

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

15

O.A. No. 1903/97

&

O.A. No. 2041/97

New Delhi, this the 1st day of July, 1998

Hon'ble Shri S.R. Adige, Vice-Chairman (A)

Hon'ble Shri T.N. Bhat, Member (J)

OA No. 1903/97

Sh. K.S. Anand s/o Late Shri Kartar Singh,
r/o 6/62, Geeta Colony,
Delhi.

OA No. 2041/97

Shri Ram Krishan s/o Sh. Tarif Singh,
r/o E-30, Jeevan Park,
Near Uttam Nagar,
New Delhi.

...Applicants

(By Advocate: Shri M.K.Gupta)

Versus

Government of N.C.T. of Delhi through:

1. Chief Secretary,
5, Sham Nath Marg,
Delhi.
2. The Development Commissioner/
Secretary (Irrigation & Floods),
5/9 Under Hill Road,
Delhi.
3. The Chief Engineer (I&F),
4th Floor, L.S.B.T.,
Kashmere Gate,
Delhi.

...Respondents

(By Advocate: Shri Vijay Pandita in OA No. 1903/97
Shri Rajinder Pandita in OA No. 2041/97)

O R D E R

Hon'ble Shri T. N. Bhat, Member (J) -

These two OAs filed by two different persons are identical and are being taken up together for disposal despite an objection by Shri Rajinder Pandita, counsel for the respondents in OA No. 2041/97 that

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there are some distinguishing features in the aforesaid case. In our view both these OAs involve identical questions of law and fact and can, therefore, be disposed of by a common order.

2. Both the applicants in these OAs initially joined the Govt. of N.C. T. of Delhi as Junior Engineers (J.E., for short) - Shri K.S. Anand in the year 1973 and Shri Ram Krishan in the year 1976. Both of them are working as Assistant Engineers (A.E., for short) on current duty charge basis; Shri K.S. Anand having been appointed w.e.f. 21.6.1988 while the applicant in the other O.A. was appointed w.e.f. 25.6.1996.

3. Respondents vide Office Memo dated 17.3.1997, as at Annexure A-1 to the OAs decided to grant the pay scale of Rs. 1640-2900 to those J.Es who had completed five years of service in the Entry Grade (scale Rs. 1400-2300) subject to the rejection of unfit and vigilance clearance. Their cases were to be examined by a D.P.C. comprising two Superintending Engineers and an Executive Engineer. In para 2 of the aforesaid O.M. it was further provided that w.e.f. 1.1.1991 the J.Es on their completion of 15 years of service may also be given the still higher pay scale of Rs. 2000-3500/- on personal basis and this was also to be given on "fitness basis subject to vigilance clearance" after their cases were examined by a similar D.P.C.

4. Admittedly, both these applicants, in pursuance to the aforesaid O.M., were granted the higher scale of Rs. 1640-2900. However, the next higher scale of Rs. 2000-3500 has not been given to them and in these OAs they are claiming this pay scale on the ground that they have already completed 15 years of service in the entry grade (pre-revised) of Rs. 1400-2300/-. They further apprehend that the DPC may not consider them even for regular promotion to the post of A.E. even though they are working as such on current duty charge basis.

5. It is not disputed by the respondents in these two O.As that the respective applicants have completed 15 years of service in the entry grade of J.E. and that they have been granted the pay scale of Rs. 1640-2900. It is, however, contended by the respondents that a decision had been taken as far back as in February, 1995 to initiate disciplinary proceedings against both the applicants as they were found involved in a case of "short availability of steel reinforcement bars" found at Surya Nagar Store, which case was investigated by the Anti-corruption Branch of Govt. of N.C.T. of Delhi. It is further stated in the reply to the O.A. filed by Sh. Ram Krishan that the chargesheet has already been served on him on 13.1.1998, though there is no similar assertion in respect of Shri K.S. Anand. The respondents have, therefore, taken the plea that since a decision had been taken even prior to the issuance of the O.M.

dated 17.3.1997 to chargesheet both the applicants, it was not possible for the respondents to give vigilance clearance in respect of either of the applicants.

6. The applicants have filed rejoinders to the counter replies filed by the respondents in these two OAs in which it is contended that personal promotion cannot be considered to be promotion in the real sense of the term and, therefore, it would not involve any assessment of suitability of the applicants for grant of the higher pay scale. That apart, it is further contended that since the higher pay scale of Rs. 1640-2900 has already been granted to the applicants there is no reason why they should not be granted the next higher pay scale when vigilance clearance was necessary even for the grant of the pay scale of Rs. 1640-2900.

7. We have heard the learned counsel for the parties at length and have carefully considered their arguments.

8. The fact that the applicants have already been granted the pay scale of Rs. 1640-2900 would, in our considered view, not by itself be sufficient to entitle the applicants to the grant of the next higher pay scales. It is true that even for the grant of the pay scale of Rs. 1640-2900 the question of fitness and vigilance clearance would have to be considered, but we do find some substance in the contention of the learned

counsel for the respondents that different criteria could be adopted so far as the grant of the next higher pay scale of Rs. 2000-3500 was concerned.

9. The contention of the learned counsel for the applicant that on the crucial date on which the pay scale of Rs. 2000-3500 could be granted, i.e. 1.1.1991, no decision regarding initiation of disciplinary proceedings was taken by the respondents and that, therefore, this pay scale cannot be denied to the applicants, is equally devoid of force, for the simple reason that Office Memorandum on which the applicants place reliance was issued only on 17.3.1997 much after the decision taken by the respondents to initiate disciplinary proceedings against the applicants in these O.As. The respondents could, therefore, legitimately say that vigilance clearance could not be given for granting the next higher pay scale to the applicants.

10. To support the above views expressed by us we may refer to a recent judgement delivered by another Bench of this Tribunal headed by Hon'ble Smt. Lakshmi Swaminathan, Member (J) in O.A. No. 1880/97 (J.K.Vats & Ors. Vs. Govt. of N.C.T. of Delhi & Ors.). The said judgement dated 15.4.1998 was delivered on facts quite identical to those of the instant cases. In the case before that Bench, there were three applicants all of whom had been granted the higher scale of Rs. 1640-2900 but the next higher scale of Rs. 2000-3500 was denied to them on the ground that a decision had been taken by the Vigilance Department to chargesheet

all the three applicants in that O.A, under Rule 14 of the CCS (CCA) Rules for imposition of a major penalty and that decision was taken on 21.2.1995, as is the case here. After discussing the rival contentions made by the counsel for the parties, the Tribunal held in the judgement (Supra) that the claim of the applicants in that OA for promotion on personal basis to the scale of Rs. 2000-3500 on completion of 15 years of service as J.Es was unsustainable as they were under a cloud and vigilance clearance had, therefore, rightly not been granted.

11. Relying on the views expressed by that Bench in the judgement (supra) we hold that these OAs before us are devoid of merit. We accordingly dismiss these OAs, but without any order as to costs.

[Signature]
(T.N. Bhat) 1.7.98.
Member (J)

[Signature]
(S.R. Adige)
Vice-Chairman(A)

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