

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 2778/99

New Delhi: this the 29<sup>th</sup> day of August, 2000.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A); B

HON'BLE MR. KULDIP SINGH, MEMBER (J).

1. Indian Defence Estate Service  
Technical Staff Association,  
through its General Secretary,

2. Shri D.D. Khurana,  
S/o Late Shri Khushi Ram

3. Shri O.P. Verma,  
S/o Late Shri Sita Ram,

4. Shri A.K. Gandhi,  
S/o Late Shri Khushi Ram Gandhi,

All C/o DGDE, West Block-IV,  
R.K.Puram,  
New Delhi.

5. Shri P.C. Masand,  
S/o Late Shri M.H. Masand,  
II-1/37 A, Lajpat Nagar,  
New Delhi

.....Applicants.

(By Advocate: Shri P.S. Mahendru)

Versus

Union of India  
through

1. Secretary,  
Ministry of Defence,  
South Block,  
New Delhi.

2. The Director General,  
Defence Estates,  
West Block-IV,  
R.K.Puram,  
New Delhi

.....Respondents.

(By Advocate: Shri H.K. Gangwani )

ORDER

Mr. S.R. Adige, VC (A);

Applicants impugn respondents' letter dated

(A)

4. 11.97 (Annexure-A/1) and seek higher pay scale to SDOs Gr.I and II of Defence Estate Organisation at par with Supdt. B/R Grade II of MES w.e.f. 1.1.86.

2. It is applicants' case that the scale of SDO Gr. I (now called DEO) of Defence Estate Organisation and that of Supdt. Gr.I in MES were equated by order dated 16.3.89 in OA No. 579/JK/87 pursuant to which Defence Ministry issued order dated 28.7.89 revising the pay scale of DEOs to 550-900 w.e.f. 26.7.82 and Rs.1640-2900 w.e.f. 1.1.86 with all consequential benefits. Meanwhile by letter dated 22.3.91, JEs in CPWD who were in the pay scale of Rs.1400-2300 were granted the higher pay scale of Rs.1640-2900 w.e.f. 1.1.82 after completion of 5 years service and Rs.2000-3500 on completion of 15 years service w.e.f. 1.1.91 on personal basis and allowing them the benefit of FR 22(1)(a)(1).

3. Some Supdt. B/R Gr.II and I of MES filed OAs in CAT Bangalore Bench, seeking parity of pay scale with that of JEs in CPWD. The CAT Bangalore Bench by its order dated 31.3.95 (Annexure-A/3) allowed those OAs and directed grant of higher pay scale to those applicants at par with JEs of CPWD. Thus Supdts B/R Gr.II who had completed 5 years of service in the grade were to be placed in the scale of Rs.1640-2900 w.e.f. 1.1.86 and on completion of 15 years service, were to be placed in the scale of Rs.2000-3500 on personal basis allowing them the benefit of FR 22(1) (I) w.e.f. 1.1.91. SLP filed against that order was dismissed by the Hon'ble Supreme Court

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on 8.4.96 and respondents implemented the aforesaid decision on 25.4.96.

4. Applicants represented to respondents (Annexure-A/4) for grant of the benefits allowed by CAT, Bangalore Bench in its order dated 31.3.95 (supra). Meanwhile as the 5th pay commission had been constituted by then, Finance Ministry circulated a Note on 17.2.97 calling upon all Ministries not to entertain prayers for revision of pay scales.

5. Aggrieved by the aforesaid Note, applicants filed OA No. 9/97 before CAT PB which was disposed of by order dated 12.9.97 (Annexure-A/5). In the aforesaid order dated 12.9.97 it was held that the CAT Bangalore Bench order dated 31.3.95 was binding upon respondents, and applicants in OA No. 9/97 were entitled to the revision of pay scales w.e.f. 1.1.96 on par with those applicants whose OAs had been decided by CAT Bangalore Bench by its order dated 31.3.95. However, the Bench went on to say that respondents had not taken any decision in this regard, and the recommendations of the 5th Pay Commission had not been implemented, they were directed to decide the matter within 8 weeks after implementation of the 5th pay Commission had become final, and to intimate to those applicants the result of the decision so taken. Liberty was given to applicant to approach the competent forum for remedy if they were still aggrieved thereafter.

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6. Pursuant to the aforesaid directions dated 12.9.97 respondents have issued impugned letter dated 4.11.99 denying the benefits claimed, to applicants against which the present OA has been filed.

7. Heard both sides.

8. There is no denial in applicants' rejoinder to the specific averment of respondents contained in their reply to paras 4.9-4.15 of the OA that the 5th Central Pay Commission in para 50.25 of their report have suggested that it is not desirable or feasible to replicate the pattern of time bound higher pay scale or personal promotion obtaining in CPWD in other cadre's due to various reasons as indicated thereunder.

9. In State of U.P. Vs. J.P. Chaurasia AIR 1989 SC 19 the Hon'ble Supreme Court has held that it is for the administration to decide the question whether two posts which very often appear to be the same or similar should carry equal pay, the answer to which depends on several factors namely evaluation of duties and responsibilities which should be left to expert bodies like the pay Commission whose recommendation should normally be accepted.

10. Again in UOI & Ors. Vs. P.V. Hariharan & another 1997 SCC (L&S) 38 the Hon'ble Supreme Court has strongly deprecated the interferences by Administrative Tribunals in matter of pay scales without being conscious of the fact that fixation of pay scales is not their function. It has been emphasised therein

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that fixation of pay scales is a function of Govt. which normally acts on the recommendation of the Pay Commission. It is stressed that change of pay scale of a category has a cascading effect and the Pay Commission which goes into the matter in great depth and happens to have the full picture before it, is the proper authority to decide upon this issue.

11. During hearing Shri Mahendru stated that the 5th Pay Commission's report was inapplicable to the facts and circumstances of the present case, as it would operate only prospectively w.e.f. 1.1.96, while applicants' claims were w.e.f. 1.1.86.

12. We are unable to agree with this contention. It would be highly inappropriate and irregular to grant applicants the relief from 1.1.86 up to 31.12.95 and then invoke the 5th Pay Commission's report denying the relief from 1.1.96 onwards.

13. As is clear, the 5th Pay Commission which submitted its report as recently as September, 1997 has gone into the matter and has not recommended the grant of time bound higher pay scale and personal promotion obtaining in CPWD to other cadres. The Tribunal, in its order dated 12.9.97 in OA No. 9/97 had itself directed respondents to take a final decision in the matter after receipt of the 5th Pay Commission recommendation, and if in the light of those recommendations, respondents have rejected applicants' claims, then having regard to the Hon'ble Supreme Court's ruling in Chaurasia's case (supra) and Hariharan's case (supra), it cannot be said that the OA warrants any judicial infirmary.

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145 The OA is therefore dismissed. No costs.

*Kuldeep*  
( KULDIP SINGH )  
MEMBER (J)

*Mr. Ch. G.*  
( S.R. ADIGE )  
VICE CHAIRMAN (A)

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