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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 2139 of 1996

New Delhi, this the 30th day of May, 1997

Hon'ble Mr. N. Sahu, Member (A)

1. Shri R.S.Gahlawat, aged 58 years,
S/o Shri Risal Singh
r/o 714, Section-8, R.K.Puram, ND
Addl Chief Engineer, working under
E-in-C's Br., ND
2. Shri Suresh Chand Gupta, aged 57 years
S/o Shri P.C.Garg(late),
r/o B-71, Nanakpura, New Delhi,
Addl Chief Engineer, working under
E-in-C's, ND
3. Shri R.K.Caplash, aged 56½ years,
S/o Dr.K.K.Caplash,
r/o P-12, Andrews Ganj, New Delhi
Addl Chief Engineer, working under
E-in-C's ND
4. Shri Vimal Datta, aged 57½ years,
S/o Dr.D.Datta,
r/o A-5, Andrews Ganj, New Delhi
Addl Chief Engineer working under
DRG ND
5. Shri K.C.Kathuria, aged 58 years
S/o Dr.Girdhari Lal,
r/o House 5, Road No.54, Punjabi
Bagh New Delhi. Addl Chief
Engineer (Retd)

- Applicants

(By Advocate : Shri Rama Krishna)

Versus

1. Union of India through Defence Secretary,
Ministry of Defence, South Block,
New Delhi -11
2. Engineer-in-Chief, Military Engineering
Services Department, Army Headquarters,
Kashmir House, New Delhi-110 011

- Respondents

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

JUDGMENT (Oral)

Hon'ble Mr.N.Sahu, Member (A)-

The prayer in this Original Application is to set aside the impugned order at Annexure-A-1. Annexure-A-1 states that the proposal for counting the special pay of Rs.400/- drawn by Addl. Chief Engineers of MES Department towards pay for the purpose of pay fixation on promotion or for pensionary benefits on retirement, was not acceptable

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to Ministry of Defence and, therefore, the claim was turned down. The prayer, therefore, is to direct that the special pay of Rs.400/- per month be given to the applicant in lieu of higher pay scale while they worked in the post of Additional Chief Engineer and this special pay should count towards calculation of pension and other terminal benefits.

2. At the outset, a Notification dated 14th May, 1997 issued by the Hon'ble Chairman, Central Administrative Tribunal, wherein cases relating to fixation of pay ought to be heard by a Division Bench, has been discussed. It is agreed by both the counsel that this is not a case of fixation of pay or a pay scale. This is a case of treatment to be accorded to special pay already granted. In view of this a Single Bench is competent to dispose of this Original Application.

3. The learned counsel for the applicant submits that the additional amount of Rs.400/- has been given as special pay to Additional Chief Engineers only as special addition to the pay already drawn by them. Drawing attention to Schedule-III of S.R.O. 4-E dated 9th July, 1981 - Indian Defence Service of Engineers (Recruitment and Conditions of Service) Rules, 1991, it is stated by the learned counsel for the applicant that there are two categories of Superintending Engineers - Superintending Engineers (Ordinary Grade) drawing the scale of Rs.3700-5000 and Superintending Engineers (Non-functional selection grade) drawing the scale of Rs.4500-5700. At serial no.3 of Schedule III the Additional Chief Engineers' scale is also mentioned as Rs.4500-5700. If on promotion a Selection grade Superintending Engineer is to get the same pay scale the promotion would be without any meaning. Therefore, a sum of Rs.400/- is added as special pay. That apart, it is mentioned that feeder cadre for Additional Chief Engineer is the Superintending Engineer (non-functional selection grade) and, therefore, this being a promotion by

selection and this amount of Rs.400/- mentioned as addition to the pay scale, must be treated as such. The learned counsel submits that this point has already been decided in favour of the applicants in three cases. He cited a decision of Chandigarh Bench of the Tribunal in the case of Shri Ashok Kumar Vs. Union of India & others, O.A.No.67 of 1996 decided on 4.11.1996, in which the respondents were directed to fix the pay of the applicant therein in the pay scale of Rs.5900-6700 on the post of Chief Engineer with effect from his joining this post by taking into account the special pay of Rs.400/- drawn by him as Additional Chief Engineer. The Chandigarh Bench has emphasised the definition of pay under F.R.9(21)(a) sub-clause (ii) which makes special pay and personal pay as part of the pay. Instead of emphasis on sub-clause (i) the emphasis should be on sub-clause (ii). This is a case where special pay has been granted for discharging higher responsibilities. The second decision is that of Principal Bench of the Tribunal in the case of O.N.Razdan Vs. Union of India & others, O.A.No.2112 of 1995 decided on 15.7.1996 in which a similar matter has been disposed of, and respondents were directed to fix the pay of the applicant therein 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. Chief Engineer. The third decision, annexed to the paper book at page 28, is that of the Bangalore Bench of the Tribunal in the case of Shri H.K.Nagaraja & another Vs. Union of India & others, O.A.No.1355 of 1994 & 1581 of 1994 decided on 23.1.1995. Here again allowing the Original Application a Division Bench directed to fix the pay of the applicants on their promotion to the level of Chief Engineer by reckoning the special pay drawn by them as Additional Chief Engineer. The

Division Bench emphasised the import of F.R.9(21)(a) (ii), and it is observed that the higher post of Additional Chief Engineer "does not carry any separate scale but carries the same scale of Superintending Engineer (S.G.) with a special pay of Rs.400/- attached to it". The learned counsel for the applicant has finally drawn my attention to page 33 of the Paper Book which is a note of the Department of Personnel and Training. After examining the CAT decision the Ministry noted that the judgment of the CAT is in order and should be implemented. The judgment under reference in the Ministry's note is one of the judgments mentioned above.

4. The learned counsel for the respondents, Shri V.S.R.Krishna made two important submissions. Firstly, he states that the feeder cadre for promotion to Additional Chief Engineer is not confined to only Superintending Engineer (Non-Functional Selection Grade), and there is only one cadre of Superintending Engineer out of which 15% are segregated as non-functional selection grade. He further states that in effect promotion to Additional Chief Engineer being by selection and the feeder cadre being Superintending Engineer the canvass for section is the entire cadre. If there are 10 posts of Additional Chief Engineer for selection, 5 times of the number 50 will be under the consideration zone and the juniormost by virtue of merit can supersede all his seniors and be considered as Additional Chief Engineer. If that is so, the promotion to Additional Chief Engineer is basically from the grade of Rs.3700-5000 and segregating a separate selection grade as the feeder cadre is not strictly in accordance with the rules of selection for this purpose. The second point of the learned counsel for the respondents is that for an Additional Chief Engineer at Headquarters besides the special pay of Rs.400/- given along with the scale, there is another amount of Rs.400/- given as a special pay known as Headquarters allowance; and an option

is given that the incumbent can either accept either one or the other, which reinforce his stand that this amount of Rs.400/- is mostly confined to the post for the arduous nature of duties of that post and not as a part of that pay scale.

5. Refuting the contentions of the learned counsel for the respondents, the learned counsel for the applicants has drawn my attention to the Recruitment Rules at Page 24 of the Paper Book, Schedules II and III. He states that the field of selection and minimum qualifying service for promotion to the post of Chief Engineer are "Additional Chief Engineer with 8 years regular service in the grade (JAG) including service, if any, rendered in the non-functional selection grade failing which 8 years combined regular service in the grades of Additional Chief Engineer and Superintending Engineer or 17 years' regular service in Group 'A' posts of which at least 4 years' regular service should be in the grade of Superintending Engineer (JAG) and possessing degree in Engineering from a recognised University or equivalent.". He made a plea that so far no Superintending Engineer (Ordinary Grade) has been selected directly as Additional Chief Engineer. That apart, certain senior officers in the Selection Grade normally are considered for promotion. Mr. Krishna, learned counsel for the respondents, however, highlighted that Superintending Engineer with three years' regular service in the grade possessing a degree will be eligible for the field of selection of an Additional Chief Engineer.

6. I appreciate the stand taken by the learned counsel for the respondents. I have also given a serious thought to the submissions made by the learned counsel for the applicants. The matter is no longer res integra. I have ascertained at the Bars and found that all the three decisions - one Division Bench and two Single Bench decisions have not been taken up

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before the Hon'ble Supreme Court so far. Those decisions are binding on me. I find further that in all orders to a special pay post the individual orders carry mention of a special pay because of arduous nature of the job of the post. It is only here in this case that the special pay has been granted as part of a scale of pay for an Additional Chief Engineer. That apart, as Shri Rama Krishna, learned counsel for the applicant has mentioned, there are two components in the definition of special pay under F.R. 9 (25). Special pay means an addition, of the nature of pay, to the emoluments of a post granted in consideration of (a) the specially arduous nature of the duties; or (b) a specific addition to the work or responsibility. As regards the first consideration for payment of special pay for specially arduous nature of duties, it could be argued that that would not be part of pay. But, then as mentioned above that such payment of special pay is usually found in individual orders to a post and not as a part of scale. Therefore, Mr. Rama Krishna's argument that the alternative, namely, a specific addition to the work or responsibility, in this particular case, has appealed to me as more probable. That apart, there would be no charm in granting of ^{promotion by} selection grade if the selection grade Superintending Engineer continued to be in the same pay scale even on promotion.

7. For the reasons elaborately discussed in the orders cited above, which I follow with great respect, I have no other alternative except to allow this Original Application.

8. In the result, the Original Application is allowed. The impugned order Annexure-A-1 is set aside. The respondents are directed to treat the pay of Rs. 400/- as part of the higher pay scale while working on the post of Additional Chief Engineer and on that premise this should count towards

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calculation of pension and other terminal benefits.

The parties shall bear their own costs.

Kumaraswami
(N. Sahu)
Member (A) 30/5/97

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