

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

O.A. NO.

524 / 98

DATE OF DECISION

9th May 2003

J. K. Debnath

APPLICANT (S)

Shri S. Nagu

Advocate for the Applicant (s)

V E R S U S

U O I and ors.

RESPONDENTS

Shri S. A. Dharmadikari

Advocate for the Respondents

CORAM :

Hon'ble Shri R.K. Upadhyaya -- Administrative Member
Hon'ble Shri J.K. Kaushik -- Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgments ? - YES / ~~NO~~
2. To be referred to the Reporter or not ? YES / ~~NO~~
3. Whether it needs to be circulated to the Principal Bench of the Tribunal ? YES / ~~NO~~


(J.K. Kaushik)
Judicial Member

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 524 of 1998

Jabalpur, this the 9th day of May, 2003.

Hon'ble Mr. R.K. Upadhyaya-Administrative Member
Hon'ble Mr. J.K. Kaushik -Judicial Member

1. J.K. Debnath
aged 41 years
son of Shri Upendra Kumar Debnath
Chargeman Grade I, PV Section,
Ordnance Factory, Itarsi
District Hoshangabad (M.P.)
2. N.K. Patnase,
aged 38 years,
son of Shri K.B. Patnase
Chargeman Grade II (Mechanical)
Factory Training Institute,
Ordnance Factory, Itarsi
District Hoshangabad (M.P.)

APPLICANTS

(By Advocate - Shri S.Nagu)

VERSUS

1. Union of India
through the Secretary
Ministry of Defence Production
and supplies, South Block,
New Delhi.
2. The Chairman,
Ordnance Factory Board,
10-A, S.K. Bose Road, Calcutta-1
3. The General Manager,
Ordnance Factory, Itarsi
District Hoshangabad (M.P.)

RESPONDENTS

(By Advocate - Shri S.A Dharmadhikari)

O R D E R

By J.K. Kaushik - Judicial Member ;

Shri J. Debnath and N.K. Patnase have preferred
this Original Application Under Section 19 of the
Administrative Tribunal, Act and have sought the
following reliefs. :-

- (i) It is most humbly prayed that the Hon'ble Tribunal may be pleased to quash the memo (Annexure A-5) dated 17.7.97 being void, illegal and arbitrary.
- (ii) The Hon'ble Tribunal be further pleased to direct the respondents effect proper fixation of pay of the applicants by granting the advantage of FR-22 I(a) (1) with all consequential benefits.
- (iii) The Hon'ble Tribunal be further pleased to declare that the given facts and circumstances of the case, the applicants are entitled to the benefit under FR 22 (I) (a) (1).
- (iv) Any other relief to which the applicants may be found entitled in the facts and circumstances be also granted them.


2. The abridged facts of this case necessary for resolving the controversy involved, are that applicants were initially appointed to the post of Tracer and they were further promoted as Draftsman in the year 1985-86. There was a disparity between the pay scale to Draftsman of Ordnance Factories and the Draftsman of CPWD. The grievance was ~~not~~ settled by this Tribunal and finally the disparity was removed. The applicants and several others were transferred and promoted as Chargeman Grade-II in Ordnance Factory Itarsi vide letter dated 3.5.93 (Annexure-A-2). By that time they enjoyed the revised ^{Rs} pay scale of 1400-2300 on the post of Draftsman. The Chargeman Grade-II also carries the same pay scale of Rs. 1400-2300 since the very beginning and which was a promotional post for the post^{of} of Draftsman.

3. The further facts of the case ~~XXXXXXXXXX~~ are that the duties and responsibilities of Chargeman are qualitatively much higher and also different from those

 ~~XXXXXXXXXXXX~~

of Draftsman despite the identical pay scale. A Further details have been given indicating that the post of Draftsman and that of Chargeman are quite distinct. It has been submitted that since the applicants were promoted to the post of higher responsibility they become entitled to their pay fixation in accordance with FR 22 C (Now FR 22 (I) (a) (1)). In this way they become entitled to fixation of pay by adding one increment in the minimum of pay. The respondents amended the promotion order and substituted the word 'redesignation' in place of 'promotion'. They submitted representations but the same have been rejected on the pretext that the pay scale for both the posts are equal and the applicants were, infact, redesignated and were not granted any promotion. Number of grounds have been enunciated in support of the relief by the applicants in the Original Application, which we shall discuss in the succeeding Paras.

4. A detailed ^{and} / very exhaustive counter reply has been filed on behalf of the respondents. The main contention raised in the reply is that the applicants were found fit for appointment to the post of Chargeman Grade-II (Tech) in the scale of Rs. 1400-2300 and were transferred to Itarsi. They have also submitted that the Ministry of Defence issued an O.M. Dated 6.12.96 wherein it is clarified that as per FR 22 (III) the appointment in identical scale shall not be construed to mean involving of assumption of duties and responsibilities of greater importance and the benefit of FR 22 (I)(a)(1) is not admissible in such case. The Original Application deserves to be dismissed with costs.



5. A short rejoinder has been filed and alongwith the rejoinder an order dated 22 Jan. 2003. passed by this Tribunal in K.R. Pachwani Vs. Union of India (OA 137/99) Annexure (A-7) has been filed in support of the contentions submitted on behalf of the applicants.

6. We have heard learned counsel for the parties at considerable length and have perused the pleadings and records of this case.

7. The learned counsel for both the parties have reiterated their pleadings. On behalf of the respondents the O.M. dated 6.12.96 has been made available. The Primary contention of the learned counsel for the applicants is that since the applicants are shouldering ~~xxx~~ higher responsibilities in the promotional post of Chergeman Grade-II, they are entitled for fixation of pay under FR 22(I)(a)(1) but such course has not been (expedient for the respondents). On the other hand the respondents have placed very heavy reliance on office memorandum dated 6.12.96.

8. We have considered rival contentions raised on behalf of the parties. To appreciate the controversy involved in this case, we consider it ~~is~~ necessary to examine the rules position which apply to govern the pay fixations. The relevant portion of the rules are extracted ~~xxx~~ as under :-

F.R.22 (I) the initial pay of Government servant who is appointed to a post on a time-scale of pay is regulated as follows.



(a) (1) Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at stage at which such pay has accrued or rupees twenty-five only, whichever is more.

x-x-x-x-x-x-x-x

(2) When the appointment to the new post does not involve such assumption of duties/^{and} responsibilities of greater importance, he shall draw as initial pay, the stage of the time-scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis


Provided that where the minimum pay of the time-scale of the new post is higher than his pay in respect of the post held by him regularly he shall draw the minimum as the initial pay:

-x-x-x-x-x-x-x-x-

(III) For the purpose of this rule, the appointment shall not be deemed to involve the assumption of duties and responsibilities of greater importance, if the post to which it is made is on the same scale of pay as the post, other than a tenure post, which the Government servant holds on a regular basis at the time of his promotion or appointment or on a scale of pay identical therewith.

-x-x-x-x-x-x-x-x-x

9. Now adverting to the facts of this case. It is admitted that the post of Draftsman and the Chargeman Grade-II carry identical scale of pay. There is a little dispute of the fact in as much as the respondents have categorically ^{stated} that the matter of redesignation ~~and~~



is not a promotion, on the other hand the applicants claim it to be a promotion. We think that the matter can be proceeded with even without settling the issue as to whether it was the redesignation or promotion since the specific rule provides for fixation of pay in identical scale of pay. Thus we go on the premises that it was a case of promotion on the identical scale. The Rule 22 (III) specifically states that in case the appointment is made in the same scale of pay the appointment shall not be deemed to involve assumption of duties and responsibilities of greater importance. If that be so, the applicants, cannot get the benefit of fixation of pay as per FR 22(I)(a)(1). The similar position is evident from the office memorandum dated 6.12.96 which has been relied upon on behalf of the respondents. It also provides the similar position and this office memorandum has not been challenged by the applicants.

10. Besides what ^{has} been discussed above, the similar controversy came up before the Supreme Court in Union of India and another Vs. Ashok Kumar Banerjee 1998 (5) SCC 242 wherein their Lord-Ships have already held that for the applicability of FR 22 (I)(a)(1) it is not merely sufficient that the officer gets a promotion from one post to another involving higher duties and responsibilities but another condition must also be satisfied that he must be moving from a lower scale attached to the lower post to a higher scale attached to a higher post. Therefore, the issue has been settled by the highest court of this country, the same does not remain res integra. In this view of the matter, there is no force in the Original Application and action of the respondents is well in conformity with the rules ^{inforce} /-

11. In the premises logical conclusion is that Original Application has no force and the same deserves to be dismissed, order accordingly. However in the facts and the circumstances of the case we make no order as to costs.

J.K. Kaushik
(J.K. Kaushik)
Judicial Member

R.K. Upadhyaya
(R.K. Upadhyaya)
Administrative Member

SKM

पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....
पतिलिपि अर्पित

- (1) सचिव, उच्च न्यायालय वार एसोसिएशन, जबलपुर
- (2) आवेदक श्री/श्रीमती/शु.....के काउंसलर S. Mayur Kumar
- (3) प्रत्यर्पी श्री/श्रीमती/शु.....के काउंसलर SA Bhawesh Kumar
- (4) वायव्य, विभाग, जबलपुर न्यायापीठ
सूचना एवं आवश्यक कार्यवाही हेतु

22/5/03
उप-सचिव

*Issued
on 22-5-03*