

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

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O.A./T.A. No.2112 of 1995 Decided on: 15.7.96

O.N. RazdanApplicant(s)

(By Shri B.T. Kaul Advocate)

Versus

U.O.I. & AnotherRespondent(s)

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


CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI

1. Whether to be referred to the Reporter *Yes*
or not?

2. Whether to be circulated to the other *no*
Benches of the Tribunal?


(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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O.A.No.2112 of 1995

Dated New Delhi, this 15th day of July, 1996.

HON'BLE SHRI K. MUTHUKUMAR, MEMBER(A)

O. N. Razdan
S/o Late Pt. J. N. Razdan,
R/o 14/30A, Kalkaji Extension,
NEW DELHI-110019.

... Applicant

By Advocate: Shri B. T. Kaul

versus

1. Union of India, through
Secretary,
Ministry of Defence,
NEW DELHI.
2. The Engineer-in-Chief,
Army Headquarters,
Ministry of Defence,
Kashmir House,
NEW DELHI-110011.
3. The Controller of Defence Accounts,
HQ Delhi,
Government of India,
G Block, DHQ, P.O.,
NEW DELHI.
4. The Controller General Defence Accounts,
West Block-V,
R. K. Puram,
NEW DELHI-110066. ... Respondents

By Advocate: Shri V. S. R. Krishna

O R D E R

Shri K. Muthukumar, M(A)

The applicant is aggrieved that the respondents have declined his request for fixation of pay in the post of Chief Engineer after taking into account the special pay of Rs.400/- per month that he had drawn for more than three years in the

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post of Additional Chief Engineer, despite the fact that this benefit was allowed by the respondents to two other similarly placed officers on the basis of the judgement of Bangalore Bench of the Tribunal in O.A.No.1355/94 and O.A.No.1581/94 - H. K. Nagaraja and S. V. Anantharamaiah Vs UOI & Ors. The respondents have intimated to the applicant that the benefit allowed on the basis of the aforesaid judgement will be reckoned only in respect of the petitioners in above cases and will not be extended to the applicant. The applicant has challenged the above decision of the respondents in the application communicated to him vide impugned letter dated 18.9.1995.

2. The brief facts of the case are as follows:

The applicant is an officer of the Military Engineering Service (MES) and was promoted as Additional Chief Engineer (Addl.CE) on 14.6.1991 from the feeder post of Superintending Engineer (Selection Grade) and was posted in the office of the Chief Engineer, S.E. Falls, Shillong, Meghalaya and he assumed charge of the said post on 14.6.1991. While working as Addl.CE, he drew special pay of Rs.400/- per month. He was thereafter promoted as Chief Engineer at Army Headquarters with effect from 20.10.1994 in the

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pay scale of Rs.5900-6700. While fixing the pay of the applicant in the post of Chief Engineer at Rs.5900-6700, the applicant claims that the special pay he drew as Addl.CE has to be reckoned in accordance with the rules and the denial of his claim by the respondents has driven the applicant to the Tribunal.

3. The learned counsel for the applicant pointed out that in terms of the recruitment rules contained in S.R.O.4-E dated 9.7.1991 and the Schedule therein, issued under Article 309 of the Constitution, the scale of pay of Addl.CE has been clearly shown as Rs.4500-5700 plus Rs.400/- as special pay. In view of this, the special pay has to be taken into account while fixing the pay of the applicant in the post of Chief Engineer in the higher scale of Rs.5900-6700. The learned counsel argued that by the very nature of the notification, the special pay granted is in lieu of a separate higher scale for the post of Addl.CE and, therefore, this special pay has to be treated as part and parcel of the scale and, therefore, in terms of the Government of India instructions, the special pay drawn on promotion should be reckoned and taken into account for the

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purpose of fixation of pay in the higher post.

The learned counsel has also pointed out that similar matter was already adjudicated by the Bangalore Bench of the Tribunal in O.A.No.1355/94 and O.A.No.1581/94 (supra) and the petitioners in those cases were similarly promoted as Chief Engineer and the Tribunal had held that the petitioners were entitled to reckon the special pay of Rs.400/- for the purpose of fixation of pay on promotion to the post of Chief Engineer. The learned counsel pointed out that it was unfortunate that the respondents have taken narrow view of the decision of the Tribunal and held that such a decision was judgement in personam.

3. The learned counsel for the respondents argued that when the special pay was sanctioned on 30.5.1988, it was nowhere stated that it was in lieu of a higher scale. A careful reading of paragraph-2 of the aforesaid letter shows that the Addl.CE working in E-in-C's Branch will not be eligible for Headquarter Specail Pay in addition to the special pay granted to the Addl.CEs of MES. He also argued that the S.R.O.4-E dated 9.7.1991 relied upon by the applicant specifically and distinctly exhibits the special pay as a separate

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item and it cannot be inferred to be read as basic pay. Since the special pay is not in lieu of the higher pay scale, this cannot be taken into consideration for fixation of pay on promotion as Chief Engineer. He also argued that the benefit of the judgement in respect of the petitioners in O.A.No.1355/94 and 1581/94 cannot be extended to others as the aforesaid judgement was a judgement in personam and there is nothing in the judgement that suggests the ruling in the aforesaid cases is of general application.

4. The respondents have also averred in their reply that as per CCS (Pension) Rules, emoluments are taken into account for fixation of pension and as per F.R.9 (21) (a) (i), the basic pay is defined as - "the pay" other than special pay and, therefore, special pay has been specifically ruled out from the definition of pay. It has, therefore, been contended that the special pay cannot be taken into account for pensionary benefits also.

5. I have heard the learned counsel for the parties and carefully perused the record. The special pay was sanctioned for the first time by the respondents vide letter dated 30.5.1988 which

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reads as follows:-

"... I am directed to convey the sanction of the President to allow a special pay of Rs.400/- (Four hundred only) to Additional Chief Engineers of Military Engineer Service over and above the pay of the grade of SE/SE(SG).

2. The additional Chief Engineers working in E-in-c's branch will not be eligible for "HQ Special Pay" in addition to this Special Pay. They may either draw "HQ Special Pay" or Special Pay admissible to Additional Chief Engineers."

3. This letter will have retrospective effect from 1st January 1986 and arrears of pay and allowances due to the officers concerned shall be admitted accordingly. ..."

However, consequent on the notification of the recruitment rules of the Corp of Engineers in the MES contained in S.R.O.4-E which was notified on 9.7.1991, the scales of pay of the post of Chief Engineer, Addl.CE and SE(SG) as provided in the Schedule-I are as follows:-

Chief Engineer	-	Rs.5900-6700
Additional Chief Engineer	-	Rs.4500-5700 plus Rs.400 as Special Pay
Superintending Engineer (Selection Grade)	-	Rs.4500-5700

6. It is also an admitted position that SE(SG) is a feeder grade for promotion as Addl.CE and

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the Addl.CE is feeder grade for promotion as Chief Engineer. From the scales given to all the above three categories, it is seen that while the pay scale of SE(SG) is Rs.4500-5700, the scale of Addl.CE is also shown as Rs.4500-5700 and Rs.400/- as special pay in addition. For promotion as Addl.CE, the recruitment rules provide for promotion by selection from the grade of Superintending Engineer with three years' service in the grade. Since the Addl.CE is a promotional post, the circumstances under which a separate higher scale for this post was not provided, are not clear. There is no material on record to show that the special pay was granted for particular posts of Addl.CE under the respondents. On the contrary, by S.R.O.4-E dated 9.7.1991 the scale of pay of all the duty posts of Addl.CEs is shown as of Rs.4500-5700 plus Rs.400/- as special pay and taking into account the fact that there is no indication in the aforesaid notification that this special pay is not granted in lieu of higher scale, it has to be construed that in the absence of a suitable higher scale of pay notified by the respondents, the special pay as notified alongwith scale of pay has to be treated as part and parcel of the scale of pay and is

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3. granted in lieu of higher scale. It is also an admitted position that the applicant had drawn special pay for more than three years and, therefore, in terms of the Government of India decision contained in Ministry's O.M. dated 25.2.1965 paragraph-28 (a) Appendix-8 of Swamy's Compilation F.R. S.R 11th Edn., I am of the considered view that the special pay drawn by the applicant qualifies for being taken into account in the fixation of pay on promotion to the higher scale. The respondents' contention that the definition of pay under Fundamental Rules defines only basic pay other than special pay, is not relevant here in the light of the O.M. (supra). The fact that is relevant here is, by a separate dispensation as in the O.M. (supra) the Government has permitted special pay granted in lieu of higher scale for reckoning as part of pay for the purpose of fixation of pay in higher scale.

7. In the light of the foregoing, I am of the considered view that the applicant will be entitled to have his special pay as drawn by him for more than three years as Addl.CE, taken into account for purpose of fixation of pay in the scale of Chief Engineer on his promotion to that

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post. Accordingly, this application is allowed and the respondents are directed to fix the pay of the applicant in the post of Chief Engineer in the scale of Rs.5900-6700 after taking into account the special pay of Rs.400/- drawn by him as Addl.CE and fix his pay accordingly. The applicant will be entitled to consequential benefits of arrears and refixation of pension and arrears on account of revision of pension and the respondents are directed to fix the pay as aforesaid and settle the consequential benefits, within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.


(K. Muthukumar)
Member(A)

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