

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 334/99

WEDNESDAY, THIS THE 10th DAY OF JANUARY, 2001

C O R A M

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

T.M.Subramanian S/o Manjunathan
Assistant Engineer,
Central Public Works Department,
Cochin-18

Applicant

By advocate Mr. P.V. Madhavan Nambiar

Vs.

1. Executive Engineer,
Cochin Central Division
Central Public Works Department
Kochi-35

2. Director General of Works
Central Public Works Department,
New Delhi.

Respondents

By Advocate Mr. R. Madanan Pillai, ACGSC

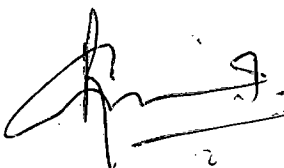
The Application having been heard on 28.11.2000, the Tribunal delivered the following on 10.1.2001.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant, an Assistant Engineer working in the Central Public Works Department (CPWD for short) filed this Original Application aggrieved by A-6 order dated 24.2.99 issued by the first respondent by which applicant's pay had been refixed from 1.1.1986 onwards

2. Applicant joined service in the CPWD as Section Officer on 21.12.63 at Andamans. All Assistant Section Officers were designated as Junior Engineer later and the designation was known as Junior Engineer Ordinary Grade. Later, selection grade was given to him. As a follow up of the IVth Pay Commission Recommendation, the posts of Junior Engineers ordinary grade and Junior Engineers Selection Grade were abolished and Junior Engineer Grade-I and Junior



Engineer Grade-II were made as per Recruitment Rules framed in that context and Junior Engineer Grade-I was made a promotion post in the grade Rs. 1640-2900 from Junior Engineer Grade-II in the pay scale Rs. 1400-2300 and those who had completed 5 years of service as Junior engineer Grade-II were made eligible to be considered for Grade-I post. This came into effect from 1.1.86. Applicant's pay in the Selection Grade was revised as Rs. 2240/- w.e.f. 1.1.86 in the grade Rs. 1640-2900 as per A-1 order dated 9.7.87. Applicant was promoted as Assistant Engineer w.e.f. 12.10.87. His salary was fixed in the Assistant Engineers grade as per A-2 order dated 4.11.87. The Director General (Works), CPWD, New Delhi vide O.M.No.A-26017/1/89-EC IV dated 18.5.89 confirmed that in the case of promotions made to Grade-I the benefit under FR 22 C should be applied for fixation of pay. By A-5 order dated 10.2.99 the applicant was informed that the internal audit during inspection on 20.1.99 and 21.1.99 raised audit objection stating that his pay in the grade 1640-2900 on 1.1.86 was fixed as Rs. 2240/- instead of Rs. 2180/- and that his pay would be fixed at Rs. 2100/- in the pay scale of Rs. 1640-2900 as the posts of JE Grade-I was not carrying higher responsibility. Pursuant to the audit objection, vide A-6 order dated 24.2.99 issued by the first respondent previous orders of pay fixation was cancelled and a fresh order of fixation was issued. Applicant submitted A-8 representation dated 5.3.99 to the first respondent and getting no response he filed this Original Application seeking the following reliefs:

i) To declare that Annexure A-6 issued by 1st respondent is illegal, invalid and unjust and quash the same.

ii) To issue an order to restrain the respondents from reducing the salary in pursuance of Annexure A-6 and also to direct the respondent to pay the salary in accordance with Annexure A-7 continuously.



iii) To declare that the benefit of pay fixation of applicant as Junior Engineer Grade-I under FR 22(C) now FR 22(1)(a)(1) has been correctly made as per Annexure A1 and consequential orders Annexure A-2 and A-7.

iv) To issue a writ of mandamus or other appropriate writ order or direction directing the respondents to consider and dispose of annexure A-8 immediately.

v) To award the cost of this Application to the applicant.

3. Applicant raised a number of grounds for the reliefs sought. According to applicant the salary once fixed correctly and observed by order dated 18.5.89 and declared correct in the various judgments of this Tribunal and other Tribunals could not be re-opened or questioned by the Department as long as the orders stood. Applicant cited the orders of this Tribunal in O.A. 33/89, 281/92, 1018/94, (Annexure A-3), 159/96, 787/96 and 187/94 and of the Madras Bench of this Tribunal in O.A. No. 856/91. He also relied on A-4 order of this Tribunal in O.A.737/96. Another plea put forward by the applicant was that he was not heard or was issued with any show cause notice and hence it was in violation of principles of natural justice. It was also submitted that the applicant was an Assistant Engineer before 1989 and before the agreement with Junior Engineers Association on the basis of which audit objection and A-6 were issued and therefore it could not bind the applicant who was not a member of Junior Engineers' Association in 1989 or 1991. Further, the applicant was treated differently from similarly situated persons in whose cases the order revising their pay invoking FR 22(1)(a)(ii) had been withdrawn or not implemented.

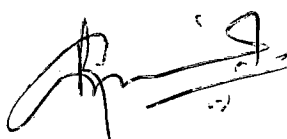
4. Respondents filed reply statement resisting the claim of the applicant giving the background of the case. The Junior Engineers like the applicant working in CPWD applicant had the pre-revised scale of pay of Rs. 425-700 and there




was a scale in the Selection Grade of Rs. 500-900 in the pre-revised scale. Senior among the Junior Engineers used to be considered for selection grade against the prescribed number of posts earmarked for the purpose on the basis of seniority. Based on the Fourth Central Pay Commission recommendations, the Ministry of Finance (Department of Expenditure) by its notification dated 13.9.86 revised the pay scale of Junior Engineers.

Sl.No.	Posts	Present scale	Revised Scale	Remarks
1.	Junior Engineer CPWD	Rs.425-15-500-EB-15-560-20-700	Rs.1400-40-1800-EB-50-2300	The existing incumbents in the Selection Grade will be allowed
		Rs.550-25-750-EB-30-900 (Selection Grade)	Rs.1640-60-2600-EB-75-2900 (Promotional to be suitably redesignated and promotion to be made as per normal procedure).	Scale of Rs.1640-60-2600 -EB-75-2900 at personal to them
			50% of the total No. of Jr.Engineers will be in the Lower Grade of Rs.1400-40-1800-EB-50-2300 and the remaining 50% in the Grade of Rs.1640-60-2600-EB-75-2900	

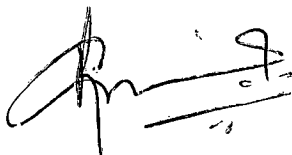
The revised pay scale were announced under "Central Civil Services (Revised pay) Rules 1986 which came into force on 1st January, 1986. The non-functional selection grade was abolished and as per note below part-A of the first schedule of the notification dated 13.9.86 the existing incumbents in non-functional Selection Grade were allowed suitable revised scale of pay corresponding to the pre-revised non-functional scale of pay as personal to them. In the case of Junior Engineer (JE for short) in CPWD two pay scales one as the entry grade in the pay scale Rs. 1400-2300 and another promotional grade in the pay scale Rs. 1640-2900. 50% of the



total number of posts of JEs were in the lower grade Rs. 1400-2300 and the remaining 50% in the grade Rs. 1640-2900. The then existing incumbents in the pre-revised Selection Grade were allowed the scale Rs. 1640-2900 as personal to them. There was a demand from the Junior Engineers Association for 100% posts to be placed in the pay scale of Rs. 1640-2900. The Government upgraded 75% of the total number of posts of Junior engineers in CPWD in the scale of Rs. 1640-2900 with effect from 1.1.86 by R-1 order dated 11.6.87. The Recruitment Rules of Junior Engineers (Civil & Electrical) were revised accordingly in 1987 by the Ministry of Urban Development's R-2 Notification dated 26.5.87. In the revised Recruitment Rules 75% of the total number of Junior Engineers were designated as Junior Engineer Grade-I in the scale of Rs. 1640-2900 and 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. Instructions were issued to all Superintending Engineers/Superintending Surveyor of Works to take urgent action to hold Departmental Promotion Committees to fill up the posts in the higher grade on the basis of R-1 revised Recruitment Rules. Subsequently, not satisfied with the bifurcation in the cadre, the Junior Engineers in the CPWD went on an indefinite strike from 14.7.87 to 19.8.87. Their demands included uniform pay scale of Rs. 1640-2900 for all Junior Engineers. A consensus was reached between the representatives of the Association and Government in which it was agreed that their demand for uniform pay scale would be referred to a Group of Ministers by the Ministry of Urban Development with appropriate recommendations (Annexure R-3 dated 20.8.87). On the demand of the Association it was decided that no further orders for promotion of Junior Engineers to grade-I would be issued till further instructions from the CPWD and the orders of promotion



to Grade-I already issued be kept in abeyance till further instructions (Annexure R-4 dated 21.8.87). The Superintending Engineer, Trivandrum Central Circle, CPWD issued promotion order of some of the JEs based on the earlier instructions of the Director General of Works dated 5.6.87 and before subsequent instructions on 21.8.87 asking the Superintending Engineer to keep the promotion orders in abeyance. Their pay was also fixed under erstwhile FR 22 C now FR 22(1)(a)(1). The question of fixation of pay on promotion to JEs Grade-I was under discussion and a view was taken that the pay could not be fixed under erstwhile FR 22-C now FR 22(1)(a)(1) as no additional duties or responsibilities were given to JEs appointed in Grade-I. The Chief Engineer (South Zone) CPWD Madras accordingly directed officers under his zone to fix the pay of the JEs in the grade-I without giving the benefit of FR 22.C. The Superintending Engineer, Madras/Trivandrum Central Circle issued orders on 2.1.89 to fix the pay of JEs who had been appointed as JE Grade-I under FR 22(1)(a)(ii) instead of FR 22-C and all were directed to recover the excess payment already made from the salary bill of February, 1989 onwards in six installments. On receipt of a number of telegrams from the affected persons the Director General (Works) CPWD instructed the Superintendent Engineer, Trivandrum circle to keep his order dated 2.1.89 in abeyance till further instructions were issued from him. On 13.1.89 itself the affected JEs filed an Application in this Tribunal and obtained a stay on the recovery. The question of pay fixation was then re-examined in consultation with the Department of Personnel & Training and Ministry of Finance who advised that pay fixation on promotion to JEs Grade-I was to be done under erstwhile FR 22-C (now FR 22(1)(a)(1). The Superintending Engineer, Trivandrum Central Circle was asked to withdraw the orders dated 2.1.89 and the same was submitted before the

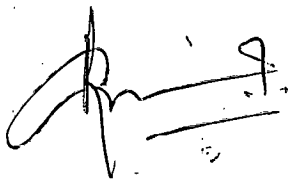


Tribunal on the date of next hearing and accordingly the case was dismissed as closed on the basis of the consensus reached with the JEs Association the matter was considered by the Government and a decision was taken with the approval of the Cabinet to grant the JEs a package of benefits. A copy of the agreement entered into with the representatives of the association on 20.3.91 was enclosed as Annexure R-6 and a copy of the consequent order issued dated 22.3.91 was enclosed as Annexure-7. Accordingly Director General of Works, CPWD issued R-8 OM dated 27.3.91. The package extended the benefit of further higher scale of Assistant Engineer in the scale of Rs. 2000-3500 on personal promotion basis to those who had completed 15 years or more service w.e.f. 1.1.91. It was also provided that JEs and Sectional Officers (Horticulture) on completion of 5 years of service in the entry grade would be placed in the scale of Rs. 1640-2900 subject to the rejection of unfit. It was also stipulated that higher grade would not be treated as a promotional one but would be non-functional and the benefit of FR 22(1)(a)(i) would not be admissible while fixing the pay in the higher grade as there would not be no change in duties and responsibilities. As the earlier orders in connection with the granting of higher grades were superseded, the decision taken earlier to give the benefit of FR 22-C no longer existed. It was mentioned that the applicant was promoted as Assistant Engineer (AE for short) only on 12.10.87 and at the time of issue of instructions in August, 1987, the applicant was a member of the Junior Engineers' Association and the Association represented its members. It was submitted that the applicant was transferred to Hyderabad Central Region and relieved of his duties on 17.8.91 and therefore when the Superintending Engineer's order dated 30.10.91 cancelling the office order dated 3.7.87 was issued the applicant was not attached to the



Trivandrum Division/Circle. Again on 10.6.96 the applicant reported for duty in the Trivandrum Circle Office. Internal Audit Party (Special Audit) for pay fixation cases inspected the records of the office of Executive Engineer, Cochin, CPWD on 20.1.99 raised objection to the fixation of pay of the applicant and directed the office to re-fix the pay w.e.f. 1.1.86 and to recover the excess amount paid. Accordingly, the applicant was intimated of the facts by letter dated 10.2.99. His pay was refixed vide office order R-9 dated 24.2.99 and he submitted representation on 5.3.99. They relied on the judgment of the Hon'ble Supreme Court dated 11.4.96 for their action.

5. Heard learned counsel for the parties. We have given careful consideration to the submissions made by learned counsel for the parties as well as the rival pleadings. Learned counsel for the respondents drew our attention to the judgment in Civil Appeal No.7059 of 1996 arising out of SLP (Civil) No. 416 of 1996 in T. Balakrishnan Vs. Union of India and Another. We find from the judgment that the Hon'ble Supreme Court in that case was dealing with an appeal filed by Sri Balakrishnan who was aggrieved by order dated 16.2.92 passed by the Madras Bench of this Tribunal in O.A. 390/94 by which office orders dated 16.2.94 issued by the Govt. of India reducing the pay of the said appellant on refixation of the pay had been upheld by the Tribunal. The direction for recovery of over payment had however been cancelled by the Tribunal. On going through the details of the judgment we find that the case of applicant in this case is similar to Shri Balakrishnan in the said Civil Appeal as can be seen from the details below.



6. The appellant Sri Balakrishnan in the said CA was appointed Junior Engineer on 7.1.1963 and with effect from 1.1.1973 his pay was fixed in scale Rs. 425-700 in the case of Junior Engineer. He was appointed as Junior Engineer Selection Grade in the scale Rs. 550-900 on 1.8.82. He was promoted as Junior Grade-I with effect from 1.1.86 on the basis of the Recruitment Rules of Junior Engineers Grade-I and Grade-II (Civil and Electrical), 1987 which came into effect from 26.5.1987. He was promoted as Assistant Engineer in the scale Rs. 2000-3500 with effect from 13.9.1987. His pay as Junior Engineer Grade-I fixed with effect from 1.1.86 and subsequent pay fixation as Assistant Engineer were refixed by the department after the agreement between the Junior Engineers' Association and the Government entered on 20.3.91. Aggrieved by the said refixation he filed O.A. No. 390/94 in the Madras Bench of the Tribunal.

From para 2 above it can be seen that the applicant's case in this O.A. is also similar.

7. The Hon'ble Supreme Court held in the above said Civil Appeal as follows:

After giving our careful consideration to the facts of the case, it appears to us that although on 20.3.1991 when the agreement was entered into between the Junior Engineers' Association and the Central Government on the basis of recommendations by the group of Ministers, the appellant was promoted to the post of Assistant Engineer, but the question of promotion as Junior Engineer Grade-I) and the applicability of FR 22-C at the relevant time when the appellant was given the scale of Junior Engineer (Grade-I) was pending consideration and such consideration attained the finality in terms of the said agreement. In our view, on these facts, the Tribunal was justified in holding that the agreement relating to the period when the appellant was Junior Engineer and a member of the said Association was binding on the appellant. That apart, the Tribunal had on a question of fact has clearly held that the appellant had failed to produce any material to show that he had discharged any additional duty or responsibility during the entire period when he was



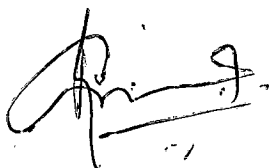
given the scale of Junior Engineer (Selection Grade) and Junior Engineer (Grade-I). Accordingly, there was no justification to claim benefit under FR 22-C. If such benefit has been given to any other Junior Engineer similarly circumstanced, the same has been given erroneously on such account, the appellant cannot claim such benefit as of right.

In the aforesaid facts, we do not find any reason to interfere with the impugned order. The appeal, therefore, fails and is dismissed without any order as to costs.

8. We find from the above that the grounds taken by Sri Balakrishnan are similar to the ones taken by the applicant in this O.A. In view of the foregoing we find considerable force in the respondents' submission that the judgment of the Hon'ble Supreme Court would be applicable in this case.

9. We also note the applicant was away from Cochin from 1991 to 1996. But the refixation was done only in 1999 on being pointed out by Audit. The Madras Bench of the Tribunal in O.A. 390/94 while upholding the refixation of pay done in the case of Sri Balakrishnan, ordered cancellation of recovery of over-payment. While admitting the present O.A. on 19.3.99 as an interim measure direction was given that no recovery be made from the pay and allowance of the applicant on the ground of overpayment in terms of A-6 until further orders. Following the judgment of the Madras Bench of the Tribunal in O.A. No. 390/94, we make the above direction absolute.

10. In the result, we hold that the applicant is not entitled for the reliefs sought for except to the extent



indicated in para 9 above. We dispose of the Original Application as above leaving the parties to bear their respective costs.

Dated the 10th day of January, 2001.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

kmn



A.V. HARIDASAN
VICE CHAIRMAN

List of Annexures referred in this Order

- A1 True copy of office order No.3(18)CHCD/1787/2826 dated 9.7.1987 of the 1st respondent.
- A2 True copy of order No.3/18/CHCD/87/4621 dated 4.11.87 by the 1st respondent.
- A3 True copy of order dated 5.7.95 in O.A.No. 1018/94 of the Tribunal.
- A4 True copy of order dated 26.11.96 in O.A.No.737/96 of this Tribunal.
- A5 True copy of the order No.8(1)CHCD/99/492 dated 10.2.99 by the 1st respondent.
- A6 True copy of the order no.3(18)CHCD/99/671 dated 24.2.99 of the 1st respondent.
- A7 True copy of order No.3/18/CHCD/97/3146 dated 23.10.97 by the 1st respondent.
- A8 True copy of representation dated 5.3.99 by the applicant to the 1st respondent.
- R-3 True copy of the consensus between representatives of the Association and the Govt. dated 20.8.87
- A-4 True copy of the OM(instruction) dated 21.8.87 of OG OT Works.
- R-6 True copy of the Agreement dated 20.3.91
- R-8 True copy of the OM No.11014/1/91 EC.VI dated 27.3.91 of DG of Works.