

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO. 95/1999

Tuesday, this the 10th day of April, 2001.

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (A)

1. Shri Vijay Kumar Sharma ,
S/o Shri Ram Sarup Sharma, [REDACTED]
Junior Engineer (Elect.) [REDACTED]
under Executive Engineer (Elect.)
Electrical Division No. XVI,
C.P.W.D., Trikut Bhawan
R.K. Puram,
New Delhi.
2. Shri Paramjit Singh Saini,
S/o Shri Sansar Chand Saini,
Junior Engineer (Elect.)
under Executive Engineer,
Electrical Constrn. Divn. No.I,
C.P.W.D., I.P. Bhawan,
New Delhi Applicants
(By Advocate: Shri B.S. Mainee)

VERSUS

1. Union of India : Through
The Secretary,
Ministry of Urban Development,
Government of India,
Nirman Bhawan,
New Delhi.
2. The Director General of Works,
C.P.W.D., Nirman Bhawan,
New Delhi.
3. The Superintending Engineer (Elect.)
Delhi Central Electrical Circle No. VIII
C.P.W.D., I.P. Bhawan,
New Delhi.
4. The Executive Engineer,
Electrical Division No. XVI,
C.P.W.D., Trikut Bhawan,
R.K. Puram,
New Delhi.
5. The Superintending Enginner,
Delhi Electrical Circle No. VI,
C.P.W.D., Vidyut Bhawan,
New Delhi.
6. The Executive Engineer, [REDACTED]
Electrical Constrn. Divn. No.I,
4th Floor, 'C' Wing, I.P. Bhawan,
New Delhi Respondents
(By Advocate: Shri R.P. Aggarwal)

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O R D E R (ORAL)

By Hon'ble Shri S.A.T. Rizvi, Member (A):

Aggrieved by the order of the Superintending Engineer (E) HQ, O/o Chief Engineer, CPWD, New Delhi, respondent No.3 herein, dated 14.1.1998, whereby the representation of applicant No.2 for being placed in the higher pay scale of Rs.2000-3500 w.e.f. 1.1.1991 has been rejected, the applicants have filed the present OA. The respondents have contested the OA by filing a counter reply, which has been followed by a rejoinder by the applicants, further followed by an additional counter reply filed on behalf of the respondents.

2. We have heard the learned counsel on either side and have perused the material placed on record.

3. The facts of the present OA briefly stated are that both the applicants had initially joined Beas Construction Board (for short BCB) in 1973 as Sectional Engineer. The employees of the BCB were declared as Central Govt. employees by an order of the Hon'ble Supreme Court. They were declared as quasi-permanent w.e.f. 29.8.1976 and 23.7.1976 respectively. Later in 1984, the applicants along with several others were declared surplus by the BCB and were consequently placed on the rolls of the Central (Surplus Staff) Cell of the Department of Personnel and Administrative Reforms w.e.f. 1.12.1984. Accordingly, they were to be re-deployed in posts carrying corresponding scales of pay in the other Central Govt. Departments. Following this, the

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applicants were posted in the Office of the Director General of Works, C.P.W.D., New Delhi, respondent No.2 herein. They stood appointed in the Office of the respondent No.2 by letters dated 1.5.1985 and 26.3.1985 respectively. Presently the applicant No.1 is working under the control of respondents, Nos. 3 and 4, while applicant No.2 is working under the control of respondents Nos. 5 and 6. In due course, the Junior Engineers/Sectional Officers of the C.P.W.D. raised demands for the grant of higher pay scales. This led to issuance of an order/notification dated 22.3.1991 by which Junior Engineers/Sectional Officers (Hort.) working in the C.P.W.D. in the pay scale of Rs.1400-2300 were placed in the pay scale of Rs.1400-2300 and Rs.1640-2900. The pay grade of Rs.1400-2300 was regarded as the entry grade. The Junior Engineers/Sectional Officers (Hort.) were to be placed in the scale of Rs.1640-2900 on completion of five years service subject to the rejection of the unfit. The aforesaid higher grade was not to be treated as promotional grade. The aforesaid order/notification further provided that the JEs/Sectional Officers (Hort.) who could not be promoted to the post of A.E./Assistant Director (Hort.) in the next higher grade of Rs.2000-3500 on account of non-availability of vacancies in that grade were to be placed in the said higher scale of Rs.2000-3500 on a personal basis after completion of 15 years of total service as JE/Sectional Officer (Hort.). The aforesaid promotion on a personal basis was to be granted on the basis of fitness. The same order/notification further provided that as and when regular vacancies in the cadre of A.E./Assistant Director (Hort.) arise, the

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JEs/Sectional Officers enjoying promotion on a personal basis will be adjusted against such vacancies subject to the observance of normal procedure. The aforesaid order/notification also provided that in the matter of pay fixation, the JEs/Sectional Officers (Hort.) allowed the scale of Rs.2000-3500 on a personal basis will get the benefit of FR-22(I)(a)(i), and will continue to perform the duties/functions of JE/Sectional Officer (Hort.).

4. In pursuance of the aforesaid order/notification, the respondents held a DPC in May/June/August, 1991 and placed the applicants in the higher grade of Rs.1640-2900 w.e.f. 29.5.1990 and 27.3.1990 respectively. According to the applicants, they should have been placed in that grade (Rs.1640- 2900) w.e.f. 1.1.1986 as they had, by that date, completed five years of service in the grade of Rs.1400-2300. Aggrieved by the aforesaid decision of the DPC, the applicants filed OA No.2241/1991, praying for a direction to the respondents to place them in the grade of Rs.1640-2900 from 1.1.1986 and also to give them the benefit of the still higher pay scale of Rs.2000-3500 on completion of 15 years of service by taking into consideration the period of service rendered by them in the BCB. The aforesaid OA was partly allowed by the Tribunal on 18.5.1992 by declaring that the applicants were entitled to the higher pay scale of Rs.1640-2900 from 1.1.1986. Insofar as the grant of the still higher pay scale of Rs.2000-3500 was concerned, the Tribunal, in the aforesaid case, held that the same would amount to discrimination against the seniors, and rejected that part of the applicants' prayer.

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5. In order to bring home their contention that the respondents have not acted correctly in the matter of grant of the pay scale of Rs.2000-3500 to them in terms of the aforesaid order/notification dated 22.3.1991, the applicants have relied on a few decisions taken by this Tribunal in similar cases in which the aforesaid pay scale of Rs.2000-3500 has been allowed on a personal basis by taking into account the services rendered elsewhere in other organisations. The first such case quoted by the applicants relates to the employees rendered surplus in the Danda Karnya Project (for short DKP), who too were deployed in the C.P.W.D. The aforesaid employees approached the Bombay Bench of this Tribunal in OA No. 866/1993, which was decided in their favour on 19.7.1995. The respondents in that case were directed to grant the pay scale of Rs.2000-3500 in accordance with the aforesaid order/notification dated 22.3.1991 on the ground that the applicants in that case had completed 15 years of service taking into account the services rendered by them in DKP. The aforesaid judgement of this Tribunal has been implemented by the respondents, but its benefit was not extended to others with the result that three other colleagues of the applicants (in the present OA), namely, S/Shri R. D. Dhiman, Kewal Singh and Surender Singh approached the Chandigarh Bench of this Tribunal in OA No.739-CH/1994. That OA was also allowed by the Tribunal on 29.11.1996. The respondents in that case went upto the Supreme Court, but the SLP filed by them was dismissed on 28.7.1997. Thereafter, the respondents in that case have implemented the judgement by their letter dated 25.9.1997.

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6. Of the aforesaid three petitioners who approached the Chandigarh Bench, two, namely, S/Rhri Kewal Singh and Surender Singh are junior to the applicants in accordance with the seniority list issued by the respondents. A copy of the seniority list has been placed at Annexure A-16. This gave rise to a fresh cause of action and, accordingly the applicants filed representations before the respondents, copies whereof have been placed at Annexure A-17 collectively. The same have been rejected by the respondents by their letter of 14.1.1998 (Annexure A-1). The aforesaid letter has been impugned in this OA.

7. In support of their claim, the applicants have relied on yet another order passed by this Tribunal (Principal Bench) in OA No.1838/1996 on 11.9.1998. In that case, some other juniors including one Shri M.C. Joshi have been granted the aforesaid benefit by taking into consideration the services rendered in the BCB. Thus, according to the applicants, there are any number of judgements and orders passed by this Tribunal, granting the benefit of the pay scale of Rs.2000-3500 to the applicants in those cases on completion of 15 years of service by taking into account the past services rendered in other organisations such as the DKP and the BCB.

8. We have heard the learned counsel on either side and have perused the material placed on record.

9. The learned counsel appearing on behalf of the respondents has, during the course of arguments, pressed

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only one legal issue. According to him, the present OA is barred by the principle of res judicata inasmuch as a decision in the same matter and involving the same parties has already been taken by this very Tribunal in OA No.2241/1991 on 18.5.1992. We have carefully considered the matter and find that the aforesaid principle will not find application in the present case. In the aforesaid OA No.2241/1991, the Tribunal had refused to entertain the plea of the applicants that the services rendered by them in the BCB should be taken into account for granting them the benefit of the higher pay scale of Rs.2000-3500. The Tribunal had, in that case, refused to take the past service into account on the ground that, while doing so, the seniors to the applicants would be discriminated against. In computing the total service of 15 years for granting the pay scale of Rs.2000-3500 to the applicants, the Tribunal had thus refused to take into account the length of service rendered under the BCB.

10. The issue now raised by the applicants is substantially different and the same had not been raised before the Tribunal in OA No.2241/1991. The pleadings in that case were based entirely on computation of length of service by taking into account the past service rendered in the BCB and on that basis alone it was argued that the applicants, after completing 15 years of total service, had become entitled to the grant of higher pay scale of Rs.200-3500. We have perused the aforesaid order of this Tribunal and find that the applicants have, at no stage, in that case, pleaded the ground of hostile discrimination vis-a-vis juniors already placed in the said scale of

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Rs.2000-3500. On the other hand in the present OA, the main grounds taken by the applicants are based on discrimination and consequent violation of Articles 14 and 15 of the Constitution. The applicants' juniors, namely, S/Shri Kewal Singh and Surender Singh and others have already been placed in the scale of Rs.2000-3500 and on this account alone the applicants have claimed their right to be placed in the same scale of Rs.2000-3500. We see nothing wrong in the plea thus raised by the applicants, and, therefore, without going into the question ~~as~~ of inclusion or exclusion of the past service rendered in the BCB, we are inclined to take the view that on par with their juniors, the applicants also deserve to be placed in the aforesaid scale of Rs.2000-3500. In this view of the matter, the principle of res judicata invoked by the learned counsel for the respondents will find no application.

11. In the facts and circumstances brought out in the preceding paragraphs, the OA must succeed and is allowed. The respondents are directed to place the applicants in the pay grade of Rs.2000-3500 with effect from the date their juniors have been so placed in that grade. The applicants will also be entitled to all the consequential benefits.

12. Before we part with this order, we would like to observe that in the additional counter reply filed by the respondents, it has been brought to our notice, though not pressed at the time of argument, that the applicants along with the others had since become eligible for the

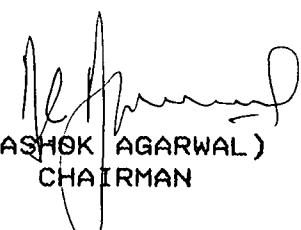


grant of financial upgradation under the ACP scheme whereby they have become entitled to two financial upgradations after completing 12 years and 24 years of service respectively. The respondents have clarified that for the purpose of financial upgradation under the ACP scheme, the past service rendered by the applicants in their previous organisation would also be counted. We are not quite sure whether the applicants stand to gain more under the ACP scheme or otherwise by the relief granted by us in para 7 above. We are also not sure whether after availing the benefit granted by us, the applicants would still be entitled for financial upgradation depending on the relevant Rules and the instructions and the circumstances of each case. These are matters which are to be looked into by the applicants as well as the respondents. We, therefore, leave it to them to decide for themselves whether the applicants (who have not referred to the ACP Scheme) would stand to gain more under the ACP Scheme or otherwise. Needless to say that the applicants should, in our view, be given liberty to exercise a choice in the matter and the respondents should proceed further accordingly before they set out to implement the relief granted in paragraph 7 above.

13. The respondents will complete entire action necessary in this case within a maximum period of three months from the date of service of a copy of this order.



(S.A.T. RIZVI)
MEMBER (A)



(ASHOK AGARWAL)
CHAIRMAN