

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

DA 1050/2003 with DA 3243/2002

New Delhi, this the 29<sup>th</sup> day of December, 2003

Hon'ble Sh. Kuldeep Singh, Member (J)  
Hon'ble Sh. Sarweshwar Jha, Member (A)

DA 1050/2003

1. Anant Kumar  
18, Dhruv Apartments  
Rohini, Delhi - 110 085.
2. S.C.Bhardwaj  
37, SFS Flats  
Ashok Vihar-IV  
Delhi - 110 052.
3. S.K.S.Deol  
A-209, Pragati Vihar Hostel  
Lodhi Road, New Delhi - 110 003.

...Applicants

DA 3243/2002

1. Bhagwan Singh (EE:17.08.89) (AEE:21.05.84)  
Superintending Engr (Civil)  
B-312, Pragati Vihar Hostel  
New Delhi - 110 003.
2. Central Electrical &  
Mechanical Engineering  
Service Group 'A'  
(Direct Recruits)  
Association, Central Public  
Works Department, Room-A216  
Nirman Bhawan, New Delhi - 110 011  
through General Secretary.
3. Central Engineering Services  
Class I (DR) Association  
Central Public Works Department  
Room.A216, Nirman Bhawan  
New Delhi - 110 011  
through Additional Secretary.
4. M.K.Sharma (EE:25.07.91) (AEE:13.09.85)  
Executive Engineer (Civil), CPWD  
A-309, Pragati Vihar Hostel  
New Delhi - 110 003.
5. S.K. Chawla (EE:08.08.80) (AEE:10.06.83)  
Superintending Engr (Electrical), CPWD  
T-IV/2, Shahjahan Road Service Centre  
(Near Masjid), Pandara Road, New Delhi - 110 003.

...Applicants

(By Advocate Sh. G.K.Agarwal  
in both the cases)

V E R S U S

Jaswant Singh

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1. Union of India through  
Secretary  
Ministry of Urban Development  
& Poverty Alleviation, Nirman Vihar  
New Delhi - 110 011.

2. The Secretary  
Ministry of Finance  
North Block,  
New Delhi - 110 001

3. The Secretary  
Dept. of Personnel & Training  
North Block, New Delhi - 110 001.

(By Advocate Sh. K.R. Sachdeva  
in both the cases)

... Respondents

#### ORDER

Shri Sarweshwar Jha,

The applicants have impugned the orders passed by the Directorate General (Works) CPWD vide letter No.30/9/2002-EOI (Office Order No.95 of 2002) dated 9-5-2002 (Annexure A-1), Deptt. of Personnel and Training (DoPT) Office Memorandum No. 22/1/2000-CRD dated 6-6-2000 (Annexure A-2) and Office Memorandum No.22/1/2000-CRD dated 20-12-2000 (Annexure A-3). The respondents vide their first order have placed the Executive Engineers (for short EEs) (civil) and (Electrical) as listed in the said order in the Non-Functional Junior Administrative Grade (for short NFJAG) in the pay scale of Rs.12,000-16,500 w.e.f. 18-3-2002 following the instructions contained in the two Office Memoranda impugned by the applicants, as referred to hereinabove. The applicants have prayed that the said orders be amended so as to grant NFJAG (Rs.12,500-375-16,500) to all EEs in the CPWD with arrears with interest effective from 1-1-96 or from the dates they have completed 9 years in group 'A' service including 5 years as EEs, whichever date be later. The applicants have also prayed that if the

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above prayer is not granted in full, arrears with interest be granted to them effective from August, 1996 on pay fixation in NFJAG effective from 1-1-1996.

2. The facts of the matter, briefly, are that the applicants have completed 9 years in regular group 'A' service and were regular EEs as on 1-1-1996. Referring to the recommendations of the 5th CPC in paragraph 4.03 of the OA and also to para 8 of the Notification (Annexure A-5) dated 30-9-97, whereby recommendations of the 5th CPC have been accepted and also the specific recommendations in respect of the CPWD as processed vide Annexure A-4, the applicants have contended that the Commission's recommendations can be put in the following three categories, namely,

(a) post for which upgradation of pay scale was simplicitor, involving no changes in Recruitment Rules, nor any restructuring of cadres either in upgrading of pay scale or as a pre-condition for upgrading of pay scale ;

(b) post for which implementation of upgradation of pay required changes in Recruitment Rules or restructuring of cadres ;

(c) post for which changes in Recruitment Rules and/or restructuring of cadres were/was necessary before upgrading of pay scale could be or was implemented.

It was also required that recommendations in respect of (a) & (b) would be effective from 1-1-1996, whereas those for (c) would take effect only prospectively.

3. A reference has been made to the decisions of the Tribunal in OA 1659/98 dated 9-3-2001 (Annexure A-8) in which grant of NFJAG to EEs in the CPWD was placed under category (b) and allowed notional benefits effective from 1-1-1996 and arrears effective from August, 1998. However, the applicants have submitted that the respondents, while implementing the NFJAG for the EEs in the CPWD vide their impugned order at Annexure A-1 dated 9-5-2002 prospectively with reference to the Tribunal's order dated 9-3-2001 (Annexure A-8), placed the grant of NFJAG to EEs in the CPWD under category (c). The grievance of the applicant is that the grant of NFJAG to the EEs in the CPWD should have been placed in category (a) for the reasons given in paragraph 4.09 of the OA. Accordingly, they have argued that NFJAG is not upgrading of or change of any category and that it is an additional pay scale for Members of a Cadre who have completed 9 years in group 'A' service not only in the CPWD but in all engineering cadres in the Government. They have, therefore, surmised that there is no need to amend the Recruitment Rules or to restructure the cadre. In other words, they have submitted that grant of NFJAG for EEs with 9 years of group 'A' service would not affect the structure of the cadre/cadres. In their opinion, with the Notification dated 30-9-97 (Annexure A-6) having been issued by the Department of Expenditure, nothing more was required to allow the NFJAG to EEs effective from

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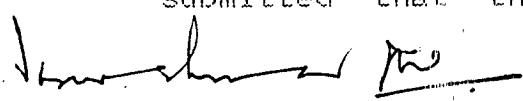
1-1-1996. Accordingly, the instructions of the Ministry of Personnel, Public Grievances and Pensions (Dept. of Personnel & Training), as contained in their Office Memorandum placed at Annexure A-2 & A-3 purporting to re-structure any cadre, in their opinion, is mis-conceived law, as they have treated the subject as falling under category 'C', whereas it should have fallen under category (a). They have argued that the Notification dated 29-10-96 (Annexure A-14) and the amended Recruitment Rules notified vide Annexure A-15 dated 22-2-2002, as claimed to have been necessitated by notification of NFJAG for EEs, point to the fact as if restructuring of any cadre and also re-distribution of posts was required in their case. According to them, all that was required was to have allowed (non-selection) NFJAG to a number of senior most EEs who had completed 9 years of group 'A' service including 5 years as EEs. They have submitted that the number of posts in all cadres, namely, AEEs, EEs, SEs, CEs and the cadres as well as relativities would remain unchanged. The revised pay rules issued vide Annexure A-6 dated 30-9-97 prescribing NFJAG for EEs would remain sufficient to give effect to NFJAG for EEs effective from 1-1-1996.

4. Referring to the orders of this Tribunal in OA 1659/98 passed on 9-3-2001, the applicants have pointed out that the said orders were passed by the Tribunal on plain reading of paragraph 2 of the Office Memoranda at Annexure A-2 & A-3 in which amendment to Recruitment Rules, restructuring or re-distribution of the cadre/post was to have followed allowing of NFJAG and which was not a pre-requisite for allowing NFJAG.

Summarized

as stated by the applicants in paragraph 4.10 of their OA. In other words, the applicants have argued that the matter fell under category (b) and not under category (c) as in the opinion of the Hon'ble Tribunal. However, the applicants have surmised that comparison of Annexure A-14 and A-15 would show that there was no such requirement either before or after grant of allowing of NFJAG. Incidentally, the applicants in the present OA were also applicants in OA 1659/98 and CWP No. 4990/2001 (among the respondents). It appears that there was also a Contempt Petition bearing No. 74/2002, during pendency of which, the said OA and CWP were disposed of and accordingly the applicants have claimed that the orders of the Tribunal in the said OA and CWP are open to challenge on merit independent of earlier proceedings. In this connection, they have referred to the upgradation of pay scale to Additional Directors (Horticulture) in the same Department (CPWD) to Rs.14,300-18,300 w.e.f. 1-1-1996 with arrears from the same date (vide Annexure A-14).

5. The respondents in their reply have, however, not admitted the averments of the applicants. They have referred to the guidelines issued by the Department of Personnel & Training vide their OM dated 6-6-2000 and 20-12-2000 regarding grant of NFJAG to EEs and to the Office Order dated 9-5-2002 passed by the respondent No.1 granting NFJAG to a number of eligible EEs (Civil) and (Electrical) including the applicant No.1 w.e.f. 18-3-2002 against which the applicants have filed the present OA and have submitted that the validity of the action of the



respondents in terms of the said Office Memoranda and Office Order dated 9-5-2002 have already been upheld by this Tribunal vide their order dated 12-7-2002 passed in CP bearing No.74/2002 in OA 1659/98 and have accordingly submitted that the present OA is not maintainable and is liable to be dismissed on this count itself. They have also claimed that the reliefs sought in the OA is hit by res-judicata and that the grounds on which the reliefs have been claimed have already been adjudicated by this Tribunal in OA 1659/98 and the subsequent CP No.74/2002 filed by the applicants earlier. They have also taken objection to the applicants questioning the policy laid down by the Government on the subject vide their Office Memoranda of 6-6-2000 and 20-12-2000 in pursuance of the recommendations of the 5th CPC which are uniformly applicable to all engineering cadres in the Government and that, therefore, the present OA is bad in law and is liable to be dismissed. They have also pointed out that the applicants have not exhausted the departmental remedies available to them under the service rules before approaching this Tribunal.

6. In their detailed reply to the individual paragraphs of the OA, the respondents have referred to the parity established between Superintending Engineers and the Conservator of Forests as mentioned in the report of the 5th CPC in paragraph 50.45 thereof in which a history of this parity dating back from the 2nd CPC to the 3rd CPC has been given. However, change in the status of the matter occurred from the 4th CPC in which a single functional scale of Rs. 4500-5700 was recommended for the Conservator of

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24

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Forests and that the Superintending Engineers who were given a JAG of Rs. 3700-5000 and NFSG of Rs. 4500-5700 got, in the process, a different treatment. However, the 5th CPC took a position that NFSG of Rs. 4500-5700 should be converted into a single functional scale for the Superintending Engineers and the scale of pay of Rs. 3700-5000 should instead be non-functional JAG for EE. To ensure that too fast rate of promotion in certain cadres to the grade does not take place, it was further recommended by the 5th CPC that promotion to the scale of pay of Rs. 4500-5700 would be permitted only on completion of 13 years of service in group "A". This dispensation was extended to all engineering cadres in the Government.

7. The respondents have, however, clarified that certain cases of the scales of pay mentioned in the recommendations of the 5th CPC are subject to the fulfilment of specific conditions like change in Recruitment Rules, restructuring of cadres, re-distribution of posts into higher grades etc., making it necessary for the Ministries that they decide upon such issues and agree to the changes suggested by the Pay Commission before applying these scales to these posts w.e.f. 1-1-1996. The respondents have also tried to clarify that it was implicit in the recommendations of the Pay Commission that such scales would necessarily have prospective effect and the concerned posts will be governed by the normal replacement scales until then. A copy of the Ministry of Finance Notification dated 30-9-97 in this regard is at Annexure R-2.

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8. Giving a history of the actions taken by them, they have said in paragraph 4 of their reply that they proceeded to issue the guidelines for NFJAG after obtaining the approval of the Cadre Controlling Authority vide Notification dated 30-9-97 in which it had been clearly stipulated that it would be mandatory for the Ministries/Departments concerned to not only accept the pre-conditions, such as, cadre restructuring and re-distribution of posts before extending the higher pay scales, and also that the higher pay scales in which cases could be given only with prospective effect. They have clarified that the number of posts of the EEs which would be placed in the NFJAG in the scale of pay of Rs. 12,000-375-16,500 was not indicated in the Government Notification dated 30-9-97. According to them, the same had to be decided by the Government taking into account factors, such as, functional requirements, established relativities etc. The respondents have taken us through the said position leading to filing of the OA 16-9-98 in which the pay scale of Rs. 12,000-375-16,500 (NFJAG) had been claimed w.e.f. 1-1-1996 and the same being granted to them with full consequential benefits including arrears of pay and allowances w.e.f. 1-1-1996.

9. At this stage, the details, like, the said scale of pay being introduced to the EEs and the equivalent officers belonging to the organised group 'A' engineering services on completion of 9 years of service in group 'A' including 4 years in the scale of pay of Rs.8000-13,500 and 5 years in the pay scale of Rs.10,000-15,200 in respect of officers as directly

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recruited or promoted to the pay scale of Rs. 8000-13,500 and further that the number of posts of EEs and equivalent to be operated in the non-functional pay scale of Rs.12,000-16,500 being re-structured to 30% of the senior duty posts in the respective cadres; and non-functional pay scale of Rs.12,000-16,500 being applicable only prospectively based on the recommendations of the DPC to be constituted for the purpose, have been given. A reference has also been made to the DoPT having issued the second impugned Office Memorandum clarifying/modifying some of the provisions of their aforementioned Office Memorandum dated 6-6-2000, in which it was envisaged that EEs and equivalent would be considered for placement in the non-functional grade of Rs.12,000-16,500 only on completion of 5 years of regular service in the scale of pay of Rs.10,000-15,200 on the recommendations of the DPC to be duly constituted for the purpose. The fact that the cadre was restructured by the respondents by re-distribution of posts of EEs in the CPWD in the functional and non-functional grades in the ratio of 70:30 in consultation with the DoPT has also been referred to in the reply of the respondents.

10. Referring to the orders of the Tribunal in OA 1659/98, the respondents have submitted that they examined the same in terms of the existing instructions of the Government on the subject in consultation with the concerned Ministries, and also referring to the fact that they filed a Writ Petition bearing CWP No.4990/2001 against the said orders of the Tribunal dated 9-3-2001, they have informed that

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the same was dismissed on the ground that the directions of the Tribunal were innocuous inasmuch as these directions envisaged asking the Government to carry out suitable amendment to rules and to consider grant of benefit of the recommendations of the 5th CPC to the respondents (applicants in the OA). On the observations of the Tribunal in their orders while disposing of the said OA that the respondents (applicants in the OA) would be entitled to the benefit of pay and arrears from August, 1998, the Hon'ble High Court expressed the view that this was required to be read in the context of the first part of the directions whereby the Tribunal had asked the petitioners (respondents in the OA) to consider the grant of NFJAG to the respondents (petitioners in the OA) while amending the rules. In the meantime, the applicants had also filed a Contempt Petition against the respondents before the Tribunal for non-compliance of the orders dated 9-3-2001. The said CP was disposed of by the Tribunal on 3-10-2001 allowing the respondents two months to implement the orders of the Tribunal. The respondents have submitted that the process of amendment of the rules in consultation with the DoPT etc. was completed vide their Notification dated 24-1-2002 which was published in the Gazette of India dated 22-2-2002. Accordingly, grant of NFJAG to the eligible EEs (civil) and (electrical) as per the existing seniority list dated 6/7-7-99 was considered, for the EEs in the DPC meetings held on 18-3-2002 and 1-4-2002 and on the basis of the recommendations of the DPC, duly accepted by the appointing authority, the same was allowed to the EEs (civil) and (electrical) w.e.f. 18-3-2002.

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vide Office Order No.295/2002 dated 9-5-2002, the impugned order in the present OA. They have not been able to grant NFJAG to officers promoted as EEs (civil) and (electrical) after 31-3-94 because their seniority lists have not yet been finalised. This position, as submitted by the respondents, was taken note of by the Tribunal while disposing of the CP 74/2002 in OA 1659/98 on 12-7-2002. The respondents have pointed out that while dismissing the said CP, the Tribunal had clearly observed the following :-

"In actuality the petitioners, unlike the SEs could not be given the pay scale of Rs. 12000-16500 with retrospective effect as in their case redistribution of posts in two different pay scales was involved. Delhi High Court order dated 20-8-2001 had observed that directions of the Tribunal are innocuous as they ask the Government to carry out suitable amendment in rules and to consider grant of benefit of Fifth Pay Commission recommendations to petitioners and that the Tribunal's observations that petitioners would be entitled to benefit of pay and arrears from August 1998 was required to be read in context of first part of the direction whereby the Tribunal had asked the respondents to consider grant of NFJAG to the petitioners at the same time of amending the Rules. As such placement of EEs in NFJAO pay scale of Rs. 12000-16500 with prospective effect as per relevant orders and fulfilment of procedural requirements do not violate Tribunal's orders dated 9-3-2001."

The respondents have, therefore, contended that, in view of the facts and circumstances of the case and the said orders of the Tribunal, the applicants in the present OA, who have been granted NFJAG in the pay scale of Rs. 12,000-16,500 w.e.f 18-3-2002, have no case to approach this Tribunal for grant of NFJAG in the above pay scale from 1-1-1996 or from any other date prior to 18-3-2002.

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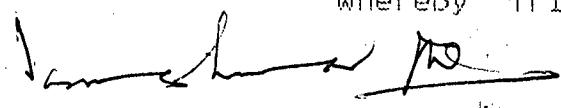
11. However, in the rejoinder filed by the applicants, they have submitted their interpretations of the orders of the Tribunal vis-a-vis the impugned order passed by the respondents dated 9-5-2002 in the light of the observations made by the Tribunal in its order dated, 11-11-2002 while disposing of MA 1852/2002. They have also made a reference to the orders of the Hon'ble High Court leaving it open to the Government to carry out the exercise of dealing with the grant of NFJAG to EEs. In regard to the individual paragraphs of the reply of the respondents, the applicants have submitted that these are wrong and are denied in so far as these are inconsistent with the submissions in the OA.

12. We have considered the rival contentions of the parties on the subject and we find that the submissions of the applicants earlier made in OA 1659/98 decided on 9-3-2001 have been essentially brought in the present OA also including the reliefs sought remaining the same. In sum, they had earlier prayed for NFJA being given to the EEs on completion of the requisite number of years of service w.e.f. 1-1-1996 and also the arrears thereof being given to them with effect from the same date irrespective of whether there was any pre-requisite or pre-condition to the same being granted/allowed to them. In their opinion, no pre-conditions were involved in the matter of NFJAG being given to them nor in the matter of arrears thereof being allowed to them with effect from the same date, i.e., 1-1-1996. The reliefs sought by the applicants in the previous OA and the submissions made in support thereof by the applicants had been

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extensively responded to by the respondents in their reply and which had been kept in view by the Tribunal while considering the said OA and deciding the same with directions as given on 9-3-2001. When the matter had been agitated by the applicants vide CP 74/2002 alleging that the respondents had not implemented the orders of the Tribunal as given on 12-7-2002, the Tribunal had again considered the matter keeping in view the reply of the respondents and taken a view that the respondents had implemented the orders of the Tribunal by following the due process of the conditions as envisaged before granting of NFJAG as detailed in their orders as referred to hereinabove and that they had not found any disobedience on the part of the respondents in the matter. There is, however, no dispute on the fact that while disposing of MA 1852/2002 in OA 1659/98 the Tribunal had observed that 'whatever rights of an applicant or of an aggrieved person by an order No. 95/2000 are there, that right is available to any aggrieved person of a service jurisprudence that too in the earlier OA cannot affect that. No clarification is required. MA stands dismissed' and, accordingly, the applicants have preferred the present OA. It is also noted that while disposing of CW 4990/2001 and CM 8593/2001, the Hon'ble High Court had observed, among other things, the following :-

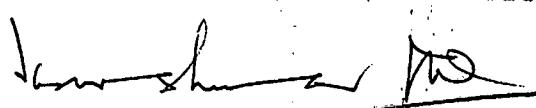
However, it was pointed out by L/C for petitioner that 'Tribunal's last observation that Respondents would be entitled to benefit of pay and arrears from August, 1998 amounted to clear cut order permitting no consideration required to be accorded by petitioners. This in our view required to be read in the context of first part of the direction whereby Tribunal was wanting Petitioners



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to consider the grant of non-functional JAG to respondents while amending the rules.

It is thus observed that most of the issues which have been raised in the present OA, being the same as already attended to earlier in the previous OA and appropriately decided by this Tribunal vide its orders dated 9-3-2001. we do find a reason to believe that the present exercise on the part of the applicants does not involve any fresh issues which have already not been looked into and duly considered and decided by the Tribunal earlier, as mentioned above, and accordingly we are unable to avoid getting a feeling that the present exercise is infructuous warranting application of principle of res-judicata. The matter has been examined earlier, not only once, but also on the subsequent occasions when CP 74/2002 was heard by this Tribunal and decided. The endeavour on the part of the applicants in filing this OA despite the fact that this Tribunal had given its observations in very clear terms while disposing of MA 1852/2002 on 11-11-2002 is also does not appear to be justified by the facts of the matter. It can be rationally surmised that this Tribunal, while disposing of OA 1659/98 on 9-3-2001 and CP 74/2002 on 12-7-2002 had visualised that satisfaction of pre-requisites/pre-conditions would be required before grant of NFJAG to the petitioners was considered and the same was allowed. This did envisage amendment of the relevant rules and the grant of the NFJAG with prospective effect as per relevant orders and fulfilment of

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procedural requirements. That being the case. We do not find any fresh cause of action necessitating filing of the present OA.

13. Keeping in view the facts and circumstances of the case and also after taking into account the oral submissions of the learned counsel of the parties, we are, therefore, not in favour of allowing this OA and accordingly dismiss it, as the matter raised in this OA has already been decided and adjudicated upon by this Tribunal while disposing of OA 1659/98 on 9-3-2001.

14. Accordingly, this Original Application stands dismissed. No costs.

(Sarweshwar Jha)  
Member (A)

(Kuldeep Singh)  
Member (J)

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