

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/00314/2019

Date of order: 27.1.2021

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

1. Anup Kumar Mukhopadhyay,
S/o Late Beman Behari Mukhopadhyay,
Aged about 59 years,
Working as Superintending Engineer (C),
Civil Construction Wing,
AIR, Doordarshan Bhawan,
Kolkata – 700095,
At present residing at Purba Abasan,
GD Block, A-1/3, 1582/2 Rajdanga
Main Road, Kasba,
Kolkata – 700107.
2. Ram Kumar Singh,
S/o Shri Kedar Nath Singh,
Aged about 60 years,
Retired as Superintending Engineer,
CCW, AIR, Room No. 113, Lodi Road,
CGO Complex,
New Delhi – 110003,
At present residing at Flat 106, E Block,
BCR Hemadurga Siv Hills,
Puppalguda Narsingi Main Road,
Ranga Reddy Hyderabad,
Telangana,
Pin – 500089.
3. Ashok V. Naik,
S/o Late Venkatraman G. Naik,
Aged about 61 years,
Retired as Superintending Engineer (C)
CCW, AIR, TV Annexe Building, Chepauk,
Chennai – 600017,
At present residing at House No. 16,
2nd Cross Chiranjibi Layout, Heppal,
Kemppura,
Bangalore – 560024.

..... Applicants.

-Versus-

1. Union of India

though the Secretary,
 Ministry of information and Broadcasting,
 Shastri Bhawan, 5th Floor,
 New Delhi - 110001

2. Secretary,
 Ministry of Personnel,
 Public Grievances & Pensions,
 Department of Personnel & Training,
 Sansad Marg, North Block,
 New Delhi - 110001.
3. Under Secretary,
 Ministry of information and Broadcasting,
 Shastri Bhawan, 5th Floor,
 New Delhi - 110001.
4. Chairman,
 UPSC, Dholpur House,
 Shahjahan Road,
 New Delhi - 110069.
5. Director General,
 AIR, Civil Construction Wing,
 Akashvani Bhawan,
 Sansad Marg,
 New Delhi - 110001.

.....Respondents.

For the Applicants : Mr. C. Sinha, Counsel

For the Respondents : Mr. A.K. Chattpadhyay, Counsel

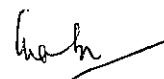
O R D E R (Oral)

Dr. Nandita Chatterjee, Administrative Member:

The applicants have approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 in second stage litigation praying for the following relief:-

"a) Liberty may be granted under Rule 4(5)(a) of CAT (Procedure) Rules, 1987 to file and maintain the Original Application jointly.

b) To direct the respondents to cause them to act in accordance of DOP&T's Office Memorandum dated 18.01.2011 and grant of Grade Pay of Rs. 10,000/-



at SAG Level in the Organized Group-A Engineering Services w.e.f. June 2012 with all consequential benefits.

c) To set aside and quash impugned speaking order dated 09.01.2019 issued by the Under Secretary to Govt. of India, Ministry of Information and Broadcasting.

d) Any other order or orders as the Hon'ble Tribunal deems fit and proper."

2. Heard both Ld. Counsel, examined pleading and documents on record. We note that no rejoinder has been filed.

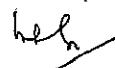
Respondent authorities have filed their written notes of arguments.

3. The facts of the matter, in brief, is that the applicants in the instant O.A. are all Superintending Engineers, who claim to have fulfilled all the requisite criteria prescribed in Office Memorandum dated 18.1.2011 for grant of Grade Pay of Rs. 10,000/- at SAG Level in the Organized Gr. "A" Engineering Service w.e.f. June 2012 with all consequential benefits.

As their representations to such effect were not considered, the applicants had approached this Tribunal in O.A. No. 635/2017 which was disposed of vide orders dated 20.7.2017, and, in compliance thereof, a speaking order was issued by the respondent authorities. The said speaking orders were challenged in O.A. No. 32/2018 and the Tribunal, thereafter, quashed the said orders, so impugned, and remanded the matter back to the respondent authorities upon which another speaking order dated 9.1.2019 was issued, rejecting the claim of the applicants and, hence, being aggrieved, the applicants have approached this Tribunal in 3rd stage litigation in the instant O.A.

4. While disposing of O.A. 32/2018, this Tribunal had directed as follows:-

" In such view of the matter, the impugned order is quashed and the matter is remanded back to the authorities to clarify,



- (i) Whether 18.1.2011 O.M. speaks of and includes Non Functional Upgradation (NFU) to SAG (PB 4 Grade Pay Rs. 10,000/-) to Organised Group 'A' Engineering Services, to be bestowed with irrespective of availability of vacancy.
- (ii) Whether such NFU is available to Superintendent Engineers of CPWD.
- (iii) Subject to (i) (ii) above why the Superintending Engineers of AIR/CCW would be deprived of NFU.

11. Let reasoned order be issued by eight weeks."

The respondent authorities, thereafter issued a speaking order (Annexure A-13 to the O.A.) wherein the respondent authorities have sought to respond to the direction of the Tribunal as follows:-

"4. Whereas the Hon'ble CAT, Kolkata disposed the above mentioned OA vide its order dated 12-10-2018 quashing the impugned communication dated 21-07-2017 issued by Ministry of I&B and remanding back the matter to the respondents to clarify the following points with the reasoned order to be issued by 8 weeks:-

- (i) Whether 18-01-2011 O.M. speaks of and includes Non-Functional Up-gradation (UFU) to SAG (PB-4 Grade Pay Rs. 10000/-) to Organized Group-A Engineering Services, to be bestowed with irrespective of availability of vacancy.
- (ii) Whether such NFU is available to Superintendent Engineers of CPWD;
- (iii) Subject to (i) (ii) above why the Superintending Engineers of AIR/CCW would be deprived of NFU.

5. Whereas earlier another incumbent Sh. Noorul Hoda, Superintending Engineer (Elect.) had filed an OA No. 350/836/2017 before Hon'ble CAT, Kolkata in the third round of litigation in a sequel to OA No. 1127/2012 and OA No. 127/2017 challenging the speaking order dated 29-05-2017 wherein the issue revolved around the grant of non-functional up-gradation to Superintending Engineers of CCW, DG:AIr.

6. Whereas the Hon'ble CAT, Kolkata disposed of the OA No. 836/2017 vide its order dated 05-09-2018 (**Annexure-A/1**) in favour of the respondents by confirming the contention of the speaking order dated 29-05-2017 and inter-alia observed as under:-

"The applicant has to wait his turn according to seniority and service rules to be promoted to the post of Chief Engineer and thereafter to the SAG Grade Pay of Rs. 10000/-

We, therefore, dispose of the OA by directing the respondent authorities to consider the applicant's claim for promotion as and when vacancies made available and in accordance with the various policy guidelines in this regard. There will be no orders on costs."

7. Whereas to clarify para 4 (i) above in deference to Hon'ble CAT, Kolkata order dated 12-10-2018, it is submitted that DOP&T OM No. AB.14017/62/2008-Estt (RR)/PT. dated 18-01-2011 relates to qualifying service for promotion to SAG/HAG Grades in Organized Group-A Engineering Services and does not include grant of Non-Functional Up-gradation (NFU) to SAG (PB-4 Grade Pay Rs. 10000/-) to Organized Group-A Engineering Services. Even Hon'ble CAT, Kolkata in the case of Sh. Noorul Hoda vide its order dated 05-09-2018 had also observed that the DOP&T OM dated 18-01-2011 obviously refers to promotion to SAG/ HAG grades and not non-functional up-gradation

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and therefore the applicant has to wait his turn according to seniority and service rules to be promoted to the post of Chief Engineer and thereafter the SAG Grade Pay of Rs. 10000/-.

8. Whereas to clarify para 4 (ii) above in deference to Hon'ble CAT, Kolkata order dated 12-10-2018, it is submitted that the cadre controlling authority of Superintending Engineers of CPWD is Ministry of Urban Development which has not been impleaded as respondent in the instant OA. However, as per Recruitment Rules of Engineers of CPWD titled "Ministry of Urban Development, Central Electrical and Mechanical Engineering Service Group - 'A' Service Rules, 2012", the Superintending Engineers of CPWD are entitled for non-functional up-gradation as per DOP&T OM No. AB.14017/64/2008-Estt (RR) dated 24-04-2009 (**Annexure-A/2**) being the Organized Group-A Service. Superintending Engineers of CPWD which are part of Central Engineering Service (CPWD) falls under the list of Organized Group-A Services circulated by DOP&T from time to time and the last one circulated vide their OM No. 1-11019/5/2017-CRD dated 03-04-2017 (**Annexure-A/3**).

9. Whereas to clarify para 4 (iii) above in deference to Hon'ble CAT, Kolkata order dated 12-10-2018, it is submitted that Superintending Engineers of Civil Construction Wing, DG: AIR are not eligible for non-functional up-gradation due to the following reasons:-

- (i) According to the Recruitment Rules of Engineering Services in CCW notified on 20-06-1985 vide GSR 327 Titled as "All India Radio Civil Construction Wing" (Group-A and Group-B post) Recruitment (Amendment) Rules, 1995", the engineering service of CCW belongs to "General Central Service" and not Organized Group-A Engineering Service.
- (ii) DOP&T vide its OM NO. 1-11009/12/2008-CRD dated 19-11-2009 (**Annexure-A/4**) has laid down the parameters to be met for an Organized Group-A Service which inter alia include that entry post to the Organized Group -A Service is Junior Time Scale (Pay scale of Rs. 15600-39100/- plus Grade Pay of Rs. 5400/-) in which at least 50% of the vacancies are required to be filled by direct recruitment. The applicants of the instant OA joined as Assistant Engineer which is a Group-B post and carries the pay scale of Rs. 9300-34800/- plus Grade Pay of Rs. 4600/-. The mode of Recruitment in Assistant Engineer is 40% by DR and not by 50%. The posts not belonging to any service are classified as General Central Services and, therefore, an Organized Group-A Service cannot have posts/grades classified as General Central Service. The engineering Service of CCW belongs to "General Central Service" as per its recruitment rules.
- (iii) DOP&T vide its above OM dated 19-11-2009 has further opined that these are certain basic attributes of an Organized Group-A Service. There is, however, nothing to suggest that the services/cadres fulfilling these criteria would be automatically conferred the status of an Organized Group-A Service. An Organized Group-A Service is one which is constituted consciously as such by the Cadre Controlling Authorities and such a service can be constituted only through the established procedures.

10. NOW THEREFORE, as per clarifications submitted in forgoing paras in deference to Hon'ble CAT, Kolkata order dated 12-10-2018, the Superintending Engineers of Civil Construction Wing, DG: AIR including the applicants of OA No. 350/32/2018 filed by Sh. Anup Kumar Mukhopadhyay & two others namely Sh. Ram Kumar Singh and Sh. Ashok. V. Naik are not eligible for non-functional up-gradation."

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From the speaking order (supra), we infer that, in response to the query as to whether the O.M. dated 18.1.2011 refers to Non-Functional Upgradation (NFU), the respondents have clarified that the said O.M. refers to promotion to SAG/HAG grades and not to Non-Functional Upgradation. In this, they have relied on this Tribunal's orders in **O.A.**

No. 836 of 2017 (Noorul Hoda v. Union of India & ors.).

In response to the issue as to whether such NFU is available to Superintending Engineers of CPWD, the respondents would argue that although the cadre controlling authority of CPWD has not been impleaded as a respondent in the O.A., a reference to the recruitment rules of Engineers of CPWD, 2012 reveals that Superintending Engineers of CPWD are entitled to Non-Functional Upgradation as per DOP&T O.M. dated 24.4.2009 as the CPWD has been recognized as an Organized Gr. 'A' service vide DOP&T orders dated 3.4.2017.

To respond to the issue as to why Superintending Engineers of Civil Construction Wing DG, AIR, CCW would not be eligible for Non-Functional Upgradation, the respondents have furnish the following reasons:-

- (a) That, the Engineering Service of CCW belongs to Chief Engineers Service and not an Organized Gr. 'A" Engineering Service.
- (b) The criteria to be made for inclusion as an Organized Gr. 'A' service is not met by the applicants in the O.A. as because both the pay scale and the Grade Pay as well as the proportion of vacancies required to be filled up by direct recruitment differ between the organized Gr. 'A' service and the General Central Service.

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(c) DOP&Ts O.M. dated 19.11.2009 also refers to certain basic attributes of organized Gr. 'A' Service as one which is constituted consciously as such by the cadre controlling authority through established procedures and the status of an Organized Gr. 'A' service cannot be automatically conferred to members of General Central Services.

The respondents, therefore, rejected the application of the applicants.

5. The applicants of the instant O.A. have claimed that they satisfy the conditions of DOP&T's O.M. dated 18.1.2011 on the following grounds:-

(a) That, the applicants' satisfy all the requisite criteria as laid down in DOP&T O.M. dated 18.1.2011.

(b) That, there is a gross discrimination regarding grant of Grade Pay of Rs. 10,000/- at SAG level to the Members of Organized Gr. 'A' Engineering Service vis-à-vis CCW/AIR.

(c) That, the distinction between Organized Gr. 'A" service and Unorganized service was obliterated by Hon'ble Apex Court in ***State of Mizoram & ors. v. Mizoram Engineering Service Association & anr. [Appeal (Civil) No. 793 of 1998]*** by virtue of which one Sri Noorul Hoda was allowed a Grade Pay of Rs. 8700/-.

(d) That, the applicants have rendered 17 years of regular service.

The have worked in same posts involving the same nature of work and under similar delegation of powers, and, hence, the distinction drawn between Organized Gr. 'A' Service and AI,

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CCW deserves to be quashed and the applicants granted identical benefits as laid down in DOPTs O.M. dated 18.1.2011.

6. This Tribunal, while deliberating O.A. No. 836 of 2017, had discussed each of these grounds as enunciated by the applicants concluding thereupon that the service of Engineers in CCW, AIR was not one which has been constituted consciously by the cadre controlling authority through established procedures and, also, that, while the Hon'ble Apex Court judgment in ***State of Mizoram (supra)*** was issued in 2004, the DOP&T had subsequently issued Office Memorandam in 2009 and 2017 respectively, distinguishing the organized service from unorganized service.

In ***Noorul Hoda (supra)*** the Tribunal had also observed that the applicant had not been able to establish parity of work between the functional responsibilities discharged by him and that discharged by Engineers in the organized Gr. 'A' service.

In the instant O.A. too, there is a fleeting reference to parity of work (para 5 f of the O.A.) but the same has not been established with further details.

7. We have been given to understand that the outcome of ***O.A. No. 836 of 2017 (Noorul Hoda vs. Union of India & ors.)*** was challenged by the applicant therein before the Hon'ble High Court at Calcutta and that the said Writ Petition is awaiting final judgment and orders. As the decisions on the issues raised are pending adjudication in a higher forum, this O.A. is, therefore, disposed of at this stage, directing the respondent authorities to revisit their speaking order dated 9.1.2019 upon receipt of, and, in the light of orders and judgement of the Hon'ble

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High Court at Calcutta on the outcome of challenge to the orders of this Tribunal in **O.A. No. 836 of 2017 [Noorul Hoda v. Union of India & ors.]**.

8. The O.A. is disposed of with the above directions. There will be no orders on costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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