

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. OA 1435/87.

DATE OF DECISION: 22.5.1990.

Shri S.N. Dandona & Ors.

... Applicants.

Versus

Union of India & Ors.

... Respondents.

CORAM: Hon'ble Mr. Justice Amitav Banerji, Chairman.
Hon'ble Mr. M.M. Mathur, Member(A).

For the Applicants.

... No one present.

For the Respondents.

... Shri M.L. Verma,
Counsel.

JUDGEMENT

(Judgement of the Bench delivered by
Hon'ble Mr. Justice Amitav Banerji,
Chairman)

This Application has been filed by the eighty four applicants. They are aggrieved that their pay has not been stepped up in accordance with the Memo dated 14.11.1975. Their case is that in accordance with the above Memo, the Government had given the benefits of pay fixation on the basis of Concordance Table to Junior Grade-II Assistant Engineers on promotion to Senior Class-I Executive Engineers on or after 1-1-1973. The Director General Works, C.P.W.D., however, denied the benefits accruing to Junior Grade-II Assistant Engineers on their promotion to Senior Class-I Executive Engineers with reference to order contained in Memo of 16.12.1975 on the ground that their promotion was on ad hoc basis and that the recommendations contained in Memo of 14.11.1975 were applicable only to promotees promoted on regular basis.

The applicants referred to a decision in the case of Shri Y.D. Piplani and Ors. Vs. Union of India & Ors. in T.A. No. 362/85 (arising out of Civil Writ Petition No. 69/78) decided by the Principal Bench of the Tribunal dated 21.8.1986. In that case, the applicants who were Executive Engineers in the C.P.W.D., had moved the Hon'ble High Court of Delhi

under Article 226 of the Constitution with a writ petition dated 24.12.1977. They had prayed for a writ in the nature of certiorari quashing the office Memos dated 16.12.1975, 29.1.1977 and 12.9.1977 and all other decisions and actions of the respondents denying the appropriate benefits of fixation of pay in terms of Office Memo dated 14.11.1975. They had also prayed for a writ of mandamus directing the respondents to give the appropriate benefit of fixation of pay in accordance with the concordance table as per Office Memo dated 14.11.1975 to all the Executive Engineers promoted on ad hoc basis. Further prayer was for a direction to the respondents to restore all such benefits of stepping up and for fixation of pay. The Division Bench after hearing the matter ultimately observed as under:-

"It is clear that no distinction has been made between substantive, regular, officiating and ad hoc appointments in the aforesaid provision of FR 22-C. The Government of India's decision no. 3-A(a) flowing from Government of India's Memo No. F.2(78)-E-III(A)/66 of 4.2.1966 is similar to the provision of stepping up of pay to the senior to the higher pay of the junior as contemplated in the C.M. of November, 1975. Here also no distinction is made between ad hoc and regular appointments.

With juxtaposed readings of the C.M. of November 1975 and FR 22-C in the context of the nature and character of the promotions given to the petitioners we have no doubt in our mind that the petitioners are entitled to the benefits of pay fixation and stepping up of pay in accordance with the order of November, 1975. Accordingly, we direct that the pay of the petitioners as Executive Engineers should be fixed from the date of their appointment as Executive Engineers in accordance with the C.M. dated 14.11.1975 without making any distinction between regular and ad hoc promotion for the application of concordance table or stepping up of pay. We however make it clear that this order is for the limited purpose of pay fixation in the circumstances of this case as Executive Engineer and by itself confer on them any right of seniority or regular promotion".

On a perusal of the records, it appears that all the 84 applicants in the present case are on the same footing as the 32 applicants in the case of Y.D. Piplani & Ors. (Supra). In our opinion, they are also the beneficiaries of the stepped up pay as in the Piplani's case.

We have heard learned counsel for the respondents and also perused the reply of the respondents. The plea raised in para 2 of the reply was that the impugned judgment of Y.P. Piplani & Ors (supra) was not the judgment in rem and it was the judgment in personam, as not applicable to the applicants in the present case.

We are unable to agree with the view that the case of Y.P. Piplani & Ors (supra) is not applicable to the facts of the present case. The applicants in that case and the applicants in this case belong to the same service and are governed by the same Office Memorandum. If one set of employees have already received a benefit from the Tribunal, the other set is also entitled to similar relief unless it can be shown that there is something to distinguish their case from those who have already received the benefit. Our attention had not been drawn to any material to show that the cases of the present applicants are different in any respect from those of the earlier set who had approached the Tribunal in the case of Y.P. Piplani & Ors. (supra). It was open to the respondents to show that there was a distinction between the two sets of employees but they have not been able to do so. We are of the view that the ratio decidendi of the decision in the case of Y.P. Piplani & Ors (supra) will also be applicable to the present applicants.

We, therefore, are of the view that the applicants should be granted relief as given in the case of Y.P. Piplani & Ors (supra). We think it would be in the interest of justice to pass an order in their favour on the same line as is given in the case of Y.P. Piplani & Ors (supra). We, therefore, direct that the pay of the applicants as Executive Engineers should be fixed from the date of their appointment as Executive Engineers in accordance with the O.M. dated 14.11.1975 without making any distinction between regular

and ad hoc promotion for the application of concordance table or stepping up of pay. We, however, make it clear that this order is for the limited purpose of pay fixation in the circumstances of this case as Executive Engineer and will not by itself confer on them any right of seniority or regular promotion. The Application is allowed on the above lines. There will be no order as to costs.

MM
(M.M. Mathur)
Member (A)
22.5.1990.

AB
(Amitav Banerji)
Chairman.
22.5.1990.