



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. NO.1000/2004

New Delhi, this the 31st day of October, 2005

**HON'BLE MR. V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)**

1. All India MES Civilian
Engineers Associations,
Ashrey Mess, Delhi Cantt.
Through its General Secretary,
Shri S.K. Mann, (JE QS&C)

2. Shri Vinod Kumar, JE(E/M),
S/o late Shri Dwarka Nath,
R/o P-56, Kabul Line,
Delhi Cantt.

(By Advocate: Shri V.K. Garg)

... **APPLICANTS**

VERSUS

1. Union of India through Secretary,
Ministry of Defence,
North Block
New Delhi

2. Engineer-in-Chief
Kashmir House,
Army Headquarters
New Delhi

(By Advocate: Shri N.S. Dalal)

... **RESPONDENTS**

ORDER (Oral)

BY MUKESH KUMAR GUPTA, MEMBER (J) :

By the present OA, the reliefs prayed for are as follows:-

"(a) direct respondents to grant the higher pay scales to all the eligible members of the applicant No.1 including applicant No.2 on their respective completion of 5 yrs & 15 yrs of service without their appearing for departmental procedure examination or any other selection method i.e. w.e.f. the respective dates when such members became eligible for the same; and



(b) direct the respondents to pay the arrears of salary to all such members with interest @ 18% p.a. w.e.f. the date when the respective member became entitled for higher scale.

(c) pass any such further order or direction as may be deemed fit, proper and necessary."

2. The facts as stated are that the first applicant is an All India MES Civilian Engineers Association and its members were promoted to the post of Superintendent E/M & Civil respectively, in Grade-II and now re-designated as J.Es as per SRO dated 21.08.1998. The applicant No.2 is a member of the said Association and was originally appointed in MES as Pump Attendant, promoted as Refrigerator Mechanic and then Superintendent E/M Grade-II w.e.f. 11.09.1992. The grievance of the applicants is that they are entitled to the pay scale of Rs.1640-2900/- and Rs.2000-3500/- on completion of 5 and 15 years of service respectively in the grade of Superintendent E/M, re-designated as Junior Engineer. They also seek the benefit of the judgment pronounced by this Tribunal dated 11.07.2001 in OA No.669/2000. It will be necessary, at this stage, to notice the brief back-ground of the case.

3. Vide communication dated 22.03.1991, the Ministry of Urban Development on the subject of grant of uniform pay scale to Junior Engineers decided that there will be "two scales of pay for Junior Engineers/Sectional Officers (Horticulture) in the CPWD, viz. Rs.1400-2300 and Rs.1640-2900/- and the incumbents thereof will be designated as Junior Engineer/Sectional Officer (Horticulture) in the grade of Rs.1400-2300 and Junior Engineer/Sectional Officer (Horticulture) in the grade of Rs.1640-2900/-. The entry grade will be Rs.1400-2300. The Junior Engineer/Sectional Officers (Horticulture), on completion of 5 years service in the entry grade, will be placed in the scale of Rs.1640-



2900/-, subject to the rejection of unfit". Para-(ii) of the said communication states that Junior Engineers/Sectional Officers (Horticulture) who could not be promoted to the post of Assistant Engineers/Assistant Directors (Horticulture) in the scale of Rs.2000-3500/-, due to non-availability of vacancies in the grade of Assistant Engineers/Assistant Directors (Horticulture), "will be allowed the scale of Assistant Engineer/Assistant Director (Horticulture) i.e. Rs.2000-3500" on a personal basis after completion of 15 years of total service as Junior/Engineer/Sectional Officer (Horticulture).

4. Since the Junior Engineers in the Military Engineering Service (hereinafter referred as MES) were not allowed the benefit of the aforesaid communication, a series of Petitions were filed before the Bangalore Bench of the Tribunal vide OA Nos. 1337, 1364 and 1375 of 1994 claiming parity with Junior Engineers of CPWD. The said OAs were allowed vide order dated 31.03.1995 with direction to Respondents "to grant higher pay scales as that paid to JEs in CPWD in the scale of Rs.1640-2900/- to the applicants in Gr.II Supdt., who as and when complete 5 years of service in the grade with effect from 1.1.1986 and who as and when complete 15 years of service in that grade the scale of Rs.2000-3500/- with effect from 1.1.1991 on the same lines as contained in the communication of MUD dated 21.3.1991 addressed to DG (Works), CPWD as in Annexure A-2."

5. The said judgment and order became final as the SLP preferred by the Government had been dismissed by the Hon'ble Supreme Court. The respondent No.2 issued an order dated 25.04.1996 implementing the aforesaid direction. Vide order dated 24.04.1997 the condition of



passing departmental procedure examination was declared compulsory w.e.f. 01.01.1998. The aforesaid communication and condition became the subject matter before this Bench of the Tribunal in OA No.669/2000. Vide order and judgment dated 11.07.2001, the communication dated 24.04.1997 was quashed and set aside and the respondents were directed to release to the applicants the higher pay scale of Rs.2000-35000/- as revised to Rs.6500-10500/- with effect from August, 1998 when the applicants in the said OA completed 15 years of service.

6. It is the contention of the applicants that the said Judgment and order has been upheld by the Hon'ble High Court of Delhi by dismissing the CWP No.7534 of 2001 on 29.08.2002, which was further maintained by dismissing respondents' SLP (Civil) (CC-2757)/2003 on 28.03.2003. Despite representation made to all concerned, the Respondents have not yet extended the same benefit of grant of personal scale to the applicants is the grievance raised in the present OA.

7. Shri V.K. Garg, learned counsel appearing for the applicants contended that after the Judgment dated 11.07.2001 passed by this Tribunal became final, the respondents ought to have applied and extended the said Judgment to all eligible JEs on completion of 5 years and 15 years of service respectively, particularly when the said Judgment is judgment in rem. In terms of the mandate of the Constitution Bench Judgment in *K.C. Sharma & Ors v/s Union of India & Ors*, 1997 (6) SCC 721 the benefit of the Judgment should be made applicable to all similarly situated persons. It is the further contention of the applicants that applicant No.2 is identically placed as the applicants in OA No. 669/2000 and, therefore, by not according similar treatment to



the applicant the respondents' action is illegal, arbitrary, unjust, discriminatory and untenable in law.

8. The respondents contested the applicants' claim denying that the All India MES Civilian Engineers Association is a recognized Association. On merits, it was contended that the applicants in the present OA who were departmental promotees to the Grade of JE are not entitled to the benefit of the Scheme dated 22.03.1991 and 25.04.1996. The applicant No.2 was appointed as Pump Attendant, promoted as Refrigerator Mechanic and then to Superintendent E/M Grade-II. Moreover, the direction of the aforesaid Judgment dated 11.07.2001 in OA No. 669/2000 was implemented in April, 2003 and the present OA is barred by limitation. It was further stated that the Scheme of 5 years and 15 years of service, as laid down vide communication dated 22.03.1991 has since been withdrawn during January 2002 and, therefore, the present OA should be dismissed. The applicant No.2 was not in the "entry grade" of Rs.1400-2300/- and much below than the said scale; that he has already availed two regular promotions and became Superintendent E/M (Grade-II) and, therefore, was not entitled to any further upgraded scale of Rs.1640-2900 and 2000-3500/- on completion of 5 and 15 years of service as alleged. The applicant No.2 did not enter into service in the scale of Rs.1400-2300/- and, therefore, he was not entitled to any further up gradation. Vide communication dated 23.01.2002, the Ministry of Defence adopted the Assured Career Progression Scheme meant for Central Govt. employees in respect of Superintendents B/R, E/M and Surveyor Assistants, re designated as JE.



9. The applicants by filing rejoinder contested the respondents' plea, while reiterating the contentions so raised in the OA.

10. We have heard the learned counsel for both sides and perused the pleadings carefully.

11. The basic issue which needs consideration is whether the applicants are similarly situated to the officials in OA No. 669/2000, decided by the Principal Bench of this Tribunal as well as OA No. 1337 etc. of 1994 decided by the Bangalore Bench of this Tribunal. A perusal of the said Judgments indeed goes to show that the applicants therein were not similarly situated as the applicants in the present OA. From the facts culled out and noticed therein, it is seen that the applicants therein were JEs enjoying the pay scale of Rs.1400-2300/- at the time of their entry into service. The word "entry grade" under communication dated 22.03.1981 as well as Scheme dated 25.4.1996 as such assume importance and is the condition precedent for the grant of said pay scales of Rs. 1640-2900 and Rs.2000-3500/-. The emphasis laid by Shri V.K. Garg, learned counsel for the applicants is that the word "entry grade" has to be interpreted liberally and would embarrass a situation where a person is enjoying the said pay scale irrespective of fact whether he was a direct recruit to the said post/grade or had been the promotee to the said scale of Rs.1400-2300/- and once he completes 5 years and 15 years of service respectively, he has to be considered at par with the Junior Engineers of CPWD as well as MES in terms of Respondents' communication dated 26.04.1996 and, therefore, entitled to the said upgraded pay scales. This contention has been vehemently disputed and controverted by Shri N.S. Dalal, learned counsel appearing



for the respondents, who maintained that the entry grade of Rs.1400-2300/- means those who have joined the said post/grade carrying the said scale, for the first time. Basically, it is contended that the Ministry of Urban Development's communication dated 22.03.1991 was to ameliorate the stagnation faced by the Junior Engineers in CPWD by providing them upgraded pay scales "on personal basis" and it was not meant to be allowed to those who were promoted to the said pay scale of Rs.1400-2300/-.

12. On bestowing our careful consideration to the entire aspect, we are of the considered view that the word "entry grade" in the scale of pay of Rs.1400-2300/- has to be construed in the context in which the said phrase has been employed by the respondents. On perusal of communication dated 22.03.1991, it is clear that the Government allowed the said pay scales "on personal basis" on completion of 5 years as well as 15 years of service in the scale of Rs.1400-2300/- obviously to avoid stagnation faced by Junior Engineers in CPWD. The word "entry grade" has been used more than once in the aforesaid communication and cannot be construed to include those who on promotion were promoted to the said scale of Rs.1400-2300/-. It is not disputed by the applicants that the Assured Career Progression has been extended by the Ministry of Defence to the MES and particularly in the grade of JE vide communication dated 23.01.2002. We may also note the fact that on recommendations made by the 5th Central Pay Commission, the DOP&T issued OM dated 09.08.1999 on the Assured Career Progression Scheme and allowed the benefit of first and second financial up-gradations on completion of 12 and 24 years of service respectively to those who for want of promotional avenues could not be

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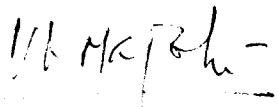


promoted. It is an admitted fact that the applicant No.2 has already earned two promotions as Refrigerator Mechanic and then Superintendent E/M Grade-II. The scale enjoyed by the applicant No.2 as Pump Assistant as well as Refrigerator Mechanic was neither 1400-2300 nor its equivalent. As such he was not in the "entry grade" of scale of Rs.1400-2300/-.

13. In view of the discussion made hereinabove, we are of the considered view that the applicants are not similarly situated to the applicants in OA No.669/2000 decided by the Principal Bench of the Tribunal as well as OA No. 1337/1994 with connected OAs decided by the Bangalore Bench of the Tribunal. Therefore, the applicants are not entitled to the pay scale of Rs.1640-2900 and Rs.2000-3500/- on completion of 5 and 15 years of service respectively in the grade of Rs.1400-2300, as prayed for. Accordingly, the OA fails and is dismissed. No costs.



(Mukesh Kumar Gupta)
Member (J)



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

31.10.05

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