

(b8)

Central Administrative Tribunal
Principal Bench

O.A. No. 538/1993

Decided on 10.1.2001

Association of J.Es, CWC
& Others

... Applicants

(By Advocate: Shri B.B. Raval)

Versus

U.O.I. & Others

... Respondents

(By Advocate: Shri K.C.D. Gangwani)

CORAM

Hon'ble Mr. S.R. Adige, Vice Charman (A)

1. To be referred to the Reporter or Not? YES
2. Whether to be circulated to other outlying benches of the Tribunal or not? NO


(S.R. ADIGE)
VICE CHAIRMAN (A)

Central Administrative Tribunal
Principal Bench

O.A. No. 538 of 1993

9

New Delhi, dated this the ^{10th} January, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

1. Association of Junior Engineers
Central Water Commission,
904 (N), Sewa Bhawan,
R.K. Puram, New Delhi-110066.
2. K. Joseph,
S/o late Shri K.J. Kurian,
Junior Engineer, CWC.
3. A.K. Puri,
S/o Shri D.D. Puri,
J.E., C.W.C. .. Applicants

(By Advocate: Shri B.B. Raval)

Versus

1. Union of India through
the Secretary,
Ministry of Water Resources,
Shram Shakti Bhawan,
New Delhi-110001.
2. The Secretary,
Ministry of Finance,
Dept. of Expenditure,
North Block,
New Delhi.
3. The Chairman,
C.W.C., Sewa Bhawan,
R.K. Puram,
New Delhi-110066. .. Respondents

(By Advocate: Shri K.C.D. Gangwani)

ORDER

S.R. ADIGE, VC (A)

Applicants seek

- (i) a declaration that Junior Engineers in Central Water Commission are entitled to the higher scale of Rs.1640-2900 after completion of 5 years service as J.Es in the grade of Rs.1400-2300 w.e.f. 1.1.86 and to personal promotion in the grade of Rs. 2000-3500 after completion of 15 years service as J.Es from 1.1.91, with

~

40

arrears of pay and allowances accordingly,
and

- (ii) a declaration that the selection grade posts created on the basis of the C.W.C. cadre review committee report are deemed to be promotional grade posts of Assistant Engineer and applicants who are entitled for personal promotion from 1.1.91 be adjusted against these posts.

2. The O.A. was heard by a Division Bench of the Tribunal consisting of Hon'ble Former Chairman and former Hon'ble Member Shri S.P. Biswas. Because of the difference of opinion between the two as recorded in the order dated 3.9.97, the matter was referred to a larger Bench for resolving the difference by answering the following question of law.

"Whether the facts in the present case are distinguishable from those in H.K. Rath Vs. Union of India & Others O.A. No. 530/91 decided on 6.7.94 by the Cuttack Bench, or from those in B.N. Kadapatti & Others Vs. Union of India & Others O.A. No. 1337 and 1364 to 1375 of 1994 decided on 31.3.95 by the Bangalore Bench of the Tribunal and, therefore, the applicants in the present case are not entitled to the benefit of the Govt. decision as contained in Annexure B for reasons given by one of us (S.P. Biswas, AM) in his separate judgment."

3. The matter was, therefore, heard by a three member Bench of the Tribunal, but the order dated 5.12.97 of that Bench makes it clear that there was no unanimity of opinion amongst the Hon'ble Members of that Bench either.

1



4. Thereupon the matter was placed before a five member Bench of the Tribunal, who heard the matter on 24.11.99 and passed the following order.

"By the present O.A. applicants claim parity of pay scales on the maxim equal-pay-for-equal-work. As already pointed out, the then Chairman held that the applicants are entitled to the relief. Brother Biswas held to the contrary. In the circumstances, we are of the view that ends of justice will be met by referring the aforesaid difference to a third Member who in turn will decide whether on the materials placed in the present O.A. the applicants are entitled to the relief claimed or otherwise. The decision of the third Member will be the order of the Tribunal.

The present proceedings be placed before the Chairman for nominating the third Member for deciding the difference."

5. Accordingly the matter was placed before me, and I have heard both sides.

6. Applicants' case is that the Engineering Organisation and departments originally formed part of Central Public Works Dept. (CPWD) of Government of India. By Government resolution dated 5.4.45 of Labour Dept., certain departments and organisations were separated from CPWD for administrative convenience and necessity, leading to the formation of Central Waterways, Irrigation and Navigation Commission (CWINC). The setup was further changed on 22.5.51 by merging the Central Electricity Commission and CWINC and the Central Water and Power Commission was created with separate Water and Power Wing. In 1974 the CWPC was split into the Central Electricity Authority (C.E.A.) and Central Water Commission by merging the Power and Water Wing into them. It is

2

contended that the duties, responsibilities, terms and conditions of service including, qualifications of all supervisors (now designated as JEs) in the Central Govt. remained the same throughout, irrespective of the fact whether they functioned in CPWD or ^{C.W.C.} vide chart annexed (Annexure F). It is also contended that the Recruitment Rules promulgated in 1982 and amended from time to time in supercession of all the previous RRs, prescribed the essential qualifications as Degree/Diploma in Engineering from a recognised University/Institution for appointment to the post of J.E. whether in CWC or in the Ministries/Departments of Govt. of India. It is emphasised that the Central Government had accepted the recommendations of the First Pay Commission and given the pay scale of Rs.100-300 to all Section Officers (Civil/Electrical/Mechanical) Supervisors, Overseers from 1.1.47 in Central Government. This pay scale was revised to Rs.186-380 from 1.7.59 on the basis of Second Pay Commission's recommendations. The Third Pay Commission after taking into account the non-gazetted engineering staff as a whole in various departments/organisations of Government of India in the pay scale of Rs.180-380, recommended two pay scales of Rs.425-700 and Rs.550-900 (Selection Grade) w.e.f. 1.1.73, which was accepted and implemented w.e.f. 1.1.73, except that ^{there was} no implementation with regard to creation of selection grade posts in the scale of Rs.550-900 in C.W.C. It is stated that pursuant to the recommendations of the Fourth Pay Commission which were implemented w.e.f. 1.1.86 J.Es in Ministries/Departments of Government

13

of India including local and other authorities were granted the scale of Rs.1400-2300 and Selection Grade of Rs.1640-2900. However, subsequently the Ministry of Urban Development in its Notification dated 26.5.87 decided to give the higher scale of Rs.1640-2900 to 75% of the sanctioned strength of J.Es in CPWD which was further superceded by letter dated 22.3.91 (Annexure B) whereby all J.Es on completion of five years service would be placed into the scale of Rs.1640-2900, effective from 1.1.86, and such J.Es who could not be promoted as A.Es in the scale of Rs.2000-3500 or due to non-availability of vacancies would be allowed the scale of Rs.2000-3500 on personal basis on completion of 15 years of service.

7. It is contended that applicants represented to respondents to extend the aforesaid benefits to them, and upon not meeting with a favourable response were compelled to file the present O.A.

8. A reply has been filed on behalf of respondents in which the contentions raised in the O.A. have been challenged. In their reply it has been conceded that the benefits of the package agreed to and implemented in the case of J.Es of CPWD referred to above has been extended to J.Es of P&T (Civil Wing), Dept. of Telecom; and D.D.A., but the same has not been extended to J.Es of C.W.C. because neither the Fourth Pay Commission, nor the Rasgotra Committee which was directed to study the position in

1



regard to J.E. cadres in different organisations, made any recommendations in regard to grant of higher Pay scales to J.Es of C.W.C. It is further stated that on the recommendations of the cadre review Committee for Group B and C Engineering posts in C.W.C., 45 posts of Extra Assistant Directors were created in September, 1990 by surrendering 90 posts of J.Es with a view to provide promotional prospects to J.Es who had rendered more than 15 years of service as also to take into account the functional requirements of the organisation. As at that time out of 856 sanctioned posts, only 62 officers had rendered 15 years or more service as J.Es, respondents contend that the stagnation problem in the case of J.Es of CWC had already been taken care of. Respondents emphasise that the Fourth Pay Commission which had considered the question of pay scales of J.Es working in different Ministries/Departments had made a specific recommendation in respect of J.Es in CPWD that the existing selection grade be abolished to be made as a functional grade. Accordingly the pay scale of Rs.1640-2900 was introduced. It is emphasised that no such recommendation was made by the 4th Pay Commission in respect of J.Es working in other Ministries/Departments including CWC and hence J.Es cannot be granted the pay scale of Rs.1640-2900. It is stated that as regards the grant of the scale of Rs.2000-3500 to J.Es on completion of 15 years of service on personal promotion basis, this was introduced with the basic objective of removing

A

(15)

stagnation in CPWD and that problem has already been taken care of by the creation of 45 posts of EADs/AEs.

9. Applicants have filed their rejoinder in which they have controverted respondents assertions as contained in their reply and have broadly reiterated their own.

10. I have considered the matter carefully.

11. Respondents have themselves admitted in their reply that the benefits granted to J.Es in CPWD by Ministry of Urban Development letter dated 22.3.91 (Annexure B) have been extended to J.Es in P&T (Civil Wing), Dept. of Telecommunications, and J.Es in Delhi Development Authority. The Tribunal in its order dated 3.9.97 has itself noticed that these benefits granted to J.Es in C.P.W.D. have been extended to J.Es in Labour Welfare Organisation pursuant to C.A.T., Cuttack Bench order dated 6.7.94 in O.A. No. 530/91 H.K. Rath Vs. Union of India & Others, and to J.Es in M.E.S. vide order dated 31.3.95 of CAT, Bangalore Bench in O.A. No. 1337 and 1364-1375 of 1994 B.N. Kandapalli and Others Vs. Union of India and connected cases. The aforesaid order of CAT, Bangalore Bench dated 31.3.95 was challenged in Supreme Court in SLP (C) No. 3190-3232/96 which was dismissed on 8.4.96.

/

(46)

12. Again very recently on 1.10.99 the CAT, Jodhpur Bench in O.A. No. 142/98 A.S. Gehlot Vs. Union of India & Others relying upon the decision of the CAT, Bangalore Bench directed extension of the benefits contained in Ministry of Urban Development letter dated 22.3.91 to Shri Gehlot who is a J.E. working in the Central Ground Water Board, Jodhpur. In that O.A., as in the present one, the Ministry of Water Resources, New Delhi figured as Respondent No. 1. In that order, the Bench has recorded that respondents' counsel admitted that the duties and responsibilities of A.Es (that should probably read J.Es) in respondent department ~~are~~ the same as that of those in C.P.W.D.

13. Again the Calcutta High Court in WPCT No. 1730/97 Kalyan Ranjan Basak & Others Vs. CAT, Calcutta Bench & Others decided on 22.9.99 after tracing the history of the case, set aside the CAT, Calcutta Bench's order and directed respondents to revise the pay scales of the petitioners who were J.Es in the Farakka Barrage Project keeping in view ~~the~~ ^{they} pay scales and allowances ~~enjoyed~~ ^{enjoyed} by J.Es in CPWD, within three months and release the arrears found payable as a result of such revision within three months of such revision. Here also the Ministry of Water Resources featured as Respondent No.1.

14. Nothing has been shown to us to establish that the aforesaid order of CAT, Jodhpur Bench dated 1.10.99 in A.S. Gehlot's case (supra) or

~



indeed the Calcutta High Court's order dated 22.9.99 in K.R. Basak's case (supra) has been stayed, modified or set aside.


15. Thus I find that J.Es in P & T (Civil Wing), Dept. of Telecommunications; JEs in D.D.A; J.Es in M.E.S; J.Es in Central Ground Water Board; and now J.Es in Farakka Barrage Project have been extended the benefits granted to J.Es in CPWD vide letter dated 22.3.91. There may have been a case to treat applicants who are J.Es in CWC differently if their duties, responsibilities, educational qualifications, mode of recruitment etc. were not similar to that of J.Es in CPWD but that is not the contention of respondents in their reply to the O.A. Indeed, respondents in their reply to the O.A. have not denied the specific averments of applicants contained in Para 4.IV and repeated in Para 5.1 of the O.A. that the duties, responsibilities, terms and conditions of services including educational and other qualifications of J.Es in CWC are the same as that J.Es in CPWD.

16. In this connection applicant's counsel has filed comparative statements of RRs as well as of duties and responsibilities of J.Es of CWC, CPWD, MES, Dept. of Telecommunications, Farakka Barrage Project and Central Ground Water Board. A perusal of the comparative statements reveals that in so far as the classification of posts and the educational qualifications is concerned, J.Es in CWC are identically placed as J.Es in CPWD. Similarly as

^



regards general duties and planning duties, J.Es in CWC are identically placed as J.Es (Civil) in CPWD. No doubt J.Es (Electrical) in CPWD have certain additional duties as per comparative statement, not required to be prepared by J.Es in CWC, but as against that, J.Es in CWC have the additional duties of Hydrological observation and collection of data and flood forecasting work not required to be done by J.Es in CPWD. As regards the method of recruitment, there is a minor variation in as much as for J.Es in CWC, it is 95% by direct recruitment and 5% by promotion, while for J.Es in CPWD it is 97% by direct recruitment and 3% by limited departmental competitive examination. In my view the marginal variation is not sufficient to deny applicants the relief claimed by them, particularly when I find that in M.E.S. posts of J.E as filled 50% by direct recruitment; 40% by transfer on deputation; and 10% by promotion failing which by transfer on deputation/reemployment (for ex-servicemen), failing both by direct recruitment, and yet the benefits granted to J.Es in CPWD have been granted to J.Es in M.E.S. Similarly in Dept. of Telecom., posts of J.Es are filled 83 1/3% by direct recruitment and 16 2/3% by promotion through departmental competitive examination. Yet the benefits granted to J.Es in C.P.W.D. have been granted to J.Es in Dept. of Telecommunications.



(79)

17. During hearing on behalf of respondents it was asserted that the benefits contained in Ministry of Urban Development's letter dated 22.3.91 had been granted to JEs in CPWD essentially because of the huge size of the cadre number^{ing} well over 8000 and the stagnation caused by the lack of promotional opportunities to the grade of A.E., which was not the case obtaining in regard to J.Es in CWC who numbered only 800-900. If size of the cadre was the only reason why JEs in CPWD were granted the benefits contained in Ministry of Urban Development's letter dated 22.3.91, it has not been satisfactorily explained by respondents why comparatively smaller cadres of J.Es such as in D.D.A. has been extended those benefits.

18. It has also been argued on behalf of respondents that the Fifth Pay Commission which was an expert body had not recommended that the JEs in CWC should be granted pay scale equivalent to that of JEs in CPWD and the Tribunal was to be guided by the recommendations of the 5th Pay Commission. In this connect^{ion} it needs to be mentioned that much after the receipt of the 5th Pay Commission recommendations, the CAT, Jodhpur^{Bench} in its order dated 1.10.99 in O.A. No. 142/98 A.S. Gehlot Vs. Union of India directed extension of the benefits contained in the Ministry of Urban Development letter dated 22.3.91 to Shri Gehlot who was a J.E. in Central Ground Water Board, Jodhpur, and similarly Calcutta High Court in its

2

(80)

order dated 22.9.99 in WPCT No. 1730/97 K.R. Basak Vs. CAT, Calcutta Bench & Others directed official respondents to revise the pay scale of the petitioner who was J.E. in Farakka Barrage Project keeping in view the pay scales and allowances enjoined by the J.E. in CPWD and hence these arguments does not avail respondents.

19. In so far as the rulings relied upon by respondents' counsel which include P. Joh & Others Vs. Union of India 1995 (29) ATC 743; Anil Joshi Vs. Union of India (1992) 20 ATC 148; R.K. Gupta Vs. Union of India (1995) 31 ATC 292; Veena Rani Nigam Vs. Union of India (1995) 31 ATC 269 and Shyam Babu Verma Vs. Union of India 1994 (2) SLJ 99 are concerned, I am in respectful agreement with the Hon'ble former Chairman who in his order dated 3.9.97 recorded that these rulings by themselves were not sufficient to reject the claim of the applicants, for similar reliefs as were granted to J.Es in CPWD; Dept. of Telecom, Labour Welfare Organisation and M.E.S., and as we have now seen, which have been extended to J.Es in Central Ground Water Board and Farraka Barrage Project.

20. In the result the O.A. succeeds and is allowed to the extent that applicants in my considered view are entitled to the reliefs claimed. Respondents should extend the benefits contained in

A

(91)

Ministry of Urban Development's letter dated 22.3.91 to applicants together with arrears and other consequential benefits within four months from the date of receipt of a copy of this order. No costs.

S.R. Adige
(S.R. Adige)
Vice Chairman (A)

Karthik
8101