

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NOs.288/2000 & 316/2000

Dated this the 7<sup>th</sup> day of May 2004.

CORAM : Hon'ble Shri A.K.Agarwal, Vice Chairman  
Hon'ble Shri S.G.Deshmukh, Member (J)

1. M.A.Tamankar
2. N.G.Kulkarni
3. S.V.mamdapurkar
4. D.S.Deshpande
5. R.Y.Kale
6. P.R.Bokil
7. N.G.Bhavsar
8. B.Sengupta
9. S.G.Limaye
10. W.S.Natu
11. P.V.Bhagwat
12. E.M.Mapgaonkar
13. A.V.Thombare
14. P.V.Deshmukh
15. P.K.Oke
16. K.V.Sankpal
17. V.T.Joshi
18. P.R.Mande
19. G.D.Khare
20. S.R.Hoshing
21. V.R.Deshpande
22. V.N.Adke
22. R.G.Diwanji
23. J.N.Navalgundkar
24. S.Anant narayana
25. K.C.Raghunathraj
26. K.T.Nagraj
27. G.S.Magdum

...Applicants

All are Retired A.E.B/R  
(MES), Pune.

By Advocate Shri S.V.Marne

vs.

1. Union of India  
through the Secretary,  
Govt. of India,  
Ministry of Defence,  
South Block, New Delhi.

..2/-

2. Engineer-in-Chief,  
Army HQ, Kashmir House,  
DHQ PO : New Delhi.
3. Officer-in-Charge,  
Central Record Office (Officers),  
C/o. Chief Engineer,  
Delhi Zone, Delhi.
4. Officer-in-Charge,  
Dept. of Pension & Pensioners  
Welfare, Loknayak Bhavan,  
3rd Floor, Khan Market,  
New Delhi.
5. Chief Engineer,  
Southern Command,  
Pune.

... Respondents

By Advocate Shri R.R.Shetty

O R D E R

{Per : Shri A.K.Agarwal, Vice Chairman}

These two OAs. have been filed by the retired Assistant Engineers of MES praying for upward revision of their pay scales w.e.f. 30.7.1993. The reliefs sought in both the OAs. are identical and are as follows :-

"(a) The applicants, in the alternative, are entitled to at least the pay scale of Rs.7500-12000 from 1.1.1996.

(aa) In the alternative, this Hon'ble Tribunal may be pleased to direct the Respondents to grant pay scale of Rs.7500-12000 to the applicants from 1.1.1996.

(b) The cut off date of 19.10.2000 fixed by the Respondents for grant of pay scale of Rs.7500-12000 to the Assistant Engineers is discriminatory, arbitrary and violative of Article 14 of the Constitution of India.

(c) This Honorable Tribunal may graciously allow to file the present OA. jointly as they have got similar cause to agitate before this Honorable Tribunal."

2. In view of identical reliefs sought in both the OAs., they are being disposed of by this common order.

3. The main contention of the applicants is that the pay scale of Superintendent which is a feeder cadre for promotion to the Assistant Engineer in MES was revised from Rs.1640-2900 to Rs.2000-3500 during the period of Fourth Pay Commission. The pay scale of Assistant Engineers Group 'B' was also Rs.2000-3500 and this led to an anomalous situation. Therefore, it is essential to revise upward pay scale of Assistant Engineer Group 'B'. It is contended by the applicant that in the Ministry of Railways the pay scale of Assistant Engineers Group 'B' which used to be Rs.2,000-3500 was revised to upward to Rs.2375-3750 w.e.f. 30.7.1993, on the same ground, i.e. when the pay scale of feeder category was made Rs.2000-3500. Thus, in this background, the Assistant Engineer Group 'B' of MES have also demanded the pay scale of Rs.2375-3750 w.e.f. 30.7.1993. However, their demand was not conceded by the Ministry of Defence, hence this OA.

4. In addition to upward revision of pay scale for a certain balance period of IVth Pay Commission w.e.f. 30.7.1993 to 31.12.1995 another prayer made is for a pay scale of Rs.7500-12000 from 1.1.1996. It has been contended that during the Vth Pay Commission period, the Assistant Engineers Group 'B'

were given a pay scale of Rs.6500-12500 w.e.f. 1.1.1996 and the pay scale of Rs.7500-12000 has been given only w.e.f. 19.1.2000. This should have been given w.e.f. 1.1.1996.

5. The learned counsel for applicant brought to our notice an order given by Hyderabad Bench of CAT holding that the Assistant Engineers Group 'B' of MES were entitled to the pay scale of Rs.2375-3750 w.e.f. 30.7.1993. The learned counsel further mentioned that the Writ Petition filed by the Govt. in High Court of Andhra Pradesh is still pending. However, the High Court by order dated 5.1.2000 has suspended the operation of the order of CAT, Hyderabad Bench. He brought to our notice an order passed by Full Bench, Principal Bench, New Delhi in the OA.No.184/90 decided on 13.2.1991, wherein the implications of a stay order have been discussed in fair detail quoting a few important rulings of the Apex Court. The main ratio is that an interim order issued by the Supreme Court is not a declaration of law under Article 141 of the Constitution and therefore does not nullify the judgement delivered by the lower court. The learned counsel for the applicant, therefore, contended that the stay order given by Andhra Pradesh High Court does in no way nullify the decision of Hyderabad Bench of CAT and therefore, the same should be respected and applied in this case as well.

6. The learned counsel for respondents brought to our notice that OA.No.295/98 filed by the Engineers of MES before Mumbai Bench of CAT was dismissed vide order dated 17.1.2001. In that OA. also the applicants who all were Assistant Engineers Group 'B' in MES had demanded the pay scale of Rs.8000-13500 w.e.f.1.1.1996. They had also pleaded for quashing and setting aside Notification dated 19.1.2000 giving them pay scale of Rs.7500-12500. In this OA., there is an additional demand of pay scale of Rs.2375-3750 w.e.f. 30.7.1993 to 31.7.1995 and order of Hyderabad Bench of CAT has been cited in its support.

7. The learned counsel for the respondents also drew our attention to the ratio laid down by the Apex Court in Union of India & Ors. vs. P.V.Hariharan & Ors., JT 1997 (3) SC 569, which is as follows :-

"It is the function of the Govt. which normally acts on the recommendation of Pay Commission. Change of pay scale has a cascading effect. Tribunal should not interfere and should realise pay fixation is not a function of Tribunal."

8. After going through the record of the case and hearing both the counsels, we find that the demand of upgradation during the IVth Pay Commission period has arisen from the fact that the

Ministry of Defence vide Notification dated 25.4.1996 upgraded the pay scale of feeder cadre to Rs:2000-3500. It is pertinent to note that the pay scale recommended by the Vth Pay Commission have been made effective from 1.1.1996. Various Associations of Officers had placed their demand and suggestions before the Vth Pay Commission. In fact, in a number of cases the Commission had also given a personal hearing before giving its recommendations. Although, some time was taken by the Government to examine and taking final decision on the recommendations of the Pay Commission and most of them were made effective from 1.1.1996. In those cases where some merger or demerger of different levels was proposed, the date of implementation of the final scale was little later. However, in such cases also the replacement scale of IV the Pay Commission was given to the concerned persons w.e.f. 1.1.1996.

9. In this background and keeping in view the various judgements of the Apex Court on the subject, we do not see any ground for interfering with the pay scales already sanctioned by the Government to the applicants. Thus, we do not find any merit in the OAS and they <sup>are</sup> ~~same~~ accordingly dismissed. No order as to costs.

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(S.C. DESHMUKH)

MEMBER (J)

mrj.

(A.K. AGARWAL)

VICE CHAIRMAN