

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.2665/2002

New Delhi, this the 27th day of May, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri Govindan S. Tampi, Member(A)

1. Jagjit Singh
Superintending Engineer
S.OI(W)) Engineer-in-Chief Branch
Army Headquarters, DHQPO, New Delhi
 2. T.S.R. Naidu
Superintending Engineer
in the Office of ADG(O.F./DRDO)
Mudfort, Secunderabad .. Applicants
- (Shri A.K.Trivedi, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Defence
South Block, New Delhi
 2. Engineer-in-Chief
E-in-C's Branch, Army HQs
DHQ PO, New Delhi
 3. Director Personnel 'B'
Coord. & Per Directorate/EIB(P&A))
Engineer-in-Chief's Branch
Army HQs DHQ PO, New Delhi
 4. Central Record Office (Officers)
Engineer-in-Chief Branch/EIB
c/o Chief Engineer, Delhi Zone
Delhi Cantt ... Respondents
- (Shri R.P. Aggarwal, Advocate)

ORDER(ORAL)

Justice V.S. Aggarwal

Applicants had joined the Military Engineering Service as Assistant Engineers. On the recommendations of the Fifth Central Pay Commission, the pay of the Superintending Engineer was revised in the pay scale of Rs.14300-18300/-. The pay of the applicants was fixed at

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the minimum of the scale. The applicants contend that the Government of India had conveyed the sanction of the President for merged single functional scale to the Superintendent Engineer of the Military Engineering Service who were placed in the pre-revised scale of Rs.3700-5000/ Rs.4500-5700/- and issued a circular in this regard. After acceptance of the recommendations of the Fifth Central Pay Commission, a lot of anomalies had arisen in the matter of fixation of pay. Accordingly, the Government of India, Ministry of Finance had issued an Office Memorandum on 30.7.1999 seeking the revised options from the Government servants. In accordance with the said Office Memorandum, the applicants submitted fresh options vide their representations that they had filed. Clarification even was issued in this regard, but the applicants had not been given the benefit of the same. By virtue of the present application, they seek setting aside of the order of 5.7.2002 by virtue of which the applicants' claim for benefit of bunching effect been refused. They seek a direction to fix their pay at Rs.15500/- from 12.8.1997 and 1.7.1996 respectively by giving the benefit of bunching in the pay scale of Rs.14300-18300/-.

2. The application has been contested. It has been pointed that after acceptance of the recommendations of the Fifth Central Pay Commission, some anomalies had arisen. Clarifications were issued in this regard, but the applicants are not entitled to the benefit because

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they were not working as Superintendent Engineer on 1.1.1996 and were not in position.

3. To appreciate the said controversy, a reference can well be made to the Defence Services (Revised Pay) Rules, 1997 (for short, "the Rules") applicable to the civilians in Defence Services. Sub-rule (2) to Rule 3 defines the "existing scale" in the following words:-

" 3. Definitions - in these rules, unless the context otherwise requires -

(2) 'existing scale' in relation to a Government servant means the present scale applicable to the post held by the Government servant (or, as the case may be, personal scale applicable to him) as on the 1st day of January, 1996 whether in a substantive or officiating capacity.

Explanation -

In the case of a Government servant, who was on the 1st day of January, 1996 on deputation out of India or on leave or on foreign service, or who would have on that date officiated in one or or lower posts but for his officiating in a higher post, 'existing scale' includes the scale applicable to the post which he would have held but for his being on deputation out of India or on leave or on foreign service or, as the case may be, but for his officiating in a higher post;

Rule 7 of the Rules refers to fixation of initial pay in the revised scale and is also being reproduced for the sake of facility:-

"7. Fixation of initial pay in the revised scale -

(i) The initial pay of a Government servant who elects, or is deemed to have elected under sub-rule (3) of rule 6 to be governed by the revised scale on and from the 1st day of January, 1996, shall, unless in any case the President by special order otherwise directs, be fixed separately in respect of his substantive pay in the permanent post on which he holds a lien or would have held a lien if

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it had not been suspended, and in respect of his pay in the officiating post held by him, in the following manner, namely....."

Rule 9 of the Rules deals with fixation of pay in the revised scale subsequent to 1st January, 1996 where a Government servant continues to draw his pay in the existing scale and is brought over to the revised scale from a date later than 1st day of January 1996, his pay from the later date in the revised scale shall be fixed under Fundamental Rules. It is obvious from the aforesaid, particularly the definition of 'existing scale' that the existing scale is as on the 1st day of January, 1996 whether in a substantive or officiating capacity. It concerns with the post held by a person or the person should be in position as on 1.1.1996. The applicants were promoted as Superintending Engineer after 1.1.1996. Therefore, in terms of Rule 7 read with sub-rule (2) to Rule 3 of the Rules, they are not entitled to the benefit of all the instructions that the applicant relies upon.

4. The applicants' learned counsel strongly refers to a letter written by the Under Secretary to the Government of India to the Chief of Army Staff dated 14.1.1998 (Annexure A/2) to contend that the benefit claimed by the applicants is due to the them. Perusal of the same clearly shows that such a benefit only should be available if the applicants were in position as on 1.1.1996 in the scale or were promoted as Superintending Engineer. In the absence of the same, the plea taken must fail.

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5. In that event, our attention was drawn by the applicants to OM No.7(29)-E.III(A)/97 dated 30.7.1999 which reads as under:-

" 3. The option in the format appended as the Second Schedule to Central Civil Services (Revised Pay) Rules, 1997 may be exercised within six months from the date of issue of this Office Memorandum. The option once exercised shall be final. The option in terms of these orders can be exercised afresh by those Government servants who have already exercised option prior to the issue of these orders and wish to switch over to their revised scale from the date of increment falling on or after 1.1.1997 but not later than 31.12.1997. However the pay of the Government servants who still opt to switch over to the revised scales:

(a) from the date of increment falling subsequent to 31.12.1997 or

(b) from any date after 1.1.1997, for reasons other than their date of increment falling during 1997

shall be fixed in those scales under Rule 9 of the Central Civil Services (Revised Pay)) Rules, 1997."

Even in this regard suffice to say that the said Office Memorandum so issued would be subject to the Rules because the instructions cannot override the Rules though they may supplement the same. Similar would be the position with respect to the clarification of 7.4.2000 because the options that were called necessarily could take its effect in terms of the Rules and not independently of the same.

6. Resultantly, we have no hesitation in holding that since the applicants were not in position and were not promoted as Superintendent as on 1.1.1996, they have no right to claim the reliefs referred to above.

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7. The present application being without merit must fail and is dismissed. No costs.

(Govindan S. Tampi)
Member (A)

(V. S. Aggarwal)
Chairman