

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

...

original Application No. 412 of 2001

this the 10th day of Dec. 2004.

HON'BLE MR. A.K. BHATNAGAR, MEMBER(J)
HON'BLE MR S.C. CHAUBE, MEMBER(A)

1. Arun Kumar Saxena, S/o late Balvir Chand Saxena.
2. Raman Kumar Sharma, S/o Sri T.C. Sharma.
3. Paras Nath Dixit, S/o Harihar Dutt Dixit.
4. Abhay Kumar Saxena, S/o Sri M.N. Saxena.
5. O.P. Nigam, S/o Sri Ram Lal Nigam.
6. Surendra Kumar Pandey, S/o late Sri Ram Pandey.
7. Anuj Kumar Gupta, S/o Sri Khem Chandra Gupta.
8. Sanjay Kumar Ratori, S/o Sri S.P. Ratori.
9. Chandra Bhan Saxena, S/o Sri Charan Bahadur Saxena.
10. Navin Kumar Malhotra, S/o Sri B.L. Malhotra.
11. Anoop Seth, S/o Sri Vinod Bihari Seth.
12. Chunnu Mian, S/o Sri Abdul Sattar.
13. Arvinder Singh Chadha, S/o Sri S. Jaswant Singh.
14. Radhey Shyam Sharma, S/o late N.P. Sharma.

All are working in the office of the Director, Quality Assurance 2-A/220, Azad Nagar, Kanpur.

Applicants.

By Advocate : Sri A.K. Gaur.

Versus.

1. Union of India through the Secretary, Ministry of Commerce, Govt. of India, New Delhi.
2. The Director General, Supply & Disposal No. 5, Parliament Street (Sansad Marg), New Delhi.
3. The Director, Quality Assurance, 2-A/220, Azad Nagar, Kanpur.

Respondents.

Signature
By Advocate : Sri G.R. Gupta.

ORDER

BY S.C. CHAUBE, MEMBER(A)

The applicants, 14 in number, have, through this O.A., sought a direction to the respondents to fix the scale of pay of the applicants on the posts of Examiners of Stores (in short E.S.) in the pay-scale of Rs.550-750/- w.e.f. 13.5.1982 to 31.12.1985 and Rs.1600-2660/- w.e.f. 1.1.1986 and actual benefits from 1.11.1983 by extending the benefits of judgment dated 19.12.1996 in O.A. no. 757 of 1990 Calcutta Bench of the Tribunal with all consequential benefits.

2. The facts, as per the applicant, are that all of them are working as Assistant Directors (in short A.D.) Gr.II in the scale of pay of Rs. 6500-10500/- in the office of the Director (Quality Assurance), Directorate General of Supplies & Disposal, Govt. of India at Kanpur. At present [✓] applicant no. 1 namely Arun Kumar Saxena, Radhey Shyam Sharma and Surendra Kumar Pandey, who are sl. no. 14 and 6 respectively in the O.A., have already been given the scale of pay of Rs.8000-13000/-. Applicant no. 11 namely Anoop Seth is working in the pay-scale of Rs.5500-8000/- and remaining applicants are working in the pay-scale of Rs.6500-10500/-.

3. According to the applicants, they were initially appointed as E.S. and further promoted to the post of A.D. (Quality Assurance) on different dates as mentioned in para 4.C of the O.A. It is contended by them that when the representation made by some of the E.S. for fixation of scale of pay at par with Senior Draftsman were rejected, the Non-gazetted Technical staff Association, Directorate of Inspection, Calcutta Circle and another filed O.A. no. 757 of 1990 before Calcutta Bench of the Tribunal in which they claimed parity of scale of pay that the post of E.S. as that of Senior Draftsmen of the same department.

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The Tribunal allowed No. 757 of 1990 and further directed the respondents to fix the scale of pay of E.S. as Rs.550-750/- w.e.f. 13.5.1982 to 31.12.1985 and Rs.1600-2660/- w.e.f. 1.1.1986 and actual benefits from 1.11.1983. A Review petition filed by the respondents against the aforesaid judgment was dismissed in January, 2000. The directions of the Tribunal in O.A. no. 757 of 1990 were, however, implemented only in respect of 32 employees working in Calcutta circle of Directorate General of Supplies & Disposal. However, out of 32 employees, three employees are working at Mumbai, Baroda and Ludhiana respectively and in respect of them proceedings were given on 31.3.2000 to implement the directions given in the aforesaid O.A.

4. According to the applicant, as per the recommendations of the Third Pay Commission for Central Government employees, the scale of pay of Senior Draftsmen and the E.S. in the Inspection wing of the Directorate General of Supplies and Disposals was Rs.425-700/-. But in accordance with the judgment dated 3.7.1997 passed in O.A. no. 458 of 1996 Calcutta Bench of the Tribunal, the scale of pay of Senior Draftsman was revised to Rs. 550-750/- w.e.f. 13.5.1982 and further revised as Rs.1600-2660/- w.e.f. 1.1.1986 as per the 4th pay commission. The applicants , however, contended that although the post of E.S. are superior to the post of Senior Draftsman carrying higher responsibilities and duties, the scale of pay of E.S. was not revised at par with the Senior Draftsman. They were not given the revised scale of even w.e.f. 1.1.1986 under the 4th pay Commission. On the other hand, the scale of pay of E.S. was revised to Rs. 1400-2300/- According to the Recruitment Rules, the post of E.S. had to be filled by transfer of Senior Draftsman who possess the same qualification prescribed for the post of E.S. or having 7 years of combined service in the grade of Senior Draftsman/Junior Draftsman and by promotion of Junior Draftsman who carry the scale of pay

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of Rs. 425-700 or Rs.1400-2300/-.

5. According to the applicants, the principle decided by Calcutta Bench of the Tribunal in O.A. no. 757 of 1990 is squarely applicable to those similarly situated persons, who are placed as E.S. in the Directorate of Supplies & Disposals throughout the country. Thus, there is no valid reason or justification for the respondents in not extending the benefit of the aforesaid judgment to all similarly placed E.S. in the Directorate General of Supplies & Disposals. Meanwhile, they have been sending representation or reminders to the respondents. Having come to know that the judgment of Calcutta Bench of the Tribunal was implemented only in respect of 32 employees in Calcutta Circle of Directorate General of Supplies & Disposals, they were left ~~with~~ no other option, but to represent their case through representation on or around 21.9.2000. A true copy of the representation made by one of the applicants, namely Sri Arun Kumar Sharma dated 21.9.2000 has been filed as Annexure no. 3 to this O.A.

6. The applicants have further contended that the persons much junior to most of the applicants have already been given the scale of pay in pursuance of the order of the Tribunal and the case of the applicants is squarely covered with the case of the applicant of Calcutta Bench of the Tribunal. Since the benefits ~~that~~ have been extended to the juniors, the same benefits cannot be denied to the applicants, who are senior. Further, the seniority list of officers in the Grade of Assistant Inspection (Textile), Engineering and Metallurgical etc. are prepared and maintained on All India basis and failure on the part of the respondents to deny the benefits of the judgment of Calcutta Bench of the Tribunal to the applicant in the present O.A. is unjust, arbitrary and violative of the Articles 14 & 16 of the Constitution of India. Thus, on account of not extending the benefit of the judgment of Calcutta Bench of the Tribunal, anomalous

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situation has arisen in which juniors are drawing more pay than the seniors, which is unjust, arbitrary and discriminatory.

7. The respondents on the other side have contended that the post of E.S. in the Directorate General of Supplies and Disposals is a Group 'C' post, which is to be filled by direct recruitment. There are four separate disciplines of Engineering, Textiles, Metallurgy and Assaying. only in the Engineering discipline, one^{of} the methods of recruitment is by transfer of Senior Draftsman.

8. In O.A. no. 458 of 1986 in re. Sunil Kumar Bhowmick & others vs. Union of India & Others, Calcutta Bench of the Tribunal vide its judgment and order dated 3.7.1987 had allowed the benefits of higher pay scales with retrospective effect to the Drawing staff of DCS&D including Senior Draftsman, whose pay scale was revised from Rs.425-700/- w.e.f. 13.5.1982 to 31.12.1985 and from Rs.1400-2300/- to Rs.1640-2660/- w.e.f. 1.1.1986.

9. Since the pay scale of E.S. was Rs.425-700/- and Rs. 1400-2300/-, hence some of the E.S. filed O.A. no. 757 of 1990 before Calcutta Bench of the Tribunal seeking the benefit of the judgment dated 3.7.1987. The aforesaid O.A. was disposed of by Calcutta Bench of the Tribunal vide its judgment and order dated 19.12.1996 with the direction to give the benefit of judgment dated 3.7.1987 to the Senior Draftsman. Further, the judgment dated 19.12.1996 has fully been implemented and the applicants to this O.A. have been given the revised scale of pay in terms of the said judgment.

10. Meanwhile, 5th Pay Commission had specifically l the revision of the pay scale of E.S. in DGS&D. The 5th Pay commission had accepted the contention of the respondents that the post of E.S. is predominantly filled by direct

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recruitment of candidates possessing a diploma in Engineering and only a limited number of posts are to be filled by promotion of Junior and Senior Draftsman and that there was prima facie no justification for any revision of the scale of pay of the feeder posts. However, due regard to the essential qualifications for direct recruitment and based on the general principles of pay determination evolved by them, they were recommended that the post may be placed in the scale of pay of Rs.1600-2660/-.

The recommendations of the 5th Pay Commission as contained in para 61.19 of the Report regarding the grant of the replacement scale of Rs. 1600-2660/- for the posts of E.S. in DGS&D w.e.f. 1.1.1996 had been accepted by the Government. The 5th Pay Commission, however, had not conceded to the demand of the applicants that with the revision of the pay scales of Draftsman, the pay scale may further be revised on the basis of scale of pay of feeder post.

11. The respondents have further invited our attention to the decision of the Principal Bench of the Tribunal in O.A. no. 451 of 1988 in re. Sh. Sone Lal & Others vs. Union of India & Others, wherein the Principal Bench of the Tribunal has held as under :

"Where such matters have been considered by the Expert Bodies like the pay Commission and the recommendations have already been considered and accepted by the Govt. it would not be proper for this Hon'ble Tribunal to interfere."

12. Counsel for the respondents has also cited the decision dated 19.3.1997 of the Hon'ble Supreme Court in the case of Union of India & Others vs. P.V. Hariharan in this regard.

13. The respondents have further contended that the matter of pay scale of the post of E.S. was considered by the 4th Pay Commission and accepted by the Govt. and on the basis of the recommendations of the 4th Pay commission, the revised pay scale of Rs.1400-2300/- was prescribed

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w.e.f. 1.1.1986 keeping in view the duties and responsibilities and methods of recruitment etc. It is also contended by the respondents that the present O.A. is ~~of sue~~ ^{of short} of the judgment of Calcutta Bench of the Tribunal in O.A. no. 458 of 1986 and 757 of 1990. These judgments are in contravention of the directions of the Hon'ble Supreme Court reported in AIR 1990 SC 1251, 1993 (2) LLJ 539, 1998 (3) AISLJ (SC) 5 and 1984 SCC (L&S) 329.

13. It has been argued by the learned counsel for the respondents that the decisions in O.A. no. 458/86 and 757/90 (supra) would spell financial disasters to the respondents ~~and~~ ^{to} create chaos in the service relationships in various Departments of the Central Govt. The respondents have further submitted that the vertical and horizontal relativities so painfully built by the Expert Bodies like Central Pay Commission will be totally destroyed by following the said decision of the Calcutta Bench of the Tribunal.

14. As regards the pay scale, the respondents have clarified that three applicants namely A.K. Saxena, R.S. Sharma and S.K. Pandey have been given the pay-scale of Rs.8000-13500/- and not Rs.8000-13000/-, which is the next higher scale under the Assured Career progression Scheme of the Govt. of India. Further the pay scale of E.S. is Rs. 5000-8000/- and not Rs.5500-8000/- and that of the applicants is Rs.6500-10500/- and not Rs.6500-10000/-. Further, the date of regular appointment of S/Sri P.N. Dixit, O.P. Nigam and Chandra Bhan are 27.8.99, 27.8.99 and 3.3.93 respectively. S/Sri A.K. Saxena, and A.K. Gupta were appointed to the post of Assistant Director Gr.II only on adhoc basis and have already been reverted to the post of E.S. Thus, the case of the applicants is misleading and not based on the facts.

15. According to the respondents, the post of E.S. and Senior Draftsman are not comparable having altogether different nature of duties and responsibilities. Further the posts

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of E.S. are predominantly filled by promotion of Jr. Draftsman/transfer of Sr. Draftsman. Further, as per recruitment rules, these appointments are allowed in one of the four disciplines of the E.S. i.e. Engineering discipline only. Here also, only those senior Draftsman can be appointed as E.S. on transfer basis who possess the same qualifications as prescribed for E.S. It is, therefore, not correct to say that the post of E.S. is superior to the post of Senior Draftsman and with the revision of pay of Sr. Draftsman/Draftsman as per the decision of Calcutta Bench of the Tribunal dated 3.7.87 in O.A. no. 458/86, there was no justification for enhancing the pay scale of E.S. Finally, the benefits of the judgment dated 19.12.1996 of the Calcutta Bench of the Tribunal cannot be *suo moto* extended to all the non-applicants.

16. We have perused the pleadings on record and heard the counsel for the parties.

17. The counsel for the applicants has cited the following decisions in support of their case.

- (i) 1998 SCC (L&S) 226 in re. K.C. Sharma & Others vs. U.O.I. & Ors.
- (ii) 2003 SCC (L&S) 703 in re. Rajasthan Public Service Commission & Another vs. Harish Kumar Purohit & others.
- (iii) (2002) 9 SCC 477 in re. Gyan Chand & Another vs. Sumat Rani & Others.
- (iv) AIR 2000 SC 594 in re. S.I. Roopal & Another vs. Lt. Governor through Chief Secretary, Delhi & Ors.
- (v) O.A. no. 260/PB/2001 decided on 12.10.2001 in re. Jaswe Singh & Others vs. U.O.I. & Ors. (Chandigarh Bench).

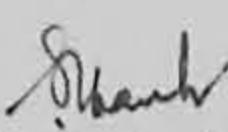
18. In the case of Harish Kumar Purohit (Supra), it has been held by the Hon'ble Supreme Court that the earlier decision of Division Bench is binding on a Bench of coordinate Bench. If Bench hearing matters subsequently entertains any doubt about correctness of the earlier decision, only course open to it is to refer the matter to a larger Bench. Later Bench was not justified in not indicating why it was not

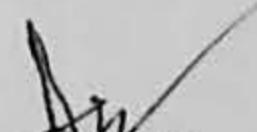
following the earlier Bench decision even though brought to its notice. Judicial propriety and decorum do not warrant such a course to be adopted.

19. Under the facts and circumstances, our aforesaid discussion and after careful consideration of the arguments advanced by the counsel for the parties, we find force in the arguments of the counsel for the applicant that ~~when~~ ^{for} the junior to the most of the applicants have already been given the scale of pay in pursuance of the order of the Tribunal as the case of the applicant is squarely covered with the case of applicants of Calcutta Bench of the Tribunal. Since the benefit has been extended to the junior why the same benefit cannot be extended to the applicants who are senior.

20. Accordingly the O.A. is allowed and the respondents are directed to extend all the benefits to the applicants otherwise eligible, in terms of judgment passed on 19.12.1996 in O.A.No.357/90, Calcutta Bench of the Tribunal. This exercise should be completed within a period of three months from the date of receipt of a copy of the order.

21. There will be no order as to costs.


Member-A


Member-J