

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2400/96

New Delhi, this 20th day of April, 2000

(25)

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

1. CPWD Jr.Engineers' Assn. through its authorised representatives
2. DVM Ch Prabhakar
C-2, CPWD En.IARI, Pusa, New Delhi
3. DC Sharma
R/21F, Dilshad Garden, Delhi
4. NK Gupta
D-41, Sector 55, NOIDA
5. SS Jaiswal
E-18, Mirdard Lane, LNJPH, New Delhi
6. SS Lamba
K-373, Rishi Nagar, Shakurbasti
New Delhi
7. Anil Kumar Sharma
125/S-1, Pimpri Nagar, New Delhi
8. BR Aggarwal
RZ/5/266, M Block, West Sagarpur
Delhi
9. Kul Bhushan
E-45, Malkaganj, Delhi
10. Narendra Kumar
233, Ankur Apt, 1P Extn. New Delhi
11. YP Johar
B-477, Meera Bagh, Delhi .. Applicants

(By Shri G.K.Aggarwal, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Urban Affairs & Employment
Nirman Bhavan, New Delhi
2. Director General (Works)
CPWD, Nirman Bhavan, New Delhi .. Respondents

(By Shri K.C.D.Gangwani, Advocate)

ORDER

Smt. Shanta Shastry

The applicants were working as Junior Engineers in CPWD in the pay scale of Rs.425-700 prior to 1.1.86. Their pay scale was revised to Rs.1400-2300 w.e.f. 1.1.86 which was declared as entry grade by Government of India's order dated 22.3.91. After completion of 5 years service in the entry grade as on 1.1.86, the JEs were to be placed in the higher grade pay scale of

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Rs.1640-2900 subject to rejection of unfit. This higher pay was not to be treated as promotional pay but as non-functional grade. It was further directed that after putting in 15 years of regular service as on 1.1.91, they would get higher scale of Rs.2000-3500. Accordingly, applicants who had already put in 5 years regular service as JEs were granted the scale of Rs.1640-2900 as on 1.1.86 and their pay was fixed in that scale. While so fixing the pay, it was made clear that they would be granted increment only after completion of one year i.e. on 1.1.87. Several representations were made by the applicants to the respondents that they should be granted increment which would have been available to them in the lower pay scale and that it was not necessary for them to put full 12 months in the revised scale before grant of next increment. Their representations were however rejected. Applicants have impugned order dated 2.5.96 whereby their request was rejected. Applicants therefore pray to direct the respondents to fix the next date of increment in the revised pay scale w.e.f. 1.1.86 as per their original dates of next increment irrespective of the fact whether they were placed in the scale of Rs.1400-2300 or Rs.1640-2900.

2. Learned counsel for the respondents has submitted that while granting higher pay scales to the applicants it had been clarified that the higher scale will not be treated as promotional one but will be only non-functional and the benefit of FR 22(i)(a)(i) will not be admissible to them as there is no change in their duties and responsibilities. Respondents had also examined the matter in the light of the instructions

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issued by the Department of Personnel & Training vide their OM dated 2.5.89 wherein it has been laid down that when a government servant is appointed from one post to another where the appointment to the new post does not involve assumption of duties and responsibilities of greater importance than those attached to the old post, including appointment to a non-functional selection grade, he will draw as initial pay the stage of the time scale of new post which is equal to his pay in respect of the old post or if there is no such stage, the stage next above his pay in respect of the old post. While in the former case his increment will become due on the date he would have received an increment in the old post, in the latter case, his next increment in the new post however will become due on completion of the required period.

3. The applicants were also given option for fixation of their pay in the new post either to be w.e.f. from the date of their appointment to the next post or w.e.f. from the date of next increment in the old post. Applicants did not give any option. Applicants' pay has therefore been fixed in accordance with rules and extant instructions and therefore the applicants have no case.

4. Learned counsel for the applicants urges that their case is covered squarely by the judgement of the Bombay Bench of the Tribunal in OA No.535/93 in the case of P.Babu and two others Vs. UOI & Ors. The applicants in the said OA were similarly placed like the applicants in the present OA and the facts are also identical. That OA was allowed by order dated 8.2.94 and the respondents were directed to grant next increment to the applicants

in the higher grade pay scale of Rs.1640-2900 on the normal date of increment in the entry grade of Rs.1400-2300 in respect of all the applicants. It has been further pointed out by the learned counsel that an SLP was filed in the Hon'ble Supreme Court against this judgement, which was dismissed on the ground of delay. Thus the order dated 8.2.94 has become final. The learned counsel has produced another judgement of the Hon'ble Supreme Court in Civil Appeal No.6717/95 decided on 18.3.99 in the case of C.B.Prasad Vs. UOI by filing MA 52/2000, in which it has been held that the applicants i.e. JEs in Public Works Department of Delhi Admn. were covered by the decision of the apex court in UOI vs. S.P.Sidhanta & Ors. 1991 Supp (1) SCC 542 wherein it has been held that when there has been revision of scale, they would be entitled to next increment on the normal date of increment in the lower scale and not on the completion of one year regular service in the revised scale.

5. The learned counsel for the respondents however pleads that the judgement of the Bombay Bench and the decision of the Hon'ble Supreme which has been based on the judgement S.P.Sidhanta (supra) is really not relevant in the present case because in that case the pay scale was revised and that is not the case here.

6. We have heard both the learned counsel for the applicant as well as the respondents and have also perused submissions as well as the judgements cited. We are satisfied that the applicants' case is covered fully by the ratio of the judgement of the Hon'ble Supreme Court in the case of C.B.Prasad (supra) as well as by

the order of the Bombay Bench of this Tribunal in the case of P.Babu (supra). The Hon'ble Supreme Court was fully aware of the facts in the case of C.B. Prasad (supra) when it was held that it was covered by the case of S.P.Sidhanta (supra). The fact remains that the applicants were given the next higher pay scale. We therefore do not accept the contention of the respondents that the judgement of S.P.Sidhanta (supra) is not relevant to the present case.

7. Learned counsel for the respondents has also raised the plea of limitation. The judgement in the case of P.Babu (supra) was decided on 8.2.94 but the applicants in the present case have approached this Tribunal on 8.11.96. Thus the application is barred by limitation.

8. While it is true that the applicants have approached rather belatedly but this is a matter of pay fixation and it provides a continuous cause of action. It has been held by the Hon'ble Supreme Court in the case of M.R.Gupta & Ors. vs. UOI (AIR 1996 SC 668) that in such matters of pay packet limitation does not apply. One is entitled for the pay based on correct fixation as per law. Moreover, it is settled law that persons similarly situated to the beneficiaries of the judgement are to be extended the benefits thereof. It is unfair to discriminate among the employees similarly placed in the same department. It is also not proper to insist on every aggrieved employee to approach the court when the cause of action is identical. Therefore in all fairness the applicants are entitled to the benefit of the date of next increment in the old scale after their pay fixation in the new scale w.e.f 1.1.86 and not after

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they complete 12 months of regular service after 1.1.86.
We therefore reject the plea of limitation.

9. The applicants have demanded arrears from three years period preceding the date of filing of the application. We however consider it appropriate to restrict payment of the arrears to one year prior to the date of the filing of the OA.

10. In the result the OA is allowed and the impugned order dated 2.5.96 is set aside. We direct the respondents to grant increment to the applicants from the dates due to them in the old scale after 1.1.86 and pay arrears restricted to one year prior to the date of filing of the OA. This shall be done within a period of three months from the date of receipt of a copy of this order.

11. In the facts and circumstances, we do not order any costs.

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(Smt. Shanta Shastry)
Member(A)

V.Rajagopala Reddy
Vice-Chairman(J)

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