

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 2055 of 2004

New Delhi, this the 9th day of February, 2005

HON'BLE SHRI SHANKER RAJU, MEMBER (J)
HON'BLE SHRI S.K. MALHOTRA, MEMBER (A)

CB Gautam,
Chief Draftsman (Group B),
Office OCWE(AF) Palam,
Delhi Cantt..Applicant.

(By Advocate : Shri Yash Pal for Shri M.K. Bhardwaj)

VERSUS

Union of India & Ors. through :

1. Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. The Engineer-in-Chief,
Army Headquarters,
Kashmir House,
Rajaji Marg, New Delhi.
3. Chief Engineer,
Western Command,
Chandi Mandir,
Chandigarh.
4. Chief Engineer,
AF(WAC), Palam,
Delhi.Respondents.

(By Advocate : Shri B.K. Barera)

O R D E R

SHRI SHANKER RAJU, MEMBER (J) :

Applicant impugns respondents' order dated 11.6.2004 whereby his request for placing him in the pay scale of Rs.6500-10500/- w.e.f. 1.1.1996 and Rs.10000-15200/- w.e.f. 9.8.1999 with all consequential benefits has been rejected.

2. Applicant was appointed as a Draftsman Grade-II in the year 1965 and had acquired degree. Vth Central Pay Commission in its

report in para 89.17 in respect of Central Engineering Service, Central Electrical and Mechanical Engineering Service, and Central Architectural Service, made recommendations, which would *mutatis mutandis* apply in case of Engineering Service also. Para 89.18 of the said recommendations provides that Assistant Architects in the pay scale of Rs.2000-3500/- have been recommended the scale of pay of Rs.2500-4000/- and having direct recruitment to the extent of 75% and 25% by way of promotion and degree in Architecture. In para 89.19 of the said recommendations, it is further provided that direct recruitment of degree holders be done at the level of Architectural Assistants and be dispensed with for Assistant Architects which would thus become promotion posts for Architectural Assistants.

3. In the aforesaid terms on the recommendations of the Vth CPC, pay of the applicant was revised in the scale of pay from Rs.1600-2660/- to Rs.5500-9000 w.e.f. 1.1.1996. Further in the scale of pay of Rs.6500-10500/- in the wake of second upgradation as per Assured Career Progress Scheme w.e.f. 9.8.1999.

4. As Vth CPC recommended that graduate in Engineering Drawing/Design cadre are to be placed in the pay scale of Rs.6500-10500/- w.e.f. 1.1.1996, the notification issued by the Ministry of Finance on 30.9.1997 whereby graduate Engineers recruited against the posts of Drawing/Design office in the subordinate engineers cadre were placed in the pay scale of Rs.6500-10500. Accordingly, this has been accepted by the Central Public Works Department, those having degree had recommended for the same treatment as the revision in the pay scale of the cadre has been adopted by the respondents at par with C.P.W.D.

5. Vide their letter dated 10.8.1998, the respondents have decided that revised scale of pay though have not been approved but recommendations are subject to certain pre-conditions. The respondents have already revised the pay scale of Junior Engineers. On representation vide order dated 25.9.1999, it is decided by the respondents that scale of pay of Rs.6500-10500/- is applicable only to graduate engineers recruited against the posts of Drawing/Design Office in subordinate Engineering cadres and it is not applicable to Draftsman Grade-I.

6. In implementation of Office Memo dated 9.8.1999 with regard to Assured Career Progression, Junior Engineers with degree were given the pay scale of Rs.10000-15200/-.

7. Learned counsel of the applicant contended that since junior engineers in MES and Draftsmen in C.P.W.D. having acquired degree to be placed in the revised pay scale of Rs.10000-15200/- as second upgradation under ACP Scheme. Applicant had been discriminated arbitrarily by not according him the said scale of pay, ignoring the notification of 30.9.1997. Learned counsel for the applicant has annexed the copy of the relevant rules of MES and CPWD to contend that from the perusal of the rules, on account of higher qualification, nothing has been brought on record to show that Vth CPC's recommendations have not been accepted to the cadre of MES. It is further stated that cadre of Draftsman in MES is at par with cadre of Architect in all respects. The pay scales of Draftsman Grade II in MES and Architectural Assistant have been at par with all respects. It is also stated by the applicant that Assistant (Architectural Department) in CPWD have been granted 1st upgradation in the pay scale of Rs.6500-10500/- and second

upgradation in the pay scale of Rs.10000-15200/- whereas Draftsmen Grade II in MES have been given ACP from the Grade of Rs.5000-8000/- in the pay scales of Rs.5500-9000/- and 6500-10500/-. According to applicant's learned counsel, second upgradation of Rs.10000-15200/- has been accorded only to those JEs who possessed degree in Engineering.

8. On the other hand, respondents' counsel opposed the contentions raised by the applicant. According to him, the present OA is barred by limitation as the implementation of letter dated 18.11.1997 is sought which does not give a continuing cause of action.

9. On merits, it is stated that in case of Architect's cadre a direct entry Draftman Grade II can get physical promotion/upgradation under the ACP Scheme in the normal hierarchy, which is Draftsman Grade-II, Draftsman Grade-I and Chief Draftsman. The recommendations of Vth CPC for grant of pay scale of Rs.6500-10500/- is for the subordinate Engineering Cadre wherein the direct recruitment for the graduate engineers are permitted whereas as per Recruitment Rules meant for MES Draftman direct recruitment separate quota for graduate Draftsman is not permitted.

10. In the rejoinder, learned counsel for the applicant has stated that there is no difference in the nature of duties of Draftsmen and Junior Engineers and there is no quota for direct recruitment in CPWD. There is also no direct recruitment in Architectural cadre of CPWD.

11. On careful considerations of the rival contentions of the parties, the order assailed dated 11.6.2004 whereby request of the applicant for parity of restructure among degree holders Architect

Engineers had been rejected by a non-speaking order, as an administrative authority, *sine qua non* for fairness is reasoned order. Non-speaking order shows non-application of mind.

12. In the matter of pay scales, it is trite law that Courts in judicial review would not assume the role of expert body and the principle of 'equal pay for equal work' would not be subject matter of judicial review if there is a conclusion arrived at by the Pay Commission.

13. While examining Vth CPC's recommendation in para 89.17 not only Engineers but in Architectural Service, the recommendations made for engineering service were made applicable. Accordingly, the pay scale of Rs.10000-15200/- has been accorded to the Junior Engineers in CPWD and MES w.e.f. 1.1.1996 as a second upgradation accorded to them in the higher pay scale of Rs.10000-15200/-. We have also perused the records, including the recruitment rules. We find that there is also no direct recruitment quota element in the cadre of MES and Architectural cadre of CPWD.

14. By that as it may, in the light of the decisions of the Apex Court in the cases of *Union of India v. Tarit Ranjan Das*, 2004 SCC (L&S) 160 and *State of Haryana Vs. Indira Kumari*, 2004 SCC (L&S) 184, it is for the Government to consider the parity of pay scale, as we have already concluded that the contentions raised by the applicant in the representation have not been considered in the perspective of the recommendations of Vth CPC and the equal treatment meted out to the similarly situated in other departments. It requires reconsideration.

15. In the result, for the foregoing reasons, we partly allow the present OA, impugned orders are set aside and the respondents are

directed to reexamine the claim of the applicant for grant of parity in the pay scale of Rs.6500-10500/- w.e.f. 1.1.1996. In this process, the recommendations of Vth CPC, Ministry of Finance letter dated 30-9-1997 (X) 30.7.1998 as well as similar treatment meted out to the counterparts in CPWD shall also be taken into consideration. A reasoned order shall be passed within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

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 (S.K. MALHOTRA)
 MEMBER (A)

S. Raju
 (SHANKER RAJU)
 MEMBER (J)

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(X) Corrected as per Order
 dated 27-6-2005.
DR
 11/7/05
 D.R(I)