

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 08th day of Mar 2006.

Original Application No. 1348 of 1999.

Hon'ble Mr. K.B.S. Rajan, Member (J)
Hon'ble Mr. A. K. Singh, Member (A)

Jagdish Prasad,
Son of Late Krishna Prasad,
Working as Assistant Engineer (Non-Functional)/
Superintendent (E/M) Grade I at Garrison Engineer,
(EAST) Old Cantt. Allahabad.

.Applicant

By Adv: Sri A. K. Srivastava

V E R S U S

1. Engineer-in-Chief,
Army Head Quarters,
Military Engineering Service,
Kshmir House,
DHQ PO New Delhi.
2. Chief Engineer,
Military Engineering Service,
Central Command, Lucknow.
3. Chief Engineer,
Military Engineering Service,
Bamrauli.
4. Commander Works Engineer,
Military Engineering Service,
Allahabad.
5. Commander Works Engineer,
Military Engineering Service,
Ranchi.
6. Garrison Engineer,
Military Engineering Service,
Ranchi.
7. Garrison Engineer,
Military Engineering Service, Dipatoli,
Ranchi.
8. Garrison Engineer,
Military Engineering Service,

Bamrauli.

. Respondents.

By Adv: Shri S. Srivastava.

ORDER

BY K. B. S. Rajan, Member-J

1. At the very outset, prayer at para 8(3) of the OA seeking quashing of the order dated 11-10-1999 of penalty of censure is to be out rightly rejected as the same amounts to multiple relief in the OA, which is impermissible. However, liberty is given to the applicant to seek recourse to appropriate legal action in which event; the same would not be hit by limitation.

2. Now, the facts in respect of the other part of the OA.

3. The controversy involved is in two parts, first relating to the factum of the applicant's pay as Assistant Engineer in the grade of Rs.2000 - 3500.

4. The applicant was initially in the pay scale of Rs 550- 900 as Superintendent Grade I on his promotion from the grade of Superintendent Grade II in December, 1983. In fact, at the time of promotion from the feeder grade, according to the applicant he had opted for retention of the old pay scale upto 01-12-1983 under the provisions of DOPT

OM dated 26-09-1981. His pay was fixed as of 01-12-1983 @ Rs 700/- in the above scale and as on 01-12-1984, it was Rs 725/-. While the applicant was placed in the above scale, w.e.f. 01-01-1991, the applicant was placed in the scale of Rs 2000 - 3500 and re-designated as A.E. (Non functional), vide order dated 25-04-1996 (referred to in the DO Part II Order dated 17-06-1996. And in the said scale, his pay was fixed as on 01-01-1991 @ Rs. 2525/- and annual increment having been accorded, his pay was Rs 2900/- as on 01-01-1996 in the aforesaid pay scale of Rs 2000 - 3500. However, by the impugned order dated 30-08-1999 (Annexure I) on the basis of E-in-C Branch order dated 02-08-1999, the designation of the applicant had been changed to Junior Engineer (Electrical and Mechanical). The above re-designation carried with the pay scale in a three tier system as under:-

- (a) Entry Grade - Rs 5,000 - 8,000/-
- (b) After 5 years- Rs 5,500 - 9,000/-
- (c) After 15 yrs - Rs 6,500 - 10,500/-

5. The applicant has challenged the above re-designation.

6. The second part of the controversy is that the Hyderabad Bench had in OA No. 1746/97, vide order dated 28-04-1999 granted higher pay scale of Rs

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2,375 - 3,750/- w.e.f. 30-07-1995 in respect of the Asst. Engineers in the Military Engineering Services and the claim of the applicant is that he should be placed in that grade from that date.


7. In so far as the second part of the controversy, the Hon'ble A.P. High Court has, by order dated 25-01-2000 in CWP No. 838 of 2000 stayed the operation of the order dated 28-04-1999 as amended by order dated 09-09-1999. Hence, claim based on the aforesaid order of the Hyderabad Bench does not survive for the time being, till the stay granted by the Hon'ble A.P. High Court is under currency. Thus, what remains is about the legality of the order relating to re-designation as Junior Engineer and the attendant Pay scales as stated above.

8. The counsel for the applicant contends that the above re-designation is illegal and the same cannot have retrospective operation. If at all, the same could have prospective operation i.e. those Asst. Engineers who reach that grade w.e.f. 25-04-1996 could be re-designated.

9. The respondents on the other hand contend that the decision being a policy decision, the same not having been also challenged, the implementation of the same cannot be agitated.

10. Arguments were heard. Though written submission has been asked for, the same has not been filed by the parties.

11. Pleadings were scanned. Admittedly the applicant was promoted to the post of Superintendent Grade. I on 26-04-1983. At that time, his pay scale was Rs 550 - 900. This scale, in the wake of the C.C.S. Revised Pay Rules, 1986 (in the wake of IV C.P.C) underwent an upward revision of Rs 1,640 - 2,900 and the pay of the applicant was fixed accordingly. Except that there was a controversy as to the date of exercising of option and imposition of penalty of censure against the applicant, the authorities, after passing of the censure order had not affected the earlier orders passed in regard to the exercising of the option or for that matter, fixation of pay in accordance with the said option. Those orders are therefore, in tact. The authorities have, by order dated 25-04-1996 placed the applicant in the grade of Rs 2,000 - 3,500 in the post of Asst. Engineer (Non-Functional). In other words, the applicant was afforded the non functional grade after completion of 7 years of his service as Superintendent Grade. I. Of course, the applicant is not the lone individual to be afforded the above mentioned higher pay scale with designation as Asst. Engineer (non functional) as



many others by virtue of the very same order had been so conferred with the higher pay scale. The post of Superintendent Grade I is sought to be redesignated as Junior Engineer and there is no mention about the non functional grade as earlier existing i.e. Asst. Engineer (Non functional) though, the pay scales would go a revision, respectively after 5 and 15 years to Rs 5,500 - 9000 and Rs 6,500 - 10,500.

12. The question is about validity of this redesignation. The respondents contend that this being a policy matter, the same cannot be agitated.

13. The legal issue is whether the policy decision can be subjected to judicial scrutiny and another equally vital legal issue is whether the Respondents could take away a vested right of an employee.

14. The earlier decision to grant higher pay scale of Rs. 2,000 - 3,500 with the designation as Asst. Engineer (Non functional) was also a policy decision and the same has been to the benefit of the applicant and similarly situated persons. On the invoking of the said order, the applicant has been enjoying the said pay scale since 1991 and meanwhile V CPC having furnished its recommendations, on their being accepted, the applicant has been drawing his pay in the pay scale of Rs. 6,500 - 10,500 since

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1996. Thus, a vested right has been created in his favour.

15. As regards judicial scrutiny of policy decision, the decision making process could well be subjected to judicial scrutiny. And, even, the policy decision could be subjected to judicial scrutiny as laid down by the Apex Court in the case of **State of T.N. Versus L. Abu Kavur Bai, (1984) 1 SCC 515** an enquiry into the policy of even Legislature or considerations governing the same could be made if the same violates the provisions of the Constitution. Similarly, as held in the case of Consumer **Action Group v. State of T.N., (2000) 7 SCC 425.**

*"Whenever any statute confers any power on any statutory authority including a delegatee under a valid statute, howsoever wide the discretion may be, the same has to be exercised reasonably within the sphere that statute confers and such exercise of power must stand the test of judicial scrutiny. **This judicial scrutiny is one of the basic features of our Constitution.**"*
(emphasis supplied)

16. The policy decision is of the Respondents and it is not in pursuance of any specific statute or any rule framed under the provisions of Article 309 of the Constitution. As such, judicial scrutiny is fully available to see whether the policy in question is or is not conforming to the provisions of the Constitution.

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17. By the re-designation the condition of service has been thoroughly changed. The vested right already available to the applicant i.e. higher pay scale has also been taken away, that too with retrospective effect. As such, it is to be tested whether the impugned order could stand judicial scrutiny.

18. Admittedly, the applicant was drawing the higher pay scale w.e.f. 01-01-1991 and the revised pay scale of Rs. 6,500 - 10,500/- from 01-01-1996. If the impugned order is implemented, which gives the higher pay scale only after 15 years as Superintendent Grade I, in the case of the applicant, it would be 15 years from 26-04-1983 i.e. w.e.f. 26-04-1998, while the applicant was drawing the said scale right from 01-01-1996. It has been held in the case of **Municipal Corpn. of Greater Bombay v. Kalpana Sadhu Kamble, 1988 Supp SCC 747.**

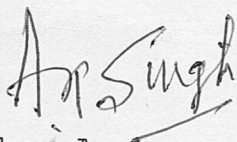
"While it may be true that service conditions of employees may be modified retrospectively, no modification which would have the effect of depriving them of their vested rights can be made retrospectively except under a valid law. No such law is placed before us in this case."

19. Thus, the respondents, by the impugned order dated 30-08-1999 cannot take away the vested rights already accrued to the applicant by virtue of the order dated 25-04-1996 in accordance with which the applicant had been placed in the pay scale of Rs. 2,000 - 3,500 with the designation of Asst. Engineer

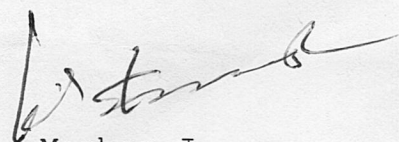
(Non Functional). The order impugned therefore, is liable to be quashed and set aside.

20. The respondents contend that the original order dated 02-08-1999 of the E-in-C Branch has not been assailed. In fact, the said order in all expectation would be only a communication to the Directorates and lower formations and would not have been made available to the individual employees. If so, none would be having the opportunity of having a copy of the same.

21. In view of the above discussion, the O.A. partly succeeds in regard to the quashing of the impugned order dated 30-08-1999. The said order dated 30-08-1999 is quashed and set aside. The respondents are directed not to vary the designation [Asst. Engineer (Non Functional)] of the applicant nor to disturb the pay scale of the applicant which he has been enjoying since 01-01-1996. The other relief, i.e. pay scale on the basis of the order dated 28-04-1999 in OA 1746 of 1999 of the Hyderabad Bench of the Tribunal is rejected in view of the stay of the said order by the Hon'ble A.P. High Court, Allahabad. No Costs.



Member-A



Member-J