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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

CP No.263 of 2003
IN
OA No.2111 of 2002

New Delhi this the 12th day of December, 2003

Hon'ble Shri V.K.Majotra, Vice Chairman (A)
Hon'ble Shri Bharat Bhushan, Member (J)

1. K.K. Garg,
s/o Shri Bant Ram Garg,
r/o H.No.134/1, R.A.Bazar,
Topkhana, Meerut Cantt.,
Meerut(UP).
MES No.480021.
2. N.K. Sharma,
s/o Shri Madan Mohan Sharma,
r/o H.No.P-126, MES Colony,
A/F Station Maharajpur,
Gwalior(MP).
MES No.413874.
3. Devi Dayal Agarwal,
s/o late Shri C.P.Agarwal,
r/o H.No.P-148/2, MES Colony,
A/F Station Maharajpur,
Gwalior(MP).
MES No.440312.
4. Chiranji Lal Mahajan,
s/o late Shri Mulkh Raj Mahajan,
r/o H.No.45/4, Talwar Line,
Dehradun Catt.
MES No.448481

(By Advocate: Sh.A.S.Singh, learned
counsel through proxy counsel
Shri R.N.Singh)

..Applicants/
Petitioners

Versus

1. Shri Ajay Prasad,
Secretary,
Ministry of Defence,
South Block,
New Delhi-110011.
2. Lt. Gen. Hari Uniyal,
The Engineer-in-Chief,
Army Headquarters,
Kashmir House,
New Delhi-110011.

(By Advocate: Sh.M.M.Sudan, learned
senior counsel)

..Respondents/
Contemnors

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O R D E R (ORAL)

(Hon'ble Shri V. K. Majotra, Vice Chairman (A))

Heard learned counsel. It has been contended on behalf of applicants that applicants are entitled to the grant of higher pay scale of Rs. 1640-2900 and Rs. 2000-3500 w.e.f. 1.1.1986 and 1.1.1991, respectively in compliance of the directions contained in the order dated 9.8.2002 passed in OA 2111/2002. Drawing our attention to respondents order dated 24.4.1996, he contended that similarly situated persons have been allowed even the 2nd upgradation without subjecting them to any examination. He, however, admitted that the 1st upgradation has already been granted to the applicants in compliance of the directions of this Court. Learned counsel of the respondents have stated that applicants have not qualified any Departmental Trade Test/examination to be entitled to benefit the 2nd upgradation which is necessary in terms of Annexure C dated 24.4.1997. We find that in the case of one Kulwant Rai Gupta, the Hon'ble Delhi High Court in CWP 7534/2001 vide order dated 29.8.2002 had held that "no discrimination can be made by directing that the respondents must pass a departmental examination....". Respondents could not have treated similarly situated persons differently by directing that they would have to pass an examination.

2. Learned counsel of the respondents stated that the Govt. of India formulated a policy vide

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annexure A-2 dated 24.4.1997 (Annex.C to additional reply) to the effect that "for grant of higher scale of Rs.1640-2900 departmental procedure examination will be compulsory w.e.f. 1.1.1998".

will not be reopened."
Past cases *h* It has *also* been pointed out that SLP directed against the High Court's order *has* been dismissed.

3. In view of the Court decision referred to above and on consideration of the facts and circumstances present before us, we are of the confirmed view that Ann.A.2 letter dated 2.4.1997 cannot be applied retrospectively to the present applicants, who had become eligible for 2nd upgradation to the higher scale of Rs. 2000-3500 w.e.f. 1.1.1991.

4. In the light of the above discussion, we direct the respondents to accord 2nd upgradation to the applicants w.e.f. 1.1.1991 on the date of completion of 15 years service by counting their past services rendered in the BCB/BSL as the case may be within a period of one month from today. The present CP 263/2003 is disposed of with liberty to the applicants that in case the respondents fail to comply with the present directions of the Court within the stipulated period, applicants shall have the liberty to revive the same. Notices discharged.

(Signature)
(Bharat Bhushan)
Member (J)

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(Signature)
(V.K.Majotra)
Vice Chairman(A)