

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 281/92 ~~199~~

DATE OF DECISION 16-4-93

M. Bhaskaran & 11 others Applicant (s)

Mr. G. P. Mohanachandran Advocate for the Applicant (s)

Versus

Executive Engineer (HQ), CPWD, Respondent (s)
Trivandrum Central Circle,
Trivandrum & 4 others

Mr. K. V. Raju, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N. Dharmadan, Judicial Member

The Hon'ble Mr. R. Rangarajan, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? no
3. Whether their Lordships wish to see the fair copy of the Judgement? no
4. To be circulated to all Benches of the Tribunal? no

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

Applicants are working as Junior Engineers, Grade-I, in the Central Public Works Department (CPWD for short), Trivandrum. They are aggrieved by Annexure-A2 office order dated 2.1.1989, which was subject matter in an earlier O.A.No.33/89 filed by them and allowed as per Annexure-A3 judgment, and further consequential orders seeking recovery of the alleged over payment from them.

2. According to the applicants, after their promotion from Junior Engineer-II to Junior Engineer-I with effect from 3.7.87 they were given the benefit of pay fixation in

the higher grade under FR 22-C. Subsequently, when the 3rd respondent passed Annexure-A2 order dated 2.1.89 by which the benefit of fixation of pay under FR 22-C was withdrawn resulting in recovery of the excess payment they have filed OA 33/89 with other similarly situated persons challenging Annexure-A2. Though the respondents contested the case, they produced the original order No.A-26017/1/89-ECVI dated 18.5.89 and submitted that the applicants are eligible for fixation of pay under FR 22-C. The relevant portion of the order reads as follows:-

"2. Accordingly, the case was referred to Department of Personnel & Training/Ministry of Finance for advice as to whether the pay of Junior Engineers on promotion from Junior Engineer Grade-II to Junior Engineer Grade-I is to be fixed under FR 22(a)(ii) or under FR 22(C). It has been decided that the pay of Junior Engineers on promotion from Grade-II to Grade-I is to be fixed under FR 22(C).

3. All Chief Engineers/Superintending Engineers etc. are requested to fix the pay of Junior Engineers who were earlier promoted from Grade-II to Grade-I under FR 22(C). It is however, clarified that promotion of Junior Engineers from Grade-II to Grade-I has been kept in abeyance vide this Directorate office memorandum No.12017/11/87-ECVI dated 21.8.87."

Accordingly, this Tribunal passed Annexure-A3 judgment on 18.12.1989. The relevant portion of the judgment is extracted below:-

"4. Though none was present on behalf of the applicants, Shri P.S.Biju, ACGSC appearing for the respondents has filed a statement, a copy of which is also seen to have been served on the counsel for the applicant, alongwith a copy of order No.A-26017/1/89-ECVI dated 18.5.89. He submitted that by this order the prayer made by the applicants has already been conceded and he also draws my attention to the written remarks of the counsel for the applicants that he has no objection to the application being closed.

5. Having perused the order dated 18.5.89 now produced by the counsel of respondents, I am of the view that the prayer made by the applicants have been fully met and there is nothing more to be adjudicated upon. "

After the judgment all the applicants were given the benefit of pay fixation under FR 22(C) with retrospective effect. Subsequently, the 5th respondent issued a fresh

order, Annexure-A4, dated 22.3.91 withdrawing the benefit under FR 22-C in the matter of fixation of pay of the applicants. Following Annexure-A4, the 4th respondent also issued a consequential order, Annexure-A5, withdrawing the benefit given to the applicant under FR 22-C in the matter of fixation of the pay. The first respondent also issued Annexure-A6 dated 2.12.91 ordering recovery of the alleged excess payment made in regard to the fixation of the pay in 24 equal instalments. Annexure-A7 is also a similar order for recovering the amount stated to have been received by the applicants in excess of the pay. Aggrieved by the aforesaid orders the applicants filed representations. Others similarly situated /^{persons} who are working in Tamil Nadu filed OA 856/91 before the Madras Bench of the Tribunal. The Tribunal admitted the case and granted stay as per Annexure-A8 order dated 28.8.91. Under these circumstances the applicant have filed this application under Section 19 of the Administrative Tribunals Act with the following reliefs:-

- "(a) Declare that Annexure-A2 and Annexure A4, A5, A6 and Annexure A7 orders issued by the Respondents are illegal and invalid and unjust and to quash the same.
- (b) Direct the Respondents to grant the benefit of FR 22-C pay fixation on their promotion to JE Grade-I.
- (c) Such other reliefs which the applicants may pray for during the pendency of this proceedings and the Hon'ble Tribunal may consider to be just and proper in the circumstances of the case may also be granted.
- (d) Allow the applicants to realise their costs from the Respondents. "

3. The respondents in the reply statement admitted the fact that after the promotion of the applicants to the post of Junior Engineer Grade-I their pay was fixed under FR 22-C and when they issued Annexure-A2 the applicants filed O.A. 33/89 and the same was allowed on the basis of the representation of the respondents that the fixation of applicants' pay in the promoted post will be restored with

retrospective effect. But they have contended that the Junior Engineers (Civil/Electrical) working in the CPWD had the pre-revised scale of pay of Rs.425-700. There was also a scale of Rs.550-900 for the selection grade post. Senior among the Junior Engineers were used to be considered for selection grade against the prescribed number of posts earmarked for that purpose. Based on the 4th Central Pay Commission report, a notification dated 13.9.86 was issued revising the scale of pay of Junior Engineers in the following manner:-

" Revised scales of pay for certain other categories of Staff

<u>S.No.</u>	<u>Posts</u>	<u>Present Scale</u>	<u>Revised Scale</u>
1.	JE, CPWD	Rs.425-15-500-EB 15-560-20-700	Rs.1400-40-1800-EB- 50-2300
		Rs.550-25-750-EB-30 30-900 (Selection Grade)	Rs.1640-60-2600-EB- 75-2900 (Promotional Grade to be suitably re- designated & pro- motion to be made as per normal pro- cedure)
			50% of the total number of posts of JEs will be in the lower grade of Rs.1400-2300 and the remaining 50% in the grade of Rs.1640-2900.

The existing incumbents in the selection grade will be allowed revised scale of Rs.1640-2900 as personal to them. "

After the introduction of the revised pay scale which came into force from 1.1.86 the non-functional selection grade has been abolished making it clear that the existing incumbents in non-functional selection grade would be allowed suitable revised scale of pay corresponding to the pre-revised non-functional scale of pay as personal to them. Thus, in the case of Junior Engineers of CPWD two pay scales have been prescribed, one at the entry grade (Rs.1400-2300), their promotional grade carries the pay scale of Rs.1640-2900 and 50% of the total number of posts

of Junior Engineers will be in the lower grade of Rs.1400-2300 and the remaining 50% will be in the grade of Rs.1640-2900. The existing incumbents in the pre-revised selection grade were allowed the revised scale of Rs.1640-2900 as personal to them. The Central PWD Junior Engineers' Association demanded that the entire posts should be placed in the pay scale of Rs.1640-2900. Considering their demands, Annexure-R1 order was passed on 11.6.87 upgrading 75% of the total number of posts of Junior Engineers in CPWD in the scale of Rs.1640-2900 with effect from 1.1.1986. Annexure-R2 modified recruitment rules were also issued under which only 25% of the total number of posts of Junior Engineers were designated as Junior Engineer Grade-II in the pay scale of Rs.1400-2300. Accordingly, instructions were also issued to all Superintending Engineers to take urgent action to hold DPC for filling up the posts in the higher grade. Annexure-R3 is the instructions issued on 5.6.1987. Not satisfied with this order and steps taken by the Department the Junior Engineers started agitation demanding uniform scale for all the Junior Engineers. Accordingly, accepting the demand appropriate recommendations were issued. Annexure-R4 is an instruction issued in this behalf on 21.8.87. In the meantime, Superintending Engineer, Trivandrum Central Circle had issued promotion orders of some Junior Engineers as per order dated 3.7.87 on the basis of Annexure-R3 instruction and before the subsequent Annexure-R4 directing the Superintending Engineers to keep the promotion orders in abeyance. Their pay was also fixed under FR 22-C. Under these circumstances the Superintending Engineer, Trivandrum Central Circle issued Annexure-A2 dated 2.1.89 to fix the pay of Junior Engineers who have been appointed as Grade-I under FR 22(a)(ii) instead of FR 22(C) with the direction to recover the excess payments. This was challenged in OA

33/89. The question of fixation of pay was then examined in consultation with DP & T and Ministry of Finance who advised that pay fixation on promotion from Junior Engineer Grade-II to Grade-I is to be done under FR-22(C). That fact was brought to the notice of this Tribunal and the case was accordingly closed. Thereafter an agreement was entered into between the Association of Junior Engineers and the Department for making uniform pay scale and on the basis of the same a decision was rendered by the Government. Annexure-R5 is the copy of the Agreement dated 20th March 1991. The impugned orders were issued on the basis of the agreement. In the light of the fresh decision and the orders passed on the basis of the agreement, all the earlier orders issued in connection with the promotion of Junior Engineers from Grade-II to Grade-I were superseded. Therefore, the decision earlier taken to grant the benefit of pay fixation under FR 22(C), according to the respondents, does not exist.

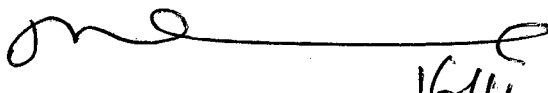
4. The applicants also filed a rejoinder denying all the averments and allegations in the reply statement filed by the respondents and submitted that they are entitled to the benefit of fixation of pay under FR 22(C) in the light of the order dated 11.6.1987. Respondents have represented the fact that the applicants are eligible for the same and Annexure-A3 judgment was passed. They cannot take a different stand after the judgment. The applicants are not party to the agreement and it is not binding on them. It is further submitted that the provisions contained in the agreement are inconsistent with the statutory provisions of the Fundamental Rules and the action of the respondents is violative of the principles of natural justice. The respondents have no legal authority to recover any amount from the applicants as there was no over payment.

5. We have heard the counsel on both sides. It is an admitted fact that the applicants have challenged Annexure-A2 along with others in OA 33/89. When the benefit of pay fixation under FR 22(C) was withdrawn and action was initiated for recovery of the excess payment. It was specifically submitted by the respondents on the basis of order No.A.26017/1/89-ECVI dated 18.5.89 that the applicants have been given the benefit of fixation of their pay under FR 22(C) with retrospective effect. Accordingly, the application was closed. If they have to take a different stand on the basis of changed circumstances or on the basis of any agreement, the respondents are bound to file a review application and get a decision in their favour because Annexure-A3 judgment is binding on them. Without resorting to this course they have changed their stand and taken steps to enforce Annexure-A2 and initiated recovery proceedings by passing consequential orders. This is an illegal procedure and they cannot be sustained.

6. The respondents have not produced any material to show that after Annexure-A3 judgment the applicants have entered into an agreement and that the applicants are party either directly or through their Association in Annexure-R5 agreement. So long as the applicants are not party to the agreement they cannot be considered to have agreed for taking steps for recovery of amounts from them. The specific stand of the applicants is that they are neither parties to the agreement nor the provisions of the agreement binding on them. It is against the statutory provisions and that the impugned orders are vitiated by the principles of natural justice. There is some force in the submission of the learned counsel for the applicant. Annexure-A2 and consequential orders cannot be enforced against the applicants under the circumstances stated in the original application.

7. In this view of the matter, after careful consideration of all the contentions raised in this case, we are of the view that the stand of the respondents in this case cannot be sustained and the application is to be allowed. Accordingly, we quash the impugned orders and allow the application. It goes without saying that if any money has already been recovered from the applicants, the respondents are bound to disburse the same to them without any delay. This will not stand in the way of the respondents in taking appropriate action, as may be advised, in accordance with law.

8. There will be no order as to costs.


16/4
(R. RANGARAJAN)
ADMINISTRATIVE MEMBER


16.4/93.
(N. DHARMADAN)
JUDICIAL MEMBER

v/-