

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

RA No. 060/00059/2018 in

OA No. 060/00368/2016

This 17th day of November, 2018

P.No. 6966603 Nand Ram, aged 64 years, S/o Sh. Ram Bahadur, FED 'B' (Retd.), Fire Brigade Section, 23 Field Ammunition Depot (Ministry of Defence, Government of India), Pin-909723 C/o 56 APO, R/o Village Budha Theh, Post Office Beas, Tehsil Baba Bakala, District Amritsar (Pb.).

.....Review Applicant

Versus

1. Union of India through the Secretary to Government of India, Ministry of Defence, South Block, New Delhi.
2. Director General of Ordnance Services (OS-8C) Master General of Ordnance Branch, Integrated Headquarters of MoD (Army), DHQ PO New Delhi.
3. Director General of Ordnance Services (OS-20) Master General of Ordnance Branch, Integrated Headquarters of MoD (Army), DHQ PO New Delhi.
4. Officer-in-Charge, Army Ordnance Corps Records, Secunderabad, Pin-900453 C/o 56 APO
5. Commandant, 23 Field Ammunition Depot, Pin – 909723 C/o 56 A.P.O.

.....Respondents

ORDER (By Circulation)

BY MRS. P. GOPINATH, MEMBER(A):-

This Review Application has been filed under Rule 22(3) (f) read with Order 47 Rule 1 CPC by the applicants in the O.A No. 060-

00368-2016 seeking review of the order passed by this Tribunal on 10.09.2018.

2. A perusal of order dated 10.09.2018 would show that all the relevant contentions raised by both sides and decisions cited on the point were considered by this Tribunal and order dated 10.09.2018 was passed as follows:-

“10. The Tribunal is not the judge of a cadre structure or posts held in the cadre or the pyramidal structure of a cadre. Both logically and legally, it has been clearly held in various judgements that a superior and subordinate cannot draw the same Grade Pay as prayed for in this matter. The Tribunal cannot also direct the respondents to fix or grant a particular pay scale. Bench also notes that an appropriate pyramidal pay structure exists in the respondent department and mere similarity in post, designation, or nomenclature, does not evolve into a right for a similar pay structure. The CPC can make a generalized service recommendation but such recommendation cannot be blindly applied across all service cadres across all departments across India. There would be cases as in the OA before us wherein the prayer made would affect the promotional pyramidal structure. The applicants also do not have an argument for merger of the cadre of FED and Station Officer, so that both posts can be merged and given the same Grade Pay. The Apex Court in Food Corporation of India Vs. Ashis Kumar Ganguly (2009) 7 SCC 734 had held as follows:-

“21. There is no dispute nor can there be any to the principle as settled in the abovesited decisions of this Court that fixation of pay and determination of parity in duties is the function of the executive and the scope of judicial review of administrative decision in this regard is very limited.”

Equation of posts and equation of pay structure are best understood in the context of a pyramidal structure of posts starting from early level to senior most level of promotion or exit level. This structure should not be disturbed by judicial decisions which would have a cascading impact on the cadre structure which may result into multifarious litigation. If one level of the service is picked up and given a higher grade pay as available in other services, then the balance in the pay structure of the fighters in AOC cadre

would be disturbed. Whereas a bonafide mistake can be corrected, this does not appear to be one and has been perpetuated on account of cadre balance in terms of movement to higher posts or the availability of reasonable promotional opportunities for growing in the service.

11. For the foregoing discussion, we dismiss the OA with the proviso directing the respondents to undertake an exercise whereby the entire pay structure of Fire Fighting Staff in AOC Cadre be reviewed in order to bring the posts and pay scales at par with the other fighting wings of Army, Navy and Air Force. This would not only remove any element of dissatisfaction or unrest, which is not good for the welfare of civilian persons working in Armed Forces or the AOC for reasons not necessary to cite in detail. No order as to costs."

3. One of the grounds for filing this RA is that a fact which has escaped the notice of Tribunal was that as per MoD OM dated 26.07.2010, old posts having pre revised pay scales of 4000-6000 & 4500-7000 were merged into Grade Pay of Rs. 2800 and further re-designated as Station Officer and thus, the post of Station Officer has wrongly been treated as a promotional post of LHF 'B'/FED 'B' by the respondents as well as by the Tribunal and which is factually incorrect.

4. As far as above argument made in RA is concerned, the Bench had noted that technically, notification dated 30th June, 2010, is deemed to have been superseded by notification dated 26.07.2010. Old posts may have different pay scales prior to the pay revision. But the fact is that the posts were merged into one pay band Rs. 5200-20,200 and given different grade pay. It has been clarified that applicant as FED B was drawing pre-revised pay scale of Rs. 4000-6000 which was revised by VI CPC to Rs. 5200 - 20,200

+ GP Rs. 2400. Annexure R-2 produced clearly states that Station Officer in AOC draws pay in PB I with Grade Pay Rs. 2800 and is the promotional post of LHF B. Hence, in the order of the Tribunal, it was rightly recorded that the promotional post of LHF B with Grade Pay Rs. 2400, in AOC, was Station Officer in PB I with Grade Pay Rs. 2800. This is also apparent from Annexure R-2 where in the hierarchical structure of post LHF A was given Grade Pay Rs. 2000 and LHF B was given Grade Pay Rs. 2400 and Station Officer was given Grade Pay Rs. 2800 and we saw no need to interfere in the pay hierarchy so drawn up as when moving from one post to the next higher post there would be a Grade Pay increase as highlighted above. Further, Annexure R-2 clearly states that it is issued in supersession of all previous sanctions issued regarding specifically the fire fighting staff in the AOC to which the applicant belongs. In response to Annexure R-3 clarification on the above matter raised by respondent, Annexure R-4 was issued wherein it is again reiterated that Grade Pay Rs. 2800 is granted to Station Officer in AOC and Station Officer is the promotional post of LHF B as per Annexure A 2 MOD letter produced by applicant and as Annexure R-2 by respondent. Annexure R-2 dated 30.06.2010 is issued specifically for the fire fighting staff in AOC and cannot be overlooked. Whereas letter dated 26.07.2010 favours the applicant, the subsequent letter dated 04.02.2016 very clearly states that post of Station Officer in AOC is the promotional post of LHF B. The Tribunal had therefore in their order issued in OA No. 060/00368/2016 provided a window by

not closing the applicant's prayer but instead in para 11, directed the respondent to review the entire pay structure of the fire fighting staff in AOC and bring it at par with other fire fighting wings of Army, Navy and Air Force. Whereas this order was passed without any time line, order in this Review Application proposes fixing a time line of six months for the respondents to complete the above task of bringing the fire fighting staff of AOC at par with other fire fighting wings of Army, Navy and Air Force so that they do not get isolated or treated differently from their cadre mates in the other Corps of the Army, Navy and Air Force.

5. As pointed out in the order dated 10.09.2018, the applicant is seeking the same pay scale as those who are senior and in the next Grade of Pay. We feel that seniors and juniors cannot be allowed to draw the same Grade Pay which would be an aberration in the hierarchical system and chain of command of superior and subordinate.

6. In ***Meera Bhanja (Smt) Vs. Nirmala Kumar Choudhary*** – (1995) 1 SCC 170 it was held that the scope of review is very limited. The court held:

"A review Application can be entertained only on the ground of error apparent on the face of record and not on any other ground. An error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions. Re-appraisal of the entire evidence or error would amount to exercise of appellate jurisdiction which is not permissible by way of review application. This is the spirit of order XLVII, Rule 1 of CPC."

7. The Apex Court in ***State of West Bengal & Ors. v. Kamal Sengupta & Anr.*** - 2008 (2) SCC 735 has enumerated the principles to be followed by the Administrative Tribunals when it exercises the power of review of its own order under Section 22(3)(f) of the Administrative Tribunals Act, 1985. They are :

“(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a Civil Court under Section 114 read with Order 47 Rule 1 CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression “any other sufficient reason” appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the Tribunal or of a superior Court.

(vii) While considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(viii) Mere discovery of a new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court/Tribunal earlier.”

8. This is a case where this Tribunal has considered all the aspects in detail in its order dated 10.09.2018. Virtually, no new point has been taken in the RA and applicant just wanted to have a rehearing of the entire case. Review application cannot be an appeal in disguise. As such we find no merit in the Review application. It is accordingly dismissed by circulation with a direction to the respondent to complete the task of bringing the fire fighting staff of AOC at par with other fire fighting staff of Army, Navy and Air Force within six months.

(P. GOPINATH)
MEMBER (A)



(SANJEEV KAUSHIK)
MEMBER (J)

Dated:
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