

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.2120/2004

New Delhi this the 10th day of August, 2005

Hon'ble Shri V.K. Majotra, Vice Chairman (A)
Hon'ble Shri Shanker Raju, Member (J)

C.L. Sharma
S/o late Shri P.C. Sharma
R/o 6370, Pocket-9, Sector-B,
New Delhi.

-Applicant

(By Advocate:Shri KNR Pillai)

Versus

1. Union of India, through the
Secretary,
Ministry of Urban Development &
Poverty Alleviation,
Nirman Bhawan,
New Delhi-110 011

2. The Director General (Works)
Central Public Works Department
Nirman Bhawan, New Delhi-110 011

-Respondents

(By Advocate: Mrs. Promila Safaya)

ORDER (Oral)

Hon'ble Shri V.K. Majotra, Vice Chairman (A)

Applicant was appointed in the CPWD as Junior Engineer on 28.12.59. He was promoted as Assistant Engineer from 21.1.73. Till, 31.12.95, he was in scale Rs.2000-3500. He was brought on to the revised scale of Rs.6500-10500 from 1.1.96. He was again promoted as Executive Engineer on 24.4.98 in scale Rs.10000-15200. He retired on superannuation on 28.2.2001.

2. The Vth Central Pay Commission recommended that Assistant Engineers of the CPWD to the extent of 50% of their strength should be granted a higher pay scale of Rs.10500-12000/- . The remaining 50% of the Assistant Engineers were to remain in scale of Rs.6500-10500. According to the applicant, as per the seniority list (Annexure A-IV) dated 20.2.1997, applicant's name was at serial No.14 and was within the 50% of the total strength and hence entitled for according scale of Rs.7500-12000 from 1.1.96 and consequent re-fixation of pay on promotion as Executive Engineer from 24.4.98. Applicant is aggrieved that

Vh

although he fulfilled the eligibility condition of coming within 50% of the strength of Assistant Engineers, he was not placed in scale of Rs.7500-12000 w.e.f. 1.1.96. By virtue of the present application, he has sought a direction for fixation of his pay from 1.1.96 as Assistant Engineer in scale Rs.7500-12000 with consequential benefits till his retirement on 28.2.2001 and thereafter.

3. Learned counsel of respondents contested the claims raised in this OA.
4. Learned counsel of applicant has drawn our attention to order dated 27.9.2000 in OA-818/2000 (**F.C. Jain V. Union of India & Others**) as also order dated 14.3.2005 in OA-2009/2004 (**V.K. Sharma Vs. Union of India & Others**).

The order in the case of F.C. Jain reads as follows:-

"5. In our judgment, aforesaid conditions also do not provide that the employees who have received benefit under one scheme will not be entitled to the benefit of the other. Similarly, no such condition is attached to the office order of 13.5.1998 at Annexure-I. In the circumstances, aforesaid contention raised on behalf of the respondents is rejected.

6. Similarly, we find that the office order of 13.5.1998 at Annexure-I has been issued in terms of the recommendations of the 5th Pay Commission. The same has, therefore, to be uniformly adopted along with other recommendations with effect from 1.1.1996. The same cannot be made applicable from the date of the office order later issued on 13.5.1998. Applicant, in the circumstances, is held entitled to the pay scale of Rs.7500-12000 with effect from 1.1.1996.

7. As enumerated above, applicant was engaged as Junior Engineer with effect from 10.10.1962 and he was promoted as Assistant Engineer on 18.9.1987 which promotion he has accepted. Applicant under the terms of the ACP Scheme would, therefore, be entitled to the benefits thereof after a period of 12 years from the date of his assuming charge as an Assistant Engineer as he has not been promoted for a period of 12 years. He will thus be entitled to receive upgradation of his pay scale with effect from 18.9.1999.

8. Present OA, in the circumstances, is allowed. Respondents are now directed to fix the pay of the applicant in the pay scale of Rs.7500-12000 with effect from 1.1.1996 and thereafter grant him upgradation of pay scale with effect from 18.9.1999, calculating the benefits accruing on the aforesaid basis and to pay him his dues including arrears expeditiously and within a period of three months from the date of service of the order. No order as to costs".

5. Union of India assailed these orders by Writ Petition 4664/2001 before the Delhi High Court, which was dismissed on 18.4.2002. High Court's decision was challenged before the Hon'ble Supreme Court through SLP (Civil) 289/2003,

which was also dismissed. The case of V.K. Sharma (supra) being similar to that of F.C. Jain (supra), was also allowed.

6. Both Shri F.C. Jain and V.K. Sharma were junior to the applicant. Once these persons who were junior to the applicant working in the same department/office have been granted the relief, there is no reason why the same benefits should not be made available to the applicant.

7. Learned counsel of the respondents stated that Vide Annexure A-2 dated 13.5.98, Assistant Engineers were placed in two revised pay scales of Rs.6500-10500 and Rs.7500-12000 to be granted on 50:50 basis in terms of number of posts but the pay scale of Rs.7500-12000 which was to be extended to 50% of these posts was abolished vide office order dated 21.7.2003 (Annexure-I to the counter reply). Further, by these orders all the posts of Assistant Engineers in CPWD were placed in a single revised pay scale of Rs.6500-10500. Learned counsel maintained that all the posts of Assistant Engineers having been placed in a single revised scale of Rs.6500-10500, vide Office order dated 21.7.2003, there is no question of placing the applicant in scale Rs.7500-12000.

8. In our considered view, office order dated 21.7.2003 cannot be given retrospective application. The applicant's case has to be covered under respondents' earlier orders (Annexure A-2) dated 13.5.98 according to which applicant's juniors Shri F.C. Jain and Shri V.K. Sharma have been accorded benefits in the aforesaid orders of the courts. Respondents ought not have compelled the applicant, who is similarly circumstanced as Shri F.C. Jain and Shri V.K. Sharma to approach the court for obtaining the benefits, which have been granted to his junior colleagues.

9. Consequently on parity of reasoning of the earlier litigation cited above, we allow this OA and direct the respondents to fix applicant's pay in the scale of Rs.7500-12000 w.e.f. 1.1.96. He should be granted the arrears with consequential benefits and his pension should also be revised accordingly. These orders should be complied with expeditiously and preferably within a period of three months from the date of receipt of a copy of these orders.

S. Raju
(Shanker Raju)
Member (J)

cc,

V.K. Majotra
(V.K. Majotra)
Vice Chairman (A)

10.8.05