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**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA No. 2212/2004

New Delhi this the 31st day of March, 2006.

Hon'ble Mrs. Meera Chhibber, Member (J)
Hon'ble Mr. N.D. Dayal, Member (A)

Zile Singh Yadav (T.No. 38)
Instrument Mechanic
Vehicle Depot Workshop EME
Delhi Cantt.-110010.

...Applicant.

(By Advocate: Shri A.S.N. Murthi proxy for Shri S.N. Anand)

Versus

1. Union of India
Through Secretary
Ministry of Defence
South Block
New Delhi
2. The Commanding Officer
Vehicle Depot Workshop EME
Delhi Cantt. 110010.

...Respondents.

(By Advocate: Shri N.S. Dalal)

ORDER (Oral)

Hon'ble Shri N.D. Dayal, Member (A)

The applicant in this case has submitted that he entered Government service as Civilian Instrument Mechanic on 12.11.1987. He qualified in the four-year degree course in Electrical Engineering from the Institution of Engineers (India) in the session 1988-1992. This qualification had been certified by the Ministry of Education to be at par with a Bachelor's Degree of Engineering for the purpose of recruitment to superior posts and services under the Central Government. (Annexure A/2). According to the applicant he applied immediately thereafter on 27.11.1992 for the necessary incentive that was applicable for acquiring

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higher qualification. He was informed on 5.12.1992 that action was in hand for recording the details of his having passed Part 'A' and Part 'B' of AMIE in the records of service. Further, in so far as the departmental promotion was concerned, he was told that the rules and eligibility etc. would be followed in the matter.

2. Thereafter on 8.1.2003, the applicant sought the grant of three advance increments from 1992 for having acquired higher qualification as per CPRO 42/69 and not as per the new incentive policy of 1995 and 1999. On 24.5.2003 he was apprised that his case had been taken up with headquarters who have asked for certain information regarding recognition of the institute concerned and equivalence of the acquired qualification to a degree in Engineering. As such the applicant was asked to produce the necessary documents to process his claim. In their letter of 29.8.2003 the Army HQ. mentioned that the applicant was entitled to three increments, one for passing Section 'A' and two for Section 'B' and, therefore, the earlier order for two increments be amended.

3. However, the applicant was repeatedly informed that clarifications were being sought from the higher authorities and finally on 28.4.2004 he was asked to comment on whether he had sought and received prior approval for acquiring the higher qualification and the reason why he did not submit the certificates of higher qualification in time. In his representation dated 29.4.2004, the applicant clarified that permission was granted by Commanding Officer, 316, Workshop EME C/o 56 APO for appearing in AMIE examination but documentary proof was not available with him. He pointed out that such query was not raised when he submitted his AMIE certificates on 27.11.1992 and though he was not aware about the incentive of three advance increments as per CPRO 42/69

initially, he came to know of it later when he sent the representation dated 18.1.2003.

4. In this background the applicant has claimed that the respondents having considered his case and even having issued orders in his favour could not now deny him the three advance increments to which he is entitled in terms of Appendix A to CPRO 42/69 (Annexure R/1). This document is GOI MOD letter dated. 6.2.1969 and inter alia states as under:-

"I am directed to say that the President is pleased to decide that a Civilian employee paid from the Defence Services Estimates, who acquires a degree in Engineering or an equivalent qualification, such as, the Associate Member of the Institution of Engineering (India) or the Graduateship of the Institution of Telecommunication Engineers (India) or the Associate membership of the Aeronautical Society of India which is among the qualifications prescribed for recruitment to the Central Engineering Service Class I, while he is serving in a non-gazetted technical/scientific grade, shall have his pay re-fixed with effect from the date on which he acquires the above mentioned qualifications, at the stage in his scale of pay which would give him three advance increments."

5. The applicant submits that letter dated 28.6.1993 of DoPT talks of switching over to a new system of payment of one time lumpsum incentive for higher qualification and the incentives and guidelines thereof were laid down by OM dated 31.1.1995 and it is not his fault that the respondents have delayed consideration of his case for three advance increments as per the guidelines of 1969 and now deny the same in terms of the impugned order dt. 21.8.2004 by stating that in terms of the DoPT O.M. dated 28.6.1993 the incentive can be considered only if the higher qualification will make the official more effective in the present or next higher assignment having utility in his trade. It is the case of the applicant that the 1969 instructions do not impose any such condition that the higher qualification acquired must have a utility in the trade and make him more effective in the present or next higher assignment. As such since he was eligible under the 1969 instructions and he had acquired the higher

qualification during the period of time when these instructions were in vogue, he could not be deprived of the advance increments and consequent fixation of pay by the respondents. The applicant has, therefore, prayed that the impugned order dated 21.8.2004 be quashed and the respondents directed to fix his pay at the stage in his scale of pay which would give him three increments as per GOI MoD letter dt. 4.2.1969 with consequential benefits.

6. In their reply, the respondents have mainly relied upon the DoPT O.M. dated 28.6.1993 which requires that the incentive for acquiring higher qualification be considered if the higher qualification will make the concerned official more effective in the present or next higher assignment. Since this condition is not fulfilled the applicant's case was rejected as conveyed by the impugned order. It is pointed out that the application dt. 27.11.1992 submitted by the applicant does not indicate any request for grant of three advance increments in terms of GOI MOD letter of 1969 and is rather, a request for promotion considering his technical qualification and having passed section A and B (AMIE) in Technical Engineering which is equivalent to a degree and recognized by the UPSC for employment purposes. As such a period of 11 years had already passed since the applicant acquired the higher qualification when he represented on 18.1.2003 and therefore clarifications had to be sought. However, it is not disputed that he had produced the degree and other certificates earlier. The rule position is further laid down in DoPT O.M. dated 28.6.1995 and 31.3.1999 that the incentive is to be given for acquiring higher qualification that is useful in the discharge of higher official work. The applicant's basic trade is Instrument Mechanic and the examination passed is in the Electrical Engineering stream which has no utility in his trade. There is also no provision for out of turn promotion on acquiring such higher degree. The applicant was sent on deputation but returned as he was found unfit.

A reliance by the applicant on the 1969 order is not valid owing to the subsequent developments vide orders of 1993 etc.

7. In his rejoinder the applicant submits that he had supplied the necessary certificates in 1992 and if he was not entitled for promotion but for the prescribed incentive as per the 1969 order at that time the same should have been granted by the respondents because at that time the Government orders did provide for grant of three advance increments without any condition regarding utility of the same in his trade etc. It is contended that the respondents have called for information for the post of Assistant Executive Engineer for which the qualification acquired by applicant is to be followed.

8. We have heard the learned counsel for both sides. Counsel for the applicant has brought to our notice, copy of an order dt. 2.9.2003, which is Part II, Order No. 21 of 2003, regarding grant of increment to Defense employees on acquiring an Engineering degree. The applicant's name appears at Serial No. 1 and he is shown to have been granted three increments from 1.12.1992 as per Army HQ. letter dt. 29.8.2003, which is available in the record at page 21 of the O.A. and also mentioned above. However, the counsel for respondents placed a letter dated 27.3.2006 which shows that Ministry of Defence had thereafter in 2004 considered the issues of prior permission to pursue higher studies, utility of the degree in the applicant's trade as well as his submission that he was initially not aware of the grant of increments but opined that the incentive could be considered only if the higher qualification would make the official more effective in the present or next higher assignment and it was of ~~not~~ utility in his present trade. As such it was submitted that the authority of the Part II order holds no good and cannot be cited as final. The counsel for the respondents repeatedly emphasized the relevance and validity of the

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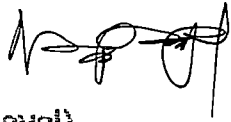
orders of 1993 and thereafter to contend that the applicant was not entitled to the lumpsum incentive extended by these subsequent orders.

9. It is not the case of the respondents that the GOI MOD order of 1969 carried any condition that the higher qualification should be of utility in the existing trade etc. Nor is it their case that those who had been earlier granted three advance increments as per the order were no longer eligible for the same after the 1993 and subsequent orders had been issued, and the benefit was to be withdrawn from them. It appears that all the employees covered by the 1969 orders for three advance increments would form one class and if that notification did not include any such condition as was introduced in 1993, the right of the applicant to three advance increments could not be taken away in terms of the later order if he belonged to that class. The genuineness of the certificates of higher qualification submitted by the applicant and their having been acquired before 1993 has not been disputed and the respondents have by their letter dated 5.12.1992, informed that action was in hand with reference to his having passed Part A and B of AMIE, which was the higher qualification. Since the order of 1969 was applicable at that time for grant of incentive with effect from the date of acquisition of the higher qualification the case of the applicant for grant of three advance increments could have been considered by the respondents, a model employer, who were aware of it. There is no argument with the orders of 1993 if a need was felt for linking the acquisition of higher qualifications with their effectiveness and utility in the existing trade and for higher assignments. But a perusal of the order dated 28.6.1993 shows that in the very first paragraph it has been stated, " Accordingly, from the current financial year the present system of giving advance increments shall be replaced by grant of lumpsum amount as incentive for which the following guidelines

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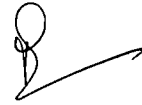
may be adopted" Evidently this was to be operative prospectively as per the specific provision incorporated in that regard.

10. We are therefore of the view that the claim of the applicant deserves reconsideration by the respondents in the light of our observations made above. The respondents are directed to reconsider the applicant's claim and pass appropriate orders in accordance with law within a period of three months from the date of receipt of a copy of this order. The application is disposed of accordingly. No costs.



(N.D. Dayal)
Member (A)

/Lg/



(Meera Chhibber
Member (B))