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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA 377/2000

New Delhi this the 15th day of September, 2000

Hon'ble Smt.Lakshmi Swaminathan, Member (J)

Shri Krishan Lal Dhall
Retd.Addl.Chief Engineer,
14-A/48, W.E.A. Karol Bagh,
New Delhi.

.. Applicant

(By Advocate Shri Rama Krishna)

Versus

1.Union of India through
Defence Secretary,
Ministry of Defence, South Block,
New Delhi.

2.Engineer in Chief,
Military Engineer Service Deptt.,
Army Headquarters, Kashmir House,
New Delhi.

.. Respondents

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

O R D E R (ORAL)

Hon'ble Smt.Lakshmi Swaminathan, Member (J)

The applicant is aggrieved that at the time when he retired as Additional Chief Engineer, MES, Bareilly Cantt. his special pay Rs.400/-PM which he was drawing in lieu of the higher pay scale has not been taken into account by the respondents in computing his pension and other retiral benefits.

2. I have heard Shri Rama Krishna, learned counsel for the applicant and Shri V.S.R. Krishna, learned counsel for the respondents and perused the pleadings and documents on record.

3. Learned counsel for the applicant has relied on the relevant Recruitment Rules called the Indian Defence Service

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of Engineers (Recruitment and Conditions of Service) Rules, 1991 (hereinafter referred to as the 'Rules') (Annexure A-3). He has submitted that under Schedule 1 of these Rules both Superintending Engineer (Selection Grade) in the pay scale of Rs. 4500-5700 and Superintending Engineer (Ordinary Grade) in the pay scale of Rs. 3700-5000 are in the feeder category and are eligible for consideration for promotion to the post of Additional Chief Engineer which is in the scale of Rs. 4500-5700 plus Rs. 400 as special pay. He has submitted that at the time when the applicant was promoted as Additional Chief Engineer w.e.f. March, 1989, he was holding the post of Superintending Engineer (Selection Grade) and hence he could not have been promoted to the same scale of Rs. 4500-5700 hence, he and/ was given Rs. 400/- as special pay in accordance with the provisions of Schedule 1 of the Rules. He has also relied on the judgement of the Tribunal (Bangalore Bench) in H.K. Nagaraja and Ors. Vs. UOI & Ors (OA 1355/94 with connected case) decided on 23.1.1995. (Annexure A-4). He has further submitted that as seen from the notings in the file, copy placed on record at Annexure A-5, the respondents have implemented the judgement of the Tribunal and the special pay of Rs. 400/- which is being drawn by the Addl. Chief Engineer in lieu of higher pay scale have been taken into account for the purposes of pension. He has also submitted that the judgement of the Tribunal (Bangalore Bench) has been implemented by the respondents which is fully

applicable to the facts of the present case. In the circumstances, learned counsel has prayed that a directions may be given to the respondents to include ^{the} Special pay of Rs.400/- as part of the pay of the applicant as Additional Chief Engineer and re-compute his pension and other terminal benefits in terms of the DOP&PWOM dated 25.8.1994. Learned counsel has also submitted that in a number of other cases, the Tribunal has also delivered ~~the~~ similar judgements, details of which are given in Paragraph 4.9.1 of the OA.

4. I have perused the reply and heard Shri V.S.R.Krishna, Learned Counsel for the respondents. The contentions ~~already~~ raised by the respondents under FR 9 have ^{already} been fully considered by the Division Bench of the Tribunal (Bangalore Bench) in H.K.Nagaraja's case (Supra) with ^{reasoning} which I respectfully agree as the facts and issues in the case before the Bangalore Bench are similar to the issues raised in the present case. It is also not disputed by the respondents that this judgement ^{not} has been implemented by them and ^{also that} no appeal has been filed and hence the same is binding on me.

5. The applicant has retired from service as Additional Chief Engineer on 30.9.1991. It is seen from the records that he had made a representation to the respondents regarding re-computing of his pension and other retiral benefits on 17.3.1999. At that time the respondents were fully aware of the Tribunal's decision in H.K.Nagaraja's case (supra)

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which was rendered on 23.1.1995. Learned counsel for the applicant has also relied on the Govt.of India Decision 2 under Rule 68 regarding payment of interest for delayed payment of Retirement/Death Gratuity to be at the rate applicable to GPF deposits.(Pages 170-171 of the Swamy Pension Compilation Incorporating CCS pension Rules) The relevant portion of ^{the} Govt.of India Decision 2 reads as follows:-

"It has been decided that where the payment of DCRG has been delayed beyond three months from the date of retirement, an interest at the rate applicable to GPF deposits(at present 12 per cent compounded annually) will be paid to retired/dependants of deceased Government servants."

6. Taking into account the aforesaid provisions of DOP&PW O.M. dated.25.8.1994 and the ~~stated~~ decision of the Bangalore Bench of the Tribunal in H.K.Nagaraja's case (Supra), the applicant shall be entitled to interest at the rate prescribed under these instructions, on the difference in payment of DCRG amounts as a result of re-computing of his pension amounts, following the directions in the present OA. In the present case, considering the fact that the applicant has also made representation for counting his special pay drawn by him as Additional Chief Engineer for the purposes of

pension on 17.3.1999 and taking into account the totality of the facts and circumstances of the case, the applicant shall be entitled to the rate of interest as provided in the Govt. of India DOP&PW OM dated 25.8.1994 from 1.4.1999 on the amounts due to him by way of pension. Learned Counsel has also prayed for costs of the proceedings in view of the fact that the applicant has been forced to file the OA for allowing the claims which the respondents should have themselves granted.

7. In the result for the reasons given above, the O.A. succeeds and is allowed with the following directions:-

- (i) The respondents shall include the special pay of Rs.400/-PM attached to the post of Additional Chief Engineer which the applicant was drawing before his retirement. This shall be taken into account for the purposes of re-fixing his pension and other retiral benefits. Necessary action in this regards shall be taken within three months from the date of receipt of a copy of this order. Thereafter, the respondents shall also take immediate action to pay the arrears of amounts of pension and other retiral benefits to the applicant;
- (ii) The applicant shall also be entitled to compound interest on the difference of amount of DCRG arising from the above action in terms of the DOP&PW O.M. dated 25.8.94 w.e.f. 1.4.99. This

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amount shall also be arranged to be paid by the respondents within the aforesaid period of three months from the date of receipt of a copy of this order.

- (iii) In the facts and circumstances of the case, costs of Rs.3000/- (Rupees Three thousand only) is imposed against the respondents and in favour of the applicant.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

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