

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

C.P. NO.316/2004

in

C.P. NO.96/2004

in

O.A. NO.2892/2002

This the 17th day of November, 2004.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

1. Kanhaiya Singh,
AK-79, Shalimar Bagh,
New Delhi-110088.
2. A.K. Agarwal,
17, Type-V, Aakansha Parisar,
Pocket-B, Sector-F,
Jankipuram, Lucknow. Applicants

(By Shri V.S.R.Krishna, Advocate)

versus

1. D. Saroop,
Secretary, Department of Expenditure,
Ministry of Finance, Government of India,
North Block, New Delhi-110001.
2. C. D. Arha,
Secretary, Ministry of Mines,
Government of India,
Shastri Bhawan,
New Delhi-110001.
3. Dr. K. N. Mathur,
Director General,
Geological Survey of India,
27, JLN Road, Kolkata. Respondents

(By Shri D. K. Singh, Advocate)

O R D E R

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

Applicants' OA No.2892/2002 seeking grant of Non-Functional Junior Administrative Grade (NFJAG) of Rs.12000-16500 w.e.f. 1.1.1996 along with all

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consequential benefits was disposed of vide order dated 2.9.2002 with the following directions:

“8. We accordingly quash the order and direct the respondents to consider the case of the applicants for the conferment of JAG non-functional as recommended by FCPC at par with their counterparts in the cadre of Engineers in All India Radio and Doordarshan who are similarly placed. This exercise should be completed within a period of three months from the date of receipt of a copy of this order.”

2. The learned counsel of the applicants pointed out that respondents' orders dated 23.12.2003 (Annexure CP-2) purported to be in compliance with the directions of the court are in fact issued in contumacious disobedience of court's directions. While the respondents had been directed to consider grant of NFJAG to the applicants as recommended by the FCPC (Fifth Central Pay Commission) at par with their counterparts in the cadre of Engineers in All India Radio and Doordarshan who were held to be similarly placed, respondents did not consider the applicants at par with their counterparts in the cadre of Engineers in All India Radio and Doordarshan. The learned counsel alleged that such a stance of the respondents is sheer contemptuous in nature. Contempt proceedings were initiated against the respondents when they passed orders dated 23.12.2003 (Annexure CP-2). In CP No.96/2004 in OA No.2892/2002, respondents' stand was that while applicants' counterparts in the cadre of Engineers in All India Radio and Doordarshan belonged to an organized service and applicants did not, applicants could not be granted the NFJAG. This stand of respondents had been rejected in order dated 2.9.2003, whereby OA 2892/2002 was disposed of. The Tribunal held in orders dated 24.5.2004 as under:

“3.The stand of the respondents clearly smacks of arrogance and deliberate disobedience of the directions of this court which is clearly contemptuous. Respondents are granted three weeks' time from today to comply with directions of this court made in order dated 2.9.2003 in OA-2892/2002, failing which a serious view would be taken.

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4. Case be listed on 28.6.2004. In case, respondents do not effect the compliance of directions of this court by the next date of hearing, respondent No.1 shall come present to explain the circumstances for non-compliance of directions of this court.”

3. Thereafter respondents filed their reply affidavit in June, 2004 in CP No.94/2004 to the effect that the Ministry of Coal and Mines vide order dated 14.6.2004 had extended the NFJAG scale of Rs.12000-16500 to the applicants w.e.f. 1.1.1996 subject to the final outcome of the writ petition being filed in the High Court. In view of the respondents’ order dated 14.6.2004 CP-96/2004 was ordered to have been disposed of vide order dated 28.6.2004. The learned counsel contended that respondents have conducted a DPC for grant of NFJAG and granted NFJAG (Rs.12000-16500) to the applicants w.e.f. 19.10.2004 subject to the final outcome of the WP (C) No.1679-71/2004 filed in the Hon’ble High Court of Delhi. The learned counsel contended that having stated before the Tribunal in CP No.96/2004 that respondents had extended NFJAG to the applicants w.e.f. 1.1.1996 vide order dated 14.6.2004 subject to the final outcome of the Writ Petition, respondents cannot be allowed to take a different stand and grant NFJAG to the applicants w.e.f. 19.10.2004 vide order dated 20.10.2004 (Annexure R-III). This, according to the learned counsel of applicants, is blatantly contumacious.

4. The learned counsel of the respondents, on the other hand, stated that respondents had committed a mistake before the Tribunal during adjudication of CP-96/2004 inasmuch as that the benefit of grant of NFJAG had been given with effect from 1.1.1996. As a matter of fact, the OM dated 6.6.2000 issued by DOP&T accepting the recommendations of the Fifth CPC regarding, among others, grant of NFJAG of Rs.12000-16500 for Executive Engineers in organized Group ‘A’ Engineering Services, had stipulated the conditions for implementation of the Fifth CPC’s recommendations in respect of the posts of Executive Engineers that it would involve restructuring of the cadre by re-distributing the

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existing posts in functional and non-functional scales of Rs.10000-15200 and Rs.12000-16500 respectively. It was also stipulated therein that non-functional scale of Rs.12000-16500 will be applicable only prospectively based on the recommendations of the Departmental Promotion Committees to be constituted for the purpose, and till such time as the existing regular incumbents of the posts of Executive Engineers and equivalent are appointed to the non-functional pay scale of Rs.12000-16500 after due observance of the prescribed procedure, they shall be entitled only to the functional scale of Rs.10000-15200. The learned counsel also relied upon order dated 29.12.2003 whereby OA No.1050/2003 was disposed of in which it was held that "satisfaction of pre-requisites/pre-conditions would be required before grant of NFJAG..... This did envisage amendment of the relevant rules and the grant of the NFJAG with prospective effect as per relevant orders and fulfilment of procedural requirements." The learned counsel of the respondents pointed out that DPC held for the purpose took into consideration Annexure R-II DOP&T OM dated 20.12.2000 and recommended grant of NFJAG to the applicants w.e.f. 19.10.2004, i.e., the date of the DPC. The learned counsel also referred to Geological Survey of India notification dated 27.2.2003 whereby the incumbents of the posts of Director (Geology) (Selection Grade Non-functional) were granted the higher scale of Rs.14300-18300 from the date when they completed the requisite years of service. The learned counsel of the respondents pointed out that respondents have yet not amended the rules and as such applicants are not eligible for grant of NFJAG in terms of the stipulations prescribed in the recommendations of the Fifth CPC.

5. The learned counsel further submitted that the respondents have filed Writ Petition No.16769/2004 before the Hon'ble Delhi High court impugning the Tribunal's order dated 2.9.2003 in which notices have been issued and the next date of hearing has been fixed for 16.11.2004.

6. We have considered the rival contentions.

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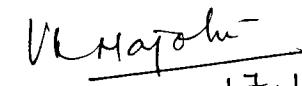
7. By the Tribunal's order dated 2.9.2003 whereby OA No.2892/2002 was disposed of, respondents were directed to consider applicants' case for conferment of NFJAG as recommended by the Fifth CPC at par with their counterparts in the cadre of Engineers in All India Radio/Doordarshan who are similarly situate. The respondents have also produced copy of Ministry of Information & Broadcasting order dated 4.12.2000 whereby Executive Engineers of CCW, All India Radio were granted NFJAG in scale Rs.12000-16500 w.e.f. 24.10.2000, i.e., the date of conduct of the DPC. Tribunal's orders dated 2.9.2003 do not stipulate the date for grant of NFJAG. Applicants were to be granted that scale as made available to their counterparts in the cadre of Engineers in All India Radio/Doordarshan. Executive Engineers of All India Radio have been granted the said scale w.e.f. 1.1.1996. Respondents have stated that applicants were erroneously granted the NFJAG w.e.f. 1.1.1996 while they ought to have been considered for grant of this scale on the recommendations of the DPC from a prospective date. In this backdrop, respondents granted the NFJAG scale to the applicants w.e.f. 19.10.2004 subject to the final outcome of the aforesaid Writ Petition. Respondents have drawn support from Tribunal's order dated 29.12.2003 in OA No.1050/2003 with OA No.3243/2002 – Anant Kumar & Ors. v. Union of India, in which it was held that before grant of NFJAG, pre-requisites/pre-conditions should be considered and followed. These pre-requisites envisage amendment of relevant rules and grant of NFJAG with prospective effect. True that respondents had not taken early steps for correction of the so called mistake of granting NFJAG to the applicants w.e.f. 1.1.1996 retrospectively. However, now they have carried the matter over to the Hon'ble High Court assailing the Tribunal's orders.

8. Basically respondents have not granted NFJAG to the applicants w.e.f. 1.1.1996 at par with their counterparts in All India Radio/Doordarshan as per Tribunal's order dated 2.9.2003 but granted it w.e.f. 24.10.2000. However, now,

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i.e., after holding of the DPC, that the Hon'ble High Court is seized of the matter, the present proceedings are dropped. Notices to the respondents are discharged, however, granting liberty to the applicants to revive this contempt petition, if so advised, after availability of orders of the Hon'ble High Court in the aforesaid Writ Petition.


(Shanker Raju)
Member (J)


(V. K. Majotra) 17.11.04
Vice-Chairman (A)

/as/