

CASE NO.:
Appeal (civil) 2643 of 2004

PETITIONER:
Union of India & Anr

RESPONDENT:
S.D. Bandhopadhyay & Ors

DATE OF JUDGMENT: 19/10/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

Respondents herein at all material times were and still are working as Draughtsmen in the Ordnance Factory belonging to Union of India. The pay scale of the Draughtsmen employed in the Central Public Works Department (CPWD) were revised on the basis of the report of the Third Pay Commission from 1.1.1973 in the following terms:

- (i) Draughtsman \026 I Rs. 425-700
- (ii) Draughtsman \026 II Rs. 330-560
- (iii) Draughtsman \026 III Rs. 260-430

They were not satisfied therewith as a result whereof dispute raised by them which was referred to a Board of Arbitration. By an award dated 20th June, 1980, the pay scales of Draughtsmen were revised as under:

- (i) Draughtsman \026 I Rs. 550-750
- (ii) Draughtsman \026 II Rs. 425-700
- (iii) Draughtsman \026 III Rs. 330-560

It was directed in the said award that the scale of pay would come into force with effect from 1.1.1973 but for computation of arrears the date of reckoning shall be 28/29th July, 1978. The pay scales of Draughtsmen of CPWD were revised. The Draughtsmen employed in some departments other than CPWD claimed revision of their pay scales by raising a similar demand in the light of the revision of pay scales in CPWD. Acceding thereto, an office memorandum dated 13.3.1984 was issued stating:

"Sub: Revision of Pay Scales of Draughtsman Grade \026 III, II & I in all Govt. of India Offices on the basis of Award of Board of Arbitration in the case of Central Public Works Department.

The undersigned is directed to state that Committee of the National Council (JCM) was set up to consider the request of the staff side that the following revised scales of pay allowed to the D/Man Grade I, II & III working in C.P.W.D. on the basis of the Award of Board of Arbitration may be extended to D/Man Grade III, II & I in all Govt. of India Officers:

Original Scale

Revised Scale on
the basis of award

Draughtsman Gr. I
Rs. 425-700
Rs. 550-750
Draughtsman Gr. II

Rs. 330-560
Rs. 425-700
Draughtsman Gr. III
Rs. 260-430
Rs. 330-560

2. The President is now pleased to decide that the Scales of Pay of D/man Gr. III, II, I in office/ Deptt. Of the Govt. of India, other than the C.P.W.D. may be revised as above provided, their recruitment qualification are similar to these prescribed in the case of D/Man in C.P.W.D. Those who do not fulfil the above recruitment qualification will continue in the pre-revised scales. The benefit of this revision of scales of pay would be given notionally with effect from 13.5.1982, the actual benefit being allowed w.e.f. 1.11.1983."

A demand was also raised by the Draughtsmen working in the Ordnance Factory herein but there were, however, no three grade structure for the said cadre as was prevalent in CPWD. Prior to revision of the scale of pay in terms of the recommendations of the Third Pay Commission, the scale of pay of Draughtsmen in Ordnance Factory was Rs. 330-560/-. In terms of recommendations of the Third Pay Commission, 50% posts of Senior Draughtsmen were put in the scale of pay of Rs. 425-700 and the remaining 50% of Senior Draughtsmen in the lower pay scale of Rs. 330-560/-. It was, however, stated that all the posts of senior Draughtsmen were merged and redesignated as Chargeman Grade II (Tech) with effect from 1981.

Appellants herein contend that the Draughtsmen in Ordnance Factories were treated equivalent to Draughtsmen Grade III of CPWD both in terms of recruitment qualification and job content and, therefore, the office memorandum dated 13.3.1984 was not relevant for their purpose.

A writ petition was filed by some Draughtsmen employed in Ordnance Factories located in the State of West Bengal before the High Court of Calcutta which was disposed of by an order dated 8th October, 1985 directing the Department to implement OM dated 13.3.1984.

The matter came up for consideration before the Central Administrative Tribunal, Jabalpur wherein the Draughtsmen in Ordnance Factories who were in the pre-revised scale of 330-560 claimed revision and upgradation of the scale of pay. The Tribunal by a judgment dated 21.4.1987 opined that Respondents were at least entitled to the pay scale of Draughtsmen Grade II opining:

"From the minutes No. R.N. No. 167/Tcn/BS, dated 18.09.1986 of the O.F. Board's decision feed by the respondents it is not clear whether the O.F. Board have applied their mind to the question of revising and revising No. 4 of 1956 and creating a three tier set up of D'men in O.F. Organisation in the light of Government of India's order of 13.03.1984. The question is of not merely applying pay scales to the existing set up but reviewing the existing set up. The sub-committee in their report of 24.01.1986 have stated that the post of Tracer should be abolished, aged if they are abolished their replacement would be by D'men Grade III, it would, however, be invidious to place these tracers in Grade III with lesser qualifications with the petitioners and applicants with superior qualifications as have been quoted by sub-

committee and the board with Grade III and not with Grade II. The equation done by the O.F. Board putting the petitioners and applicants inspite of their higher qualifications with Grade III and not Grade II of the draughtsmen of CPWD and consequently giving them the lower pay scale of Rs. 330-560 is itself wrong and erroneous and cannot be accepted by this Tribunal. Also there is no reason to suppose as to why in the light of general policy laid down by the Government of India vide their order of 13.3.1984 the senior draughtsman of the present set up should not be equated with D'men Grade I and redesignated in the pay scale of Rs. 550-750 instead of treating them as Chargeman Grade II."

It was further opined:

"\005This is a matter which needs review by the O.F. Board. In any case the decision of the O.F. Board taken in their meeting of 09.09.1986 and the equation of the petitioners and applicants with D'men Grade III of CPWD as recommended in sub-committee's report of 21.01.1986 and accepted by the O.F. Board is hereby quashed."

It was directed:

"The OF Board decision is neither a proper implementation of Calcutta High Court's judgment of 08.10.1985 in C.O. No. 502 of 1985 read with their subsequent order of 14.07.1986 and nor a proper implementation of the Govt. of India's order 13.3.1984 (document No. 2). As we have held in the proceeding paragraph to petitioners and applicants have similar qualifications to those of Category II D'man of CPWD at least subject to some individual exceptions, which may be identified by the Assessor's Committee, which has been suggested by us to go into the question. The argument advanced on behalf of non-applicants/respondents that persons with higher qualifications can be taken on lower posts cannot be entirely accepted in the context of this case where the Govt. of India's order stipulate linking of certain pay scales with certain qualifications are generally entitled to be placed in the category of D'men Grade II in the scale of Rs. 425-700 (revised by Govt. of India consequent to the Award but pre-revised with reference to Fourth Pay Commission) and consequently to the corresponding replacement sale on the basis of Fourth Pay Commission's recommendations as accepted by Govt. The exceptions may be identified with a period of three months from the date of this order."

From the said judgment, however, it does not appear that the Tribunal had any occasion to notice the rules framed by Appellant in the year 1989. Indisputably, the criteria laid down in the OM of 1984 was substantially radiated in another OM wherein similar benefits were sought to be conferred upon the Draughtsmen, i.e, OM dated 19.10.1994 in terms whereof extension of the benefit of CPWD Arbitration Award was directed to be given in regard to revision /upgradation of pay scale in different grades/ post or any time bound promotion granted thereafter in other departments.

It was, however, stated therein that once the revision of pay scale has been effected, future promotions will be made in accordance with the normal eligibility criteria. The said OM also was given retrospective effect and retroactive operation with effect from 1.11.1983.

The judgment of the tribunal came to be challenged by the Union of India in Union of India v. Debashis Kar and Others [1995 Supp (3) SCC 528]. Therein attention of this Court was not only drawn to the aforementioned OM of 1984 but also to the OM of 1994.

This Court also noticed the benefits granted in terms of the OM of 1994 observing:

"In respect of draughtsmen who fulfilled the requirement relating to the period of service mentioned in the said Office Memorandum dated 19-10-1994 on the relevant date the question whether their recruitment qualifications were similar to those in the case of draughtsmen in CPWD would not arise and they would be entitled to the revised pay scales as granted to the draughtsmen in CPWD irrespective of their recruitment qualifications. But in respect of those draughtsmen who did not fulfil the requirement relating to the period of service prescribed in para 2 of the Office Memorandum dated 19-10-1994 the question whether their recruitment qualifications are similar to those prescribed for draughtsmen in CPWD is required to be considered for the purpose of deciding whether they are entitled to the benefit of the revision of pay scales as per the office memorandum dated 13-3-1984."

Attention of the Court was also drawn to the Indian Ordnance Factories Group C Supervisory and Non-Gazetted Cadre (Recruitment and Conditions of Service) Rules, 1989 by the learned counsel appearing on behalf of Union of India while contending that the award of the Board of Arbitration was not applicable in the case of Draughtsmen. The said contention, however, was negatived stating:

"The said Rules are not retrospective in operation. Here we are concerned with the revision of pay scales with effect from 13-5-1982 on the basis of the Office Memorandum dated 13-3-1984 and, at that time, the said rules were not operative. Therefore, on the basis of the aforesaid Rules Draughtsmen in Ordnance Factories cannot be denied the benefit of revision of pay scales on the basis of the Office Memorandum dated 13-3-1984. The appeals and the SLPs as well as review petitions relating to draughtsmen in Ordnance Factories are, therefore, liable to be dismissed."

The appeal filed by Union of India was, thus, dismissed.

However on 15.9.1995, a circular letter was issued by the Ministry of Defence wherein upon referring to both the aforementioned OMs it was stated in paragraphs 3 and 9:

"3. Incumbents in position before 13.5.82 may be placed in the revised scale of pay as and when they complete/completed the length of service in the respective grades and subject to condition indicated below:

(1) The individuals will be granted the revised scale from the date on which they complete the required length of service as follows:

(a)
Minimum period of service
for placement:
from the post carrying scale
of Rs. 975-1540 to Rs. 1200-
2040 (pre-revised Rs. 260-
430 to Rs. 350-560)
7 years

(b)
Minimum period of service
for placement:
from the post carrying scale
of Rs. 1200-2040 to Rs.
1400-2300 (pre-revised Rs.
330-560 to Rs. 425-700)
5 years

(c)
Minimum period of service
for placement:
from the post carrying scale
of Rs. 1400-2300 to Rs.
1600-2660 (pre-revised Rs.
425-700 to Rs. 550-750)
4 years

(2) Once the Draughtsmen are placed in the regular scales, further promotions would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in the recruitment rules.

(3) The benefit of this revision of scales of pay would be given with effect from 13.5.82 notionally and actually from 1.11.83, in respect of Draughtsmen who fulfilled the requirement relating to the period of service mentioned in clause (1) above before 13.5.82. In respect of the Draughtsmen who were in position as on 13.5.82 but did not fulfill the required length of service on that date, they will be entitled to the revised scales as and when they complete requisite length of service.

(4) The individuals pay scales had not been revised earlier on the basis of Ministry of Finance O.M. No. F(59)/E.III/82 dated 13.3.84 referred to in para 4 of this letter or through any court orders.

9. These orders shall not also apply to DGEME and OFB for which separate orders will be issued."

Respondents thereafter filed revisional application before the Central Administrative Tribunal inter alia questioning the said OMs and contending that they were entitled to the grant of pay scale of Senior Draughtsmen (Rs. 550-750) in terms of OM dated 19.10.1994. The said original application was allowed directing:

"We have carefully considered the facts of the case and perused the material placed before us. In our opinion the Ministry of Finance OM dated

19.10.1994 is a general order conveying the President's pleasure to allow Draughtsmen Grade I, II and III in the offices/ departments of Government of India other than CPWD who fulfil the requisite number of years of service.

\005In this view of the matter, we are of the view that Draughtsman Grade II in the scale of Rs. 425-700(pre-revised) should also get the scale of pay admissible to Draughtsman Grade \026 I after completion of requisite length of service as per Ministry of Finance OM dated 19.10.94. This upgradation of pay in the light of Ministry of Finance OM dated 19.10.94 is restricted to arrears of pay and allowances and is not to be taken into account for re-fixation of any seniority. With the above observation this OA is allowed."

Writ petitions were filed by both the parties before the High Court of Madhya Pradesh, Jabalpur. While dismissing the writ petition filed by Appellant, the High Court directed:

"After bestowing our anxious consideration on the reasons assigned by the Tribunal, we have no scintilla of doubt to hold that the findings rendered by it are in consonance with the law laid down in the case of Debasish Kar (supra). However, looking to the nature and peculiar facts and circumstances of the case, it will be justifiable to extend the said relief from the date of filing of the Original Application before the Tribunal."

Insofar as the writ petition filed by the employees, it was directed:

"The submission of the learned counsel for the petitioner is that the Tribunal has erred in law by not extending the benefit of seniority and promotion to the petitioners.

It is well settled in law that the matter of promotion is a managerial function and it is not the function of the court to consider the merit of the employees itself. The proper course for it is to ask the employer to consider the case for promotion of particular employees. In the present case, the petitioners have not arrayed the employees over whom they are claiming seniority."

Before advertng to the contentions raised by the parties herein, we may notice that Respondents had filed special leave petition before this Court being SLP (C) No. 14431 of 2003 but the same has been dismissed by this Court on 18.8.2003 directing:

"In view of the fact that the petitioners are permitted to make the representation, we are not inclined to interfere. The special leave petition is dismissed.

In case the representation is filed, we hope and trust that the same would be considered expeditiously."

The short question which arises for consideration before us is as to whether Respondents having been given the benefits in terms of the OM of

1984 could have been granted further benefits in terms of the OM of 1994.

It is not in dispute that the system of having three grades of draughtsmen in Ordnance Factories was not in vogue. Indisputably, OM of 1984 was based on educational qualification. It is also true that by reason of OM of 1994, a shift was made from the educational qualification to length of service. However, indisputably the question as noticed herienbefore was fully considered by this Court in Debashis Kar (supra).

Respondents obtained the benefits by reason of the judgment of the Tribunal. This Court as noticed hereinbefore in Debashis Kar (supra) refused to consider the rules framed by the Union of India in 1989 on the premise that the rules being prospective in nature the same did not take into consideration the scale of pay to which Respondents would be entitled prior thereto. The Central Administrative Tribunal no doubt used the expression 'at least' while directing revision of scale of pay to Respondents at par with Grade II Draughtsmen of CPWD but merely directed the Ordnance Factory Board to review 'set up of Draughtsmen' in the said organisation in the light of the said memorandums. But, what had not been noticed therein was that prior thereto rules had been framed in 1989. Once statutory rules came into force, the terms and conditions of service laid down thereby shall govern the field. The decision of this Court in Debashis Kar. (supra) again was considered in Nain Singh Bhakuni and Others v. Union of India and Another [(1998) 3 SCC 348] wherein it was stated:

"11. In this connection we may profitably refer to the decision of this Court in Debashis Kar to which one of us, S. Saghir Ahmad, J., was a party. In that case the Tribunal had granted parity of treatment to Draftsmen working in ordnance factories as well as army base workshops in EME so far as rise in their pay scales on the same lines as the hike given to their counterparts in CPWD by the Government Memorandum dated 13-3-1984 was concerned. It was observed that the pay scales fixed on the basis of First, Second and Third Central Pay Commissions showed that Tracers in ordnance factories had all along been treated equivalent to Tracer/Draftsman Grade II in CPWD and Draftsman in ordnance factories had all along been treated as equivalent to Assistant Draftsman/Draftsman Grade II in CPWD and accordingly they were entitled to the benefit of OM dated 13-3-1984. The said decision, therefore, upheld the action of the authorities based on the aforesaid OM. It is this OM which has been given effect to by the Tribunal in favour of the present appellants. Under these circumstances, in our view, no more relief on the facts of this case, as discussed by us, could be granted to the appellants than what is granted by the Tribunal to them."

In State of Haryana and Another v. Haryana Civil Secretariat Personal Staff Association [(2002) 6 SCC 72], this Court had the occasion to consider the question with regard to the job evaluation opining that the same poses a complex question. It was observed:

"\005The courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government while taking the decision has ignored factors which are material and relevant for a decision in the matter. Even in a

case where the court holds the order passed by the Government to be unsustainable then ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order. The court should avoid giving a declaration granting a particular scale of pay and compelling the Government to implement the same\005"

Submission of Mr. Ravindra Shrivastava, learned senior counsel appearing on behalf of Respondents, that in view of the changes in criteria by reason of the OM of 1994, the same should be applied in their case, in our opinion, is misplaced. The contentions of Respondents had been considered by the Tribunal. Evidently, they could not have been given the entire benefit of the OM of 1984. It was in that situation and in particular in absence of a clear policy decision adopted by the Union of India a direction was issued by the Central Administrative Tribunal that they be given the pay scale of Draughtsmen Grade II. It was not adhoc in nature. The observations of the Tribunal as quoted supra cannot be taken to mean that the same was subjected to any other decision. The OM of 1994 does not take into effect the question of the promotion. Whereas the posts of Senior Draughtsmen were to be filled up by way of promotion from the incumbents of Draughtsmen Grade II, so far as the Draughtsmen of the Ordnance Factory Board are concerned they were to be promoted to the Draughtsmen Grade II. The question must be determined on the basis of the position as was obtaining prior to 1989. As Respondents had already derived benefit in terms of OM of 1984, in our opinion, it is difficult to hold that they became entitled to the further benefit that is a higher scale of pay which was payable to the Senior Draughtsmen of CPWD in terms of the OM of 1994.

In view of our findings aforementioned, the directions contained in paragraphs 3 and 9 of the circular dated 15.9.94 cannot be said to be vitiated in law. Whether it is issued by the Ministry of Defence or Ministry of Finance would pale into insignificance, once it is held that the interpretation of the two OMs had correctly been made. It is furthermore difficult to accept the submission of the learned counsel that the OM of 1994 is not given effect to in its entirety, the same will result in discrimination of Respondents inasmuch as they have already got the benefits under the OM of 1994.

For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. This appeal is allowed. No costs.