

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

CA No. 1634/91

DATE OF DECISION : 5.6.92

Shri Surinder Kumar Trehan
Vs.

...Applicant

Union of India & Ors.

...Respondents

CORAM

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri S.S. Bhalla

For the Respondents

...Shri K.L. Bhandula

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

JUDGEMENT

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

The applicant, working as Assistant Director (Maintenance), Power Engineers Training Society (PETS), Department of Power, Badarpur assailed the order dt. 6.11.1990 issued by the Central Electricity Authority (CEA) (Annexure AI) fixing the pay of the applicant as follows :-

<u>Date</u>	<u>Basic pay</u>
25-2-76	Rs.650/- On promotion to Sr.Erector's post
25-2-77	Rs.675/-
25-2-78	Rs.700/-
1-2-79	Rs.725/-
1-2-80	Rs.750/-

2. The applicant has claimed the relief that the respondents be directed to withdraw the aforesaid order dt. 6.11.1990 and the respondents be directed to issue Office

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Order superseding the above order fixing the pay of the applicant on the basic pay which he was drawing in PETS on the post of Foreman Grade I on 1.2.1980, namely Rs.830/-.

3. The facts of the case are that the applicant was on deputation as Erector with U.P. State Electricity Board at Obra Project from where he returned in September, 1963. The applicant joined at Badarpur Thermal Power Project (BTPP) of Central Water and Power Commission (Power Wing), now designated as Central Electricity Authority, the parent office of the applicant. While the applicant was working as Erector in BTPP, he was drawing a basic pay of Rs.620/- w.e.f. 1.2.1974 in the pay scale of Rs.425-640/-. PETS invited the applications for appointment to the grade of Foreman Grade-I (Mechanical) in 1974. The applicant was selected as Foreman Grade-II in the pay scale of Rs.550-750/- and after being relieved from the post of Erector w.e.f. the afternoon of 31.12.1974 and joined his duty in Badarpur Thermal Power Station (BTPS) and the pay of the applicant was fixed at Rs.650/-. Under FR 22(c) taking his pay as Erector in the pay scale of Rs.425-640/- at the level of Rs.620/- giving one increment in the grade of Erector of Rs.20/- bringing the pay to Rs.640/- and fixing the pay at the next stage in the pay scale of Rs.550-750/- at

Rs.650/- w.e.f. 1.1.1975 (afternoon). The applicant was subsequently appointed as Foreman w.e.f. 24.1.1977 in the pay scale of Rs.700-900/- when he was drawing a salary of Rs.700/- in the post of Foreman Grade II. The pay of the applicant as Foreman Grade I was, therefore, fixed at Rs.730/- under FR 22(c) w.e.f. 24.1.1977. On 1.1.1980, the applicant was drawing a salary of Rs.830/- in the pay scale of Rs.700-900/- as Foreman Grade I. The Power Engineers Training Society (PETS) invited applications for the post of Maintenance Instructor in the pay scale of Rs.700-1300/- and the applicant was selected for one of the posts on deputation basis. The applicant requested BTPS, then under the management of NTPC to relieve him of his post in BTPS and place his services at the disposal of CEA so that he could take his appointment with PETS. The applicant was relieved of the post by the management of BTPS w.e.f. 29.10.1980 and the applicant reported for duty to CEA from the afternoon of 29.10.1980 and on that day was sent on deputation to PETS. The applicant was appointed on deputation on foreign service terms w.e.f. 30.10.1980 in the pay scale of Rs.700-1300 as Maintenance Instructor in PETS. The LPC was issued by BTPS authorities on 21.11.1980 showing the pay of the

applicant as Rs.830/-.. The applicant was never treated on deputation to BTPS. This is evident from the fact that on returning from Obra, the applicant was asked to report to BTTP being part of CEA. In PETS, the applicant had opted for the pay scale of the Maintenance Instructor and his pay was fixed at Rs.900 p.m. under FR 22(c)-5. CEA fixed the pay of the applicant w.e.f. 1.2.1980 at Rs.750/- instead of Rs.830/-.. According to the applicant, the post of Foreman Grade I was created by CEA as temporary addition to the existing cadre of CEA in BTPS. The applicant has worked on the post of Foreman Grade-I on regular basis from 24.1.1977 to 29.10.1980. So his pay as Foreman Grade I be taken to consideration while fixing his pay as Maintenance Instructor in the pay scale of Rs.700-1300/-.. The applicant never worked as Senior Erector and while he was working as Erector, was selected for the post of Foreman Grade-II and Foreman Grade-I which were to be filled up by direct recruitment. As such the pay which the applicant was drawing on 1.2.1980 was required to be taken into consideration for fixing the pay of the Maintenance Instructor. Thus the applicant in the application has stated that his last pay was Rs.830/- which he was drawing as Foreman Grade-I and on the basis of the same, the pay of the applicant was rightly fixed as Maintenance Instructor in the pay scale of Rs.700-1300/- and

PETS authorities rightly fixed the pay of the applicant at Rs.900 p.m. w.e.f. 30.10.1980. By the impugned order of November, 1990 fixing the pay of the applicant on 1.2.1980 as Rs.750/- would naturally result in revision of his pay of Maintenance Instructor in PETS authorities and the applicant shall be, therefore, put to heavy loss.

4. The respondents contested the application and stated that the applicant for monetary gain from time to time applied for certain posts directly without the approval and consent of Central Electricity Authority. Last time, he applied for the post of Maintenance Instructor in PETS, while he was working in BTPP which was taken over by NTPC w.e.f. 1.4.1978. Since the applicant was not on the rolls of NTPC, Badarpur Division, the NTPC forwarded the application of the applicant to the CEA Headquarters for processing the case of the release from the post of Erector to join the post of Maintenance Instructor in PETS. However, since the applicant had not applied through proper channel, so initially he was not been relieved to join the post of Maintenance Instructor but subsequently on humanitarian grounds, he was relieved from the post of Erector in the scale of Rs.425-640 and his pay in the grade of Erector would have been Rs.640 p.m., i.e., the

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maximum of the scale from the date of his release from the CEA. However, PETS had fixed his pay in the grade of Maintenance Instructor after considering the LPC which was issued by NTPC, Badarpur Division in the grade of Foreman Grade-I and the advice tendered by CEA regarding his basic pay was ignored. On permanent absorption, against the post of Maintenance Instructor in the PETS, the applicant resigned from the post of Erector w.e.f. 30.4.1985. Since he has served for more than 20 years, he was sanctioned the prorata retirement benefits and leave salary was remitted to the PETS. The applicant requested vide his representation dt.1.10.1990 (Annexure I) that the basic pay which was taken into consideration for grant of prorata pensionary benefits to him, was not in commensuration with the basic pay which his juniors were drawing when they took absorption in the service of the NTPC. He requested that since his juniors were promoted in the grade of Senior Erector, he may also be promoted to that grade and his pay may be fixed accordingly. Since the applicant never submitted his joining report as Senior Erector in CEA nor he made any request for his appointment as Senior Erector and he was drawing more pay, than he would have drawn in the grade of Senior Erector in CEA as Foreman Grade I in NTPC (BTPP). In 1977, in BTPP as Foreman Grade-I, he was in the scale of Rs.700/-

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which was higher than the scale of pay of Senior Erector. Since his juniors were already promoted to the grade of Senior Erector, the proforma promotion was also granted to him in 1990. In view of this, his basic pay was fixed at Rs.750 p.m. i.e., at the maximum of the scale as on 1.2.1980 vide Office Order dt.6.11.1990 which he has challenged in this case. On this basis of this, PETS refixed his pay in the grade of Maintenance Instructor in the scale of pay of Rs.700-1100. It is against this that the applicant has come for redress of his grievances.

5. I have heard the learned counsel for the parties at length. As regards the refixation of the pay of the applicant in PETS, that cannot be considered and adjudicated by the Tribunal as the PETS is an autonomous body and there is no notification issued under Section 14(2) of the Administrative Tribunals Act, 1985 confirming jurisdiction of the Central Administrative Tribunal. What is to be seen is that the pay of the applicant (as Senior Erector) has been rightly fixed by the order dt.6.11.1990 or not in the scale of Senior Erector as on 1.2.1980. The learned counsel for the respondents gave out the history of the working of CEA. The learned counsel for the respondents argued that only issue which can be agitated

is the refixation of the pay of the applicant in the cadre of Erector or Senior Erector before he was absorbed in PETS. It is argued that the Erector, Senior Erector, Erection Engineer etc. were employed to provide assistance in erection and commissioning of the power projects in the union territories and in the central projects. The salaries of such employees continues to be paid by the CEA. However, in respect of the central project, i.e., BTTP/BTPS, Bairasul, Salal and Loktak Hydro Electric Projects, which were the subordinate offices of the CEA, the salaries of such employees used to be paid by the project authorities. There were certain engineering posts from Junior Engineer to Superintending Engineer and the erection staff which were common to all the projects and the CEA, and these were controlled from the CEA Headquarters. However, there were some posts which were not on the common cadre of the CEA and were sanctioned only for the projects side, for example, Foreman Grade II and Foreman Grade I. The appointment to these posts which were on the common cadre of CEA used to be made by the CEA Headquarters and according to demands, the officials used to be transferred from the project to another project. However, in respect of the posts which were only sanctioned in the projects and were not on the common cadre of the CEA, the

appointment to such posts were to be made by the managing committee of the concerned projects and the transfers of such officials were to be made to other projects. NTPC took the charge of Badarpur Thermal Power Project w.e.f. 1.4.1978 and NHPC took over the charge of the Bairasal, Salal and Loktak Hydro Projects on different dates. The officials whose posts were on the common cadre of the CEA were treated on deputation with those projects where they were serving before taking over the charge of the projects by the concerned corporations. However, the officials who were not on the common cadre were appointed by the management committee of the project continued to be with the concerned projects. Thus it is contended by the learned counsel that the applicant joined the post of Foreman Grade-I on a post advertised by the project authorities in 1974 and the applicant rightly applied for that post. Since CEA Headquarters were the cadre controlling authority, the applicant should have got his application forwarded through proper channel and he did not do so. Even the management committee of BTPP did not apprise this position to the CEA even after appointment of the applicant against the post of Foreman Grade-II in the scale of Rs.550-750. The applicant was appointed in 1977 as Foreman Grade-I by the BTPS in the

scale of Rs.700-900 and his pay was fixed at Rs.730 p.m. w.e.f.

24.1.1977 and on 1.1.1980, he was drawing Rs.830 p.m. At this stage, he joined PETS as Maintenance Instructor and got his pay fixed on the basis of the last pay drawn by the LPC issued to him. Thus the lien of the applicant remained on the post of Erector with the cadre controlling authority, i.e., CEA and the applicant irregularly applied, selected and joined in different projects without informing the cadre controlling authority and his pay was fixed also by the said project, i.e., in the grade of Foreman Grade-II and Foreman Grade-I. The pay the applicant has drawn was higher than the scale of pay of Senior Erector. From BTPP, the applicant again applied in PETS as Maintenance Instructor and was selected and permanently absorbed there on 30.4.1985. The difficulty arose on his absorption because the prorata contribution and leave encashment was to be made by the cadre controlling authority by the CEA because the applicant had already worked for more than 20 years. The pay of the applicant was fixed in the maximum of the scale of Erector at Rs.640 and the applicant has made a representation that his juniors had already been promoted as Senior Erector vide Annexure R-1 to the counter and he has also prayed that his pay be fixed at Rs.750. The relevant

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portion of the said letter dt.1.10.1990 is extracted below :-

"Please refer to my representation of November 17, 1987 and your reply there to vide your letter No. 2/41/63-Admn II (CEA) dated 14.3.90 regarding remittance of leave salary for 165 days to me. Copies of both the above letters are enclosed for the sake of convenience.

In this context, I have to make following submissions

- i) That I was promoted as Sr.Erector in the scale of Rs.550-20-650-25-750/- on 24.2.76 as per office order No.306 dated 24.2.76 as shown in your letter No.3/34/75-Admn.II(Office Order No.684 dated 4th May, 1976) and resumed duty in the forenoon of 25th February, 1976 ((copy enclosed for ready reference.
- ii) That even without taking into consideration of the parallel post in the same scale i.e. Rs.550-20-650-25-750, in which I was holding officiating post, my pay should have been fixed at Rs.675/- in 1976 itself and not in 1984 as mentioned by you.
- iii) That all my colleagues who were promoted and resumed duties in the revised scale as per your office order No.684 dated 4.5.76 were junior to me-most of them have retired and were given benefits of service at the maximum of scale i.e. Rs. 750/- whereas my pay has been fixed at 675/- which obviously is not correct.

The benefits of service have become due to be paid to me on October 24, 1990.

In view of the circumstances explained above, I would request your goodself that my case may please be looked into afresh and orders may please be passed for release of salary payment at the maximum of scale i.e. Rs.750/- for 165 days."

Thus from the above, it is evident that the applicant himself calculated his pay which he would have drawn with the cadre controlling authority, had he served there and the cadre controlling authority, therefore, on 1.2.1980 has correctly fixed the pay of the applicant as per letter dt.6.11.1990 which has been challenged by the applicant in this case. When the applicant has himself represented regarding the fixation of pay at Rs.750/- and the same has already been done, the

applicant in any manner should not have any grievance.

However, the difficulty is that the applicant wants the benefit of the pay which is drawn in the project on the post of Foreman Grade-I and his pay was ₹.830/- when he applied in PETS. The learned counsel for the applicant could not show any rule or instructions under which this pay of the applicant can be protected. The applicant for all these years has worked, may be on transfer basis in various projects without the consent and permission of the CEA, which is the cadre controlling authority. Thus the applicant cannot now get any benefit for the pay which he has drawn on the posts, which were exclusively on the said projects and the appointment to those posts were by the management of those projects.

6. I, therefore, find no merit in this application and the same is dismissed leaving the parties to bear their own costs.

J. P. SHARMA
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(J. P. SHARMA)
MEMBER (J)

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