

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 1238/96

Date of Decision: 20.12.2001

Shri V.K. Sood & 13 Ors.

Applicants

Shri S.P. Saxena.

Advocate for Applicants

Versus

Union of India & 2 others

... Respondents

Shri R.K. Shetty.

Advocate for Respondents

CORAM: HON'BLE SHRI S.L. JAIN. MEMBER (J)
HON'BLE SMT. SHANTA SHAstry. ... MEMBER (A)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to other Benches of the Tribunal?

(3) Library ✓

Shanta S
(SMT. SHANTA SHAstry)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 1238/96

DECEMBER 20
THIS THE 20 TH DAY OF NOVEMBER, 2001

CORAM: SHRI S.L. JAIN. . MEMBER (J)
SMT. SHANTA SHAstry . MEMBER (A)

1. V.K. Sood (MES-300159),
Executive Engineer
College of Military Engineering,
Pune-411 031.
2. P.K. Jain (MES-425386),
Executive Engineer,
College of Military Engineering,
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3. P.K. Jain (MES-425386),
Executive Engineer,
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4. S.N. Vanarase (MES-165149)
Executive Engineer,
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5. P.R. Khudanpur (MES-165100)
Superintending Engineer,
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6. V.K. Sahni (MES-300146)
Superintending engineer, (S.G.)
College of Military Engineering,
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7. B.L. Singhal (MES-300186)
Superintending Engineer, (S.G.),
College of Military Engineering,
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8. R.C. Tripathi (MES-409800),
Superintending Engineer (S.G.),
College of Military Engineering,
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9. Dr. S.Balasubramonian (MES-175295),
Superintending Engineer, (S.G.),
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Pune-411 031.

10. D.K. Dinker (MES-461169),
Superintending Engineer, (S.G.),
College of Military Engineering,
Pune-411 031.
11. N.S. Nair (MES-104188),
Superintending Engineer, (S.G.),
College of Military Engineering,
Pune-411 031.
12. Dr. S.C. Pal (MES-175301),
Superintending Engineer,
College of Military Engineering,
Pune-411 031.
13. S.K. Mahajan (MES-300125),
Superintending Engineer,
College of Military Engineering,
Pune-411 031.
14. A.K. Chaturvedi (MES-439074),
Superintending Engineer (S.G.),
College of Military Engineering,
Pune-411 031. .. Applicants

By Advocate Shri S.P. Saxena

Versus

1. The Union of India,
through the Secretary,
Ministry of Defence, DHQ P.O.,
New Delhi-110 011.
2. The Engineer-in-Chief,
Army Head Quarters,
Kashmir House, DHQ P.O.,
New Delhi-110 011.
3. The Commandant,
College of Military Engineering,
CME, P.O. Pune-411 031. .. Respondents

By Advocate Shri R.K. Shetty.

O R D E R

Smt. Shanta Shastry, Member (A)

The main question for consideration in this OA is whether the applicants belonging to the Engineering Service are entitled to the training allowance in terms of the Government of India DOP&T OM dated 31st March, 1987. The applicants are working in the College of Military Engineering under Respondent No.3, Pune. They are all civilian Group "A" officers of the MES in the ranks of Executive Engineer, Superintending Engineers and Superintending Engineers (Selection Grade). They belong to IDSE and have been recruited as per SRO framed by the President of India belonging to the MES Department of the Ministry of Defence. Thus, they are basically engineers.

2. The college of Military Engineering at Pune is a category "A" Institution under the Ministry of Defence, Government of India and imparts training to group "A" officers and other officers details for training.

3. In order to improve the service conditions of the faculty members of the Training Institution, the Government of India issued OM from time to time starting from 13.9.1985, 07.02.1986, 17.4.1986, 03.6.1986, 31.3.1987 and 09.7.1992. Vide OM dated 07.02.1986 of the DOP&T which was endorsed to all the

Ministries and Departments of Government of India, certain guidelines were laid down. According to these guidelines in para 1.2 it was laid down with regard to faculty members who join training institution on deputation, that their emoluments may be raised by 30% of the total emoluments which they were getting in their cadre while posted in the training institution. So far as permanent faculty members of the training institution are concerned suitable proposal for enhancement of their pay/special pay on similar lines should be worked out by the department concerned. It was decided that initially this facility would apply to only those training institutions meant for group "A" officers and would be gradually extended to others. There were certain other benefits also spelt out in this OM.

4. An amendment/clarification to the OM dated 07th February, 1986 was issued on 17th April, 1986 by the DOP&T. It was clarified that the item 2 in the guidelines of 07.02.1986 may be read as "with regard to faculty members other than permanent faculty members of the training institution, their emoluments may be raised by 30% of the total emoluments which they would be getting in their cadre while posted in the institution. Therefore, taking into account, the introduction of the Pay Commission as recommended by the IVth Pay Commission and the various references received from Ministries/Departments revised guidelines ^{were} issued by the DOP&T on 31st March, 1987 in supersession of the

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previous OM's of the DOP&T. According to this OM in para 2.1 it was laid down that when an employee of Government joins a training institutions meant for training Government officers as a faculty member other than as a permanent faculty member, he will be given a training allowance at the rate of 30% of his basic pay drawn from time to time in the revised scale of pay. There is a note below explaining what the basic pay in this context means. The basic pay has been defined differently in respect of those who are on deputation those who join the training institution on deputation outside the training department/Ministry and those who join the training institution within the department/Ministry.

5. This OM was further modified by OM dated 09th July, 1992 whereby the training allowance was reduced by 15%.

6. It is the grievance of the applicants that though all of them are initially recruited as engineers, they were posted in the College of Military Engineering as faculty members and therefore not being permanent faculty members, they are entitled to the training allowance as envisaged in the OM dated 31.3.1987 of the DOP&T, but they have been denied this. It is their contention that they were not required to perform the teaching job. Since their services have been utilised for purposes of teaching, they should get the training allowance. They have been working in the College of

Military Engineering from different dates, the oldest being from 21.10.1969. The details of date of their joining the College of Military Engineering are given in Exhibit "A1" at page 19 of the OA. The incentive scheme has been formulated by the Government of India by the Nodal Ministry of Personnel & Training. It has been made applicable to all Ministries/Departments of Government of India and therefore, it is also to be made applicable to employees of the Ministry of Defence and the same needs to be implemented with effect from 01.01.1986. Further, the College of Military Engineering at Pune is a premier category "A" institution for training group "A" and other officers. It fulfils the conditions laid down in the OM dated 07.02.1986. The applicants are fully eligible for training allowance. It is submitted further that non permanent faculty members of various training institutions under different Ministries/Departments of the Government of India are also getting training allowance but the applicants are not getting the same. Even under the very Ministry of Defence under whom the applicants are working, the faculty members of the Ordnance Factory Staff College, Ambazari, Nagpur are getting training allowance and other incentives due to them. Representations made by some of the applicants were rejected summarily by the respondents without any justifying reasons.

7. The respondents have opposed the prayer and have taken the firm stand that the applicants are not eligible to get the benefit of the OM dated 31.3.1987 as the applicants are not posted in the College of Military Engineering on deputation basis. The OM only applies to those who are sent on deputation to the College of Military Engineering. There is no question of sending the employees of the MES on deputation to the College of Military Engineering. Their postings are interchangeable in terms of PE VI/77/1946/8 a copy of which has been produced as Exhibit "R1" at page 89 of the OA and therefore, the applicants are just not entitled to the training allowance. The case of the applicants was examined in depth and it was decided not to grant the above benefit to the applicants. The Ministry of Defence also informed the DOP&T that it has decided the training allowance will not be extended under the guidelines of the DOP&T to faculty members of the Defence Training Institution. According to the respondents, the claim of the applicants is not legally tenable.

8. The respondents have further submitted that out of the fourteen applicants in this OA only four applicants have submitted their representations to the department on 04th September, 95, 14th August, 95, 11th August, 95 and 28th August, 95 respectively. The others have not submitted any representation. It has been pointed out that in the OM dated 31st March, 1987 there

is a specific provision contained in sub-para xiii of para "C" of para 2 that various Ministries are required to take a decision for their Institutions under them and since the Ministry of Defence have not chosen to extend the incentives to the Defence Training Institutions the question of extending the benefit to the applicants does not arise. It is a policy matter which does not warrant any interference from the courts of law. The respondents have appended an order of Jodhpur Bench of this Tribunal in a similar case in OA No.245/94 in the matter of Keshav Pal Vs. Union of India & Others. In this case, the Tribunal held that the copy filed by the applicant of the OM dated 31.3.1987 of the DOP&T did not show that it was also sent to the Defence Ministry and it bound the Defence Ministry. Further, the applicant therein was only Barrack Stores Officer and his posting to Pune does not show that he was posted to faculty, he was again on the substantive duty ofcourse, and therefore, not being the faculty member, he does come within the purview of the OM dated 31.3.1987, the OA was therefore, rejected.

9. The applicants have however, reiterated their plea that they are entitled to the training allowance. According to them the Nodal Ministry of the Government of India in consultation with the Cabinet Secretariat and the Finance Ministry had issued orders to all the Ministries/Departments of Government of India on the subject of training allowance and they have to be

implemented by all the Ministries similar to other orders of the DOP&T regarding central Government employees. The allowance is to be paid on month to month basis and it is a recurring cause of action and therefore, the demand of the applicants is not barred by limitation under section of the Administrative Tribunals Act, 1985. The applicants submit that their cause was taken up by Respondent No.3 vide letter dated 15.9.90 duly recommending the case. Merely by posting the officer in the PE of the CME that officer does not become permanent faculty member of the CME. According to the applicants the interpretation given by the respondents to the DOP&T instructions on training allowance is erroneous. The correct interpretation is that if an officer (Group A) is detailed as a non faculty member in any training institute/college for teaching/training of Group "A" officers then he is entitled for the training allowance. Even within the Ministry of Defence teaching allowance is paid to Group "A" officers drawn from Ordnance Factory and detailed as non permanent faculty members in the Ordnance Factory Staff College at Nagpur. Therefore, there is discrimination.

10. We have heard the learned counsel for the applicants as well as the respondents. We find that the OM dated 31.3.1987 of the DOP&T is the important and

relevant document for deciding the issue for consideration. The relevant portion of this OM is therefore, reproduced below:

.....2. Taking into account the introduction of the Fourth Pay Commission pay scales and the various references received from Ministries/ Departments the following revised guidelines are issued, in supersession of the previous OM's from this Ministry referred to above.

(i) When an employee of Government joins a training institution meant for training government officials, as a faculty member other than as a permanent faculty member, he will be given a "training allowance" at the rate of 30 per cent of his basic pay drawn from time to time in the revised scales of pay.

Note: Basic pay in this context, means,

(a) in the case of an officer, belonging to an All India Service, the basic pay which he would have drawn on deputation to the Centre.

(b) in the case of an officer belonging to a Central Service

(1) the basic pay which he would have drawn on deputation to the Centre, if he joins a Training Institution on deputation outside his department/ Ministry.

(2) the basic pay which he would have drawn in his cadre if he joins a Training Institution within his Department/ Ministry.

(c) in any other case, the basic pay which he would have drawn in his regular post if he had not joined the Training Institution.

- (ii) *Training allowance will be reduced by special pay, deputation pay and allowance thereon to which a faculty member might be entitled in the institution.*
- (iii) *Training allowance will be admissible to faculty members (excluding those not covered by these guidelines as indicated in sub-para (xi) without any ceiling and will not form part of "Pay" as defined in F.R. 9(21) but will count for purpose of leave salary.*
- (ix) *Training allowance will be admissible only to the faculty whose work is to impart training/teaching and not to others.*
- (x) *Such training allowance will also be admissible to an employee of government who goes on deputation as a faculty member to an autonomous training institution aided by the Central Government which inter-alia trains Group "A" Government officials.*
- (xi) *These guidelines would not be applicable to the faculty members recruited specifically for training institution.*
- (xii) *The incentives outlines in this OM and consequential orders will take effect from 1 January, 1986 in so far as these relate to training institutions primarily meant for training group "A" officials and from 1 January, 1987 for training institutions primarily meant for training other officials.*
- (xiii) *Each Ministry/Department will issue orders in pursuance of these guidelines in consultation with their Integrated Finance and a separate reference to the Establishment Division of the Department of Expenditure (Ministry of Finance) will not be necessary.*

11. It is seen from this OM that this was issued in supersession of the earlier OM's dated 07.02.1986, 17.4.1986, 03.6.1986 on the above subject. In this OM it does not speak anywhere that the training allowance is to be given to only those who are posted on

deputation. It merely states that when an employee of Government joins the training institution meant for training Government officers as faculty member other than the permanent faculty member, he will be given training allowance. No doubt in the earlier OM's now superseded the reference was to those who were sent on deputation to work as faculty member. However, in this particular OM no such distinction has been made. Further that the OM would apply to even those who are not on deputation, is confirmed from the note below para 2 (i). This note gives the meaning of basic pay in different contexts. It describes as in the case of an officer belonging to central service the basic pay which he would have drawn in his cadre if joins a training institution within his department/Ministry and separate from one who would have drawn on deputation to the training institution. Thus it was definitely envisaged that there would be central Government servants who could be deputed as faculty member to the training institution as also those Government servants who would be simply posted to the training institution to work as non permanent faculty member. Therefore, to say that the applicants not being on deputation are not eligible for the training allowance cannot be accepted. It is nowhere denied that the applicants are performing the work of imparting training and teaching. It is only to those who are actually imparting training or teaching that the training allowance is to be given. There is also no dispute that the College of Military Engineering

is a training institution training Group "A" officers. The respondents have not been able to say that the applicants have been specifically recruited as faculty members. They were recruited as engineers through the UPSC. It is true that the OM of 31.3.1987 does provide that it is for the different Ministries/Departments to issue orders in pursuance of these guidelines in consultation with their integrated finance. It has also however, been stated that a separate reference to the Department of Expenditure of Ministry of Finance will not be necessary as the concurrence of the same has already been obtained by DOP&T for all. It is also seen that various Ministries like the Ministry of Railways and Home Affairs have issued guidelines as indicated in the DOP&T OM dated 31.3.1987. Even the Ordnance Factory employees posted as non permanent faculty members in the Ordnance Factory Staff College have been extended the benefit of training allowance. In our considered view therefore, we do not see any reason to deny the benefit to the applicants.

12. The learned counsel for the respondents has at the outset raised the plea that the OA is not maintainable as it lacks in material particularly when the applicants have not brought out specific orders of DOP&T by which they are entitled to the grant of training allowance and have also not given the specific date from which they should be given the training allowance. The applicants are governed by the pay

scales and other allowances as recommended by the IVth Pay Commission and was accepted by the Government. The Government is sole authority in regard to laying down of service conditions in respect of various posts under it. This authority of the Government cannot be challenged at any level. The respondents have also submitted that the Hon'ble Supreme Court has ruled that the courts should not interfere in the matter of pay scale which for the executives to decide. The judgments relied upon are Secretary, Finance Department & Others Vs. Western Bank Registration Service Association and Others reported in JT 1992 (2) SC 27 also Employes Welfare Association Vs. Union of India & another etc., reported in JT 1989 (3) SC 1989. The courts can intervene only if there is a violation of fundamental right or there has been unauthorised discrimination, arbitrariness or patent error in law. There is no such flaw in the present case. The learned counsel for the respondents has also cited the case of Markendayan Vs. Union of India reported in 1989 (4) ATC 3 in regard to the principle of equal pay for equal work not being applicable when distinction in pay scale is based on permissible classification such as education qualification. The learned counsel for the respondents has also cited the judgment in the case of P.V. Hariharan in this connection. It is for the Expert Bodies to determine the pay scale etc.

13. We are definitely aware of the judgments of the Supreme Court holding that it is not for the courts/Tribunal to interfere in the matter of pay fixation or revision of pay scales etc as that is the domain of Expert Bodies like Pay Commission etc. However, in this particular case we find that the decision has already been taken by the Government of India in the Nodal Ministry with the approval of the Cabinet Secretariat as well as the Ministry of Finance. This decision is reflected in the OM dated 31.3.1987 and it has been endorsed to all the Ministries/Departments of Government of India which have been asked to issue necessary instructions in accordance with the OM. Had the intention of the DOP&T been that each Ministry should take its own decision, then the word used in sub para 1.3 of the para 2 of the OM would have been "may issue," whereas the para xiii clearly states that each Ministry/Department "will issue" orders. These orders are to be taken as binding on all the Ministries/Departments. Merely stating that Ministry of Defence has taken a decision contrary to these guidelines cannot set aside the all pervasive nature of this OM. As also the respondents have not been able to explain as to how within the Defence Ministry itself the respondents have permitted the Ordnance Factory Staff College to grant such benefit to non permanent faculty members drawn from the Ordnance Factory. It is further now submitted that even the 5th Pay Commission has

already recommended granting of training allowance to the teaching faculty of the CME and the same has been accepted by Government.

14. The respondents have relied on the judgment in OA No.245/94 of the Jodhpur Bench of the Tribunal delivered on 07.11.1996. We have perused the same. In our considered view this OA cannot be made applicable in the case of the present applicants, because the present applicants are actually doing the job of imparting training/teaching. They are posted as non permanent faculty members and not engineers. IN OA 245/94 the applicant was posted as Stores Officer only and not as a faculty member and he had been unable to produce anything to substantiate his claim that he was working as faculty member, to fortify the stand that the applicant was entitled to the training allowance.

15. In view of this position also we are inclined to hold that the applicants have a strong case and deserve to be granted the training allowance as envisaged in the OM dated 31.3.1987 at 30% of basic pay and at 15% as in OM dated 09th July, 1992 to all the engineering persons such as Assistant Engineers, Executive Engineers, Superintending Engineers, who are posted as non permanent faculty members. Accordingly the respondents are directed to consider granting the 30% training allowance to those applicants only who have been posted as non permanent faculty members and who are

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imparting training/teaching and not to those who are posted in their original capacity as engineers in the CME. They shall be entitled to the training allowance from 01.01.1986 from the dates they have been posted as non permanent faculty members in the CME. The arrears, however, shall be restricted to the period of one year prior to the filing of the OA. The OA is allowed accordingly. No costs.

Shanta
(SMT. SHANTA SHAstry)
MEMBER (A)

S.L. Jain
(S.L. JAIN)
MEMBER (J)

Gajan