

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 385/92

Transfer Application No:

DATE OF DECISION: 5.7.94

R. Sampatkumar.

Petitioner

Shri S.P. Saxena

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Shri R.K. Shetty.

Advocate for the Respondent(s)

RCV
PNM

CORAM :

The Hon'ble Shri B.S. Hegde, Member (J).

The Hon'ble Shri

1. To be referred to the Reporter or not ? *yes*
2. Whether it needs to be circulated to other Benches of the Tribunal ? *yes*

B.S.H
(B.S. HEGDE)
MEMBER (J).

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

Original Application No. 385/92.

R. Sampatkumar.

... APPLICANT.

V/s.

Union of India & Ors.

... Respondents.

Coram: Hon'ble Shri B.S. Hegde, Member(J).

Appearances:-

Applicant by Shri S.P. Saxena.
Respondents by Shri R.R. Shetty.

JUDGMENT :-

¶Per Shri B.S. Hegde, Member(J) Dt. 5/7/94

The applicant is a Civilian employee working as Superintendent E/M Gd.I in the M.E.S. department under the Ministry of Defence. He is presently posted in the office of Garrison Engineer, Kirkee, Pune. He had joined the M.E.S. department on 21.12.1971 as Superintendent E/M Gd.II after passing the Diploma in Electrical Engineering.

2. The applicant submits that the Ministry of Defence vide its letter dt. 4.2.1969 had issued a scheme on behalf of the President of India stating that ~~A~~ civilian employee paid from Defence Services establishments, who acquire degree in Engineering or an equivalent qualification such as Associate Membership of Institution of Engineers (India), (hereinafter referred as A.M.I.E. for brevity) which is among the qualifications prescribed for recruitment to Central Engineering Services (Class-I), while such employee is serving in a Non-Gazetted Technical/Scientific Grade, shall have his pay refixed w.e.f. the date on which he acquired the above mentioned

qualification, at the stage in his scale of pay which would give him three advance increments.' It is further stated such employee would be allowed one increment on passing Section-A of A.M.I.E. examination and would again be allowed another two increments on passing Section-B of A.M.I.E. Examination.

3. The applicant while working as Superintendent Gr.II for which the essential qualification is Diploma in Engineering (and not Degree in Engineering). The applicant passed Section-A examination on 24.2.1975 and passed Section-B on 31.7.1977. Therefore, he contends, that he is entitled for three increments as per the scheme, 1969. He applied for the post of Superintendent Gr.I against the direct recruitment quota and by virtue of selection, the applicant was directly appointed as Superintendent Gr.I w.e.f. 6.4.1978. He submitted an application dt. 16.5.1978 (Annexure A-4) to Respondent No.3 requesting for sanctioning of three advance increments due to him. Having not granted the three increments to him, being aggrieved of the same, he has filed this OA praying for the following reliefs:

- i) the Respondents be directed to pay one advance increment to the applicant w.e.f. the date he passed the section A examination of the A.M.I.E. Engineering Degree.
- ii) the Respondents be directed to pay another two advance increments to the applicant w.e.f. the date he passed the section B exam of the A.M.I.E. Engineering Degree.
- iii) the Respondents be directed to refix the basic pay of the applicant after granting him the above said increments.
- iv) the Respondents be directed to pay the difference of pay and allowances due to refixation of pay from the date the applicant passed section A of the AMIE exam till date of actual payment of arrears.
- v) the Hon'ble Tribunal may award cost of the application to the applicant.

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4. The facts are not in dispute. The Respondents while denying the contention of the applicant have stated that in view of the withdrawal of the scheme vide their letter dt.5.9.1972 the applicant is not entitled to for payment of advance increments for the reasons stated in the reply.

5. The short point for consideration is whether the applicant is eligible to claim the advance increments in the facts and circumstances of the case. It is true that the Respondents vide their letter dt. 4.2.1969 (Annexure A-3) came out with a scheme that a civilian employee paid from the Defence Services Establishments, who acquires 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 Telecommunal 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 grade shall have his pay refixed w.e.f. the date on which he acquired the above mentioned qualification at the stage in his/scale of pay which would give him three advance increments. However, the said scheme has been withdrawn by its letter dt.5.9.72 on the recommendation of the IIIrd Pay Commission. In the case of direct recruits the scheme became non-effective after 5.9.1972 and for serving employees in such posts on their acquiring an Engineering degree while in service would also cease to be admissible for those who have acquired such qualification on or after 1.12.1973. Admittedly, the applicant got appointed to the higher post of Superintendent Gr.I w.e.f. 6.4.1978 and the minimum essential qualification for the post of Gr.I is a degree in Engineering or equivalent and he acquired AMIE on 31.7.1977 hence, the applicant is not entitled for AMIE increment.

dt.15.4.78

In this connection, the respondent No.1 issued a letter,

(Annexure -4A) clarifying the subject of grant of increments to defence employees on passing Telecommunications/Aeronautical Engineering Course or Acquiring an Engineering degree. In view of the Judgment of the Hyderabad Bench, they clarified that that letter dt. 4.2.1969 as amended from time to time on the above subject and to say that the benefit of three advance increments allowed w.e.f. 1.12.1968 to non-gazetted Technical/Scientific civilian employees paid from the Defence Service Estimates on their acquiring degree in Engineering was withdrawn in respect of non-gazetted Technical/Scientific posts where a degree in Engineering or an equivalent qualification is a minimum qualification prescribed for appointment to the post (Gr.I) vide Ministry's letter dt. 5.9.1972. Some senior Scientific Assistants of Defence Research and Development Establishment, Hyderabad filed a Writ Petition in the Andhra Pradesh High Court and also in the High Court of Karnataka against the above decision and these Courts gave their judgment in favour of the petitioners. Accordingly, the cases of all those who had gone to the Court were reviewed and the benefits of three advance increments were restored to them. The point whether the benefit of the Court's Judgment should be granted to all those similarly placed non-gazetted employees holding technical/scientific posts was under consideration for some time past. It has now been decided to extend employees the benefit of the Court's Judgment to all/similarly placed irrespective of the fact whether they have gone to the Court or not subject to the condition that this benefit after 5.9.1972 the date on which the benefit was withdrawn and these employees who have acquired degree subsequently which the minimum basic qualifica-

tion of the post."

6. The learned counsel for the applicant heavily relied on the Judgment of the Hyderabad Bench of the Tribunal in Potham Narayan Rao & Ors. V/s. UOI & Ors. dt. 10.7.1987 and also the decision of the Bangalore Bench of the Tribunal in Rajvir Agrawal & Ors. V/s. Union of India & Ors (1989). Though the principle involved in those two decisions is similar to the one under consideration, the facts in both the cases were different. Insofar as the Hyderabad decision is concerned it is not the case of the applicant that the minimum qualification for Class-I post was degree in Engineering, that a degree in Engineering was also one of the minimum qualification prescribed for the said post unlike the present case. Admittedly, the reliefs sought in that case was prior to the withdrawal of the scheme i.e. 5.9.1972, therefore, the said case is clearly distinguishable from the present one. Similarly, in the case before the Bangalore Bench also, the applicants were given the benefits of the advance increments as they had acquired the professional qualification prior to 1.12.1973 the date on which the said benefit was to cease, there also out of the three alternative educational qualifications prescribed for the post, diploma in Engineering with four years experience is one of the qualification for being considered for the said post unlike the present case, the essential qualification prescribed for the Gr.I is Engineering Degree. Therefore, both the cases cited at the bar by the learned counsel for the applicant do not have any bearing on the facts of the present case and in both the cases the reliefs sought was prior to the withdrawal of the scheme i.e. 5.9.1972, therefore, both are distinguishable and cannot take support of those decisions in support of his contention that the applicant should be paid the advance increment in view of the scheme then in vogue i.e. 4.2.69. The learned counsel for the applicant

further emphasised the contents of the letter dt. 15.4.1981 wherein the respondents had come out clearly pursuant to the decisions of the Hyderabad as well as the Karnataka Bench that advance increments should be granted to all those similarly placed non-gazetted employees holding technical/scientific posts irrespective of the fact whether they have gone through Court or not subject to the condition that this benefit will not be admissible to those recruited after 5.9.1972. Such a contention is not tenable on the following grounds.

7. Admittedly, the applicant has passed the A.M.I.E. examination subsequent to the withdrawal of the scheme dt. 5.9.1972 i.e. 75 and 77 respectively by which time the scheme was not in existence. The learned counsel further contended that the payment of advance increment on passing A.M.I.E. examination is still in vogue in other departments/ Ministries i.e. Railways, but the Respondents are arbitrarily refusing to grant the benefit of advance increments to applicant, such a contention is not based on any documentary proof nor made any pleadings in this behalf. In the circumstances, the said contention cannot be taken on record.

8. The applicant made a representation to the Respondents in the year 1978 which has been turned down by the Respondent No.3 in the year 1981, despite the same he made further representations in 1989 and 1991 separately and had not received any response from the Respondents, therefore, the Respondents though not raised the point of limitation in this case, admittedly, the petition is barred by time. However, in the absence of any pleadings on the part of the Respondents, the petition is not disposed of on the point of limitation. Parties are well aware that the repreated representation

does not extend the period of limitation.

9. The learned counsel for the applicant has also urged that the subject matter was raised in the Parliament while giving answer to the question raised in the Parliament, the following points have been clarified:

- (a) Individuals who were recruited after 5.9.1972 to a post for which the minimum qualification is a Degree in Engineering will not be eligible for the advance increments.
- (b) Individuals who were appointed prior to 5.9.1972 but acquired the Engineering Degree after 5.9.1972 and holding a post for which the minimum qualification is an Engineering Degree will not be eligible for the advance increments.
- (c) Individuals appointed after 1.12.1973 to a post for which the minimum qualification is a diploma in Engineering as also serving individuals in such posts acquiring Engineering Degree on or after 1.12.1973 will not be eligible for the grant of advance increment.

10. It is not the case of the applicant that the Respondents had not replied to the representation made by the applicant. As far back as 1989 itself the applicant was informed that individuals who were appointed prior to 5.9.1972 and holding a post for which minimum qualification for direct recruit is Engineering Degree will not be eligible for the advance increments. Accordingly, since the applicant was holding the Grade I post for which the minimum qualification was Engineering Degree or equivalent, hence the question of seeking advance increments does not arise.

11. In the conspectus of the facts and circumstances of the case, it is clear that the applicant cannot take the advantage of the decision of the Hyderabad Bench as well as Bangalore Bench in this respect, as both

the cases the qualification prescribed for the post of the applicants were optional unlike the present one and the advance increments sought by the applicants in those applications were prior to 5.9.1972. Admittedly, in the instant case applicant has acquired the A.M.I.E. Degree in the year 1977 subsequent to the withdrawal of the scheme thereby the question of seeking any advance increment hardly arises. Apart from the above facts, the applicant has secured Grade-I post through a direct selection for which the minimum qualification is an Engineering Degree. In view of the foregoing, I am of the view, that the benefit of extending the benefit of advance increments as envisaged vide letter dt. 4.2.1969 to the applicant is not feasible and accordingly his claim is not supportable as the scheme in question has ceased to have any force after 5.9.1972. In the result, the application is devoid of any merits and the same is dismissed, but no order as to costs.


(B.S. HEGDE)
MEMBER (J).

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

R.P.NO. 100/94
in

OA.NO. 385/92

Shri R.Sampatkumar

... Applicant

v/s.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Member (J) Shri B.S.Hegde

Tribunal's Order by Circulation

DATED 1.9.94

(PER: B.S.Hegde, Member (J))

This review application has been filed seeking review of the judgement dated 5.7.1994 in OA.NO. 385/92.

2. The OA. was disposed of keeping in view the ratio of judgement of Hyderabad Bench and also a decision of the Bangalore Bench and also in view of the withdrawal of the scheme vide Respondents' letter dated 5.9.1972. The OA. was disposed of on merits by stating that the benefit of extending the benefit of advance increments as envisaged vide letter dated 4.2.1969 to the applicant cannot be extended and accordingly his claim was not supportable as the scheme in question has ceased to have any force after 5.9.1972.

3. In this review application, the petitioner is seeking review of the judgement on the following grounds: (1) The scheme of advance increments was withdrawn only in cases of Non-Gazetted Technical/Scientific posts where a Degree in Engineering or an equivalent qualification is a minimum qualification for appointment to that posts. The scheme was not withdrawn on 5.9.1972 in respect of the applicant who was holding the post of Supdt. E/M Grade II, for which the essential qualification was Diploma in Engineering.

(2) The Tribunal has erred in stating that the scheme has been withdrawn by the letter dated 5.9.1972 on the recommendation of III Pay Commission. The recommendations of III Pay Commission became effective from 1.1.1973 and hence the question of withdrawal of scheme of advance increment on a date prior to 1.1.1973 cannot arise. The withdrawal of scheme was restricted only to cases where a Degree in Engineering was a minimum qualification. Since the applicant was holding Supdt. E/M Grade II post at the time when he passed A.M.I.E., the minimum qualification needed was Diploma in Engineering and not a Degree in Engineering. Thus the scheme of advance increment was not withdrawn for applicant while he held the post of Supdt. E/M Grade II.

4. Under Order 47 Rule 1 C.P.C., a decision/judgement/order can be reviewed only if an error apparent on the face of the record, new material or evidence is discovered which was not within the knowledge of the parties or could not be produced by that party at the time the judgement was made, despite due diligence; or for any sufficient reason construed to mean analogous reason.

5. A perusal of the review application revealed that none of the reasons warrant any review.

6. The main contention of the applicant in this review application is that the criteria laid down by departmental letter dated 5.9.1972 is the date of recruitment and not passing ^{date of} of Section 'A' and Section 'B' of A.M.I.E. Since the applicant was recruited prior to 5.9.1972, and he is covered by the benefit given by the President in his letter dated 15.4.1981. The said contention is not tenable in view of what is stated in departmental letter dated 15.4.1981 wherein it is clearly envisaged that :-

"the benefit of three advance increments allowed with effect from 1.12.68 to non-gazetted Technical/Scientific civilian employees paid from the Defence Services Estimates on their acquiring degree in Engineering was withdrawn in respect of non-gazetted Technical/Scientific posts where a degree in Engineering or an equivalent qualification is a minimum qualification prescribed for appointment to the post vide Ministry's letter dated 5.9.1972."

It also makes specific that the benefit will not be admissible to those recruited after 5.9.1972. Admittedly, the applicant has passed the A.M.I.E. subsequent to the withdrawal of the scheme, i.e. passed Section 'A' examination on 24.2.1975 and Section 'B' ~~on~~ 31.7.1977, by which time the scheme was ceased to be in existence.

7. It is well settled that the scope of the Review Application is very limited and a Review Application is maintainable only if there is an error apparent on the face of the record or some new evidence has come to notice etc. Review Application cannot be utilised for re-arguing the case traversing the same ground. In the light of the above, I do not find any new facts brought to my notice. In view of the facts and circumstances of the case, I do not see any merit in the Review Application and the same is rejected in Circulation.


(B.S. HEGDE)

MEMBER (J)

mrj.