BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH BANGALORE

DATED THIS THE 30th OCTOBER 1986

Present : Honourable Justice K.S. Puttaswamy, Vice Chairman

Honourable Shri L.H.A. Rego Member

Applications Nos. 356, 359, 364, 365, 386, 396 to 399 and 818, all of 1986 (Transferred)

(Corresponding respectively to W.P. Nos. 16915, 17941, 17946, 17947, 18888, 18898 to 18901 all of 1980 and W.P. 20492 of 1982 filed in the High Court of Judicature, Karnataka)

D.Ramanath s/o Late K.S.Devarajan
Senior Scientific Officer II
R.T.O. (Engrs), Ministry of Defence,
Bangalore (A.No. 356/86) -Applicant

K.V. Ramamurthy
Principal Scientific Officer
Controllerate of Inspection Electronics
M.R. Palyam, Bangalore 6 (A.No. 359/86) -Applicant

B.V. Pachabhaiyya
Senior Scientific Officer I
Officer incharge, Vehicle Inspection Wing
Ministry of Defence, D.G.I., Agaram
Bangalore 7 (A.No. 364/86) -Applicant

M.R. Shivaram
Senior Scientific Officer I
Office of the C.R.E.(Engines) Department
of Aeronautics, Bangalore 75 (A.No. 365/86) -Applicant

R.K. Malhotra s/o Sri Anant Ram
A/F, CIL, Bangalore 560007 (A.No. 386/86 -Applicant

M.C. Anand s/o M.C. Narasimhan
Foreman, CIL
Bangalore 560006 (A.No. 396/86) -Applicant

K.Srimannarayana
S/o Sri K.V. Reddipantulu
Foreman, CIL
Bangalore 5600061 (A.No. 397/86) - Applicant

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V.G. Govinddraj
S/o late Sri N. Gopalakrishnan
Foreman, CIL, Bangalore 560006 (A.No. 398/86) -Applicant

K.M. Srinivasan
s/o Sri K.Krishnaswamy Iyengar
Technical Officer, CIWE
275, RMV Extension,
Bangalore 560080 (A.No. 399/86) -Applicant

B.Jayatheertha s/o Badarayanachar
Foreman, C.I.L.
Bangalore (A.No. 818/86) -Applicant

(By Sri V.H. Ron, Advocate) - common to all Applicants

Union of India represented by the
Secretary, Ministry of Defence
New Delhi Respondent in all the applications

The Director
Electronics Radar Development
Establishment, Bangalore 1 (A.No. 356/86) -Respondent

Controller of Defence Accounts,
Southern Command, Pune 1 (A.Nos.359, 364, 365, 396, 397, 398, 399 and 818 all of 1986)
- Respondent

Controller of Inspection Electronics
Hebbal, Bangalore (A.Nos. 396 to 399 of 1986)
- Respondent

(By Sri M.V. Rao -- in Application No. 356/ 86)

(By Sri N. Basavaraj - in Application Nos. 359, 364 & 365)

(By M.S.Padmarajaiah, Senior Standing Counsel for the Central Government in Applications Nos. 396 to 399, 386 and 818 all of 1986)

The applications have come up for hearing before the Tribunal today, Member (AM) made the following

O R D E R

These are in all ten writ petitions filed in the High Court of Judicature, Karnataka, under Art 226 of the Constitution of India, transferred to this Bench of the Central Administrative Tribunal, under Art 29 of the

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Administrative Tribunals Act 1985 and renumbered as Applications which are grouped, to be disposed of together, as they involve a common question of law.

2. While Applications Nos. 356, 386, 396 to 399 and 818 all of 1986 (Set I for short) are similar in facts and circumstances, Applications Nos. 359, 364 and 365 of 1986 (Set II for short) relate to a different circumstance, though the question of law involved is the same. In Set I of the applications, the prayer is mainly for issue of a writ of mandamus directing the respondents to refix the pay of the applicants and pay them arrears in terms of the orders dated 4.2.1969 (Annexure A) and 2.6.1971 (Annexure B) of the Govt of India, Ministry of Finance (GOI for short) but not with reference to their orders dated 5.9.1972 (Annexure D) and such other orders or direction as deemed proper, in the circumstances of the case. In Set II of the applications, the prayer is almost the same except that the applicants also pray that the orders dated 29.2.1972 (Annexure C) of the GOI may not be given effect to.

3. The case in both these sets of applications hinges essentially on these four annexures. It is therefore pertinent to extract relevant portions from these annexures, to provide a coherent picture of the case of the applicants. Through Order dated 4.2.1969 (Annexure A) of the GOI, the President of India was pleased to decide that a civilian employee paid from the Defence Services Estimates, who acquires a Degree in Engineering or an equivalent qualification or passes Section 'A' of AMIE or an equivalent qualification while serving in a non-gazetted technical/scientific grade, shall have his pay refixed, with the benefit of advance increments, with reference to the date namely 1.12.1968 as

... set

set out in the said letter, which is reproduced below in toto:

No. 96850/V-1967/DTTA/884/D(Civ I)
Government of India
Ministry of Defence
New Delhi, the 4th February 1969

To
The Chief of the Army Staff
The Chief of the Air Staff
The Chief of the Naval Staff
The Director General of Inspections
The DGOF, Calcutta
The Scientific Adviser
The DML&C

Subject : GRANT OF INCREMENTS TO DEFENCE EMPLOYEES ON PASSING TELECOMMUNICATION/AERONAUTICAL ENGINEERING COURSE OR ACQUIRING AN ENGINEERING DEGREE

Sir,

I am directed to say that the President is pleased to decide that a Civilian employee paid from the Defence Services Estimates, who adquires a degree in Engineering or an equivalent qualification such as the Associate Membership of the Institution of Engineers (India) or the Graduateship of the Institution of Telecommunication Engineers (India) or the Associate Membership of the Aeronautical Society of India, which is among the qualifications prescribed for recruitment to the Central Engineering Services Class I while he is serving in a non-gazetted technical/scientific grades, shall have his pay refixed, with effect from the date on which he acquires the above mentioned qualification, at the stage in his scale of pay which would give him three advance increments.

2. The President is also please to decide that such an employee who passes section 'A' of AMIE/Telecommunication and Part II of Aeronautical Course, thereby enhancing his academic knowledge, shall be granted one advance increment in his scale of pay with effect from the date on which he is declared by the competent authority o have passed the prescribed test. Such employees who are allowed one advance increment on passing section 'A' of AMIE/Telecommunications or Part II of Aeronautical Course would be allowed two (and not three) increments on passing section 'B' or Part III of the examination.

3. The financial benefits as a result of the decisions mentioned in paras 1 and 2 above would be allowed from 1.12.1968 to those who have already acquired the requisite qualifications and from the of announcement of the results of the concerned examination to those who attain the requisite qualifications after 1-12-1968.

4. This letter issues with the concurrence of the Ministry of Finance(Defence) vide their u.o. No. 341/PB of 1969.

Yours faithfully,
Sd/-
(S M Gidwani)
Under Secretary to the Government of India

4. By its subsequent communication dated 2.6.1971

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(Annexure B) from the GOI, the President was pleased to decide that the orders contained in Annexure A, would also be applicable to persons, who had acquired the prescribed qualifications, while entering Government service in the non-gazetted technical/ scientific grade. Financial benefit on this account was to accrue from 1.12.1968 or the date of appointment of the employee whichever was later.

5. Thereafter the GOI through its letter dated 19. 2.1972 (Annexure C) inter alia clarified, that its orders in Annexure A and B, would not apply to such of the persons who were promoted to the gazetted grade, as they did not fall within the purview of these orders. Annexure C is extracted below in full.

Govt. of India, Min of Def. Letter No. 96850/V-1967/ DTTA/1662/D/Civ-I) dt. 19th Feb '72

Sub: GRANT OF INCREMENTS TO DEFENCE EMPLOYEES ON PASSING TELECOMMUNICATIONS/AERONAUTICAL ENGINEERING COURSE OR ACQUIRING AN ENGINEERING DEGREE

I am directed to refer to this Ministry's letter no. 96850/V-1967/DTTA/884/D(Civ-1) dated the 4th Feb 1969 and No. 696850/V-1967/DTTA/4709/D(Civ-1) dated the 2nd June, 1971 on the above subject and to clarify that in the cases of individuals who had acquired the requisite qualifications before 1-12-68 and who were promoted to higher posts in between the date of passing the examination acquiring the qualification and 1-12-68, advance increments, one ore three, as the case may be, may be given in the non-gazetted technical and scientific posts actually held by them on that date 1-12-68. This would not apply to such persons who had received promotions to gazetted grades as they did not fall within the purview of this Ministry's orders referred to above.

2. The financial benefits as a result of these orders will be admissible from the 1st Dec. 1968.

3. This letter issues with the concurrence of the Ministry of Finance (Defence) vide their u.o. no. 681-88 of 1972.

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6. Later in its letter dated 5.9.1972 (Annexure D), the GOI stated among other things, that the benefit of advance increments would not be admissible in the case of non-gazetted technical/ scientific posts, where a Degree in Engineering or an equivalent qualification was prescribed as the minimum qualification for appointment to these posts.

7. We have given due consideration to the pleadings of both sides and have examined carefully the record material placed before us in support.

8. We first proceed to examine the case of the seven applicants in Set I of the Applications, in terms of the relevant Annexures. They are seen to have been denied the benefit of advance increments in accordance with Annexure A, as according to the learned counsel for the respondents the non-gazetted technical/scientific posts in which the applicants entered service as civilian employees in the Ministry of Defence, have been deemed as posts, where a Degree in Engineering or an equivalent qualification has been prescribed as the minimum qualification with reference to para 2(i)(b) of Annexure D. In order to help ascertain the factual position it is necessary to find out the details of the posts, to which each of these applicants was initially appointed and the technical qualifications acquired by them either before or after entering service. The following tabular statment provides a picture at a glance:

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A.No. of 1986	Name of the Applicant	Post of Initial Appointment		Technical qualification acquired	
		Designation	Date	before entering service	while in service
(1)	(2)	(3)	(4)	(5)	(6)
356	D.Ramnath	Senior Scientific Asstt	26.10.1972	B.Sc(Eng)	-
386	R.K.Malhotra	Tech Supervisor	7.12.1964	-	Graduation in ITE
396	M.S.Anand	Asstt Foreman	15.11.1972	Secs 'A' & 'B' of AMIE	-
397	K.Srinarayana	- do -	16.12.1972	B.E.	Graduation in IETE
398	G.Govindaraj	- do -	23.10.1972	B.E.	-
399	K.T.Srinivasan	- do -	22.11.1972	B.E.	-
818	B.Jayatheertha	- do -	15.11.1972	B.E.(Mech)	

9. Let us now turn our attention to the minimum educational qualification prescribed for the post, to which each of the above applicants was initially appointed. These details are as under, as extracted from the Defence Research and Development Organisation Class III Non-gazetted (Technical, Scientific and other Non-ministerial) posts Recruitment Rules 1968, placed before us.

Designation of the post	Educational and other qualifications prescribed
(1)	(2)
Supervisor Technical Grade II	B.Sc/Diploma in Engineering with one year's experience
Supervisor Technical Grade III	Diploma in the required subject
Senior Scientific Assistant	(i) M Sc or Degree in Engineering with one year's experience OR (ii) B Sc with 4 years' experience OR (iii) Diploma, in Engineering with 4 years' experience

(1)	(2)
Asstt Foreman	(i) Degree in Engineering with one year's experience OR (ii) Diploma in Engineering with 4 years' experience

10. It would be seen from the foregoing, that all the above seven applicants, were initially appointed to non-gazetted technical/scientific posts and that all of them except Shri R.K.Malhotra, acquired the prescribed qualification before entering service, to be eligible for advance increments in terms of Annexures A & B. Shri Malhotra however acquired this qualification while in service.

11. The question that remains to be resolved is, as to whether the Degree in Engineering or an equivalent qualification was the minimum qualification prescribed for the posts to which the above applicants were initially appointed, which would disentitle them to the benefit of advance increments in terms of para 2(i)(b) of Annexure D. The learned counsel for the applicants contends that for each of the four categories of posts specified in para 9 supra, the lowest educational qualification prescribed as an alternative, is a Diploma in Engineering or in the required subject, with the stipulated minimum period of experience and therefore, this alternative minimum qualification cannot be overlooked, so as to infer, that a Degree in Engineering was the minimum educational qualification prescribed for the

post in question. The counsel for the applicants has referred to W P No. 4781/1972 filed by a number of employees, similarly circumstanced, as the applicants in this case, in the High Court of Andhra Pradesh. It is seen, that the GOI had filed a writ appeal thereon which came to be dismissed. The latest order on the subject is said to have been rendered on 18.4.1978 in Writ Petition No. 2294 of 1977 in the High Court of Andhra Pradesh, wherein Chinnappa Reddy, J had held, with reference to the post of Senior Scientific Assistant, that a Degree in Engineering was only one of the educational qualifications prescribed for this post but was not the minimum educational qualification prescribed. According to the learned Judge, the minimum educational qualifications prescribed as an alternative for this post was Diploma in Engineering, with the stipulated years of experience. The GOI had challenged this decision of the High Court of Andhra Pradesh, before the Superme Court in a Special Leave Application, but the same was rejected, thus rendering the decision of the High Court of Andhra Pradesh final in the matter. The applicants had requested the GOI to extend the benefit of this judgement to them, as they were similarly circumstanced as the petitioners who went before the Andhra Pradesh High Court but the same was turned down by the GOI, in its letter dated 20.5.1980. We are of the view, that the case of the applicants is alike on all fours with the case of the petitioners before the High Court of Andhra Pradesh in respect of para 2(i)(b) of Annexure D and that they are therefore entitled to financial benefit in terms of Annexures A and B.

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12. We now proceed to examine the case of the 3 applicants in Set II of the Applications. Their prayer is that the orders of the GOI in Annexures C & D, the former precluding those promoted to the gazetted grade from the financial benefits spelt out in Annexures A & B may not be given effect to in their case. The relevant service particulars of these applicants, according to the record placed before us are as below :

Appln No of	Name of applicant	Technical qualification acquired	First promotion to the gazetted cadre	
			Post	Date
(1)	(2)	(3)	(4)	(5)
359	K.V.Ramamurthy	B.E.(Telecom)	SSO II	10.4.1963
364	B.V.Pachabhaiyee	B.E.	SSO II	9.4.1968
365	M.D.Shivaram	B.E.	JSO	31.1.1979

N B: SSO means Senior Scientific Officer; JSO means Junior Scientific Officer

13. The foregoing reveals, that Sarvashri Ramamurthy and Pachabhaiyee, were first promoted to the gazetted cadre, prior to 1.12.1968 i.e. the date specified in Annexure A, with effect from which, financial benefit was to be granted, while the dates of initial appointment of these applicants to the non-gazetted post of Asstt Foreman in the technical/scientific grades, were 22.12.1959 and 6.1.1965 respectively. Shri Shivaram was initially appointed in the non-gazetted technical scientific post of Senior Scientific Assistant on 22.11.1972 and was first promoted to the gazetted post as JSO on 31.1.79 i.e. after 1.12.1968. In either case, financial benefits have been denied to them, in accordance with the instructions of GOI in Annexure 'C' which disentitles those promoted to the gazetted grade, to this benefit. In the case of Shri Ramamurthy, the arrears paid earlier to him on refixation of his pay in the gazetted post of SSO I and II are said to have been subsequently recovered from him, while in

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the case of the other two applicants, the arrears have not been paid.

14. Relying on the instructions of GOI in Annexure C, the learned counsel for the respondents pleads, that the applicants are not entitled to financial benefit as they have been promoted to the gazetted grade. In this connection we invite attention to Application No. 181/1986 which came up for hearing before the Bench of this Tribunal (composed of Hon'ble Vice Chairman Shri Justice K.S. Puttaswamy and Hon'ble Member Shri P Srinivasan) on 1.10.1986, which was akin to the instant Set II of the Applications, in point of law and facts and in which the prayer was allowed. The ratio decidendi of the order in that application would therefore apply to Set II of the Applications in the present case, mutatis mutandis.

15. In fine, we allow the prayer in both Sets I and II of the Applications in this case, with however no order as to costs. We direct that this order be given effect to within a period of 3 months from the date of its receipt.

Sd/-

Vice Chairman

Sd/

Member (AM)(R)

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21/11/86

SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE