Assistant-B and made it a promotional post to Supervisor-B. The applicants have also known these facts that the post of Security Assistant-B has been down graded and has become a promotional post for Supervisor-B and even then they had opted for promotion to the post of Security Assistant-B in order to get immediate financial benefits. Now, they cannot come with the plea that their services in the down-graded post of Security Assistant-B should be counted as has been done in the case of Shri Dongre and others. In view of the aforesaid facts, we also find that no discrimination has been met out to the applicants as the case of afore mentioned persons S/Shri C.P.Dongre and 3 others is completely distinguishable and the applicants are not identically placed.

12. As regards, the private-respondents are concerned, we find that they have not opted for promotion to the post of Security Assistant-B and have waited for their turn in the normal channel of promotion. The channel of

promotions are as follows:

(I) LDC(Rs.260-400)

*promotion on option*

Security Assistant-B(Rs.330-480),  
Security Supervisor (B) (Rs.330-560),  
Security Assistant-A (Rs.425-640);  
Chargeman-II (Rs.425-700)  
Chargeman-I (Rs.550/750)

(II) LDC(Rs.260-400)

*By promotion*

(i)Supervisor (B) (Rs.330-560),  
Supervisor-A (Rs.425-640);  
Chargeman-II (Rs.425-700)  
Chargeman-I (Rs.550/750)

(ii)UDC (Rs.330-560),  
O.S.Gr.II and Chargeman Gr.II (Rs.425-700)  
O.s.Gr. I and Chargeman-I (Rs.550/750)

Since the private respondents have been promoted to the grade of UDC prior to 14.12.1993 when the post of Supervisor-B was a promotional post for Security Assistant-B, they have been granted the seniority from the date they had entered the grade of Supervisor. The applicants were not promoted to the grade of Supervisor-B from the grade of Security Assistant-B prior to the promotion of the applicants in that grade and, therefore, they cannot be granted this benefit of counting their service rendered by them as Security Assistant-B. The respondents have rightly counted their service in the grade of Supervisor-B from 14.12.1993 – the date on which the post of Security Assistant-B was upgraded to that of Supervisor-B. We, therefore, do not find any illegality in the seniority list prepared by the respondents by taking into consideration the date of entry into the grade of Supervisor-B of the applicants as well as the private-respondents. Undisputedly the private respondents had entered the grade of Supervisor earlier than the applicants.

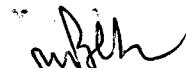
13. For the reasons recorded above, the O. A. is without any merit and is accordingly dismissed with a cost of Rs.500/- on each of the applicants to



be paid to the official respondents within a period of three months from the date of communication of this order.

14. The Registry is directed to affix a copy of memo of parties along with this order, while issuing a copy of the same.

  
(Madan Mohan)  
Judicial Member

  
(M.P. Singh)  
Vice Chairman

rkv

पूर्णकान से ओ/व्हा.....जबलपुर, दि.....  
प्रतिलिपि अब्दो गिरतः—

- (1) सचिव, उच्च न्यायालय द्वारा एसोसिएशन, जबलपुर
- (2) आवेदक श्री/श्रीमती/दंडु.....के काउंसल
- (3) प्रदीपी श्री/श्रीमती/दंडु.....के काउंसल
- (4) वायपाल, कै.प्र.अ., जबलपुर न्यायपीठ

S. Paul Pv ०८०

B. D. S. १०८ Sr Pv ०८०

सूचना एवं आवश्यक विवरणही हैं

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