

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

OA No.1605/2002

Date of decision: 23.01.005

Vinod Kumar Khera & Others

... Applicant

(By Advocate: Ms. Harvinder Oberoi)

versus

Union of India & Ors.

... Respondents

(By Advocate: Shri A.K. Bhardwaj)

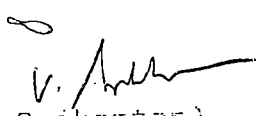
CORAM:

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)

Hon'ble Shri V. Srikantan, Member (A)

To be referred to the Reporter or not?

YES ✓


(V.Srikantan)
Member(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1605/2002

New Delhi, this the 23rd day of January, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)
Hon'ble Shri V. Srikanthan, Member(A)

1. Vinod Kumar Khara
JE(Civil), GE(E/M)
RR Hospital, Delhi Cantt
 2. H.G.Wadhawa, JE(Civil)
GE, New Delhi, Delhi Cantt
 3. R.C.Sengal
JE(Civil), GE New Delhi, Delhi Cantt
 4. S.S.Chandia, JE E/M
GE(U), Water Supply, Delhi Cantt
 5. S.S. Verma, AE E/M
GE(U), Water Supply, Delhi Cantt
 6. Awadesh Kumar Garg, AE (Civil)
o/o GEDZ, Delhi Cantt
 7. B.K.Bhatia, JE(Civil)
GE (North) AF Palam, Delhi Cantt
 8. Bhagwan Singh Arya, AE(Civil)
WZ-61, Prem Nagar, Ullam Nagar
New Delhi
 9. Krishan Lal, JE E/M
GE(P), AF Palam, Delhi Cantt
 10. Suresh Chandra Gangwar, AE E/M
CEDZ, Delhi Cantt
 11. Balwant Rai, AE E/M
CEDZ, Delhi Cantt
- .. Applicants

(Ms. Harvinder Oberoi, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Defence
South Block, New Delhi
 2. Additional Financial Advisor
Ministry of Defence
South Block, New Delhi
 3. Secretary
Deptt. of Personnel & Training
North Block, New Delhi
 4. Secretary
Ministry of Finance
North Block, New Delhi
 5. Engineer-in-Chief
Kashmir House
Defence Hqrs PO
New Delhi
- .. Respondents

(Shri A.K. Bhardwaj, Advocate)

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ORDER

Shri V.Srikantan, Member(A)

The 5th Central Pay Commission had made certain recommendations relating to Assured Career Progression (ACP) Scheme for Central Government employees in all Ministries/Departments. After careful consideration of the Pay Commission's recommendations, Government have introduced ACP scheme with certain modifications and orders. have been issued vide order dated 9.8.1999. By letter dated 23.1.2002, Respondent No.1 has adopted the ACP Scheme for the Central Government employees in respect of Junior Engineers (JEs) vide Annexure 11. By this letter, sanction was conveyed for adoption and introduction of the Scheme involving pay upgradation after 12 and 24 years of regular service, respectively, in respect of JEs with effect from 9.8.99. The second hierarchy in the cadre of JEs as Executive Engineers (EEs) is in the pay scale of Rs.10000-15200. Accordingly, JEs on completion of 24 years are entitled to the second financial upgradation.

2. The grievance of the applicants is that R-1 vide letter dated 23.1.2002 did not provide second financial upgradation to diploma holder-JEs or recruited as JEs and promoted as AEs after 9th July, 1991 on the ground that they are not eligible for promotion to the post of EEs and that they shall be eligible for grant of second ACP only after acquisition of Degree in Engineering or equivalent and on completion of 24 years of regular

service on 9.8.1999, whichever is later. Aggrieved by the order dated 23.1.2002, applicants have filed this OA praying for the following reliefs:

To direct the respondents to grant:

- (i) financial upgradation to diploma holder JEs in MES in terms of ACP Scheme dated 9.8.1999 with interest;
- (ii) the benefit of second financial upgradation to diploma holder JEs/AEs in MES as per hierarchy in the cadre/category, i.e. in the pay scale of Rs.10000-15200; and
- (iii) arrears of pay of financial upgradation to the applicants with exemplary interest @ 18% p.a.

3. It is the contention of the applicants that the action of respondents in not granting second financial upgradation to JEs is illegal, arbitrary and in violation of OM dated 9.8.1999 issued under the ACP Scheme and introduced by the Government. It is their stand that JEs/AEs on completion of 24 years of service but who do not possess qualification of degree in Engineering have been denied the benefit of second financial upgradation and thus the act of respondents is also discriminatory. It is further contended that grant of second financial upgradation is nowhere linked with fulfilment of certain qualification or availability of promotional avenues. In this context, applicants have specifically referred to para 4 of the condition for the grant of benefit under the Scheme dated 9.8.1999 and that in terms of para 3.1 of the Scheme the only condition which has to be fulfilled for the purpose of grant of second financial upgradation was completion of 24 years of service and the conditions imposed by R-1's letter dated 23.1.2002 are contrary to the provisions contained in the ACP scheme

dated 9.8.1999. It is their further contention that in the CPWD no such condition was imposed whereby Diploma Holder-JEs were denied the benefit of second financial upgradation and no condition was imposed on JEs for acquiring qualification of degree.

4. Respondents have filed their reply opposing the claim of the applicants and have stated that grant of ACP Scheme is subject to the conditions mentioned in Annexure 1 to OM dated 9.8.1999 which provide for fulfilment of normal promotional norms (bench mark, departmental examination, seniority-cum-fitness etc.) for grant of the benefit of financial upgradation. Since diploma holder-JEs are not eligible for regular promotion as EEs, therefore diploma-holder JEs with 24 years service on 9.8.99 cannot be granted 2nd financial upgradation under the ACP Scheme. It is also further argued that grant of second financial upgradation to degree-holder JEs and not to diploma-holder JEs is not in violation of Articles 14 and 16 of the Constitution. Further, DoPT vide OM dated 18.7.2001 have also clarified that only those employees who fulfil all promotional norms are eligible to be considered for benefit under ACP Scheme and unless promotional norm of holding engineering degree is satisfied applicants cannot be considered for grant of second financial upgradation.

5. We have heard Ms. Harvinder Oberoi, learned counsel for applicants and Shri A.K.Bhardwaj, learned counsel for respondents and perused the records.

6. Applicant have filed rejoinder rebutting the averments made by the respondents and have also enclosed a copy of order passed by the Bangalore Bench of this Tribunal on 25.11.2002 in OA No.540 and other connected matters of 2002. These OAs were allowed and respondents have been directed to grant second financial upgradation to the JEs. It is argued by the learned counsel for the applicants that the same benefit be extended to the applicants in this OA also, in view of the order passed by the Bangalore Bench of the Tribunal as the present applicants are similarly situated.

7. One of us (Shri V.Srikantan) was also one of members of the DB and had passed the order dated 25.11.2002 in OA No.540 and other connected matters of 2002 by the Bangalore Bench. On going through this judgement, it is seen that the main ground raised therein was different than what has been taken in the present OA. The only ground urged in this OA is that in terms of para 3 of ACP Scheme dated 9.8.1999 read with para 4 of the condition for the grant of benefit under the ACP Scheme, applicants are entitled to the second financial upgradation on completion of 24 years of service and in the CPWD no such condition has been imposed for the grant of second financial upgradation. In so far as the case pertaining to CPWD is concerned, respondents in their reply have pointed out that in the CPWD, 1/3rd posts of EE are to be filled by promotion from Diploma Holder-AEs, 1/3rd from Degree Holder-AEs and balance 1/3rd from AEEs (direct recruits through UPSC with degree in Engineering)

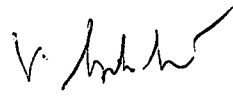
and as such all JEs in CPWD whether holding a Degree or Diploma in Engineering have been extended the 2nd financial upgradation.

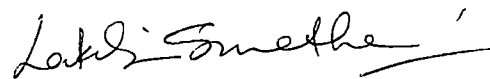
8. However, though a reference was made to the ACP Scheme and to the benefit of second financial upgradation given to JEs in CPWD, the main thrust of the argument before the Bangalore Bench of the Tribunal was that the cadre and recruitment rules pertaining to the cadre of EEs did not prescribe acquiring of graduation of engineering at the time of appointment of the applicants and was, therefore, not one of the conditions for promotion to the cadre of EEs but is a condition imposed several years after the applicants have entered into service under IDSE Rules with effect from 9.7.1991. However, the very same rules exempt the persons who are diploma holders if the said persons are already holding the posts of AEs on the date of promulgation of the IDSE Rules of 1991. It was their further contention that non-exention of the benefit that has been extended to the AEs who were recruited prior to the promulgation of IDSE rules to the applicants therein was unconstitutional and arbitrary since all the applicants had reached the grade of AEs before the cut off date on which the amended Recruitment Rules were promulgated, i.e. 9.7.91. In the above circumstances, keeping in view the stand taken therein by the JEs that they were in the scale of AEs and AEs who are diploma holders prior to the amendment of the Recruitment Rules were eligible for grant of second financial upgradation as they were made eligible to be considered for promotion to the post of EEs, the Bangalore Bench had held that the applicants were also

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entitled for grant of second financial upgradation under the ACP Scheme on completion of 24 years of service as JEs.

9. From the pleadings made in this application, it is not clear if all the applicants are similarly placed as the applicants in OA 540 and connected matters of 2002 decided by the Bangalore Bench. Under the circumstances, this application is disposed of directing the respondents to consider the case of the applicants in the light of the grounds on which the applications were allowed by the Bangalore Bench and pass a reasoned and speaking order. This direction to be complied with within three months from the date of receipt of a copy of this order. No costs.


(V. Srikantan)
Member(A)


(Smt. Lakshmi Swaminathan)
Vice Chairman(J)

/gtv/

for MA for 201