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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

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Date of Decision: 31.7.92

OA 1750/90

B.P. AGRAWAL

... APPLICANT.

Vs.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicant

... SHRI C.P. PANDEY.

For the Respondents

... SHRI M.L. VERMA.

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

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J).)

The applicant is working as Executive Engineer, CPWD being on deputation to AIR, filed this application challenging the order dated 29.5.89 by which the pay earlier fixed of the applicant as the Chief Engineer has been reversed and depriving the applicant from the benefit of Concordance table.

2. The applicant has claimed the relief for issue of a direction to the Director General of Works, CPWD to

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restore the applicant's pay fixed in terms of concordance table, by the Chief Engineer, PWD Delhi Administration, vide order dated 3.5.89 and the order dated 29.5.89 be declared null and void and quashed. Further, a direction to the Director General of Works not to effect any changes or modification in the applicant's pay fixed under Rule FR 22C in the grade of AEE on completion of his probation period as AEE.

3. The facts of the case are that the applicant was appointed as Assistant Engineer (Class-II) w.e.f. 7.1.66. The applicant took the Engineer Services Examination in 1975 conducted by UPSC and was appointed as Assistant Executive Engineer (Junior Class-I) and he joined that post on 10.1.1977. He also completed successfully 2 years probation period. The pay of the applicant was fixed in the grade of Assistant Executive Engineer vide order dated 16.3.1981 (Annexure A-6). While the applicant was working as Asstt. Executive Engineer his lien was retained on the post of Asstt. Engineer because of this on the post of Asstt. Engineer the applicant was promoted to the Senior Class-I post of Executive Engineer by the order dated 31.5.1980 (Annexure A-7). This promotion was purely temporary and on adhoc basis. The applicant made a representation on 20.1.1983 for fixation of his pay in the Executive Engineer grade Rs.1100-1600 to fix at Rs.1400/- w.e.f. 13.6.1990 as per concordance table. The

applicant was informed by the letter dated 6.5.1983 that as and when his case for promotion on regular basis ^{is} decided his pay will be regulated in accordance with the provisions of Concordance table. However, by the letter dated 10.4.1989, the Director General of Works, CPWD issued Office Memo on the subject of pay fixation under concordance table in respect of Asstt. Engineers promoted to the grade of Executive Engineers on adhoc basis. Accordingly, the pay of the applicant was refixed by the Office Order dated 3.5.1989 w.e.f. 13.6.1986 under concordance table. In view of this order, the pay as on 1.1.1989 has been Rs.4250/-. However, this order of pay fixation has been revised and Office Memo dated 29.5.1989 was issued by the Director General of Works, CPWD stating that the applicant is not entitled to getting his pay fixed under concordance table as he was promoted to the grade of Executive Engineer when he was officiating as Assistant Executive Engineer and not from the post of Assistant Engineer direct. In view of this order the pay of the applicant in the month of July, 1989 has been fixed as Rs.4000/- while the pay slip of June, 1989 shows that the pay was Rs.4250/-.

4. The case of the applicant is that as per Ministry of Finance OM No.F-12/21/74-IC dated 14.11.87 concordance table is applicable for fixation of pay on promotion as Executive Engineer from both Asstt. Executive Engineer

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and Asstt. Engineer grade and also for those Class-II who are first appointed to the junior scale of Class-I and thereafter promoted to the senior scale. The case of the applicant is that since he was also Class-II before his appointment to the junior scale of Class-I and was subsequently promoted to the senior scale of Class-I then he should be given the benefit of concordance table. The applicant also relies on the letter dated 6.5.83 (Annexure A-9) alleging that an assurance was given to him to refix his pay in accordance with the concordance table when his case for promotion on regular basis ^{is} decided.

5. The respondents contested the application and stated that the representation filed by the applicant is still under consideration and he has come prematurely before the Tribunal. It is further stated that the applicant joined as Asstt. Engineer (Class-II post) in CPWD on 7.1.66 in the pay scale of 650-1200. He was appointed as Asstt. Executive Engineer in the pay scale of 700-1300 as a direct recruit through the UPSC and was placed on probation for a period of 2 years. During this period of probation he was allowed a presumptive pay of the permanent post of Asstt. Engineer on which he has a lien in accordance with the provisions of FR 22-B(1)(a). On 10.1.79, his pay was fixed under FR 22C in the grade

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of Asstt. Executive Engineer (Rs.700-1300) at the stage of Rs.1100/- p.m. While on probation in the first year he was getting preemptive pay of Rs.960/- and from January, 1978 he was getting Rs.1000/- p.m. till 9.1.79. Since the applicant was permanent in the grade of AE(C) his lien was not terminated in that grade as a result after completion of 8 years service in the grade of AE, he became eligible for consideration for promotion to the post of Executive Engineer. By virtue of seniority in the grade of Asstt. Engineer on 13.6.80 his pay was fixed in the pay scale of Executive Engineer Rs.1100-1600 under FR 22C at the stage of Rs.1200/- with date of increment as on 1.6.81. The pay of the applicant was fixed as Asstt. Executive Engineer as well as Executive Engineer under FR 22C and not under the concordance table rule. The order dated 10.4.89 fixing the applicant's pay under concordance table is applicable only to Asstt. Engineers promoted as Executive Engineer direct and on adhoc basis and not to Executive Engineer who at the time of promotion as Executive Engineer was officiating as Asstt. Executive Engineer.

6. It is also stated by the respondents that from the cadre of Asstt. Executive Engineer the applicant would be eligible to regular promotion as Executive Engineer from the post of AEE w.e.f. 9.1.82, the date on which he completed 5 years' service as Asstt. Executive Engineer.

Thus, when the applicant appointed as Executive Engineer on regular basis from 9.1.82 he will be deemed to be promoted from the grade of Asstt. Executive Engineer ^{from} and not AE. The matter regarding making the regular promotion from the grade of Asstt. Executive Engineer w.e.f. 9.1.82 is under consideration and once this has been finalised, the applicant is expected to be placed much above in the seniority list of Executive Engineer which he could not expect alongwith those AE promoted on adhoc basis as Executive Engineer on 13.6.80. Thus, according to the respondents, the applicant could not be granted the benefit of the concordance table.

7. I have heard both the learned counsel at length and perused the records. The respondents have clearly denied that the case of the applicant is covered by Ministry of Finance OM No.12/21/71-IC dated 14.11.75 which has been wrongly mentioned by the applicant in para 5-A as dated 14.11.87. That OM regulates the fixation of pay under the concordance table of the departmental promotees who are promoted from Class-II to the senior Class-I either directly or through first appointment to the junior scale of Class-I. In the present case the applicant has been promoted to grade-I of Executive Engineer on adhoc basis on the basis of seniority in the grade of Asstt. Engineer Class-II while he was officiating as Asstt. Executive Engineer in the junior scale of Class-I. Thus, the case of the applicant is different as also

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evident from the perusal of the said OM filed by the learned counsel for the applicant during the course of the hearing. At the time of appointment as a direct recruit AEE, the pay of the applicant has been fixed under FR 22C. Thus, the benefit of concordance table cannot be given to the applicant as he cannot be treated to have been promoted to the grade of Executive Engineer from the grade of Asstt. Engineer.

8. The learned counsel for the respondents has also argued that the granting of benefit of the concordance table to the applicant cannot be given because of his promotion to the post of Executive Engineer while the applicant was already officiating as AEE. The applicant by virtue of his seniority in the grade of AEE is likely to get regular promotion as EE w.e.f. 9.1.82, and at that time he will not be eligible for any refixation of his pay including the benefit of concordance table. The learned counsel has also argued that the matter is still pending with the respondents as the rules on the point are not very clear and a final decision in that regard is yet to be taken. Thus, the respondents are still considering the matter of the applicant in consultation with the other departments.

9. The learned counsel for the applicant has also referred to the decision in the case of TA 362/85 decided on 21.8.86 by the Principal Bench but the issue involved in that

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case was somewhat different. Their issue was denial of the benefits of the concordance table in terms of OM of 14.11.75 because of the promotion was said to be on adhoc basis and not on regular basis and their promotion was ^{from} the post of AE to EE. Thus, the applicant cannot get the benefit of that judgement.

10. Considering all these facts and in view of the position of the law though the applicant has been promoted from Class-II post to Class-I post but since he was working in a junior Class-I post scale, so whether the said OM of November, 1975 can be applied in the fixation of the pay of the applicant is to be decided by the respondents and the respondents in their reply have admitted that the matter is under their active consideration. On the face of it withdrawal of the order of earlier fixation of the pay of the applicant by the order dated 3.5.89, by the order dated 29.5.89 cannot be said to be in any way infirm or unjust because of the extant rules on the subject.

11. The applicant has alleged that certain persons junior to the applicant in the cadre of Asstt. Engineer have been fixed at higher level ^{of pay} as Executive Engineer by virtue of the benefit of concordance table. However, in the application, the applicant has not named even a single person nor has given any such illustration.

12. In view of the above discussion, the application is disposed of in the manner that the respondents are

directed to dispose of the representation of the applicant within a period of 8 weeks from the date of receipt of a copy of this order, and the reliefs claimed by the applicant, therefore, cannot be allowed at the stage.

After the disposal of the representation of the applicant which is under consideration of the Govt., if the applicant is still aggrieved, he can assail the grievance ^{if any} in the competent forum, subject to the law of limitation.

J. P. Sharma
21.7.92
(J.P. SHARMA)
MEMBER (J)