

(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA.211/86
OA.498/86

Date of Decision:13.11.92

(a) OA.211/86

Shri lakshmi Narayana and Others

Applicants

Versus

Union of India through
Secretary, Ministry of Defence

Respondents

(b) OA.498/86

Shri S.N. Sen Gupta

Applicant

Versus

Union of India through
Secretary, Ministry of Defence

Respondents

Ms. Urmila Sirur

Counsel for the applicants in
both the OAs.

Shri P.H.Ramchandani

Counsel for the respondents in
both the OAs.

CORAM

THE HON'BLE VICE CHAIRMAN SHRI P.K. KARTHA.
THE HON'BLE MEMBER SHRI B.N. DHOUNDIYAI.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter, or not? *Yes*

JUDGEMENT

(of the Bench delivered by
Hon'ble Member Shri B.N. DHOUNDIYAI)

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JUDGEMENT

(of the Bench delivered by
Hon'ble Member Shri B.N. Dhoundiyal)

Shri A. Lakshmi Narayana and 29 others, applicants in OA 211/86 and Shri S.N. Sen Gupta, applicant in OA 498/86, are members of the Military Engineering Service (MES), belonging to the cadres of Stores and Administration. They are aggrieved by the various impugned orders issued from time to time, whereby, the benefits given to other Class-I service of the MES by application of concordance table for fixation of their pay, has been denied to them.

2. The Military Engineering Service (MES) consists of five different cadres of civilians, namely:-

- (i) Engineers (ii) Architects (iii) Surveyors (iv) Stores and Administration. All the senior posts in these 5 cadres are in the revised senior scale of Rs.1100-1600 (Group 'A') and the feeder posts as provided under Rules are indicated below:

NAME OF THE POST

FEEDER POST

- | | |
|---|--|
| (i) Executive Engineer
Rs.1100(6th year or under)-
50-1600(Class-I senior scale) | (i) Assistant Executive Engineer
Rs.700-40-900-EB-40-1100-50-1300
(Class-I Junior Scale) |
| | (ii) Assistant Engineer
Rs.650-1200 (Class-II) |
| (ii) Surveyor of Works/Technical Examiner
Rs.1100-(6th year or under) 50-1600 (Class-I Senior scale) | Assistant Surveyor of Works
Rs.700-40-900-EB-40-1100-50-1300
(Class-I Junior Scale) |
| (iii) Architects
Rs.1100(6th year or under) 50-1600 (Class-I Senior Scale) | (i) Deputy Architects
Rs.700-40-900-EB-40-1100-50-1300
(Class-I Junior Scale) |
| (iv) Senior Administrative Officer-
Rs.1100-50-1600(Class-I Senior Scale) | Administrative Officer
Grade-I, Rs.840-40-1000-EB-40-1200 (Class-II) |
| (v) Sr. Barrack Stores Officer
Rs.1100-50-1600 (Class-I Senior Scale) | Barrack Stores Officer
Rs.650-30-740-35-810-EB-35-880-40-1000-EB-40-1200 (Class-II) |

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3. The promotions to the posts of Executive Engineer, Surveyor Works/ Technical Engineer and Architects are from the posts of Assistant Executive Engineers, Assistant Surveyor of Works and Deputy Architects, all of which, are also Class-I posts but are in a junior scale of pay. On the other hand, the promotion to the post of Senior Administrative Officer and Senior Barrack Stores Officer are made from the posts of Administrative Officer Grade-I and Barrack Stores Officer, which are both class-II posts. Thus there is no junior scale of class-I post in the cadres of Senior Administrative Officers Grade-I and Senior Barrack Stores Officers.

4. The issue raised in this application is whether the benefit of fixation of pay in accordance with the terms of Ministry of Defence OM dated 12.1.76, issued after considering the recommendations of the Central Pay Commission, are applicable in cases of SAOs and SBSOs, or not? The following services qualified for the benefit of this concordance table are specified in annexure-II of the said OM:-

"DEFENCE

A. SERVICES having separate junior and senior scales prior to 1.1.73 in which concordance tables were applicable under separate orders before 1.1.73.

1. Indian Ordnance Factories Service (Technical)
2. Indian Ordnance Factories Service (Non-Technical)
3. Military Engineering Service
4. Defence Science Service

B. Service which carried an integrated pay scale of Rs. 400-450-30-510-EB-700-40-1100-50/2-1250 prior to 1.1.73 in which concordance table was not applicable before 1.1.73.

Military Lands and Cantonments Service.

5. The applicants have contended that no distinction has been made in the different cadres of MES in the above O.M. While the Government

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gave the benefit of concordance table to the Executive Engineers, Surveyor of Works and Architects, the same were denied to Senior Barrack Stores Officers (SBSO's) and Senior Administrative Officers (SAO's), thus creating hostile discrimination. In fact, the Controller of Defence Accounts, Headquarters and Controller of Western Command, Meerut gave the benefits of concordance table for pay fixation. The benefit was later withdrawn and they took a stand that SBSO's and SAO's of MES do not form an organised service and are thus not eligible to this benefit.

The respondents have referred to Chapter VIII of the IIIrd Pay Commission's Report, wherein, it was, inter alia, recommended that the benefit of concordance table should be given to the class-I officers in 'Established Services'. It was stated that "the working definition of 'Established Services' was a service where all senior scale posts are filled entirely by promotion of officers in the junior scale. It was also recommended that the benefits of the concordance should be extended to other organised class-I services, which have characteristics of 'Established Service' i.e. where direct recruitment occurs only in the junior scale and that too for the purpose of preparing the incumbent to assume higher responsibility after a comparatively short period of 5 to 6 years. We would also suggest adoption of the same arrangement in fixation of pay of the promotees in service which

have junior and senior scale, even though, lateral induction takes place at the senior level also". Thus according to the respondents, the benefits of concordance table is not applicable in cases where promotions are made from class-II to class-I posts. There is no junior scale class-I post in the cadres of Senior Administrative Officers grade-I and Senior Barrack Stores Officers. Avertisments have also been made that these two cadres are really speaking, subsidiary and auxiliary to the main cadres of Executive Engineers, Surveyors of Work, Technical Examiners and Architects.

7. We have heard the arguments addressed at the Bar and had perused the pleadings put forth by the learned counsel for both the parties

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and the documents on record. As regards the question of these two services being 'Established Services' our attention has been drawn to the judgement ^{dated 30.9.80 by} of the Hon'ble High Court of Delhi in Civil Writ Petition No.176/1979, wherein, this question had been considered in the context of ^{by} grant of a special pay to these cadres. In that case also, the respondents had decided that the special pay would be admissible to only Technical and Engineering Officers of Organised Central Class-I services on their posting to Headquarters to E-in-C and that the SBSO's and the SAO's being non-Technical officers were not eligible for the special pay. It was held that the non-implementation of the report of the IIIrd Pay Commission as accepted by the Government in case of SBSO's and SAO's would be in breach of provisions contained in Article 14 and 16 of the Constitution of India. The Controller General of Defence Accounts, could not in law, refuse the Special Pay to the SBSO's and SAO's on the ground that they are Non-Technical Officers. A reference was also made to the observation of the Supreme Court in the case of Purshotam Lal and others Vs. Union of India and Another; AIR 1973 (SC) 1088, wherein, it was held that the non-implementation of the report of IIInd Pay Commission in respect of certain posts would not be sustainable as when the Government accepts the recommendation, it is bound to be implemented, in respect of all the Government employees. On this basis, the court directed the respondents to give Special Pay to these categories of officers also.

8. Another ground taken by the respondents for denying benefits of concordance table to the applicants is that there are no junior scale posts in class-I for their cadres. In case of promotee officers, the

Office Memorandum dated 12.11.76, issued by the Ministry of Defence, mentions that:-

....The pay of departmental promotees who are promoted directly from Class II to the senior scale of Class I shall be fixed first

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in the revised junior scale notionally and thereafter in the senior scale post on the same lines as mentioned above."

Thus the pay of Class-II officers who are appointed to any of the Class-I specified service will be fixed on their actual or notional pay in the revised junior scale, before it is fixed in the senior scale on promotion thereto. The departmental promotees shall, therefore, be allowed their first increment in the senior scale on the date of their promotion falling after their notionally completing sixth stage in the junior revised scale. Those promoted at the sixth stage or at later stages in the revised junior scale shall be given their increments on the anniversary of their date of promotion. In case of SAO's and SBSO's, the pay scale goes to the maximum of Rs.1200/- and some of them may be drawing a pay higher than Rs.1100/- i.e. starting pay for Class-I senior scale.

9. The respondents have argued that there is no junior scale in case of the services to which the applicants belong and hence this provision too, is not applicable. This issue has to be examined in the light of another recommendations made by the IIIrd Pay Commission that:-

"As regards weightage for the service rendered in the Class-II on the subsequent promotion to Class-I, some weightage should be accorded at least in those Class-I services, where promotion from Class-II is for all practical purpose, to senior scale of Class-I, and the extent and the condition governing the weightage should be decided by the department."

10. It is inconceivable that either the Pay Commission or the Government had intended not to give the general benefit of improvement in emoluments to the particular cadre of officers, who were promoted to class-II to class-I, just on the basis of a technical ground that there were no junior scales in these class-I services. The class-I senior

scale in case of all cadres is Rs.1100-1600. The scale of Administrative Officer is from Rs.840-1200 and that of Barrack Stores

Officer is from Rs.650-1200.

11. In the conspectus of the above facts and circumstances of the case, we are of the view that on promotion to the class-I senior scale, the concordance table which had been made applicable in case of other three categories, should be made applicable to the applicants in this case also, and for this purpose, the junior scale class-I, i.e. Rs.700-1300, can be notionally adopted in their cases also.

We therefore, dispose of the application, with the following orders and directions:-

(a) The respondents are directed to treat the petitioner as entitled to the benefit of pay fixation in accordance with the concordance table and as per the directions contained in the Ministry of Defence, OM No.2(18)/75/D(CIV-I) dated 12.1.1976 and fix their pay in accordance with the said table with all consequential benefits including arrears of pay and in case of retired persons, refixation of pension, gratuity, commutation and other benefits. The junior scale of Class-I posts of Executive Engineers will be taken as the basis for notional fixation

of pay for giving them the benefit of concordance table for fixing their pay in class-I post.

(b) Any recoveries made towards alleged over-payments to some of the officers, shall be reimbursed to them after revising their pay on promotion. In case of deceased personnel, all payments due to them shall be paid to their families as per Rules.

(c) The above orders shall be complied with, expeditiously and preferably, within a period of three months from the date of receipt of this order.

(d) There will be no order as to costs. *Let a copy of this order be placed in both the case files.*

B.N. DHOUNDIYAL

MEMBER(A)

(P.K. KARTHA)

VICE CHAIRMAN(J)

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13/11/92