

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

OA No.586/99

Monday this the 11th day of June, 2001.

CORAM

HON'BLE MR. A.M.SIVADAS, JUDICIAL MEMBER  
HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

A.K.Divakaran  
S/o Krishnan Kunju  
Assistant Engineer (Electrical)  
Cochin Central Electrical Sub Division No.1  
Central Public Works Department,  
Cochin-14  
Residing at "Alunkal House"  
Kanichukulanagara P.O.  
Cherthala, Alappuzha. ...Applicant

By advocate Mr.P.V.M.Nambiar

Versus

1. Executive Engineer(Electrical-I)  
Cochin Central Electrical Division  
C.P.W.D, Kochi.
2. Director of General Works  
C.P.W.D., New Delhi. ...Respondents

By advocate Mr.Govind K.Bharathan,  
SCGSC

The application having been heard on 11th June, 2001,  
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M.SIVADAS, JUDICIAL MEMBER

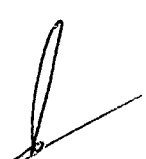
Applicant seeks to declare that A-7, A-8 and A-9 are  
illegal and to restrain the respondents from reducing the  
salary in pursuance of A-5, A-7, A-8 or A-9 and also to pay  
the salary in accordance with the fixation made prior to that  
and existing on that date continuously.

2. Applicant is an Assistant Engineer. He joined service as  
Section Officer. All Section Officers are designated as Junior  
Engineer later. At that time this post was known as Junior  
Engineer Ordinary Grade. Later, a selection grade was given  
to him with effect from 1.3.86. He was promoted as Assistant  
Engineer as per order dated 2/4.1.91. His salary has been  
correctly fixed as per A-1 when the date of his promotion in

selection grade Junior Engineer has been corrected from 1.3.86 to 7.8.85 and consequently his salary in the grade of Rs. 1640-2900, when new grade of JE grade I has been <sup>and</sup> created all the selection grade JEs were also included in that grade in contra distinction to Junior Engineer in the grade Rs.1400-2300 this correction could be done only in 1990 immediately before his promotion as Assistant Engineer. A-7, A-8 and A-9 have been passed without issuing any show cause notice. It is in violation of the principles of natural justice. The mistake committed by the department and rectifying the date of selection grade later cannot be taken advantage of by the department to the detriment of the applicant.

3. Respondents resist the OA contending that the applicant was given the selection grade with effect from 1.3.86. Later the date was advanced to 3.7.85. He was drawing basic pay of Rs. 680 as on 7.8.85 in the selection grade in the scale of Rs.550-900/-. He was promoted to Junior Engineer Grade-I with effect from 1.8.86. In the revised pay scale of Rs. 1640-2900 his pay was fixed at Rs. 2120/- with effect from 1.1.86. He was promoted to the Junior Engineer Grade-I with effect from 1.8.86 and his pay was fixed at Rs. 2240/- giving the benefit under FR 22(C) now FR-22 (1) (a) (i). Thereafter, he was promoted to the post of Assistant Engineer with effect from 24.1.91 and his pay was fixed at Rs. 2675/- with effect from 1.9.91 in the scale of Rs. 2000-3500 as per option exercised by him. On detecting the mistake, pointed out by Audit, the pay of the applicant was revised and refixed as per A-7, A-8 and A-9.

4. An identical question was considered by this Bench of the Tribunal in OA No.1018/94 in which this applicant was the 6th applicant. The impugned orders <sup>in the said OA</sup> ~~were~~ quashed and allowed the application to the extent of restraining the respondents from recovering payments made to the applicants. It was also stated therein that no opinion is expressed regarding the course open to the respondents for any future action.



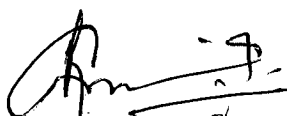
In civil appeal No.7059/96 filed by one Balakrishnan before the Apex Court, it was held that there was no justification to claim benefit under FR 22 (C). If such benefit has been given to any other Junior Engineer similarly circumstanced the same has been given erroneously and on such account the appellant cannot claim such benefit as of right.

5. The learned counsel appearing for the applicant in the light of the judgement of the Apex Court in civil appeal No. 7059/96 submitted that the applicant is now seeking the relief only to the extent of restraining the respondents from proceeding with the recovery of the alleged over payment. The stand of the applicant on this aspect is supported by the order of this Bench of the Tribunal in OA No.1018/94. The finding of this Bench of the Tribunal in OA 1018/94 is left untouched by the Apex Court in the judgement in civil appeal No.7059/96.

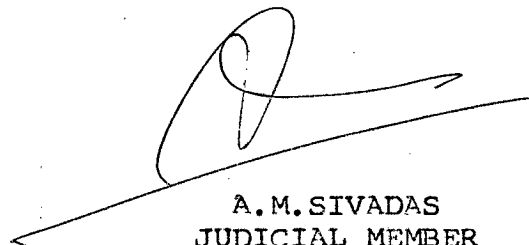
6. Accordingly the respondents are directed not to effect any recovery on the basis of the alleged overpayment made till the date of the filing of the OA.

7. The OA is disposed of as above.

Dated 11th June, 2001.



G. RAMAKRISHNAN  
ADMINISTRATIVE MEMBER



A.M. SIVADAS  
JUDICIAL MEMBER

aa.

Annexures referred to in this order:

- A-7 : True copy of the office order No.8/1/KCED/99/974 dated 31.3.99 by the Executive Engineer (E) - 1st respondent.
- A-8 : True copy of the office order No.8/1/KCED/99/975 dated 31.3.99 by the Executive Engineer (E) - 1st respondent.
- A-9 : True copy of Statement of Fixation vide No.8/1/KCED/99/976 dated 31.3.99 by the Executive Engineer(E) - 1st respondent.
- A-5 : True copy of order No.8(4)/KCED/99/253 dated 30.1.99 by the Executive Engineer (E) - 1st respondent.
- A-1 : True copy of office order No.3(18)90/CCED/CB-1715 dated 12.7.90 by the Executive Engineer (E) - 1st respondent.