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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 1659/1998

Date of Decision: 09.3.2001

Shri Anant Ram & Others :: Applicants.

(By: Shri Shyam Babu Advocate)

Versus

Union of India :: Respondents

(By : Shri Rajiv Bansal and
Shri Sohan Lal, Advocates)

Corum:

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tampli, Member (A)

1. To be referred to the Reporter or not ? YES/NO
2. Whether it needs to be circulated to other Benches of the Tribunal ? YES/NO

(GOVINDAN S. TAMPI)
MEMBER (A)

Patwal/

(26)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. NO. 1659/1998
M.A. NO. 1763/1998

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)
Hon'ble Shri Govindan S. Tampi, Member (A)

New Delhi, this ..9th... day of March 2001

1. Shri Anant Kumar
S/o Shri Om Prakash Rajput,
M-379, Guru Harkishan Nagar,
Paschim Vihar,
New Delhi 110 063
2. Shri M. C. Bansal,
S/o late Shri Om Prakash Bansal,
R/o 30-C Pocket -B
Mayur Vihar, Phase-II
Delhi -110 091
3. Shri M.C. Bansal,
S/o Late Sh. R R Agrawal,
R/o N-158, Sector -8,
R K Puram,
New Delhi.
4. Shri U.C. Mishra,
S/o Shri R C Mishra,
R/o A/28, Sector 33
NOIDA.
5. Shri K.C. Singh,
S/o Shri Mangi Singh,
R/o 953, Type-IV NH-IV
NIT Faridabad.
6. Sh. Sarjan Singh
S/o Sh. Singh Ram
R/o D-4, Sector-55
NOIDA
7. Shri S.K.S. Deol,
s/o Shri Sadhu Singh Deol,
R/o A-209
Pragati Vihar Hostel,
New Delhi.

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8. Shri Nem Chandra,
S/o Sh. Jagdish Prasad Singhal,
r/o A-415, Pragati Vihar Hostel,
Lodi Road,
New Delhi.

9. Shri A.K. Ahuja,
S/o Late Sh. B.S. Ahuja,
R/o A-1/215, Janak Puri,
New Delhi -110 058

10. Shri S.C. Bhardwaj,
S/o Shri B.S. Bhardwaj,
37, SFS Flats,
Ashok Vihar, Phase-IV
Delhi.

.....Applicants.

(By : Shri Shyam Babu, Advocate)

Versus

1. Union of India
through its Secretary,
Ministry of Finance
New Delhi 110 001

2. Union of India
through its Secretary,
Ministry of Urban Affairs & Employment
Nirman Bhawan,
NEW Delhi

3. Director General,
Central Public Works Department,
Nirman Bhawan,
New Delhi.

.....Respondents.

(By: Shri Rajiv Bansal, Advocate)

.....3/-

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4. B.K. Gupta S/o Sh J.P. Gupta
r/o 537 Sector III,
R.K. Puram, New Delhi.

5. Shyam Lal s/o Shri Chunni Lal
r/o 164, Type IV
Laxmi Bai Nagar,
New Delhi

6. J.C. Bhardwaj s/o Shri Hari Shankar,
r/o Flat No. 97,
Devdoot Appts.,
D Block, Vikas Puri,
New Delhi

7. A.S. Negi S/o S.S. Negi,
r/o A-18, Mandakini Appts.
Pritam Pura,
Delhi.

.....Respondents

(By Shri Sohan Lal Advocate)

By Hon'ble Shri Govindan S. Tampi, Member (A)

Delay in the grant of non-functional Junior
Administrative Grade (n.f. - JAG) of Rs.
12,000-16500/- to the applicants w.e.f. 1.1.96, with
full consequential reliefs including arrears of pay
and allowances is under challenge in this application.

2. All the ten applicants are presently,
working as Executive Engineers in Central Public Works
Department (CPWD), having joined that organisation in
Group 'A' Service, between 1981 and 1986. In terms of
para 50.45 of its Report, 5th Central Pay
Commission, (FCPC) had recommended, the grant of a
single functional scale of Rs. 4500-5700/- for the
Superintending Engineers (similarly placed as
Conservators of Forests by successive Pay Commissions)
and a non - functional scale of Rs. 3700 —

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- 5000/- for Executive Engineers with the rider that the promotion to the grade of Superintending Engineer in the scale of Rs. 4500-5700/- be permitted only after the officer completes 13 years of service in Group 'A'. Replacement scales were to be worked out accordingly. Following the acceptance of the above recommendations of the Pay Commission, w.e.f. 1.1.96, C.P.W.D. granted the scale of Rs.4500-5700/- to eligible Superintending Engineers (as well as to Sr. Architects and Director of Horticulture), but the recommendation relating to the grant of scale of Rs.3700-5000/- to Executive Engineers was not given effect to. Though the Pay Commission had not suggested any change in the Recruitment Rules or restructuring of Cadres or redistribution of posts in the cadre of Executive Engineers, before the new scales are granted, the applicants have been granted only the Scale of Rs. 10,000/- - 15,200/- (replacement scale for Rs. 3000-4500/-) and not n.f.JAG of Rs. 12,000-16,500/- (the replacement Scale for Rs.3700/- -5000/-). This was, indeed surprising, argue the applicants. While implementing the recommendations of the 4th Pay Commission, Ministry of Environment and Forests, had directed vide their letter No. 20214-22/87/IFS/II dated 27.4.87, that the non - functional JAG be made available without screening to all the officers, in the Senior Time Scale who have completed 9 years of service on 1.4.87 [emphasis supplied]. (In the case of Engineers the relevant date was 1.7.87). Keeping in mind the above criterion and the parity of their posts with those in Indian Forest Service, the applicants feel

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that all of them who have completed 9 years of service are entitled to be correctly placed in the pre-revised scale of Rs.3700-5000/- and the replacement scale of Rs. 12,000 - 16,500/- w.e.f. 1.1.96. The applicants have individually and collectively through their Association, represented against the inaction of the Deptt. in their case moved the Hon'ble Minister for Urban Affairs and Employment. It is their understanding that their case had been favourably endorsed by respondent No. 2 to respondent 1 but nothing has happened in this regard. According to the applicants, once the recommendation of the 5th Central Pay Commission was accepted, and given effect to in almost all the Deptts. and in many cases in their own organisation, there was no reason for delaying or holding back the same only as far as their grade is concerned. Nor was there any justification for awaiting the issue of any fresh notification for implementing the recommendations, and that too prospectively, as the respondents were planning to do, plead the applicants..

3. In their reply, the respondents do fairly concede that the Govt. has, vide Ministry of Finance, Department of Expenditure, Notification dated 30.9.97, notifying Central Civil Services (Revised Pay) Rules, 1997, (annexed at R-I) accepted in principle, the recommendations of the 5th Central Pay Commission, with regard to the adoption of a "functional grade" for Superintending Engineers and a "non functional JAG" for Executive Engineers. However, according to them, as Pay Commission's recommendations envisaged not only modification in the pay scales but also

change in the character of the grades, the same could be done only after amendment to recruitment rules followed by promotions through DPCs in consultation with UPSC, wherever found necessary. As this dispensation with regard to Superintending Engineers and Executive Engineers had the potential to disturb the inter stream (Technical and non-Technical Group 'A' Organised Services) relativities the matter merited review, pending the finalisation of which, all Executive Engineers were placed in the normal replacement scale of Rs. 10,300 - 15,200/- (pre-revised Rs. 3000-4500) Further, according to the respondents, the parity being sought by the applicants with the officers of Indian Forest Service, an All India Service, different in nature and character, was not tenable as the Pay Commission itself had not proposed any such specific parity. They reiterate that clearly defined guide-lines would have to be evolved, in consultation, with all the concerned Ministries, as the proposed change was likely to have large scale repercussions in the pay scales of Central Civil Services, Group 'A' in general (emphasis added).

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4. In their rejoinder, the applicants aver that in terms of Part 'B' of the Notification dated 30.9.97, (Supra) amendment to recruitment rules was required to be done only in those cases where Pay Commission had direct the grant the new Scales, subject only to fulfilment of certain specific conditions, which was not the case with them. Therefore, it was wrong on the part of the respondents to take the plea that amendment to Recruitment Rules or holding of DPC was necessary before the revised

n.f. - JAG was given. The applicants also refer to the aspect of their parity with officers of Indian Forest Service, which was recognised by the successive Pay Commissions, the only expert body for determining such issues, as laid down in a few judgements of the Apex court. Having themselves championed the cause of parity of the members of Engineering Services with those in Indian Forest Service, in their letter dated 2-9-97, the respondents cannot now take a different view and deny the grant of the same to the applicants.

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5. Private respondents 4 to 7 who are Executive Engineers, promoted from the grade of Asstt. Engineers - as against the applicants in the OA who are Executive Engineers promoted from the grade of Asstt. Executive Engineers - plead that the eligibility period for grant of n.f. J.A.G. for Executive Engineers should be reckoned with reference to the service rendered as Executive Engineers and not earlier. According to them, there shall be no discrimination while granting the n.f. JAG as to whether an individual has become Executive Engineer from the grade of Asstt. Executive Engineer or Asstt. Engineer. Applicants oppose this plea and aver that these respondents are not necessary or proper parties in this litigation.

6. Heard the counsel for both the applicants and the respondents. Sh. Shyam Babu, learned counsel appearing for the applicants, forcefully reiterated his pleas that the respondents were delaying the implementation of the accepted recommendations of the 5th Pay Commission for the

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applicants on totally unjustified grounds. He also stated that the Office Memorandum No. 22/1/2000-CRD dated 6.6.2000, issued by DOPT, regarding the recommendations of the Commission on the Pay Scales of Engineers was not relevant in the applicants' case. In fact the same has been modified by another O.M. on 20.12.2000 (both taken on record during the hearing). According to him, as all the applicants have completed nine years in Group 'A' service, without any further ado, they should be given the n.f. - JAG which was theirs as of right, w.e.f. 1.1.96 and that too with arrears. (He also placed for our perusal, copy of the Ministry of Urban Affairs and Employment (Dept of Urban Development) Central Engineering (Civil) Group 'A' Service Rules 1996, notified on 28.10.96). On the other hand, Sh. Rajeev Bansal, learned counsel for the respondents has stuck to his argument that the grant of n.f.- JAG to the Ex. Engineers was not automatic but was to be permitted only after amendments were made in the recruitment rules and promotions ordered through DPCs and that too prospectively. Sh. Sohan Lal, learned counsel for the private respondents only pleaded that while disposing the OA, the rightful claims of the respondents 4 - 7 should not be overlooked.

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7. We have carefully deliberated on the rival contentions raised and have perused the relevant records placed before us. According to the applicants the benefit of the revised pay scale in the non-functional JAG of Rs. 1200-16,500/- recommended for the Executive Engineers by the 5th Central pay Commission, keeping in view the important role of the

Engineers as well as their parity with corresponding level of officers in Indian Forest Service, has been held back by the respondents on totally wrong grounds.

To determine the validity of this plea reference to para 50.45 of the Commission's Report becomes relevant. The same reads as under:

"We would, however, like to make an exception only in the case of Superintending Engineers. It is a fact that the Second CPC had already established a parity between Superintending Engineers and Conservators of Forests by granting them both the scale of Rs. 1300-1800. This parity was cemented further by the Third CPC which observed that "For the post of Conservators of Forests we recommend the scale which we have recommended for the Superintending Engineer grade of the Central Class-I Engineering Service viz. Rs. 1800-2000". For the selection grade of Conservators of Forest, the same Commission stated that "a selection grade of Rs. 2000-2250 should be introduced for the Conservator of Forests, on the same principles as recommended for the Selection Grade in the Central Class-I Engineering Service". Between the Third and Fourth CPCs, there was an upgradation of the first grade for CFs to Rs. 1800-2000. Subsequently, the Fourth CPC merged the scales of Rs. 1800-2000 and the Selection Grade of Rs. 2000-2250 and gave CFs the single functional scale of Rs. 4500-5700. The same treatment in spirit was unfortunately not accorded to the SEs who were given a JAG of Rs. 3700-5000 and an NFSG of Rs. 4500-5700. Taking into account the significant role of engineering services in the nation-building process and the fact that the promotion prospects in engineering cadres are rather bleak, we recommend that the NFSG of Rs. 4500-5700 should be converted into a single functional scale for Superintending Engineers and the scale of Rs. 3700-5000 should instead be the non functional JAG for Exe. Engineers. However, in order to avoid too fast a rate of promotion in certain cadres to this grade, it is further recommended that promotions to the scale of Rs. 4500-5700 would be permitted only on completion of 13 years of service in Group 'A'. Although the above recommendation is being made in the context of CPWD Engineers, it is clarified that this dispensation will be available to all Engineering cadres in the Government." (emphasis supplied).

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It would therefore appear that the Fifth Pay Commission has recognised the need of some parity in treatment between the officers of Engineering Services and those in the Indian Forest Service, originally granted by the 2nd and 3rd Pay Commission and has also attempted to undo the imbalance in treatment meted out to the former, by the 4th Pay Commission. The matter however, rests there. Commission has not brought in or specifically suggested total parity of scales between the two services, as has been pointed out in the d.o. letter No. Secy (UD)/3190-D/7 dated 2.9.97, addressed by the Secretary of Urban Development to the Secretary Expenditure, annexed at F.

8. To the applicants' complaint that the recommendations of the 5th Central Pay Commission with regard to their grade (Executive Engineers grade) have not been given effect to automatically as it should have been done, the answer by the respondents is that the same can be considered only after ordering changes in their Recruitment Rules. In the proceedings No.25/5/97-PC-II/EEI dated 16.10.97 of the Directorate General of Works, CPWD (annexure G) it is indicated that the stipulation in the Pay Commission's recommendation that the single functional grade of Rs. 14300-18300/- for the Superintending Engineers (similar to Conservator of Forests) would be permitted only on the completion of 13 years in Group 'A' service, did not necessitate any change in the Recruitment Rules, restructuring, of the cadre, redistribution of posts etc.. as the same was already provided for in the relevant Recruitment Rules. All the Superintending Engineers were therefore to be put in the revised scale of Rs.14,300 - Rs.18,300/- w.e.f. 1.1.96 (emphasis added) after ensuring that they have

completed the requisite period of 13 years of Group 'A' Service. At the same time all the Executive Engineers were placed in the scale of Rs.10000- Rs.12,500/-, as an interim measure, with the observation that the guide-lines for allowing non-functional JAG will issue separately, on approval of the cadre controlling authority. This arrangement is obviously a sequel to Part B of Ministry of Finance, Deptt. of Expenditure Notification dated 13.9.97 introducing Central Civil Services (Revised Pay) Rules, 1997 which provides as follow :-

"The revised scales of pay mentioned in Column 4 of this part of the Notification for the posts mentioned in column 2 have been approved by the Government. However it may be noted that in certain cases of the scales of pay mentioned in column 4, the recommendations of the Pay Commission are subject to fulfilment of specific conditions. These conditions relate inter-alia to change in recruitment rules, restructuring of cadres, re-distribution of posts into higher grades etc. Therefore, in those cases where conditions such as changes in recruitment rules etc. which are brought out by the Pay Commission as the rationale for the grant of these upgraded scales, it will be necessary for the Ministries to decide upon such issues and agree to the changes suggested by the Pay Commission before applying these scales to these posts w.e.f. 1.1.96. In certain other cases where there are conditions prescribed by the Pay commission as pre-requisite for grant of these scales to certain posts such as cadre restructuring, redistribution of posts etc. it will be necessary for the Ministries/Department concerned to not only accept these preconditions but also to implement them before the scales are applied to those posts. It would, therefore, be seen that it is implicit in the recommendations of the Pay Commission that such scales necessarily have to take prospective effect and the concerned posts will be governed by the normal replacement scales until then."

Evidently, the Government had and correctly too reserved to itself the right to prescribe conditions for correct and proper availment of the benefits recommended by the Commission. It therefore meant

that the implementation of the recommendations of the commission was not per se automatic, as claimed by the applicants, but was subject to conditions fixed by the Government for their adoption. It is in this context that the provisions of the OM No. 22.1.2000 CRD dated 6.6.2000, duly modified by OM of 20.12.2000 become relevant. In fact, the lay down the parameters in this regard.

9. Para 2 of OM dated 6.6.2000, amended by OM of 20.12.2000 states as below:-

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"Implementation of the FCPC recommendations will necessitate the restructuring of Group 'A' cadres in the Central Engineering Service, the Central Electrical and Technical Engineering Service and other organised Group 'A' Engineering services. The related recruitment rules will also need to be appropriately amended. In terms of the provisions contained in the preamble to Part B of the First Schedule to the Central Civil Services (Revised Pay) Rules 1997, in cases where cadre restructuring, re-distribution of posts, etc. are pre-requisites for the grant of pay scales recommended by the FCPC for certain posts, it will be necessary for the Ministry/Department concerned to not only accept these pre-conditions but also to implement them before the recommended pay scales are applied to these posts. It is, therefore, implicit that such scales will necessarily have only prospective effect and only the normal replacement scales will be applicable to posts concerned until the pre-requisites are fulfilled" (emphasis supplied).

It is also indicated that the condition to be enumerated in para 3 below were to the prospective and will be effective from the date of notification of revised Service/Recruitment Rules.

10. In terms of para 3 & 4 of the OM, referred Supra, the functional grade of Rs.14300 - 18300/- will become available to Superintending Engineers once they complete nine years of service in the grade of Executive

Engineer or equivalent in the pay scale of Rs. 12500-16500/- and subject to availability of vacancies.

It is also provided that regular Superintending Engineers who have completed the requisite period on or before 1.1.96, will be placed on the scale of Rs. 14,300 - 18,300/- w.e.f. that date while the others will get it from the dates on which they complete the period. It is further directed that even if some one becomes a Superintending Engineer before the above period, he will have to wait for the completion of the period to get the above grade. The above direction to some extent is generally in tune with the instructions contained in D.G. Works (CPWD) O.M. dated 16.10.97 (annexure G, Supra) wherein it was indicated that the grant of the revised scale of Rs. 14,300-18,300 to the Superintending Engineers would not call for much of a change in the Recruitment Rules. The same, however, is only partially true. correct. Relevant portion of Schedule II of the Ministry of Urban Affairs and Employment (Department of Urban Development) Central Engineering (Civil) Group 'A' Services Rules, 1996, which came into force on 28.10.96, reads as below:

Sl No.	Name of duty post and grade	Method of recruitment	Field of selection, minimum qualifying service and Edn. Qualification for promotion
2.	Superintending Engr. (Civil) (Non-functional) (Selection Grade)	By Apptt. on the basis of seniority and suitability taking into account the over-all performance	Superintending Engr. (Civil)(Junior administrative grade) who have entered <u>fourteenth year of Group A</u> service on the first of July of the year calculated from the year following the year of examination on the basis of which the officer was recruited or who have rendered nine years

related matters. Group A service calculated from the date of promotion to the senior time scale in the case of officers promoted from Asstt. Engr.

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2. Superintending Engineer (Civil) (Junior Administrative Grade) By promotion Executive Engineer (Civil) with five years regular service in the grade and possessing degree in Engineering from recognised university or equivalent.

With the adoption of the recommendations of the FCPC, the two scales have merged to become a single functional scale of Rs. 4500-5700/- (replacement Scale of Rs.14,300 - 18,300/-). But no amendment to the Recruitment Rules was felt necessary and the Superintending Engineers were placed on the revised scale of Rs.14,300-18,300 w.e.f 1.1.96 holding that they have completed 13 years of service in Group 'A' Service. It is also pertinent to mention here that DOPT's OM dated 6.6.2000, modified by that of 20.12.2000, prescribed that "Executive Engineer and equivalent may become eligible to be considered for promotion to the grade of Superintending Engineer and equivalent only on completion of nine years of regular service in the grade of Executive Engineer and equivalent, including regular service, if any, in the non-functional second grade for the Executive and equivalent in the pay scale of Rs. 12,000-16,500/-. Obviously therefore in the case of Superintending Engineers also the conditions had not remained the same before and after the adoption of FCPC's recommendations.

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11. Respondents however, have taken a different stand in the case of the Executive Engineers on the ground that a new non-functional JAG has been introduced in that grade. Para 3(c) and (d) of the OM dated 6.6.2000, modified on 20.12.2000 along with para 5 dealing with Executive Engineers read as below:

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" i) Executive Engineer and equivalent (in the pay scale of Rs. 1000-15200) may be eligible to be considered for placement in the non-functional grade of Rs. 1200-16500 only on completion of five years of regular service in the pay-scale of Rs. 10000-15200.

ii) Assistant Executive Engineer and equivalent (in the pay scale of Rs. 8000-13500) may be eligible to be considered for promotion to the functional grade of Executive Engineer and equivalent in the pay scale of Rs.10000-15200 only on completion of four years of regular service in the pay scale of Rs. 8000-13500."

(d) The number of posts of Executive Engineers and equivalent to be operated in the non functional pay scale of Rs.12000-16500 shall be restricted to 30% of the Senior Duty posts (i.e posts in the pay scale of Rs.10000-15200 and above) in the respective cadres, ensuring at the same time that (i) there is no increase in the overall strength of the cadre; and (ii) the number of posts to be operated in the 'non functional' grade (Rs.12000-16500)does not exceed the number of posts available in the pay scale of Rs. 10000-15200.

5. "In view, however, of the fact that the implementation of the FCPC recommendation in respect of the posts of Executive Engineer and equivalent would involve restructuring of the cadre by re-distributing the existing posts in the functional and non functional scales of Rs.10000-15200 and Rs. 12000-16500 respectively, the non functional pay 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. Till such time, as the existing regular incumbents of the posts of Executive Engineer 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. It should also be ensured that they had been promoted functionally to the posts of Executive

Engineer and equivalent (in the pay scale of Rs. 10000-15200) against vacancies and after observing the prescribed selection procedures and that they have completed the prescribed qualifying service (in the pay scale of Rs. 10000-15200) as at sub-para 3(c) above before they are placed in the 'non functional' scale of Rs.12000-16500."(emphasis supplied).

(A)

12. It is thus observed that while in the case of Superintending Engineers , the respondents have granted the benefit of the new functional scale automatically, on the premise that they have completed 13 years in Group 'A' Service, the benefit has been held back in the case of Executive Engineers; holding that amendment to recruitment rules redistribution of posts, etc. was called for before the new non functional JAG could be granted to them. A perusal of the Recruitment Rules and the parameters fixed by the latest OM dated 6.6.2000 and 20.12.2000 would not be out of place here. Promotion to the grade of Executive Engineer (Civil) as per the Rules would be in equal proportion from Asstt. Executive Engineers with four years regular service , Degree holding Asstt. Engineers with eight years regular service and Diploma holding Asstt. Engineers with ten years regular service. In terms of the new dispensation in para 3(c) of the DOPT's OM dated 6.6.2000, modified by that of 20.12.2000 the eligibility for placement in the non functional JAG of Rs. 12,000-16,500/- is indicated as completion of five years regular service as Executive Engineer in the pay scale of Rs. 10,000-15,200/- for which in turn the eligibility is fixed as completion of four years of regular service as Asstt. Executive Engineer in the pay scale of Rs. 8000-13,500/-. Thus only on completion of 5+4 years in Group 'A' Service, one becomes eligible for placement in the new n.f. JAG . Admittedly all the

applicants have also completed nine years of service in Group 'A' having joined the Department as direct recruits between 1981 and 1986. Still the benefit of the n.f. JAG has been denied to him on the ground that fresh recruitment rules have to be framed. In our view this distinction is disturbingly glaring. However, the Tribunal would not like to tread into the arena of the Executive, in whose domain falls matters like adoption of pay scales, cadre re-structuring etc. etc. Tribunal also notes with approval the observation of the respondents in the averments in para 4.9 of their counter that they could not have automatically given effect to the recommendations, except at the risk and cost of disturbing the inter stream relativities. Executive is in the circumstances the best judge of the issues and it is only just and fair that the matter is left in their hands. This is also in tune with the observations of the Hon'ble Supreme Court in P.V. Hariharan Vs Union of India. Therefore, we do not think it would be proper to assail the decision of the respondents to place all the Executive Engineers in the grade of Rs. 10000/- to Rs. 15,200/- as an initial measure and to consider the grant of the n.f. JAG after the restructuring of the cadres, redistribution of the posts, amendment of recruitment rules etc. are ordered and DPOCs are held. However, we are disturbed by the inordinate delay caused by the respondents in the matter. They have been literally dragging their feet seeking shelter under the expression 'prospective effect' appearing in part 'B' of the Deptt of Expenditure Notification dated 30.9.97 as well as in DOPT's OM dated 6.6.2000 and 20.12.2000. More than

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four years have gone by since the recommendations of FCPC have been accepted to and given effect to in most of the Govt. Deptts. In CPWD itself where the applicants work quite a few other have got the full benefits w.e.f. 1.1.96, including the Superintending Engineers [whose cases were also dealt with in the same para as the applicants (Executive Engineers] in terms of D.G.Works OM dated 16.10.97. Still the Executive Engineers are made to wait for the approval of the cadre controlling authority, indefinitely. As the applicants have correctly pointed out, the Hon'ble apex Court has put the stamp of authority on the findings of expert bodies like Pay Commission on matters of pay scales (see State of UP & Other Vs. J P Chaurasia and Others (1989)/SCC121 and Secretary, Finance Department & Others Vs West Bengal Registration Service Association and Other 1993 Supp (1) SCC 153). Having accepted the recommendations of the 5th Central Pay Commission as far back as September - October 1997 and given effect to them w.e.f. 1.1.96, in their own organisation, the respondents cannot expect one class of the employees, like the present applicants to wait patiently for all time to come. DOPT's OM of 6.6.2000 had also advised the respondents to complete the procedures i.e. restructuring of the cadres, redistributing the posts etc. within two months. Nothing appears to have been done. No averments have also been made before us even during the hearing as to the steps taken so far in that direction. And we do not know how long more it will take. Pay Commission has made their recommendations keeping in mind the important and significant role of the Engineering Services in nation

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building, who have not been given their due for long. Such recommendations having been adopted, no further delay in implementation can be permitted. Therefore while endorsing in law the steps taken by the Department for giving effect to the recommendations, on an interim measure, we have to advise that the issue should be finalised fast. While doing so it would also be necessary to compensate the applicants who have been waiting for their just reward. It would only be just and fair.

13. The plea of the private respondents - those promoted as Executive Engineers from the grade of Asstt. ~~Engineers~~ Engineers, that for determining the eligibility for the placement in n.f. JAG, the service rendered only in Executive Engineers cadre be taken into consideration is reasonable. Once they became regular Executive Engineers, distinction between them and those who are promoted from the grade of Asstt. Executive Engineer should cease. That however, would be a matter for the respondents to decide, while recasting the Recruitment Rules.

14. In view of the above observations, the application is disposed of with the following directions:-

- i) Respondents shall take up and finalise the steps for amendment of the Recruitment Rules, redistribution of posts, restructuring of the posts of Executive Engineers (ordinary as well as non-functional JAG). This shall be

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completed within a period of three months from now and at any rate before 15th June 2001.

(A5)

ii) While drafting the RRs and restructuring the cadres the respondents shall consider grant of n.f. JAG to the applicants- all the Executive Engineers who have completed 9 years in Group 'A' on 1.1.96, as the recommendations of FCPC have been accepted by CPWD as far back as September - October 1997, but given effect from 1.1.96 in the case of Superintending Engineers in their own organisation, without any additional screening. However, it would be a notional placement and fixation and they would be entitled for the benefit of pay and arrears in the n.f.JAG only from August 1998, when they have filed this O.A.

iii) Respondents are also advised to examine the feasibility of the request of the private respondents, while framing the Recruitment Rules.

No order to costs. No costs.

(Govindan S. Tampi)
Member (A)
Patwal/

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)