

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.No.383/2001

Dated this Wednesday the 13th Day of March, 2002

Hon'ble Shri Justice Birendra Dikshit, Vice Chairman
Hon'ble Smt. Shanta Shastry, Member (A)

1. K.D. Mahajan
Selection Grade Professor (Retd.)
College of Military Engineering,
Dapodi, Poona- 31.
2. B.V. Ramaswamy,
Selection Grade Professor (Retd.),
College of Military Engineering,
Dapodi, Poona- 31.
(Res. at 47, Mitra Mandal Colony,
Parvati, Poona- 9).
.. Applicants.

(By Advocate Shri S.P. Saxena)

Versus

1. Union of India, through the
Secretary, Ministry of Defence,
DHQ PO, New Delhi - 110 011.
2. The Engineer-In-Chief,
Army Headquarters,
DHQ, PO, New Delhi - 110 011.
3. The Commandant,
College of Military Engineering,
Dapodi, Poona-31.
.. Respondents.

(By Advocate Shri R.R. Shetty,
holding the brief of Shri R.K. Shetty).

ORDER (Oral)
{ Per : Shanta Shastry, Member (A) }

The applicants in this case retired as Selection Grade Professors from the College of Military Engineering in the then pay scale of Rs.1800-100-2000 from 30.9.1975 and July, 1977 respectively. Recently, the Government of India reviewed the position of the pre 1.1.1986

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pensioners and issued O.M. dated 10.2.1998. According to this, it was decided that in the case of pre 1.1.1986 pensioners, their pay fixation should be done notionally as on 1.1.1986 and again on 1.1.1996 and revise the pay scales as recommended by the 4th and 5th Pay Commissions respectively and they would become entitled to 50% pension based on the years of qualifying service put in by them. Accordingly, the applicants' pay was revised notionally w.e.f. 1.1.1986 and they have been paid arrears from 1.1.1996 in terms of aforesaid O.M. dated 10.2.1998.

2. The grievance of the applicants is that the scale which has now been granted to them is of Rs.18400-22400 which is that of Professors. Since the applicants had served as selection grade Professors they are entitled to get still higher scale of Rs.18400-22400 which has been prescribed by the All India Council for Technical Education (AICTE). After 1.1.1986, the post of the selection grade Professor was abolished by the 4th Pay Commission with effect from 1.1.1986. However, later on Sr. Professors grade was introduced by the AICTE for which the replacement scale is 18400-22400.

3. The applicants represented that they should be granted the scale of Rs.18400-22400/-. However, the representation was rejected vide letter dated 23.5.2000.

4. The contention of the learned counsel for the applicants is that the respondents ought to have referred the matter to the Ministry of Finance and Department of Personnel & Training before taking a final decision and rejecting their representation, as per para 14 of the O.M. dated 10.2.1998 in terms of which the applicants pay and pension were revised which is reads as follows:-

"14. There may be cases where it would be difficult for the Head of Office to determine the revised scale of pay corresponding to pre-revised scale as the scales of pay have been revised from time to time and some of the scales might have become defunct after a particular period of time. In such cases it would be for the Head of Department to decide about equivalence of pre-revised scale with the revised scale after consulting the integrated Finance Division. However, in cases where it is not feasible to arrive at a conclusion can be taken by the Head of Department in consultation with the Ministry of Finance and DOPT."

According to the learned counsel for the applicants, since the AICTE recommended the Sr. Professors grade and the selection grade was abolished as on 1.1.1986 it cannot be denied to the applicants who were in selection grade and therefore their pay ought to have been fixed in the selection grade or rather Sr. Professors grade as recommended by the AICTE. Since this specific provision was made in Para 14, the respondents could not have arrived at the conclusion without referring the matter to the Ministry of Finance and DOPT.

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5. The learned counsel for the respondents submitted that their action in fixing the pay of the applicants as on 1.1.1986 notionally in the scale of Rs.4500-5700 and fixing it in the scale of Rs.16400-22400 with effect from 1.1.1996 is in order and is according to the OM dated 10.2.1998. It has been explained by the respondents that there were selection Grade Professors post carrying the pay scale of Rs.1800-2000 with effect from 1.1.1973. There was a lower post of Professors in the scale of Rs.1500-1800 as of the same date. However, the 4th Pay Commission abolished the selection grade and merged the post of Professor Selection Grade viz. that of Professor into a single grade with pay scale of Rs.4500-5700 with effect from 1.1.1986. Thus, there is no ambiguity as the selection grade Professors post was merged with that of Professor. The applicants have rightly been given their replacement grade of Rs.4500-5700, therefore, there is no need to refer the matter to Ministry of Finance or DOPT. The Head of the Department did not find it difficult to determine the revised scale of pay corresponding to the pre-revised scale and therefore rightly the applicants pay has been fixed in the revised pay scale and pension granted to them accordingly.

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6. The learned counsel for the applicant reiterated the contention that the respondents ought to have made a reference to the Ministry of Finance and DOPT.

7. The learned counsel for the applicant also made mention about an amendment to the OM dated 10.2.1998 and copy of OM dated 17.2.1998 has been produced. This amendment does not change the position. As far as the selection grade Professors post being merged with that of the Professors with effect from 1.1.1986 is concerned. It only enhances the pension to maximum of 50% of the pay applicable only to rest of the Central Government employees with a minimum of Rs.1275/-.

8. We have heard learned counsel for both the sides and have also perused the relevant OM dated 10.2.1998. The factual position is that, as on 1.1.1986 the post of selection grade Professors was merged with that of Professors and a common pay scale of Rs.4500-5700 was made applicable. It is not that the 4th Pay Commission kept silent over the replacement scale for the post of pre-revised selection grade Professors, the Commission categorically recommended the merger of the selection grade Professor's pay scale with that of the Professor. Thus, there is no scope for any doubt that what has been

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granted is a common replacement scale. The applicants would be entitled to the common replacement scale and not the higher pay scale just because they were in a higher pay scale than that of the Professor prior to 1.1.1986. In our considered view, therefore, it does not appear to be a case where the Head of Office would find it difficult to determine the revised scale of pay corresponding to pre-revised scale. Thus, this is not a case where it was not feasible for the head of the office to arrive at a conclusion in this regard. Had the applicant continued to be in the pre 1.1.1986 pay scale of selection grade even after 1.1.1986 then they would have become entitled to the grade of senior Professor's pay scale as on 1.1.1986. Since the selection grade was merged with ordinary grade of the Professors, in our considered view the applicants' claim for the higher scale of Rs.18400-22400 as recommended by the 5th Pay Commission is not sustainable. In the result the O.A. is dismissed, with no order as to costs.

Shanta

(Smt. Shanta Shastry)
Member (A)

B. Dikshit

(Birendra Dikshit)
Vice Chairman.

H.