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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2253/1997

DATE OF DECISION 1-7-1998

Sh. Raj Kumar & Others Petitioner

Sh. Ram Krishna Advocate for the
Petitioner(s)

VERSUS

1. Union of India through
Ministry of Defence Respondent

2. The Engineer in Chief,
Army Headquarters Advocate for the
Respondents

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

The Hon'ble Shri S.P.Biswas, Member (A)

1. To be referred to the Reporter or not? *JB*
2. Whether it needs to be circulated to other
Benches of the Tribunal?

By Mr. Bhat
(T. N. BHAT)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 2253/97

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

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

Shri Raj Kumar and Others Applicant
(By Advocate: Sh. Ram Krishna)

Vs.

1. Union of India
Through
Ministry of Defence, South Block,
New Delhi.
2. The Engineer in Chief,
Military Engineer Services Dept.,
Army Headquarters, Kashmir House,
New Delhi Respondents.
(By Advocate: Sh. V.S.R.Krishna)

O R D E R

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

The applicants in this OA, 7 in number, have retired as Additional Chief Engineers in the MES Department and they have come to the Tribunal with the prayer that the special pay of Rs.400/- which had been granted to them on their promotion to the aforesaid post should be counted as part of the basic pay for the purpose of calculation of pensionary and other terminal benefits.

2. We notice that some similarly placed persons had approached the Bangalore Bench of the Tribunal by filing OA Nos.1335/94 and 1581/94 which were disposed of by that Bench by a common judgment dated 23.1.95. It was held in clear terms that the special pay drawn by the additional Chief Engineers in the MES Department should be counted as a part of the basic pay for the purposes of

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pension and other post retiral benefits. The same view has also been expressed by several other Benches of the Tribunal. In this regard, we may refer to the judgment of Hon'ble Sh. K.Muthukumar, Member (A), Principal Bench of the Tribunal dated 15.7.96 in OA No.2112/95 and the one delivered by Hon'ble N.Sahu, Member (A), Principal Bench, dated 30.5.97 in OA-2139/96.

3. The controversy between the parties arises in the following circumstances:-

Under the provisions of the Indian Defence Service of Engineers (Recruitment and Conditions of Service) Rules, 1992, a Superintending Engineer (selection grade) on promotion to the post of Additional Chief Engineer gets the same grade as he held while working as Superintending Engineer (selection grade), i.e., Rs.4500-5700. However, he gets Rs.400 as special pay. While on the one hand the contention of the Additional Chief Engineers has throughout been that the special pay of Rs.400/- is in lieu of higher pay scale, the stand taken by the respondents has been that the special pay is granted only in view of the arduous nature of duties that an Additional Chief Engineer is required to perform. The respondents have also been uniformly taking the plea that under FR 9 (21) (a)(i) special pay cannot be included in the term 'pay'.

4. On going through the judgments (supra) of the Tribunal we find that similar pleas had been taken by the Ministry of Defence in those cases but the same were rejected by the different benches of the Tribunal, and

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rightly so. It is true that under note 21 (a)(i) below FR 9 special pay granted in view of any personal qualifications of an official or special pay to which he is entitled by reason of his position in a cadre has to be excluded from the term "pay". But it is equally true that all other kinds of special pay including personal pay and overseas pay has to be counted. This is so in view of the provision contained in FR 9 (21)(a)(ii). Under the aforesaid provision the term 'pay' means the amount drawn monthly by a Government servant as the pay plus overseas pay, special pay and personal pay and other emoluments which may be specially classified as pay by the President. While relying upon FR 9 (21) (a)(i) the respondents seem to have conveniently omitted to refer to FR 9 (21)(a)(ii).

5. We are also not convinced by the argument of the learned counsel for the respondents that the special pay of Rs.400/- is admissible to Additional Chief Engineer in view of the arduous nature of his job. Had that been so there would have been a specific mention of this fact in the Recruitment Rules. Since the pay scale of a selection grade Superintending Engineer and that of the Additional Chief Engineer, which is the next higher post to which a Superintending Engineer gets promoted, is the same the only reasonable interpretations that can be given is that the special pay of Rs.400/- has been provided for in lieu of the higher pay scale. This becomes even more clear when we go through the extracts from the relevant file of the Department of Personnel & Training which have been annexed by the applicants as Annexure A-V to the OA. In this note a reference has been made to the judgment of the Bangalore Bench of CAT and it

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has been stated that since the Ministry of Finance had not agreed with the proposals of the Ministry of Defence to grant a higher pay scale of Rs.5100-5700 to Additional Chief Engineer the pay scale of Rs.4500-5700 was allowed to Additional CE which was also the pay scale available to Superintending Engineer and that it was in these circumstances that a special pay of Rs.400/- was allowed with the concurrence of the Ministry of Finance, the same being clearly allowed in lieu of separate higher scale of pay. However, a condition was added that those officers working as Additional Chief Engineers who were posted in the headquarters' office would not get the special pay of Rs.400/- in addition to the special pay of Rs.400/- payable in lieu of separate higher scale of pay.

6. We further notice that despite clear pronouncements by the various benches of this Tribunal on the point in controversy between the parties the respondents rejected the representations of the applicants on the ground that "benefit of court judgment is only extended to applicants in the case and not to all similarly placed officers". This plea taken by the respondents cannot be sustained, firstly, for the reason that the judgments of the Tribunal, notably the one delivered by the Bangalore Bench is a judgment in rem; and, secondly, it is now well settled, that the benefit of a judgment has to be given to all other similarly placed persons. This is so because discrimination is to be dispelled and multiplicity of court proceedings avoided.

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7. To sum up, the applicants have established that they are entitled to the relief claimed by them. Respondents have no justification whatsoever to deny the benefit of the said judgments of the Tribunal to the applicants. This OA must accordingly be allowed with costs.

8. In the event, the OA is allowed and the respondents are directed to count the special pay of Rs.400/- as a part of the basic pay received by the applicants while they were working as Additional Chief Engineers and to fix/revise their pension and other post retiral benefits accordingly. The respondents shall further pay an amount of Rs.3500/- as costs (i.e. Rs.500/- to each of the seven applicants in this OA) namely, Sh. Raj Kumar, Sh. B.S.Gulati, Sh. S.P.Kumar, Sh. S.S.Mittal, Sh. O.P.Kalshian, Sh. K.D.Kharbanda and Sh. R.K.Ahuja. The judgment shall be implemented within 3 months from the date of receipt of a copy thereof.

9. With the above order this OA is disposed of.


(S.P. BISWAS)
Member (A)


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(T.N. BHAT)
Member (J)

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