

E/S 14

CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH.

O.A.No.33/2002

Decided on : February 23 , 2005

**CORAM : HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN &
HON'BLE MR.G.R.PATWARDHAN, MEMBER (A.)**

R.C. Patel S/o Late Shri Krishna Ram Patel, aged about 46 years, R/o D-224, Sarswati Nagar, Phase-I, Basni Jodhpur.

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Applicant

By : Mr. Sanjiv Johri, Advocate.

Versus

1. Union of India through its Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Commander Works Engineer (Air Force), Air Force Area, Jodhpur.
3. The Chief Engineer, Air Force, Hanuman Camp, Cantt Area, Ahmedabad.
4. The Area Accounts officer (ACDA), Southern Command, Khatipura, Jaipur.
5. Assistant Garrison Engineer (Independent), Defence Lab, R and D, Jodhpur.

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Assistant Garrison Engineer (I), Air Force Station, Mount Abu (Raj.).

Respondents

By : Mr. Vinit Mathur, Advocate.

ORDER (oral)

KULDIP SINGH, VC

The applicant has filed this Original Application seeking the following relief :-

"(i) & (ii) x x x

(iii) That respondents may kindly be directed to provide the benefit of pay fixation to the applicant on completion of five years of service i. e. Grade of Rs.1640/- w. e. f. 01-01-86 and grade of Rs.2000-3500 on 23-07-96 on completion of 15 years of service.

(iv) to (vi) x x x"

The facts in brief as alleged by the applicant are that he was initially appointed as Surveyor Assistant Gr. II on 23.11.1979 and he had completed 5 years of service on 23.11.1984. At that point of time he was drawing the salary on the basis of the old pay scale of Rs.1400-2300. As on 1.1.1986, he was drawing the pay scale of Rs.1560/-

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whereas on the basis of "date of next increment" his pay had to be fixed at Rs.1640/- on the basis of revised pay scale of Rs.1640-2900 PM w. e. f. 1.1.1986 itself. The applicant further pleads that he had completed 15 years of service on 23.11.1994 and the fixation of his pay in the scale of Rs.2000-3500 (Assistant Engineer), should have been done immediately on completion of 15 years of service. It is further submitted that the Apex court in the case of **Union of India Vs. Shyampada Sidhanta**, 1991 Supp. (1) SCC, Page 542, has held that pay has to be fixed in revised scale on the date one becomes entitled to increment in the old pay scale itself. Following this judgment, the Bombay Bench of C.A.T as well as Jodhpur Bench have also decided number of cases of such nature and allowed the Original Applications. This Bench of the Tribunal in its judgment dated 31.8.2000 in two identical cases titled **Bajran Singh Chaudhary Vs. Union of India & Others & R.P.Joshi Vs. Union of India & Others**, has concluded that the pay fixation in revised pay scale of Rs.1640-2900 has to be on the normal date as became due in the entry grade of Rs.1400-2300. It is further stated that the case of the applicant is also identical to the two cases of **Bajrang Singh Chaudhary and R.P. Joshi (supra)**. In the case of **Shri P.Babu Vs. Union of India & others**, O.A.No.535/93 decided on 8.2.1994, Bombay Bench of the Tribunal concluded on the similar lines that the respondents are bound to grant next increment to the applicant therein in the higher grade pay scale of Rs.1640-2900 on the normal date as fell due in entry grade of Rs.1400-2300.

The applicant has also submitted that he submitted number of representations i. e. dated 5.8.1998, 19.8.1996 and 3.3.1997, including one legal notice dated 31.1.2002 inviting attention of the respondents but to no effect. However, the respondents have always remained adamant with illegal attitude and have not come out of the

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illegality. It is thus submitted that the applicant is entitled to the higher pay scale on completion of 5 years as well as on completion of 15 years of service i. e. Grade of Rs.1640/- w.e.f. 1.1.1986 and grade of Rs.2000-3500 w.e.f. 23.7.1996 on completion of 15 years of service.

Respondents are contesting the Original Application and have filed a reply. They admit the facts that the applicant was appointed as Surveyor of Assistant on 24.11.1979 in the pay scale of Rs.425-700 which was revised to Rs.1400-2300 w.e.f. 1.1.1986. The pay of the applicant was fixed at Rs.1560/- with the next date of increment as 24.11.1996. It is admitted that on completion of applicant completed 5 years of service on 23.11.1984 and as per the judgment of the Tribunal, on completion of five years service, his pay is to be fixed w.e.f. 1.1.1986 at the rate of Rs.1640/- in the pay scale of Rs.1640-2900. The next date of increment is 1.1.1987 and the next date of increment has to be given on completion of 12 months from 1.1.1986. It is further submitted that on completion of 15 years of service w.e.f. 24.11.1994, the applicant was placed in the higher pay scale of Rs.1640-2900 and ultimately in the pay scale of Rs.2000-3500 and, therefore, his pay was fixed at Rs.2240/- w.e.f. 24.11.1994 with the next date of increment w.e.f. 1.10.1994 i. e on completion of 12 months from November, 1994. Thus, the pay fixation of the applicant has been correctly done. There is no violation of any rule. The respondents have also filed an additional affidavit wherein it is submitted that consequent to the adoption of ACP Scheme for Junior Engineers in MES, the existing time bound pay promotion scheme (which was in issue under the C.A.T. Bangalore Bench judgment) ceased to be operative w.e.f. 9th August, 1999, as per Chief engineer, Southern Command, Pune letter dated 29.4.2002. The 5/15 years' pay promotion scheme has been withdrawn w.e.f. 9th August, 1999 and thus the pay fixation

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has to be done on 9th August, 1999 in the lower pay scale and no revision of pay fixation w.e.f. 1.1.1996 to 9.8.1999 is required as per letter dated 27.1.1994. It is, thus, submitted that since earlier scheme of grant of scales after 5 and 15 years of service has been withdrawn, the persons who have been placed in the pay scale of Rs.5500-9000 after completion of 5 years of regular service as per old scheme shall be brought back to the scale of Rs.5000-8000 and fall in pay be protected by granting personal pay of the scale of R.5000-8000 to be adjusted in future increments. Thus, the applicant is not entitled to the

pay fixation sought by him.

 We have heard learned counsel for the parties and gone through the record.

As far as the contention raised in the additional affidavit is concerned, we find that this has been done in pursuance of an OM having been promulgated by the DOPT on the recommendations of the 5th CPC. But this, Annexure A-9 has come into force w.e.f. 9.8.1999. This scheme cannot be applied with retrospective effect and whatever benefits already accrued to the applicant under the earlier scheme, which was in vogue till 9.8.1999, cannot be denied to him. As far as the judgment of this Tribunal in the case of **Bajrang Singh Chaudhary & R.P.Joshi** (supra) is concerned, it may be submitted that the Bench relying upon the judgment of the Principal Bench in O.A.No.2400/96 dated 20.4.2000 had directed the respondents to grant increment to applicant therein in the old scale after 1.1.1985. This Tribunal also followed the judgment of the Principal Bench and allowed the cases mentioned above holding that the applicant therein was entitled to next increment in the next higher scale of Rs.1640-2900 on the normal date as became due in the entry grade. We also see no reason to deviate from the earlier judgments since the case of the applicant is fully covered on all fours. Admittedly the applicant is

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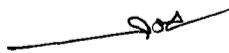
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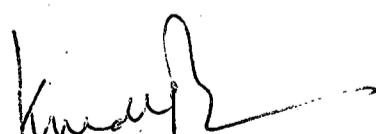
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fully covered under the earlier scheme adopted by the Department which provided for two scales of Rs.1640-2900 and Rs.2000-3500 on completion of 5 and 15 years of service respectively w. e. f. 1.1.1986 or 1.1.1991, whichever is later. The scheme had further provided that since the placement in higher pay scales of Rs.1640-2900 is on non-functional basis, the benefit of fixation under FR 22 (1)(a)(i) will not be admissible whereas on the placement in the pay scale of Rs.2000-3500, the benefit of fixation under FR 22 (1)(a)(i) will be admissible. Since the scheme had been adopted by the respondents to govern the staff of Surveyor Assistants Gr. II and Surveyor Assistant Grade I, so we hold that the applicant was entitled to the benefit of pay fixation on completion of 5 years of service w. e. f. 1.1.1986 and was also entitled

to the grade of Rs.2000-3500 on completion of 15 years of service, as per the Scheme.

In view of above discussion, we allow the O.A. and direct the respondents to give benefit to the applicant of fixation of pay on completion of 5 years of service i. e. in the grade of Rs.1640-2900 w.e.f. 1.1.1986 and also grade of Rs.2000-3500 w.e.f. 23.7.1996 on completion of 15 years of service and the further increments are to be given as per the earlier scheme. The introduction and implementation of ACP Scheme of DOPT will not have any effect on such benefits to be extended to the applicant as it came only w.e.f. 9.8.1999. This O.A. stands disposed of accordingly. The compliance of this order is to be made within a period of three months from the date of receipt of copy of this order.


**(G.R.PATWARDHAN)AM
MEMBER (A)**


**(KULDIP SINGH)
VICE CHAIRMAN**

February 23,2005.

HC*