

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9455 OF 2003

R. E. Mulay, aged 67 years,
Occupation Pensioner,
Son of Eknath Mulay,
Residing at 8, Nivedita Apartments,
Near Dandekar Bridge,
Behind Petrol Pump,
PUNE – 411 030.

... Petitioner

Versus

1. The Union of India
Through the Secretary,
Ministry of Defence,
South Block, DHQ, PO,
New Delhi – 110 011.

2. The Director General of
Quality Assurance,
Department of Defence Production,
Ministry of Defence, DHQ, PO,
New Delhi – 110 011.

3. The Controller,
Controllerate of Quality Assurance
(Ammunition), Nehru Road,
Kirkee, Pune-411 003.

... Respondents

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Mr. S. P. Saxena for Petitioner.
Mr. N.R. Prajapati for Respondent-Union of India

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CORAM : A. S. OKA AND M. S. SONAK, JJ.

RESERVED ON : 30th AUGUST, 2018

PRONOUNCED ON : 27th SEPTEMBER, 2018

JUDGMENT [PER M. S. SONAK, J.]:

1. Heard learned Counsel for the parties.
2. Challenge in this writ petition is to the judgments and orders dated 7th November, 2000 and 14th March, 2002 made by the Central Administrative Tribunal (CAT) disposing the Original Application No.1307 of 1994 and Review Petition No. 8 of 2001 instituted by the petitioner seeking for re-fixation of his pay on parity with his junior, one Sahasrabudhe. The petitioner on such basis had prayed for consequential reliefs like payment of arrears of difference in pay etc.
3. The petitioner was appointed as Technical Supervisor on 13th June, 1960 with the respondents. Thereafter, he was directly recruited as Assistant Foreman with effect from 17th January, 1966 with basic pay of Rs. 370/- per month. The petitioner was then promoted as Foreman in the basic pay of Rs. 525/- w.e.f. 1st November, 1971. On 9th August, 1986, the petitioner was

promoted as Junior Scientific Officer in the pay scale of Rs. 2000-3500. However, the basic pay of the petitioner was fixed at Rs.3200/-. The petitioner ultimately superannuated from the post of Junior Scientific Officer w.e.f. 31st March, 1993.

4. Sahasrabudhe with whom the petitioner claims parity, was directly recruited as Assistant Foreman w.e.f. 9th February, 1966 i.e. about a month later than the petitioner's direct recruitment as Assistant Foreman w.e.f. 17th January, 1966. Sahasrabudhe was promoted as Foreman on 6th December, 1973 i.e. almost two years after the promotion of petitioner as Foreman w.e.f. 1st November, 1971. However, since Sahasrabudhe's promotion to the post of Foreman was after the third pay commission the scales which became effective from 1st January, 1973, Sahasrabudhe's basic pay was fixed at Rs. 920 per month in the revised pay scale. On revision, however, the petitioner's pay scale was fixed at only Rs. 880/-.

5. From 1st January, 1986, in pursuance of the acceptance the recommendations of the fourth pay commission, the post of Principal Foreman came to be abolished and the same was merged

with the post of Foreman with the common pay scale of Rs.2300-3500. Accordingly, the pay of the petitioner as on 1st January, 1986 was fixed at Rs.3050/- per month, whereas, the pay of Sahasrabudhe was fixed at Rs.3300/- per month. Shri Sahasrabudhe was promoted as Junior Scientific Officer dated 22nd March, 1988 i.e. almost two years after the promotion of petitioner to the same post w.e.f. 9th August, 1986. Again, the basic pay of the petitioner was fixed at Rs.3200/- in the pay scale of Rs.2000-3500/- and the basic pay of Sahasrabudhe was fixed at Rs.3500/- in the pay scale of Rs.2000-3500. The petitioner superannuated on 31st March, 1993 and Sahasrabudhe superannuated on 30th November, 1993.

6. In the year 1994, one Shri N. V. Nadgauda instituted Original Application No. 1309 of 1994 before the CAT seeking for stepping up his pay/parity with the pay of Sahasrabudhe who was junior to Nadgauda in the cadre of Foreman as well as Junior Scientific Officer. In the same year, i.e. 1994, even the petitioner instituted Original Application No. 1307 of 1994 seeking for the same relief of stepping up of his pay/parity with Shri Sahasrabudhe.

7. By judgment and order dated 7th December, 1995, the CAT allowed Original Application No. 1309 of 1994 instituted by Nadgauda and directed the respondents to re-fix his pay of par with Sahasrabudhe. The CAT also allowed by consequential benefits including arrears and differential pay and as well as pension to Nadgauda. However, by judgment and order dated 7th November, 2000, the CAT dismissed the petitioner's Original Application No. 1307 of 1994. Even the Review Petition No. 8 of 2001 instituted by the petitioner was dismissed by the Cat by its order dated 14th March, 2002. Hence, the present petition.

8. It is quite clear that the petitioner was in fact senior to both Nadgauda as well as Sahasrabudhe in the cadre of Foreman. This is because the petitioner was promoted as Foreman on 16th October, 1971, whereas Nadgauda and Sahasrabudhe were promoted as Foreman on 16th October, 1971 and 6th December, 1973 respectively. There is also no dispute that the petitioner was senior to both Nadgauda as well as Sahasrabudhe in the cadre of Junior Scientific Officer. Therefore, there was absolutely no distinction between the case of Nadgauda and the case of the petitioner. The reasoning adopted by the CAT in its judgment

dated 7th December, 1995 in Original Application No. 1309 of 1994 instituted by Mr. Nadgauda squarely applied to the reasoning in petitioner's Original Application No. 1307 of 1994. Admittedly, the respondents did not challenge the CAT's judgment dated 7th December, 1995 in Original Application No. 1309 of 1994 instituted by Nadgauda. In such circumstances, the CAT was not at all justified in taking some contrary view in the case of the petitioner and dismissing petitioner's Original Application No. 1307 of 1994 vide judgment and order dated 7th November, 2000.

9. The CAT in its impugned judgment dated 7th November, 2000 has quoted a circular of D.O.P.T. dated 4th November, 2000, which makes reference to FR 22-C and on such basis refused to follow judgment and order dated 7th December, 1995 in Original Application No. 1309 of 1994 (Nadgauda's case), by observing that the said judgment makes no reference to the circular or FR 22-C.

10. The CAT, in paragraph 8 of the impugned order has quoted sub para (C) of the D.O.P.T. circular dated 4th November, 2000, which reads as follows:-

“(C) the anomaly should be directly as a result of the application of FR 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments or on any other account the above provisions will not be invoked to step up the pay of Senior Officer.”

11. There is absolutely no material on record, to establish the applicability of the D.O.P.T. circular dated 4th November, 2000 to the issue involved in the case of either the petitioner or Nadgauda. Secondly, this is also not a case where the obvious anomaly had arisen directly as a result of application FR 22-C. In such circumstances, the CAT was not at all justified in refusing to follow its earlier judgment and order dated 7th December, 1995 in Original Application No. 1309 of 1994.

12. Since, as noted earlier, there was absolutely no distinction between the case of Nadgauda and the petitioner the respondents were not at all justified in opposing the grant of relief to the petitioner, when admittedly, the respondents accepted and even implemented the judgment and order dated 7th December, 1995 in

Nadgauda's Original Application No. 1309 of 1994. As noted earlier, the petitioner was senior to both Nadgauda as well as Sahasrabudhe in the cadre of Foreman and Junior Scientific Officers. In the absence of any valid reasons, therefore, the respondents were not at all justified in denying the petitioner parity with Nadgauda and Sahasrabudhe. Such denial would amounts to hostile discrimination against the petitioner thereby violating his right guaranteed by Article 14 of the Constitution of India.

13. For the aforesaid reasons, we allow this writ petition and make rule absolute in terms of prayer clauses (a), (b), (c) and (d) which read as follows:-

(a) The Hon'ble Court may be pleased to issue a writ of certiorari or any other appropriate writ or order or direction in the nature of writ, calling for the records and proceedings of Original Application No. 1307 of 1994 from the Central Administrative Tribunal, Bombay Bench and after perusal of the same to quash and set aside the order of the Tribunal dt. 07.11.2000 and 14.03.2002,

(b) to direct the Respondents to step up the pay of the Petitioner at par with the pay of Shri. M. P. Sahasrabudhe

from 06.12.1973 in Foreman grade and re-fix the Petitioner's pay by granting annual increment from time to time, as was done in the case of Shri. N. V. Nadgauda,

(c) to direct the Respondents to step up the pay of the Petitioner in Junior Scientific Officer grade at par with that of Shri. M. P. Sahasrabudhe, as was done in the case of Shri N. V. Nadgauda,

(d) to direct the Respondents to recalculate the pension and other retirement benefits of the Petitioner on the basis of his pay as stepped up vide para (b) and (c) above, and to pay arrears of amounts arising out of the same.”

14. We further direct that payment of arrears and other benefits under this judgment and order be made to the petitioner within a period of three months from today, failing which the respondents to pay to the petitioner interest on such arrears @ 6% p.a. on the date such amount became due and payable to the petitioner till the date of actual payment.

15. In the facts and circumstances of the present case, there shall be no order as to costs.

(M. S. SONAK, J.)

(A. S. OKA, J.)