

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 40 of 2000

Jabalpur, this the 5th day of January, 2004

Hon'ble Shri M.P. Singh, Vice Chairman  
Hon'ble Shri G. Shanthappa, Judicial Member

1. All India Association of Clerical Employees of Ordnance Factories Central Executive Head Quarters through its General Secretary, S.L. Kewat, Vehicle Factory, Jabalpur.
2. Shyam Singh Rajpur, aged 50 yrs. S/o Dhannalal Rajput, Upper Division Clerk, Vehicle Factory, Jabalpur. ... Applicants

(By Advocate - Shri A.K. Tiwari on behalf of Shri S.Yadav)

V e r s u s

1. Union of India, through its Secretary Defence Production and Supplies Ministry of Defence, New Delhi.
2. Ordnance Factory Board, through its Chairman 10-A, Shaheed Khudiram Bose Road, Calcutta-700001. ... Respondents

(By Advocate - Shri S.A. Dharmadhikari)

O R D E R (ORAL)

By G. Shanthappa, Judicial Member -

The above Original is filed seeking the relief for directing the respondents to upgrade 10% posts of Upper Division Clerk, numbering 285 of Ordnance Factories to the post of Assistant in the pay scale of Rs. 5000-8000/- as has been implemented in other Departments as per recommendation of Vth Pay Commission w.e.f. 1.1.1996. The further relief is also for direction to the respondents that consequent upon the above upgradation of 285 posts of UDCs to Assistants, the corresponding increase in the



higher grades of Office Superintendent Post should also be revised based on the existing ratio 3 : 1 and also the corresponding increase in the post of Foreman (NT).

2. The brief facts of the case are that the first applicant is an association and the second applicant is a member of the first applicant. The respondents have not implemented the recommendations of the Vth Pay Commission and consequent acceptance of the same by the Central Government for upgrading 10% posts of Upper Division Clerks in the Ordnance and Ordnance Equipment Factories. The main grievance of the applicant is that the Vth Pay Commission has recommended for upgradation of 10% post of Upper Division Clerk to the pay scale of Rs. 5000-8000 and the said recommendation has been made to abolish the erstwhile policy of granting special pay to 10% of the UDCs. The said recommendation has been accepted by the Central Government and the same is implemented in various Departments under the Ministry of Defence such as DGI, COD, AOC, DRDO and in Ministry of Railways and Income Tax (a Department of Ministry of Finance). The said scheme is also equally made applicable to the various Ministries including the Director General of Ordnance Factory (now Ordnance Factory Board). The Ministry of Finance had issued a memo dated 29.12.1982, clarifying that these special pay orders are applicable to UDCs in subordinate offices not participating in the Secretariate Scheme and where there is no intermediary level between Supervisory grades and UDCs including Technical Assistance Investigators etc, vide Annexure A-3.



3. Based on the said recommendation/decision 10% posts of UDCs in Ordnance and Ordnance Equipment Factories were granted special pay of Rs. 35/- per month from the effective date i.e. 5.5.1979 or from such subsequent date when this duty was assigned to 10% UDCs. Subsequently this special pay was revised to Rs. 70/- and Rs. 140/- with effect from 1.1.1986 and 1.1.1996 as recommended by the IVth Pay Commission and Vth Pay Commission respectively. The Ministry of Finance has issued their OM No. 6/31/99-IC, dated 19.03.1999, with the following orders :

- "i) create additional posts of Assistants in the scale of pay Rs. 5000-8000 equal to the number of 10% identified post of UDCs carrying special pay,
- ii) against additional posts of Assistants so created, UDCs may be considered for promotion on the basis of seniority-cum-fitness. Their pay on promotion may be fixed in terms of FR 22(I)(a)(I). Further, whenever, the UDCs are carrying special pay of Rs. 140/- (Pre-revised Rs. 70/-), this may be taken into account in fixation of pay,
- iii) from the date, the additional number of posts of Assistants are filled up by promotion, the posts of UDCs carrying special pay of Rs. 140/- per month may be abolished, copy of the order is Annexure A-7."

The Ministry of Defence did not grant the said benefits and for that the applicants have approached the respondents vide their representation at Annexure A-9, for grant of reliefs, as it was given to the other employees of the Ministries.

4. Advocate for the applicant has submitted that similar relief as prayed in this Original Application has been granted by this Tribunal in OA No. 82/2002 - S.M.

Gautam & Ors. Versus Union of India & Ors. on 31st October, 2003. Hence the said order is also applicable to the facts of this case. Accordingly he has requested for considering this Original Application at par with OA No.

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82/2002, decided by this Tribunal.

5. Per contra the respondents have filed their reply contending the averments of the Original Application and submitted that the judgment of this Tribunal in OA No. 82/2002 is not applicable to the facts of this case. The relevant para of the reply regarding their defence is as follows :

"4. Ordnance Factory Board has moved a proposal for approval of Ministry of Defence for upgradation of 10% posts of Upper Division Clerks (hereinafter called UDC) based on pay Commission's recommendation as Assistant in the pay scale of Rs. 5000-8000/- . In terms of provisions of Ministry of Finance (Expenditure) letter No. 5(9)/E/(iii)/A/97, dated 11.9.97, Advise/Concurrence of integrated finance Division/ Ministry of Finance (Expenditure), implementation Cell was sought on Ordnance Factories Board's proposals to upgrade to 285 posts of UDCs (10% of the total strength of UDC's in Ordnance Factory Organisations) who are in receipt of Special Pay for performing the duties of Higher and Complex nature, to the post of Assistant in the Revised pay scale of Rs. 5000-8000/- without Special pay in accordance with the (v) CPC's recommendations given in para 46.17.

M of D vide their I.D. Note No. 42(2)/98/III/D (FY.II) dated 20.8.99 intimated that the proposal of upgradation of post of UDC to the post of Assistant was considered in consultation with Ministry of Finance but could not be accepted due to following reasons :-

The Proposal was considered in consultation with the Ministry of Finance and it has been noticed that these posts in Ordnance Factories Board had been allowed Special Pay in contravention of the provisions existing in the OM dated 29.6.79 which clearly stipulated that Special Pay to UDC's in the non-Secretariat Administrative Offices be restricted to offices where the post of Assistant did not exist. It has been further stated that this basic condition has remained unchanged till date and accordingly the instant proposal cannot be agreed to as the special pay to the UDC's concerned was granted in violation of the existing provisions for grant of this Special Pay.

In view of the above decision of Ministry of Defence, the applicants are not entitled to upgradation to the post of Assistant as claimed by them. Even the eligibility of special pay to UDC's of Ordnance Factories organisation in terms of M of D



dated 29.6.79 has been disputed. Thus, the applicants are not entitled for upgradation to the post of Assistant as claimed by them. However, this matter has again been taken up with Ministry of Finance for re-consideration of their advice."

6. Subsequent to filing of the reply the applicants have filed their rejoinder alongwith the documents producing the order dated 09.04.1999 issued by the Ministry of Defence. The applicants have clarified the factual things in pursuance to the reply and submitted the letter of the Ministry of Finance dated 19.03.1999, containing the guidelines to regularise the cases/issue of upgradation of 10% UDCs drawing Special Pay.

7. Subsequently the respondents have filed their additional return by producing the correspondence dated 21.06.2001. According to the said letter reference of the Ministry/Defence proposal regarding upgradation of 10% of posts of UDCs in the Army Record Offices and Ordnance Factory Board who were in receipt of special pay of Rs. 70/- per month to the level of Assistants in the pay scale of Rs. 5000-8000/-, it further provides that the proposal has been considered in this Department. It has however, not been found feasible to agree to the instant proposal owing to the fact that the special pay to these posts has been granted in contravention of the original orders in this regard. Accordingly, the Ministry of Defence is advised to operate these posts in the normal replacement pay scale of Rs. 4000-6000 with simultaneous withdrawal of special pay.

8. After hearing the advocate for the applicant and the respondents and on perusal of the judgment of this Tribunal in OA No. 82/2002, we find that the facts of

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this case <sup>are</sup> corresponding to the facts of O.A. No. 82/2002. The contention of the respondents has been considered and the reliefs as prayed in this Original Application are granted by considering the principle laid down in OA No. 82/2002. The relevant paras of the said judgment is extracted below :

"6. During the course of arguments, the learned counsel for the applicant has submitted that the Ministry of Finance had accepted the recommendations of the 5th CPC to upgrade the 10% identified posts of UDCs to that of Assistant in the pay scale of Rs. 5000-8000, and the Ministry of Defence has also accepted the recommendations of the 5th CPC to enhance the special pay of Rs. 70/- to Rs. 140/- with effect from 1.1.1996 and also to take into account this amount for the purpose of fixing of the pay of the incumbents at the time of their promotion to the next higher grade. To support his contention, he has drawn our attention to the letters issued by the Ministry of Defence dated 4.9.1998 (Annexure A-13), by the Ministry of Finance dated 28.5.1999 and by the Principal Controller of Accounts, Calcutta dated 12.5.2000 (Annexure A-15). He also submitted that this benefit has been extended to all the Directorates and the Departments of the Govt. of India excepting to the persons working in the Ordnance Factories.

7. We have very carefully perused the material placed before us and we find that the recommendations of the 5th CPC has been accepted by the Ministry of Finance as per letter dated 19.3.1999 and 28.5.1999 (Annexure A-12 & A-14) and by the Ministry of Defence as per letter dated 4.9.1998 (Annexure A-13). According to these letters the Ministry of Finance had accepted the recommendations of the 5th CPC to upgrade 10% identified post of UDCs in the scale of Rs. 4000-6000 to that of Assistant in the scale of Rs. 5000-8000. An extract of letter dated 4.9.1998 (Annexure A-13) is reproduced below :-

"Sanction of the President is hereby ordered for upgradation of 80 posts of Upper Division Clerks in the DGQA Establishments and 3 posts in DQA(Navy) to Assistants (Scale of Rs. 5000-8000) without special pay of Rs. 70/- per month."

It is also clear from the letter dated 4.9.1998 issued by the Ministry of Defence that the same benefit has been extended to the persons working in the Directorate of Quality Assurance - a sister organisation of the same Ministry in which the applicants are working. In view of this, the persons working in the Ordnance Factories cannot be discriminated and the same benefit cannot be denied to them. The contention of the respondents that this benefit cannot be granted to the applicants is without any logic and is not tenable.



In the aforesaid OA No. 82/2002 the issue was of taking into account the special pay of Rs. 70/- (revised Rs. 140/-) for the purpose of fixing of pay at the time of promotion of UDCs to the next higher grade, but in that judgment it has been clearly laid down that the Government has accepted the recommendations of the 5th Pay Commission to upgrade the 10% identified posts of UDCs as per their letter dated 4.9.1998 (Annexure-A-13 to OA 82/2002) extracted above. The present applicants are also similarly placed and they cannot be discriminated. When this benefit has been allowed to the employees of Directorate of Quality Assurance of Ministry of Defence, the persons working in the Ordnance Factories cannot be discriminated.

9. For the reasons stated above this Original Application is partly allowed and the respondents are directed to upgrade 10% posts of Upper Division Clerk of Ordnance Factories to the post of Assistant in the pay scale of Rs. 5000-8000/- as has been implemented in other Department as per recommendation of Vth Pay Commission. The respondents are also directed to comply with the orders of this Tribunal within a period of four months from the date of receipt of copy of this order. No costs.

G. Shanthappa  
(G. Shanthappa)  
Judicial Member

(M.P. Singh)  
Vice Chairman

Filed on 15.1.04  
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Chander  
14/11/03

A.F. Tiwari, H.R.  
S.A. Dhami, H.R.