

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 19th day of April 2005.
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Original Application no. 1398 of 2002.

Hon'ble Mr. D.R. Tiwari, Member (A)
Hon'ble Mr. K.B.S. Rajan, Member (J)

Durga Lal Balai, S/o Sri Kishan Lal,
R/o C-30, New ATI Campus, Udyog Nagar,
Kanpur, presently,
Employed as Vocational Instructor (Drawing),
Advance Training Institute (ATI),
KANPUR.

....Applicant

By Adv : Sri N.K. Nair & Sri M.K. Updhayaya

V E R S U S

1. Union of India through the Secretary,
Ministry of Labour & Employment,
Shram Shakti Bhawan,
Rafi Marg,
NEW DELHI.
2. The Director of Apprenticeship Training,
Directorate General of Employment & Training,
Shram Shakti Bhawan, Rafi Marg,
NEW DEHI.
3. The Deputy Secretary,
Directorate General of Employment & Training,
Shram Shakti Bhawan, Rafi Marg,
NEW DEHI.
4. The Director, Advance Training Institute,
Udyog Nagar,
KANPUR.

...Respondents

By Adv : Sri S.C. Mishra

O R D E R

By K.B.S. Rajan, JM

The applicant, through this O.A. prayed for a direction to the respondents not to reduce the scale of pay of the applicant as decided by them vide order dated



17.10.2002. The request includes quashing of the said order also.

2. In nutshell, the facts of the case are that the applicant was a beneficiary of the order dated 13.3.1984 passed by the Ministry of Finance, whereby the pay scale of Draughtsman Gr.I, II and III are equivalent under when and upward revision whereby his pay scale was enhanced w.e.f. 12.10.1989 from Rs. 1400-2300/- to Rs. 1600-2660/- vide order dated 30.3.1995 (Annexure A-2). However, by the impugned order dated 17.10.2002, (Annexure A-1), the revised pay scale was sought to be made effective only from 11.10.1993, as the case of the applicant is covered by order dated 19.10.1994 only. It is pertinent to mention here that the order dated 30.3.1995 also refers to the Ministry of Finance O.M. dated 19.10.1994.

3. The applicant has challenged the legality of the aforesaid order dated 17.10.2002 inter alia on the following grounds:

- (a) The applicant infact is entitled to the revised pay scale of Rs. 550-750/- from the date of his appointment itself whose replacement scale is Rs. 1600-2660/-.
- (b) Several Benches have decided the cases of identical nature in favour of the applicants and the case of Inder Pal Singh decided by the Apex Court and the case of A.K. Khanna decided by Principal Bench of the CAT also support the case of the applicant.

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(c) No show-cause notice has been issued prior to effecting the revised pay scale.

(d) The action of the respondents is also arbitrary as the applicant's juniors have been allowed to avail the higher pay scale from the date of their initial appointment. Consequently, Article 14 & 16 of the Constitution of India get violated.

(e) The deferment of the higher pay scale further as a telescopic effect, postponed the benefit under ACP Scheme.

4. The respondents have contested the case. Their main plea is that the order dated 30.3.1995 was issued on the strength of O.M. dated 19.10.1994 according to which, the applicant was entitled to get the higher scale only after the completion of 4 years of regular service in the grade whereas it was by mistake that the applicant was granted this pay in the higher scale from the very first day of his appointment. The impugned order was, therefore, a corrective measure taken by the respondents.

5. The counsel for the parties were heard and the pleadings perused. Order dated 13.3.1984 relates to grant of higher pay scale of Rs. 1600-2660/- to Draughtsman in the scale of Rs. 1400-2300/- subject to the condition that the recruitment qualification matched with those meant for Draughtsman Gr.II of C.P.W.D. The history of the case is such that in many Organization it was slightly impossible to ascertain the exact equitation of qualification of Draughtsman of C.P.W.D. and those in other departments. It was, therefore, felt necessary to have a re-look into the

matter and it was decided that if a qualifications do not match, stipulated period of service could offset the same and for revision of Rs. 1400-2300/- to Rs. 1600-2660/-, the period of experience was prescribed of 4 years. Since the applicant was granted initially on the date of his appointment the higher pay scale of Rs. 1600-2660/- effective from 12.10,1989, the same was to be modified postponing the revised pay scale by four years i.e. 12.10.1983. This is the contention of the respondents.

6. The qualification as prescribed in the Recruitment Rules for the post of Draughtsman (Mechanical) is Matriculation or equivalent with Science and Maths and National Trade Certificate or equivalent or Diploma in Mechanical Engineering or equivalent followed by about one year experience in Industry or Teaching.

7. It is, therefore, to be seen whether the aforesaid qualification is comparable with that of the C.P.W.D. Draughtsman Gr. II. The case relating to applicability of O.M. dated 13.3.1984/ 19.10.1994 came up consideration by the Hon'ble Supreme Court in the case of **Union of India Vs. De Bashishkar** 1995 SCC (L&S). The Hon'ble Supreme Court has held as under:-*

Union of India v. Debashis Kar, 1995 Supp (3) SCC 528, at page 530

2. On the basis of the report of the Third Pay Commission, the pay scales of Draughtsmen employed in the Central Public Works Department (for short "CPWD") of the Government of India were revised in the following manner :

- (i) Draughtsman Grade I Rs 425-700
- (ii) Draughtsman Grade II Rs 330-560
- (iii) Draughtsman Grade III Rs 260-430

3. The said employees in the CPWD were not satisfied with the said revision and were claiming that they should have been placed on higher pay scales. This dispute was referred to a

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Board of Arbitration. The Board of Arbitration gave the award on 20-6-1980 whereby the pay scales of Draughtsmen were revised as under :

- (i) Draughtsman Grade I Rs 550-750
- (ii) Draughtsman Grade II Rs 425-700
- (iii) Draughtsman Grade III Rs 330-560

4. By the award it was directed that the above-mentioned categories of draughtsmen shall be fixed notionally in their respective scales of pay as aforesaid from 1-1-1973, but for computation of arrears, the date of reckoning shall be 28/29-7-1978. In accordance with the said award the pay scales of draughtsmen in CPWD were revised vide order dated 10-11-1980. The draughtsmen employed in departments other than CPWD claimed the revision of their pay scales in the light of the revision of pay scales in the CPWD and on 13-3-1984 the Government of India, Ministry of Finance (Department of Expenditure), issued an Office Memorandum whereby it was directed that the scale of pay of Draughtsmen Grade III, II, I in the office/department of the Government of India, other than the CPWD, may be revised as per revised scales for CPWD provided their recruitment qualifications are similar to those prescribed in the case of Draughtsmen in CPWD and those who do not fulfil the said qualifications would continue in the pre-revised scales. Thereupon, the Ministry of Defence on 3-7-1984 issued an order whereby the user organisations were requested to take necessary action in terms of para 2 of the Office Memorandum dated 13-3-1984.

..... In the impugned judgments the various Benches of the Tribunal have taken the view that the qualifications which were required for appointment of draughtsman in the Ordnance Factories as well as in the Army Base Workshops in the EME were equivalent to the qualifications which were prescribed for appointment on the post of Draughtsman Grade II in the CPWD and therefore, the respondents who were placed in the pay scale of Rs 335-560 on the basis of the report of the Third Pay Commission were entitled to be placed in the revised pay scale of Rs 425-700 in accordance with the Office Memorandum of the Ministry of Finance dated 13-3-1984. On behalf of the Union of India and other appellants in the appeals and petitioners in the special leave petitions and the review petitions, the said view of the Tribunal has been assailed and it has been urged that the qualifications for appointment on the post of draughtsman in the Ordnance Factories and the Army Base Workshops of the EME cannot be treated as equivalent to the qualifications for appointment on the post of Draughtsman Grade II in CPWD and therefore, the said respondents are not entitled to the benefit of revision of pay on the basis of the Office Memorandum dated 13-3-1984.

11. During the pendency of these cases in this Court the Government of India, Ministry of Finance has issued an Office Memorandum dated 19-10-1994 which is reproduced as under :

“OFFICE MEMORANDUM

Subject : Revision of pay scales of
Draughtsmen Grade I, II and III in all Government of India
offices on the basis of the Award of the Board of

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Arbitration in the case of Central Public Works Department.

The undersigned is directed to refer to this Department's OM No. F. 5(59)-E. III/82 dated 13-3-1984 on the subject mentioned above and to say that a Committee of the National Council (JCM) was set up to consider the request of the staff side that the following scales of pay, allowed to the Draughtsmen Grade I, II and III working in CPWD on the basis of the Award of Board of Arbitration, may be extended to Draughtsmen Grade I, II and III irrespective of their recruitment qualification, in all Government of India offices :

Original Scale Award (Rs)	Revised Scale on the basis of the
Draughtsman Grade I	425-700 550-750
Draughtsman Grade II	330-560 425-700
Draughtsman Grade III	260-430 330-560

2. The President of India is now pleased to decide that the Draughtsmen Grade I, II and III in offices/departments of the Government of India other than in CPWD may also be placed in the scale of pay mentioned above subject to the following :

- (a) Minimum period of service for placement from the post carrying scale of Rs 975-1540 to Rs 1200-2040 (pre-revised Rs 260-430 to Rs 330-560) 7 years
- (b) Minimum period of service for placement from the post carrying scale of Rs 1200-2040 to Rs 1400-2300 (pre-revised Rs 330-560 to Rs 425-700) 5 years
- (c) Minimum period of service for placement from the post carrying scale of Rs 1400-2300 to Rs 1600-2600 (pre-revised Rs 425-700 to Rs 550-750) 4 years

3. Once the Draughtsmen are placed in the regular scales, further promotions would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in the recruitment rules.

4. The benefit of this revision of scales of pay would be given with effect from 13-5-1982 notionally and actually from 1-11-1983.

Sd/-

(Shyam Sunder)

Under Secretary to the Government of India"

16. Dealing with draughtsmen in the Army Base Workshops in the EME, the Principal Bench of the Tribunal has observed that in the EME for the post of draughtsman, the qualifications that are prescribed are "Matriculation or its equivalent with two years' Diploma in Draughtsmanship Mechanical or its equivalent". The Tribunal has referred to the Report of the Third Pay Commission wherein, while dealing with draughtsmen who were in the pay scale of Rs 150-240 (as per report of Second Pay Commission), it is stated :

"(ii) for the next higher grade of Rs 150-240 the requirement is generally a Diploma in Draughtsmanship or an equivalent qualification in Architecture (both of 2 years' duration after Matriculation)."

17. The Tribunal has observed that Tracer in the EME could not be treated in any other manner but on a par with Grade III

Draughtsman of CPWD, keeping in view their recruitment qualifications. The Tribunal held that the benefit of Office Memorandum dated 13-3-1984 had been rightly extended to Draughtsmen in EME and that its withdrawal was illogical and irrational. The learned counsel for the appellants has been unable to show that the said view of the Tribunal suffers from an infirmity which would justify interference by this Court.

8. Though a number of citations have been referred to by the counsel for the parties, to support their respective cases, the above judgment of the apex court clinches the issue. The pay scale of Rs. 1600-2660/- in the case of Draughtsman Gr. II of the C.P.W.D. is admissible and the qualification thereof as could be seen from the aforesaid decision is similar to that of the applicant herein. Hence, the applicant is entitled to the same benefit from the date of his appointment, which was rightly given to him as per order dated 30.9.1995.

9. In fact, the applicant has contended that some of the juniors of the applicant have been granted the higher pay scale right from the date of their induction (ground no. 5(v) refers. The respondents have not met this ground in the Counter.

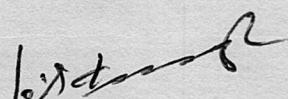
10. Further, admittedly, before effecting the aforesaid revision of pay scale, no show cause was issued to the applicant. This is violative of the principles of natural justice.

11. In view of the above, we have no hesitation to hold that the impugned order dated 17.10.2002 is legally unsustainable and is liable to be quashed. As such, the impugned order dated 17.10.2002 is quashed and set aside. The respondents are directed to ensure that the applicant's

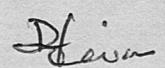


pay fixed as per order dated 30.3.1995 is restored and if any amount has been recovered from the applicant, the same be refunded. Again, if the pay fixation of the applicant had been made on the basis of the impugned order, the same be modified in a fashion that order dated 30.3.1995 is implemented.

12. Under the above circumstances, there will be no order as to costs.



MEMBER-J



MEMBER-A

/Piyush/