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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2944/2002

New Delhi, this the 25th day of July, 2003

Hon'ble Sh. Shanker Raju, Member (J)

1. Jai Singh Yadav,
S/o Late Sh. Chunni Lal Yadav
C/o GE (Projects) Airforce, Palam
Delhi Cantt-10.
2. Vinod Kumar
S/o Late Sh. Sukh Dayal
C/o GE (Projects) Airforce, Palam
Delhi Cantt-10.
3. Ashok Kumar Kapoor
S/o Sh. Ved Prakash Kapoor
C/o Surveyor Dte, E-in-C Branch
Kashmir House, DHQPO
New Delhi.
4. Basti Ram, S/o Sh. Ram Kumar Gupta
C/o GE Base Hospital, Delhi Cantt.
5. Ashok Kumar, S/o Late Sh. Kaku Ram Batra
C/o GE (East) Delhi Cantt.
6. Sh. Narinder Singh, S/o Sh. Raghuvir Singh
C/o GE (Water Supply) Delhi Cantt.
7. Sh. Sant Ram S/o Sh. Harnand
C/o GE (Central) Delhi Cantt.
8. Sh. Vijay Kumar Jain, S/o Late Sh. K.D.Jain
C/o CWE (Projects), Delhi Cantt.
9. Sh. S.C.Gupta, S/o late Sh. S.L. Gupta
C/o GE (East), Delhi Cantt.
10. Sh. B.K.Lahir, S/o Late Sh. G.R.Lahir
C/o GE (Central), Delhi Cantt.
11. Sh. Deepak Menghiani, S/o Sh. Hari Menghiani
C/o CWE, Delhi Cantt.
12. Sh. Ishwar Singh Mittal,
S/o Sh. Chander Bhan Mittal
C/o GE (Hisar) Military Stn, Hisar Cantt.
13. Sh. K.L.Chawla, S/o Sh. Dharam Chand Chawla
C/o Surveyor Dte, E-in-C Branch
Kashmir House, DHQPO, New Delhi.

...Applicant

(By Advocate Sh. M.K.Bhardwaj)

V E R S U S

Union of India through

1. The Secretary
MCD, South Block, New Delhi.

2. The Engineer-in-Chief
Army HQ Kashmir House
New Delhi.

3. The Chief Engineer
Western Command
Chandi Mandir
Chandigarh.

...Respondents

(By Advocate Sh. R.P. Aggarwal)

O R D E R

Shri Shanker Raju,

Heard the parties.

2. In action on the part of the respondents to extend to the applicants benefit accorded in OA 1421/2000 for grant of three advanced increments on acquirement of degree in engineering with consequential benefits has been complained.

3. Applicants who have joined Military Engineering Service (hereinafter called as MES) in the Ministry of Defence as Superintendent/Surveyor now redesignated as Jr. Engineers having entered employment on diploma acquired degree qualifications in engineering prior to 1968.

4. By a Scheme dated 4-2-1969 promulgated by Ministry of Defence on acquirement of degree in engineering by a civilian employee of defence service, advance increments have been allowed. The cut off date 1-12-1968 was applicable to those who had already acquired the requisite qualifications and from the date of announcement of the result who attained the requisite qualifications after 1-12-1968.

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5. In view of recommendations in paragraph-70, Chapter 14, Vol.I of the IIIrd CPC as to withdrawal of existing concessions for grant of advance increments to engineering graduates appointed to the post in Ministry of Defence by Memorandum dated 13-3-1974 discontinued the benefit of increment.

6. Similarly circumstance employee Sh. S.Ramaswamy being aggrieved with non-grant of three advance increments on acquisition of degree in engineering prior to 1-4-1993 approached the Ernakulam Bench of this Tribunal. By an order dated 7-10-1999, OA was allowed with grant of benefits of three advanced increments. The aforesaid decision was implemented by the respondents on 30-3-2000.

7. In another OA 1421/2000 before the Bangalore Bench in R.Umashankar Vs. UOI decided on 9-1-2001 similar relief was granted.

8. Being aggrieved with non-grant of three advance increments to the applicants their acquisition of B.E., representation preferred remained unresponded giving rise to the present OA.

9. Ld. counsel of the applicants contends that the recommendations of III CPC, on the basis of which, OM dated 13-3-1974 was issued has been misconstrued by the respondents by stopping the three advanced increments. According to Sh. M.K.Bhardwaj, these recommendations are applicable to those engineering graduates who were appointed on the posts

having qualification of Degree. In this backdrop, it is stated that it was never the intention of III CPC to withdraw the concession given to those who acquired qualification before 1-4-1993 referring to the decision of the High Court of Kerala in OP No.34436/2002 dated 8-4-2003, it is contended that the same is per incuriam of the aforesaid and having overturned the decision of the Tribunal against the statutory rules and without taking the cognizance of the recommendations of III CPC. The same has no precedent value.

10. Sh. M.K.Bhardwaj contends that being similarly circumstanced and acquired qualification, denial of extension of benefits to the applicants is not in accordance with law.

11. On the other hand, respondents' counsel Sh. R.P.Aggarwal contends that the benefit of three advance increments on acquisition of higher qualification was extended to the Ministry of Defence vide OM dated 2-6-1971 and OM dated 4-2-1969. However, on the basis of recommendations of III CPC, the same was withdrawn from civilian employees paid from defence services w.e.f. 1-12-1973. The Scheme of giving incentives in form of advance increments on acquisition of higher qualifications was existing in various Ministries and Departments but the same stood withdrawn by the Ministry of Defence on 18-3-1974. Accordingly as per the DOPT OM dated 31-1-1995, one time lump sum incentive was replaced for existing increments based incentive and as in the Defence, no

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scheme was in vogue, the same was not extended to the Ministry of Defence. Accordingly placing reliance on the decision of the Kerala High Court, it is stated that on setting aside of the decision of Ernakulam Bench which is genesis of the grant of advance increments applicants have no valid claim.

12. I have carefully considered the rival contentions of the parties and perused the material on record.

13. The incentive scheme as promulgated on 4-2-1969 by the Ministry of Defence has been made applicable through OM issued by the Ministry of Defence over the Civilians in 1971.

14. Third Central Pay Commission observed in para 29.8 of the report that incentive to be given to the employees on acquisition of qualifications useful in their job. This necessitated review of the existing schemes. Vide DOPT OM dated 28-6-93, one time lump sum incentive scheme was introduced replacing the earlier guidelines but this was applicable from financial year 1993-94. Those who had been granted the increments prior to 1-4-93 would continue to draw the same and those who acquired higher qualification after 1-4-93 have been granted lump sum amount as incentive. However, vide OM dated 9-4-99, fresh qualifications were finalised. As no incentive scheme existed in Ministry of Defence from

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1-12-1973 to 27-6-93, OM dated 28-6-93 & 3-1-1995 were applicable only to those Ministries and Departments where incentive scheme was prevalent.

15. In my considered view, recommendations of III CPC in para 70 as contended by Sh. M.K.Bhardwaj and its applicability to only those qualified engineers having degree on appointment is concerned, the same cannot be countenanced. Infact as the incentive was liberal with enhancement of cadre of graduate engineers with qualification of diploma attached to the post, this practice of unnecessary burden on ex-chequer necessitated the CPC to recommend withdrawal of concession. Not only engineering graduates appointed on direct recruitment but the recommendation has applicability over those who acquired qualification subsequently. Accordingly the aforesaid recommendation have been rightly accepted by the Govt., Ministry of Defence in right perspective.

16. In so far as extension of benefits of the decision of Eranakulam Bench is concerned, it is not disputed that from 1-12-1973 to 27-6-1993, no incentive scheme existed in the Ministry of Defence. Accordingly the admissibility of OM dated 28-1-93 and 3-1-1995 is out of question. The Scheme is applicable on replacement against the existing prevalent scheme. In absence of any scheme, this OM would have no application. However, the cardinal principle of interpretation that special provision over rides the general provision, applicants through out serving in the Ministry of Defence cannot have advantage of the

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general circular issued by the Ministry of Personnel which has no applicability on defence and was also not adopted by the Ministry of Defence.

17. Be that it may so the decision of the Ernakulam Bench has been set aside by the Kerala High Court, I do not find it to be per incuriam of any provision or law laid down to the contrary. Having a binding force and a precedent, the same has to be followed.

18. As regards implementation of the order of Ernakulam Bench of the Tribunal to similarly circumstanced, the wrong interpretation and its consequential benefits cannot bestow a valid legal right in favour of the applicants to claim similar benefits. This is an anti thesis to the principle of equality enshrined under Article 14 of the Constitution of India.

19. In the result for the forgoing reasons, OA is bereft of merit and is accordingly dismissed. No costs.

S. Raju
(SHANKER RAJU)
MEMBER (J)

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