

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.484/1999.

Date of decision : 07.02.03

V.P.Panganti

Applicant.

Shri S.P.Saxena

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri R.R.Shetty for Respondents

Advocate for
Respondents.

CORAM :

Hon'ble Shri D.C.Verma, Vice-Chairman,

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

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

(3) Library. ✓

(D.C.VERMA)
VICE-CHAIRMAN (J)

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.484/1999.

this the 07th day of February 2003.

Hon'ble Shri D.C.Verma, Vice-Chairman (J)
Hon'ble Shri B.N.Bahadur, Member (A).

1. V.P.Panganti,
 2. H.R.Jamkhandi,
 3. K.M.Johny,
 4. D.W.Acharya,
 5. N.K.Chipale,
 6. Joseph Scaria,
 7. M.B.Sankonati,
 8. G.B.Humbare,
- (All are working
as Foreman Instructor,
College of Military
Engineering,
Dapodi,
Pune - 411 031.

...Applicants.

(By Advocate Shri S.P.Saxena)

v.

1. Union of India
through the Secretary,
Ministry of Defence,
New Delhi - 11.
2. The Engineer-in-Chief,
Army Headquarters,
New Delhi - 11.
3. The Commandant,
College of Military Engineering,
Dapodi,
Pune - 411 031.

...Respondents.

(By Advocate Shri R.R.Shetty)

: O R D E R :

D.C.Verma, Vice-Chairman (J).

Eight applicants of this OA who have been working as Foreman Instructor (for short, FI) in the College of Military Engineering (for short, CME) have claimed pay scale of Rs. 2,200-4,000 which is the approved scale of pay of All India Council of Technical Education (for short, AICTE) for FI w.e.f. 1.1.1986. Consequential relief is that the applicants pay be

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refixed in the aforesaid scale w.e.f. 1.1.1986 as has been done for other teaching staff of CME.

2. All the applicants joined as FI in the CME in the year 1967 to 1988 as Direct Recruits. Though the applicants completed about 30 to 32 years of regular service in the grade of FI, they are still in the same post and none of the applicants were considered for promotion to higher post, as there is no promotional avenue for the applicants. The applicants, according to the OA, are totally deprived of any career advancement by way of promotion for the last three decades. The applicants' case was recommended and forwarded by the Department with no relief. The post of FI, CME is to be filled up from feeder cadre of Charge Mechanics and Charge Electricians having the requisite qualification prescribed in the Rules. In case, however, suitable candidates are not available, the post is to be filled up by direct recruitment. All the applicants were appointed to the post of FI by direct recruitment at different times.

3. The Respondents case is that the direct recruits to the post of FI in the CME are governed by different set of Rules vis-a-vis the FI of AICTE. The qualification prescribed is different, the two posts are not comparable. Further, the FI of CME were earlier having one post of promotion as Senior Scientific Assistant (for short, SSA). The number of posts of SSA has now been increased to 12 w.e.f. the year 2001 and presently all the applicants are working in the scale of SSA.

4. Counsel for the parties have been heard. Learned Counsel for the applicant submitted that mere one promotion to the post

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of SSA that too after three decades cannot be called a promotional avenue to an employee who joined the service as FI of CME and continued on the same post and in the same scale for three decades. Though the respondents in the year 1991 granted in situ promotion by placing the FIs in the next higher grade subject to fulfilling of requisite conditions laid down in the order, this too, as per Learned Counsel for the applicant, cannot be said to be a promotional channel. The long pending grievance regarding creation of adequate promotional avenue has not been redressed by the Respondents. The applicants, it is submitted, formed subordinate teaching staff having Diploma Engineering qualification, but with no prospect of promotion, whereas, the FIs of AICTE draw higher scale of Rs.2,200-4,000. The submission of the Learned Counsel is that the benefit of AICTE should have been granted to FI of CME also as was granted from the grade of Lecturer only. The applicants also belong to the teaching staff so the benefit of AICTE pay scale should have been extended to the FI of the CME also.

5. Learned Counsel for the Respondents, has on the other hand, submitted that the applicants scale is Rs.1,400-2300 and the scale of promotional post of SSA is Rs.1640-2900, whereas, the scale of FIs of AICTE is Rs.2,200-4,000. Thus, the applicants in this OA do not claim channel of promotion, but are actually claiming parity of pay scale with those of FIs of AICTE. Further submission is that as per the various decisions granting of pay scale comes within the jurisdiction of Administrative Departments and Pay Commissions and the Tribunal or Courts cannot

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on the basis of legal affidavits, decide such questions which come within the domain of Expert Bodies.

6. Learned Counsel for the parties have been heard at length. From the documents, it is clear that the qualification required for the post of FIs of CME is different from the FIs of AICTE. The duties are also not similar. The pay scale of FIs of CME is Rs. 1,400-2300, whereas the pay scale of FIs of AICTE is Rs. 2,200-4000. Now after the creation of additional posts, the FIs of CME can be promoted to the post of SSA in the scale of Rs.1640-2900. This scale too is lower than the scale of FIs of AICTE. By the claim of scale of Rs.2,200-4,000, as is available to FIs of AICTE, the applicants would fly over their promotional scale of Rs.1640-2900. This would naturally create another anomaly for grant of further higher scale to the promotion post of SSA. As has been observed by the Apex Court in the case of Union of India Vs. Pradip Kumar (2001 (1) SC SLJ 20) "Acceding to the claim made by the respondent would not merely result in change in the pay scales but may also lead to alteration of the pattern of hierarch requiring re-orientation and restructuring of the other posts...". Besides that, as mentioned in Exhibit 'A-8', the FIs of AICTE are in the rank of Lecturers, whereas the FIs of CME are ~~not~~ in subordinate grade. The AICTE pay scale has been extended to the Civilian Professorial staff of College and not below. Such is a policy decision to which the Tribunal cannot interfere.

7. Learned Counsel for the Respondents placed reliance on the decision of the Apex Court in the case of State of M.P. Vs. Promod Bhartiya (1993 (23) ATC 657), wherein the Apex Court held that the Non-Technical Lecturers of Technical School getting higher scale of pay than the Lecturers of Higher Secondary School, cannot claim parity of scale as they belong to two



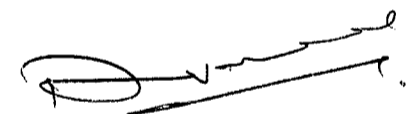
different categories and governed by two different set of Rules. The burden to establish right to 'equal pay for equal work' is to be discharged by the applicants therein. In the present case, from the facts brought out on record, it is found that the applicants cannot be compared with the FIs of the AICTE. They are also governed by different set of Rules. Hence, the benefit of grant of equal pay cannot be acceded to.

8. It is also noticed that the 5th Pay Commission had taken note of all such posts which were having no promotional avenues or meagre promotional avenues. Consequently, after 5th Pay Commission Assured Career Progression Scheme was introduced for giving of higher scale after 12 years and 24 years, this benefit is also available to the applicants and some of them have been already given the benefit thereof.

9. In view of the discussions made above, the OA is devoid of merit and is dismissed. Costs on parties.



(B.N. BAHADUR)
MEMBER(A)



(D.C. VERMA)
VICE-CHAIRMAN(A)

B.