

Central Administrative Tribunal, Principal Bench

O.A. No. 2341/2004

With

O.A. No. 124/2005

New Delhi this the ¹⁶ day of October, 2005

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. D.R. Tiwari, Member (A)

OA No.2341/2004

1. Gajendra Singh
S/o Late Hori Lal
R/o Quarter No. 14-C,
Old Pinto Part, AF Station,
Palam,
Delhi Cantt-110 010.
2. Ram Chandra Singh
S/o Late Ganesh Singh
R/o Quarter No.63/1,
Camp Area, AF Station,
Delhi Cantt-110 010.

...Applicants

By Advocate: Shri A.K. Trivedi.

Versus

1. Union of India
Through its Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. The Engineer-in-Chief,
E-in-C's Branch, Army HQs,
Kashmir House, New Delhi.
3. The Chief Engineer
HQs Chief Engineer, AF (WAC),
Palam, Delhi Cantt-110 010.
4. The Garrison Engineer (North)
Air Force Station,
Palam,
Delhi Cantt-110 010.Respondents

By Advocate:Shri Ashish Nischal for Shri Rajinder Nischal, Counsel.

OA No. 124/2005

1. Mohinder Singh Malik
S/o Late Hari Singh
R/o 207, Godrej Apartments,
Sector-10, Dwarka,
New Delhi.

2. Nirmal Singh
 S/o Late Hazoor Singh
 R/o G-6, New Adarsh Apartments,
 Plot No.22, Sector-10,
 Dwarka, New Delhi.

3. N. Shekhar Reddy
 S/o Shri Sudarshan Reddy
 Working as Junior Engineer (Civil)
 In the O/O Garrison Engineer (S)
 Secundrabad (AP). ...Applicants

By Advocate: Shri A.K. Trivedi.

Versus

1. Union of India
 Through its Secretary,
 Ministry of Defence,
 South Block, New Delhi.

2. The Engineer-in-Chief,
 E-in-C's Branch, Army HQs,
 Kashmir House,
 New Delhi. ...Respondents

By Advocate: Shri Ashish Nischal for Shri Rajinder Nischal, Counsel.

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

These two OAs may be conveniently disposed off by a common order as the question of fact and law involved are more or less similar.

2. The applicants in OA No. 2341/2004 S/Shri Gajendra Singh and Ram Chandra Singh and the applicants in OA No.124/2005 S/Shri Mohinder Singh Malik, Nirmal Singh and N. Shekhar Reddy were Subedar/Subdear Major B/R-I in the Army. On the eve of their retirement, they were given re-employment in accordance with the deputation-cum-reemployment Scheme of the Army on the post of Junior Engineer B/R in Military Engineering Service from various dates. The applicants in OA 2341/2004 were appointed vide letter dated 25.7.2000, originally in the pay scale of Rs.5500-9000 and their pay was fixed at Rs.5500/- This letter of appointment has been subsequently amended by corrigendum letter dated 16.6.2001 and they have been offered the pay of Rs.5000/- in the pay scale of Rs.5000-8000. They are aggrieved by these orders, which are Annexure A-I in this OA.

3. The applicants in OA No.124/2005, however, are aggrieved that they have not been given the pay scale of Rs.5500-9000.

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4. The above applicants in OA No.2341/2004 had filed OA Nos. 677/2003 and 884/2003 respectively which were disposed off vide order dated 21.4.2004 and a direction was given to the respondents to consider their representation and decide it by a speaking order. The respondents have disposed off their representation by speaking order dated 10.9.2005. These orders are also impugned in the OAs.

5. A common relief has been claimed that the direction be given to the respondents to place them in the pay scale of Rs.5500-9000 and fix their pay at Rs.5500/- on appointment.

6. Both these OAs are contested by the respondents by filing identical counter-replies.

7. In the counter reply to OA 2341/2004, it was stated that the applicants served in the post of Corps Engineer and superannuated after completion of service in the rank of Sub/Maj as per the term and engagement of the department. They were re-employed in accordance with the ROI (Record Office Instruction) and extant rules on the subject. While issuing appointment letter, existing scale of Rs.5000-8000 was erroneously mentioned as Rs.5500-9000. After noticing the mistake, the department issued the corrigendum in the lower existing scale as per MOD letter dated 9.7.1999 (Annexure A-1). In pursuance to the order of the Tribunal passed in the OA filed by the applicants, the respondents have passed the speaking order on the representation of the applicants (Annexure A-2 and Annexure A-3).

8. In the counter reply filed to OA 124/2005, it was stated that the pay scale of the post of JE (Civil) and JE (E&M) is Rs.5000-8000. The applicants were not selected for re-employment in MES as Superintendent B&R-I and Superintendent E&M-I. The applicant No.1 was offered appointment as JE (Civil), applicant No.2 was offered the appointment of JE (E&M) and applicant No.3 was offered the appointment of JE (Civil). Appointment letters were issued as per Statutory Rules (SROs) of the Government of India and not on the local instructions of a particular Record Office of the Engineer Group. ROI -1/1996 is nothing but a local instruction issued subsequently by one of the Record Offices of the different Engineer Groups. The Record Office of the Bengal Engineer Group is a subordinate office/unit of the Army. They have no statutory bearing. It is only the statutory SROs that have sanctity and are followed by the respondents. The

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applicants have been appointed as JE (Civil) and JE (E&M) in the entry grade of scale of pay of Rs.5000-8000 as per rules. It is also stated that the applicant No.1 did not specifically apply for the post of Superintendent B/R-I. He did sign the undertaking to accept the post of Superintendent B/R-II right at the footnote of his application under DCRE. The post filled up by the respondents were that of JE (Civil), i.e., erstwhile Superintendent B/R-II and JE (E&M), i.e., erstwhile Superintendent E&M-II. The question of recruiting any Superintendent B/R-I and Superintendent E&M-I did not arise in the MES after issue of the government order on 9.7.1999 redesignating these posts as JEs (Civil) and JEs (E&M) w.e.f. 9.7.1990. The scale of pay granted to the erstwhile Superintendent B/R-II undoubtedly was Rs.5000-8000 and the appointment of the applicants as JEs in MES took effect from different dates after 30.4.2001, i.e., only after their retirement from the Army Service.

9. We have heard the learned counsel for the parties and perused the record.

10. The Record Office Instructions of Records Bengal Engineer Group ROI 01/1996, Annexure A-3 provided re-employment of MES Militarised Cadre after their retirement in the vacancies of B&R Grade I/II and E&M Grade-I/II on deputation-cum-re-employment basis. This ROI has now been replaced by ROI issued on 17.12.2002 (Annexure A-8). The new Recruitment Rules called the Military Engineer Services Junior Engineer (Civil) and Junior Engineer (Electrical and Mechanical) Recruitment Rules, 2001 have also come into force. As per these Rules, the entry grade scale of JE was Rs.5000-8000. Before that vide order dated 9.7.1999, the government has re-organised the grades of Superintendents B/R Grade-I and Grade-II and Superintendents E&M Grade-I and Grade-II in order to grant them time bound upgradation at par with Junior Engineers of the CPWD. The redesignation and pay scale to the redesignated posts given was below:-

“ Name of Posts	To be redesignated as
(a) Superintendent B&R Grade-II Rs.1400-2300 (Revised Rs.5000-8000)	Junior Engineer (Civil) Rs.1400-2300 (Entry Grade) (Revised Rs.5000-8000)
Superintendent B&R Grade-I Rs.1640-2900 (Revised Rs.5500-9000)	Rs.1640-2900 (After 5 years) (Revised Rs.5500-9000) Rs.2000-3500 (After 15 years) (Revised Rs.6500-10500)

Answer given

(b) Superintendent E&M Grade-II Rs.1400-2300 (Revised Rs.5000-8000)	Junior Engineer (Electrical & Mechanical) Rs.1400-2300 (Entry Grade) (Revised Rs.5000-8000) Rs.1640-2900 (After 5 years)
Superintendent E&M Grade-I Rs.1640-2900 (Revised Rs.5500-9000)	(Revised Rs.5500-9000) Rs.2000-3500 (After 15 years) (Revised Rs.6500-10500)
(c) Surveyor Assistant Grade-II Rs.1400-2300 (Revised Rs.5000-8000)	Junior Engineer (Quality Surveying and Contract) Rs.1400-2300(Entry Grade) (Revised Rs.5000-8000)
Surveyor Assistant Grade-I Rs.1640-2900 (Revised Rs.5500-9000)	Rs.1640-2900 (After 5 years) (Revised Rs.5500-9000) Rs.2000-3500 (After 15 years) (Revised Rs.6500-10500)"

10. The applicants as per the averments made in the OAs and the counter-replies were appointed as per the Record Office Instructions and the Administrative Instructions on deputation-cum-reemployment of retired Militarised Cadre as Junior Engineer in MES. They were working as Superintendents B/R and E&M when they retired in the rank of Sub/Sub.Maj. in the Military.

11. As regards the applicants in OA No. 2341/2004, their case is that they submitted their applications as Superintendent B/R and Superintendent E&M Grade-I as per ROI 01/1996 and they were issued identical offer of appointment dated 25.7.2000. Inter alia, they were offered pay of Rs.5500/- per month plus usual allowances etc. in the pay scale of Rs.5500-9000. Their pay as well as the pay scale has been lowered by the two identical corrigenda dated 16.6.2001. As a result, they have been offered pay of Rs.5000/- in the pay scale of Rs.5000-8000. In fact, according to them, this lowering of pay is not in accordance with the ROI of 01/1996 and the rules, therefore, are liable to be set aside and their earlier pay of Rs.5500/- in the pay scale of Rs.5500-9000, should be restored.

12. The applicants in OA No. 124/2005 have submitted that they were selected for appointment to the post of JE in accordance with ROI 1/1996 under deputation-cum-re-employment scheme and, therefore, they ought to have been given the pay scale of Rs.5500-9000 instead of Rs.5000-8000. They pray that they should be granted the higher pay scale from the date of their joining the service.

13. We will first examine the merit of the case of the applicants in OA 124/2005. Admittedly, the new Recruitment Rules, i.e., Military Engineer Services Junior Engineer (Civil) and Junior Engineer (Electrical and Mechanical) Recruitment Rules, 2001 have

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come into force on 30.4.2001. Applicant Nos.1 and 3 S/Shri Mohinder Singh Malik and N. Sekhar Reddy were appointed before the Recruitment Rules came into force and the applicant No.2 Shri Nirmal Singh was appointed after coming into force of these Recruitment Rules. As regards Shri Nirmal Singh, applicant No.2, his appointment was under the amended Recruitment Rules. The letter of offer was issued to him for appointment to the post of JE (Civil) in MES carrying pay scale of Rs.5000-8000 and the offered pay was Rs.5000/-. His selection prior to amendment of the Recruitment Rules will not give him an indefeasible right to claim higher pay scale in the entry level of Junior Engineer (Civil) for which he was appointed. Furthermore, the offer of appointment was made to the applicant for appointment to the post of JE (Civil) in the grade of Rs.5000-8000 at the pay of Rs.5000/- which he has willingly accepted. Accordingly, he had no legal right to turn back and claim that he ought to have been appointed in the scale of Rs.5500-9000 which is not the entry grade of Junior Engineer (Civil). It is pertinent that he was not appointed to the post of Superintendent B/R which existed prior to its redesignation and change of grade by the Government order dated 9.7.1999, referred to above.

14. As regards the other two applicants, namely, S/Shri Mohinder Singh Mali and N. Sekhar Reddy in OA 124/2005, suffice to mention that though they were appointed before the new Recruitment Rules came into force on 30.4.2001, the letter dated 27.4.2001 showed that the offer was made to them for appointment to the post of Junior Engineer (Civil) in the MES in the pay scale of Rs.5000-8000 and the pay offered was Rs.5,000/-per month. They had accepted this offer of appointment unconditionally and had joined the service. They were not appointed to the post of Superintendent B/R or E&M. They could not rely upon ROI of 01/1996 since the Presidential Order dated 9.7.1999 has redesignated the cadres of Superintendents to bring them at par with Junior Engineers of CPWD and instead of the two grades of Superintendents in B/R and E&M, they were redesignated as Junior Engineer (Civil) and Electrical and Mechanical with entry grade of Rs.5000-8000 and time bound upgradation after 5 years to the scale of Rs.5500-9000 and further upgradation after 15 years of service to the scale of Rs.6500-10500. The appointment of these two applicants has taken place after the Presidential Order which has not only changed the designation but has also changed the pay scale, the

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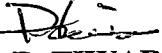
ROI is nothing but the local Record Office Instructions and in view of the Presidential Order dated 9.7.1999, have lost its sanctity. The applicants were given appointment to the post of JE (Civil). ROI of 1996 did not regulate their appointment to the post of JE (Civil). Whether the applicants were selected and appointed before the new Recruitment Rules is of not much consequence since these appointments were made consequent upon the Presidential Order dated 9.7.1999, which was the basis of the amendment of the Recruitment Rules which were notified subsequently. Therefore, the contention of these applicants that they were entitled to be placed in the grade of Rs.5500-9000 which is the pay scale of Superintendent B/R Grade-I, does not have any merit.

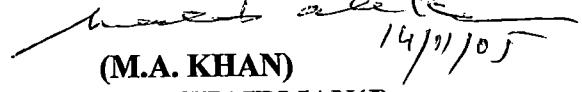
15. Reverting to the case of the applicants in OA 2341/2004, patently their case is similar to the case of applicants S/Shri Mohinder Singh Malik and N. Sekhar Reddy of OA No. 124/2005. These two applicants have also been appointed after the Presidential Order dated 9.9.1999 has changed the designation of the post of Superintendent B/R and E&M, Grade-I and Grade-II services and had unified them into one cadre of the Junior Engineers with time bound financial upgradation at the interval of 5 years and 15 years. It is also important to note that these two applicants were appointed as Junior Engineers though in the letter of offer, they were given the pay scale of Rs.5500-9000 and were offered the pay of Rs.5500/-. Since they were being appointed after their retirement from Military Service as per rules and instructions, they had to be appointed in the entry grade. The entry grade of Junior Engineer, the post to which these two applicants were appointed, was Rs.5000-8000. After the Presidential Order dated 9.7.1999, the local Record Room Instructions ROI 01/1996 on which great deal of reliance is placed, were of no consequence. ROI of 01/1996 cannot override the Presidential Order. The appointment of these applicants had to be in the entry grade of the Junior Engineer which as per the Presidential Order was Rs.5000-8000. The Recruitment Rules were also amended subsequently as per the Presidential Order dated 9.7.1999. To make the things more clear, the subsequent ROI has provided appointment of the retired Militarised Cadre as Junior Engineer in the entry grade of Rs.5000-8000. Anyhow, in view of the Presidential Order dated 9.7.1999, the grant of pay scale of Rs.5500-9000 to these applicants at the time of their appointment, was evidently by mistake. The administrative authority had a right to rectify their mistake at the subsequent stage to which the

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applicants did not have an indefeasible right to object to unless they have been vested with some right legally, which has been taken away. In the present case, only the description of the pay and pay scale in the letter of offer has been rectified. The applicants were appointed as Junior Engineers and not as Superintendent B/R and E&M, therefore, the mistake seems to be apparent on the face of the order. These applicants, as such, are not entitled to be restored back the pay scale of Rs.5500-9000 and the pay of Rs.5500/- on the date of their joining as Junior Engineer (Civil)/Junior Engineer (E&M).

16. The result of the above discussion is that none of the two OAs has merit. They are dismissed but the parties are left to bear their own costs.


(D.R. TIWARI)
MEMBER (A)


(M.A. KHAN)
VICE CHAIRMAN(J)

Rakesh