

9

IN THE CENTRAL ADMINISTRATIVE CENTRAL TRIBUNAL:
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION No.75 of 1990.

Date of Decision: 30th. September, 1991.

Purnendu Bikash Parial ... Applicant.

Versus,

Union of India & Ors. ... Respondents.

For the Applicant: Mr. A.K. Mohapatra,
P.K. Mohapatra, Advocates.

For the Respondents: Mr. T. Dalai,
Standing Counsel (CAT).

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THE HON'BLE MR. N. SENGUPTA: MEMBER (JUDICIAL)

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1. Whether reporters of local papers may be allowed to see the Judgment ? *Yes*
2. To be referred to the reporters or not ? *No*
3. Whether Their Lordships wish to see the fair copy of the Judgment. ? *No*

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J U D G M E N T.

N. SENGUPTA: MEMBER (J) :-

The applicant's case is that was working as Junior Engineer in Dandakaranya Project and according to the recommendation of the 3rd. Central Pay Commission was entitled the selection grade pay of Rs.560/- to Rs.900/-. The respondents ignoring the claim of the applicant allowed that scale of pay to his Juniors. Subsequently according to the recommendation of the 4th. Central Pay Commission, as amended in 1988, 25 percent of the total number of posts of Junior Engineers was to be in the scale of pay of Rs.1400/- to Rs.2300/- and the remaining 75% in the pay scale of Rs.1640/- to 2900/-. The applicant's averment further is that though he is within the zone of 50%, he has been placed by the respondents in the scale of pay of Rs.1400/- to Rs.2300/-. The applicant in support of this case has annexed a seniority list. As a lower scale of pay was given to him, he made a representation to the concerned authorities on 5.2.1987 vide Annexure-4 to the application. In reply thereto the respondents informed him that after the Central Civil Service (Revised Pay) Rules, 1986, the post became non-functional and selection grade stood abolished. Thereafter some of Junior Engineers filed Original Applications before this Bench of the Tribunal questioning the propriety of the fixation of their pay in the lower scale. In those cases i.e. O.A. Nos. 103 and 105 of 1987, O.A. 85/90 and O.A. 75/90, this

Recd 29/12/91

Tribunal held that a particular percent of Junior Engineers are entitled to the scale of pay of Rs.550/- to Rs.900/- prior to the coming into force of the C.C.S. (Recised Pay) Rules, 1986 and accordingly, a fitment into the scale of pay of Rs.1640/- to Rs.2900/-. Thereafter, the applicant has averred, he made a further representation which was forwarded by the Zonal Administrator of the Dandakaranya Project by his letter dtd.12.10.89 but the respondents did nothing in the matter, hence he has filed the application claiming the reliefs of a direction on the respondents to grant him the scale of pay of Rs.550/- to Rs.900/- with effect from 1.4.76, a further direction to the respondents to grant him pay in the scale of Rs.1640/- to Rs.2900/- with effect from 1.1.36 and an order for payment of all arrears financial and other benefits.

2. The Respondents in their counter have stated that no junior to the applicant got the selection grade of Rs.550/- to Rs.900/-. Therefore, the applicant's averment that some juniors were given to scale but not he is incorrect. They have further averred in their reply that no comparison can be made between the Juniors Engineers working in C.P.W. Department and those in the Dandakaranya Project. Therefore, the rules applicable to Juniors Engineers of CPWD cannot be attracted to fix the pay of Junior Engineers in Dandakaranya Project. The Respondents do not

See serial 3057

dispute that the 4th Central Pay Commission recommended that 75% of the Junior Engineers were to draw pay in the scale of Rs.1640/- to Rs.2900/- and 25% in the lower scale of Rs.1400/- to Rs.2300/-. But those instructions relate to Junior Engineers of CPW Department. In substance, the case of the respondent is that no parallel be drawn between the Juniors Engineers of CPWD and those of Dandakaranya Project. The respondents, have also sought reliance on a single Member decision of this Tribunal in O.A.165/86 in support of their contention that the work of the Junior Engineers of the CP WD differs from those working in the Dandakaranya Project. From the narration of the facts made above, it would be apparent that only two questions arise for consideration namely whether can the applicant be allowed to draw pay in the pre-revised scale of Rs.550/- to Rs.900/- and whether could he get the benefit of the scale of pay of Rs.1640/- to Rs.2900/-.

3. Mr.Dalai the learned counsel for the respondents, has contended that in view of the decision of this Bench in O.A.165/36, the applicant cannot be entitled to the relief that he has claimed. Mr.Dalai has referred to para-5 of the Judgment which is Annexure-R/1 to the reply and has stated that the Hon'ble Member(J), (as he then was) observed that though there was recommendation of the Chief Administrator for giving the Junior Engineers the

Member J
30/9/81

same scales of pay as admissible to the Junior Engineer of Telecommunication on Department the government not having accepted the recommendation, nothing availed to the applicant in that O.A.165/86 who was also a Junior Engineer working in the Dandakaranya Development Project. Mr. Dalai has also referred to a decision of the Supreme Court reported in AIR 1989 Supreme Court, 19 (State of U.P. - Versus - J.P. Chaurasia). In that case the Hon'ble Supreme Court observed that courts should not try to tinker with equivalence of post in different departments unless it was shown that there was some extraneous consideration. This particular contention was also advanced on behalf of the present respondents in O.A.35/90 and this contention was repelled by observing that as the Respondents had granted the same relief to two others persons similarly situated vide Annexure-3 to that application, there was no justifiable ground to refuse the relief to the applicant of O.A.35/90. In O.A.10/89 decided on 13th. July, 1989 the then Hon'ble Vice-Chairman examined the question in some detail and came to the conclusion that the scale of pay recommended by the 4th Central Pay Commission for Junior Engineer selection grade in the CPWD and the Telecommunication Department were to be given to the applicants with effect from 1.1.86. I am in respectfully agreement with the view expressed by the Hon'ble Vice Chairman in O.A.10/89. I would repeat that as

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there is no denial that some of the Junior Engineers coming within the top half of the Junior Engineers, to which category the applicant belongs, were given the benefit of the pay scale of Rs.1640/- to Rs.2900/-, refusing to give the same benefit to the applicant would amount to an unreasonable discrimination. It is also undisputed that no appeal has been preferred against the judgment of this Tribunal expressing that view. Therefore, the applicant would be entitled to the scale of pay of Rs.1640/- to Rs.2900/-.

4. So far as the period prior to the acceptance of recommendation of the 4th Central Pay Commission is concerned the applicant cannot be allowed any relief in as much as the claim is barred by time but that is not to say that had he come in time, he might not have been entitled the relief that he has claimed in this regard. The applicant, as may be gathered, made a representation in October, 1989 to give the benefit of the scale of Rs.1640/- to Rs.2900/-, in such circumstances it would be fit and proper to direct the respondents to fix his pay in that scale on the date he made representation, reckoning his service as in that scale from 1.1.86 and pay him within three months from the date of receipt of the copy of the Judgment, the arrears for the period commencing from the date of representation till payment.

Recd
30/9/91

-7-

There shall no order as to cost. The case is accordingly disposed of.



Central Administrative Tribunal,
Cuttack Bench, Cuttack,
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