

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO.170/01447/2018

DATED THIS THE 17th DAY OF JANUARY, 2020

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

M.M.Jamal
S/o. Late Kader Mohammed
Aged about 54 years
Assistant Engineer
O/o the Superintending Engineer
Bangalore Central Circle
C.P.W.D., 2nd Floor, A Wing
Kendriya Sadan, 17th Main
2nd Block, Koramangala
Bangalore-560 034.
Res: 182/4, M.N.House
5th Cross, Venkatapura
Koramangala, 1st Block
Bangalore-560 034.

....Applicant

(By Advocate Sri K.Hanifa)

Vs.

1. Union of India
Rep by its Secretary
Ministry of Urban Development
Nirman Bhavan
New Delhi-110 108.
2. Director General
Central Public Works Department
Nirman Bhavan
New Delhi-110 011.
3. Chief Engineer
CPWD, (SZ) III
1st Floor, 'A' Wing
Kendriya Sadan
Koramangala 2nd Block
Bangalore-560 034.
4. Superintending Engineer
Bangalore Central Circle

2nd Floor, 'A' Wing
Kendriya Sadan
Kormangala 2nd Block
Bangalore-560 034.

....Respondents

(By Advocate Sri V.N.Holla, Sr.PC for CG)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN)

The case of the applicant is that he was appointed as Junior Engineer on 15.3.1986 in the pay scale of Rs.1400-2300. On completion of 5 years of service in the said pay scale, he was granted non-functional pay in the scale of Rs.1640-2900 w.e.f. 10.2.1991. His pay was revised and fixed in the revised pay scale of Rs.5500-175-9000 w.e.f. 1.1.1996. Subsequently, he was granted ACP in the pay scale of Rs.6500-10500 w.e.f. 9.8.1999. But the Internal Audit Wing(IAW) (SZ) vide their letter dtd.3.11.2016(Annexure-A3) have communicated that "the applicant's pay was incorrectly fixed at Rs.6900 with reference to his pay drawn in the non-functional pay scale of Rs.5500-9000. As per DG's OM dtd.14.1.2002(Annexure-A3), the scale of Rs.5500-9000 is not part of the defined hierarchy for the JEs cadre. In such cases, the pay scale which is not a part of the hierarchy may be treated to have been withdrawn, when the implementation of ACP scheme. However, fall in pay resulting out of this shall be protected by granting personal pay in the entry grade i.e. 5000-8000 to be adjusted against future increments. As per the OM dtd.14.1.2002 initially the applicant's pay should be fixed on 8.8.1999 in the pay scale of Rs.5000-8000 at a stage which is equal to his pay drawn in the pay scale of Rs.5500-9000 and the difference if any may be granted as personal pay. Subsequently, the applicant's pay should be fixed in the ACP pay scale of Rs.6500-10500 with reference to his pay fixed in the hierarchy pay scale of Rs.5000-8000". Accordingly, excess amount paid to

the applicant is directed to be recovered from the applicant. Then the applicant submitted his representations dtd.7.12.2016(Annexure-A4) and dtd.15.3.2017(Annexure-A5). In response to the representation dtd.15.3.2017, the 3rd respondent has issued order dtd.18.5.2018(Annexure-A6) stating that as per DoPT OM dtd.25.2.2003(Annexure-A1), the revised option is to be exercised within one month from the date of orders of such unforeseen developments or change of rules. As per the said OM, the applicant should have exercised revised option within one month, but he exercised option on 15.3.2017. Therefore, his request for grant of revised option to fix his pay w.e.f. 1.4.2000 is not acceded to. The 2nd respondent has confirmed the above order by his impugned order dtd.21.5.2018(Annexure-A7). In response to the Annexure-A6 & A7, the applicant has submitted another representation dtd.23.5.2018(Annexure-A8) to the 2nd respondent stating that he has exercised his option for pay fixation within one month of IAW order dtd.3.11.2016(Annexure-A3) which was received in the office on 8.11.2016 was served on him on 21.11.2016. In continuation to the same, he had given his option for pay fixation on 7.12.2016 which is well within a month of receipt of the notification. This fact was very well mentioned in his letter dtd.15.3.2017(Annexure-A5), which was only a reminder to his earlier letter dtd.7.12.2016. Further his letter with diary No.4920 dtd.8.12.2016 was referred to IAW for clarification by the Executive Engineer(HQ) vide letter dtd.9.12.2016 and again a reminder was sent to IAW by the Executive Engineer(HQ) vide letter dtd.27.1.2017. From all the above, it is evident that he had given his option well within the time limit i.e. one month of receipt of the IAW notification. Accordingly, the statement of the respondents that he had not exercised his option within the time limit is denied and he requested to consider his case favourably. The 3rd

respondent has forwarded his representation dtd.23.5.2018 with covering letter dtd.25.5.2018(Annexure-A9). In response to the same, the 2nd respondent has replied vide letter dtd.31.7.2018(Annexure-A10) stating that PG petition sent vide letter dtd.21.5.2018(Annexure-A7) has been considered and not agreed to. However, with regard to DoPT OM dtd.2.3.2016(Annexure-A2), his case has been considered and a letter has been sent to Executive Engineer(HQ) vide letter dtd.25.7.2018 for examination and further necessary action and his case has been treated as disposed of and deleted from the list of pending PG cases. Since the applicant is aggrieved by the action of the respondents in not acceding to his request for his option to re-fix his pay from 1.4.2000 instead of 9.8.1999 despite exercising his option within one month as per DOPT OM dtd.25.2.2003, he filed the present OA seeking the following relief:

- a. Call for the relevant records leading to the issuance of the impugned orders F.No.11014/08/2016-17/EC-VI/616 dt.21.5.2018 at Annexure-A7 & No.A-38015/02/2018-EXVI/971/72 dt.31.7.2018 at Annexure-A10 issued by the R-2 and on perusal quash the impugned orders at Annexure-a7 & A10 as arbitrary, unjust, unfair and bad in law.*
- b. Direct the Respondent-2 to allow the option of the applicant exercised 7.12.2016 at Ann-A4 i.e., within one month as per the Ann-A1 for fixation of increment on date i.e. on 01.04.2000 instead of 09.08.1999 and to re-fix his pay w.e.f. 01.04.2000 instead of 09.08.1999 with all consequential benefits. And*
- c. Pass any other order or direction as deemed fit by this Hon'ble Tribunal including an order for award of cost of this application in the interest of justice and equity.*

2. The respondents, on the other hand, have submitted in their reply statement that the applicant was appointed as Junior Engineer on 15.3.1986 in the pay scale of Rs.1400-2300. On completion of 5 years of service in the entry grade, he was placed in the non functional grade in the pay scale of Rs.1640-60-2600-EB-75-2900 w.e.f. 16.3.1991 vide office order dtd.24.9.1993. Consequent on the revision of pay scale due to 5th CPC on 1.1.1996, his pay was revised in the pay

scale of Rs.5500-175-9000. He was granted 1st ACP w.e.f. 9.8.1999 in the pay scale of Rs.6500-200-10500 and fixed at Rs.6900 (with reference to his pay drawn in the non functional pay scale of Rs.5500-175-9000). Subsequently vide DGW OM dtd.14.1.2002(Annexure-I), it was clarified that Rs.5500-9000 is not a part of defined hierarchy for JE's cadre and is to be treated as withdrawn. It was also clarified that fall in pay resulting out of this shall be protected by granting personal pay in the direct entry grade i.e. Rs.5000-8000, to be adjusted against future increments. It was also clarified that, if found eligible for ACP in the scale of Rs.6500-10500, their pay should be fixed in that scale under FR 22(1)A(1). Internal Audit Wing(SZ), Chennai while verifying that pay of the applicant (Asst.Engineer), issued their audit vide letter dtd.3.11.2016(Annexure-II) stating that in terms of DGW OM dtd.14.1.2002, pay of the applicant at the time of granting ACP in the pay scale of Rs.6500-10500 should be fixed as Rs.6700 whereas it was incorrectly fixed at Rs.6900. Thus internal audit wing requested to revise the pay and recover the excess paid allowances. The applicant submitted representation dtd.7.12.2016(Annexure-III) stating that his pay was audited on 30.3.2015 and audit slip is also issued by IAW, hence re-fixing is not justified. He further submitted that if his pay is to be re-fixed, he may be given a chance for his fixation in April 2000 instead of September 1999 as he could not get any fixation benefit. And recovery of excess pay may not be done as per DoPT OM dtd.2.3.2016 para 4(III) since excess payment made pertains to period of more than 5 years. His representation was referred to Internal Audit Wing (IAW), Chennai vide letter dtd.9.12.2016(Annexure-IV) followed by a reminder letter dtd.27.1.2017. However, the response was awaited from IAW, Chennai. Since, on other side, 2nd MACP w.e.f. 1.9.2008 and 3rd MACP w.e.f. 22.4.2016 were

granted vide office order dtd.1.12.2016(Annexure-V), which warranted pay fixation duly implementing audit direction on grant of MACPs, pay fixation order was issued vide office order dtd.23.2.2017(Annexure-VI). In continuation of his earlier representation dtd.7.12.2016(Annexure-III), the applicant has submitted representation dtd.15.3.2017(Annexure-VII) which was forwarded to Directorate, CPWD, New Delhi vide O/o Chief Engineer(SZ) CPWD, Bangalore letter dtd.24.4.2017(Annexure-VIII) for necessary directions. In response, Directorate has sought certain clarifications vide letters dtd.31.8.2017(Annexure-IX) and dtd.13.11.2017(Annexure-X) to examine the applicant's case. In the meanwhile, the applicant was transferred and posted to O/o Superintending Engineer, Bangalore Central Circle, CPWD, Bangalore. Therefore, requisite clarifications were provided by O/o Superintending Engineer, Bangalore Central Circle, CPWD vide their letters dtd.6.9.2017(Annexure-XI) and dtd.15.11.2017(Annexure-XII). Thus, in response, Directorate vide their letters dtd.18.5.2018(Annexure-XIII) and dtd.21.5.2018(Annexure-XIV) conveyed that the request to exercise option from 1.4.2000 on 15.3.2017 by the applicant is not acceded to as the exercise of option is to be done within one month from the date of orders of unforeseen developments or change of rules as per DoPT OM dtd.25.2.2003(Annexure-XV). The Directorate also conveyed that the applicant has exercised his option on 15.3.2017 which cannot be considered. When the applicant has submitted his representation dtd.22.5.2018(Annexure-XVI) in response to Annexures-XIII & XIV, the Directorate had replied vide letters dtd.25.7.2018(Annexure-XVII) and 31.7.2018(Annexure-XVIII) conveying disagreement to the applicant's representations. Hence, the request of the applicant is unjustified.

3. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that the 2nd respondent vide Annexures-XVII & XVIII has given direction to the Executive Engineer(HQ) to examine the matter as per the guidelines in DoPT OM dtd.2.3.2016 under intimation of directorate and not conveying disagreement as stated by the respondents in their reply statement. Nowhere in the reply statement, the respondents have taken note of the fact that the applicant has exercised his option on 7.12.2016(Annexure-A4) i.e. within one month but they are taking note of his subsequent reminder dtd.15.3.2017(Annexure-A5) as his option letter and coming to the conclusion that the applicant has exercised his option after a lapse of one month, which is quite wrong and contrary to the letter dtd.25.5.2018(Annexure-A9) wherein the 4th respondent has admitted that the applicant has exercised his option within one month i.e. on 7.12.2016. The action of the respondents shows that they determined to avoid pay fixation as requested by the applicant. The respondents have failed to peruse the reply of 4th respondent to 3rd respondent vide letter dtd.25.5.2018 in response to Director (Admn) letter dtd.18.5.2018. The repeated submission of the respondents that the applicant has not exercised his option within one month holds no water and hence the impugned orders at Annexures-A7 & A10 are liable to be quashed as arbitrary, unjust, unfair and bad in law.

4. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The issue in this case is in a very small compass. Vide Annexure-XV submitted by the respondents, the DoP&T in its OM dtd.25.2.2003 had permitted the Govt.servants to give a revised option for pay fixation under FR 22(1)(a)(i) within one month from the date of orders of such unforeseen developments or change of rules. Vide Annexure-A4, it is clear that

the applicant had requested for giving a chance for option to refix his pay in April 2000 instead of September 1999 as he could not get any fixation benefit. The unforeseen developments as provided under the DoP&T OM has to be taken as the letter from the respondents dtd.3.11.2016 vide Annexure-A3 and the applicant has stated that this was received in the office on 8.11.2016 and therefore his sending communication for exercising revised option dtd.7.12.2016 is clearly within one month as provided for in the OM of DoP&T. This has not been challenged by the respondents and it is very obvious that as per the OM cited, the applicant is eligible for the relief he claimed. The OA is allowed. The respondents are directed to issue necessary orders within a period of one(1) month from the date of issue of this order. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexure-A1: O.M.No.16/8/2000-Estt.(Pay-I) dt.25.2.2003
Annexure-A2: O.M.F.No.18/03/2015-Estt.(Pay-I) dt.02.03.2016
Annexure-A3: No.DCA/IAW/MOUD/CHN/2016-2017/518 dt.03.11.2016 with OM
dt.14.01.2002
Annexure-A4: Representation dtd.7.12.2016 of the applicant
Annexure-A5: Representation dtd.15.3.2017 of the applicant
Annexure-A6: File No.A-11014/08/2017/EC-VI/614 dt.18.05.2018-issued by R2
Annexure-A7: L.No.A-11014/08/2016-17/EC-VI/616 dtd.21.5.2018-issued by R2
Annexure-A8: Representation dtd.23.5.2018 of the applicant
Annexure-A9: L.F.8(14)/2018/ECI/3315-17 dtd.25.5.2018-issued by R4
Annexure-A10: L.No.A-38015/02/2018-EC/VI/971-72 dtd.31.07.2018-issued by R2

Annexures with reply statement:

Annexure-I: Director General, CPWD OM dtd.14.1.2002
Annexure-II: Letter of Internal audit dtd.3.11.2016
Annexure-III: Representation of applicant dtd.7.12.2016
Annexure-IV: Forwarding of representation of applicant to internal audit
Annexure-V: Grant of MACP order dtd.1.12.2016
Annexure-VI: Pay fixation dtd.23.2.2017
Annexure-VII: Representation of the applicant dtd.15.3.2017
Annexure-VIII: Clarification sought from CPWD directorate dtd.24.4.2017
Annexure-IX: CPWD Directorate letter dtd.31.8.2017
Annexure-X: CPWD Directorate letter dtd.13.11.2017
Annexure-XI: Forwarding of details of CPWD Directorate dtd.6.9.2017
Annexure-XII: Forwarding of details of CPWD directorate dtd.15.11.2017
Annexure-XIII: CPWD Directorate clarification letter dtd.18.5.2018
Annexure-XIV: CPWD Directorate clarification letter dtd.21.5.2018
Annexure-XV: DOPT OM dtd.25.2.2003
Annexure-XVI: Representation of the applicant dtd.23.5.2018
Annexure-XVII: CPWD Directorate letter dtd.25.7.2018
Annexure-XVIII: CPWD Directorate reply dtd.31.7.2018

Annexures with rejoinder:

-NIL-
