

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH
AT HYDERABAD

O.A. NO.1581 OF 1994

Between

Sri B. Sasibalan

APPLICANT

and

Executive Engineer(E),

Vizag Central Electrical Division,

Central P.W.D., Visakhapatnam .

RESPONDENTS


and others

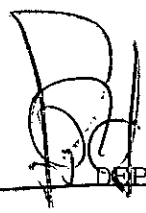
REPLY STATEMENT FILED ON BEHALF OF THE RESPONDENT

I, Surendra Mohan S/o Sri S.L. Kamboh, aged 47 years, occupation Superintending Engineer(Electrical), Hyderabad Central Electrical Circle, CPWD, Hyderabad, resident of Hyderabad, do hereby solemnly affirm and state as follows:-

(1) I am the Respondent No.2 and as such I am fully acquainted with all facts of the case. I am filing this Reply Statement on behalf of all the Respondents as I have been authorised to do so. The material averments in the O.A. are denied save those that are specifically admitted hereunder. The applicant is put to strict proof of all such averments except those that are specifically admitted hereunder.

At the outset it is submitted that the O.A. is premature in that the Applicant has not exhausted the remedies available to him under the service rules. The


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Applicant has not made any representation nor preferred any appeal against the impugned order. As such, the O.A. is liable to be rejected.

Without prejudice to the above contention the respondents submit the brief facts of the case as follows:-

(a) The Junior Engineer(Civil and Electrical) working in CPWD had the pre-revised scale of pay of Rs.425-15-500-EB-20-700 and also there was a scale in selection grade of Rs.550-25-750-30-900 in the pre-revised scale. Senior among the Junior Engineers used to be considered for Selection Grade against the prescribed number of posts marked for the purpose. Based on the Fourth Central Pay Commission recommendations, the Ministry of Finance (Department of Expenditure) in their Notification No.F-15(1)-IC/86 dated 13/9/86 revised the scale of the Junior Engineer as follows:

Sl. No.	Posts	Present Scale	Revised Scale	Remarks
1.	JE(E)	Rs.425-15-500-EB-15-560-20-700	Rs.1400-40-1800-EB-50-2300	
		Rs.550-25-750-EB-30-900 Selection Grade	Rs.1640-50-2600-EB-75-2900 (Promotional grade to be suitably re-designated and allowed revised promotion to be made as per normal procedure) 50% of the total number of posts of JEs will be in the lower grade of Rs.1400-40-1800-EB-50-2300 & the remaining 50% in the grade of Rs.1640-60-2600-EB-75-2900.	The existing incumbents-in the selection grade will be allowed revised scale of Rs.1640-60-2000-EB-75-2900 as personal to them.

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(b) The revised pay scales were announced Central Civil Services (Revised Pay) Rules, 1986, which have come into force on the 1st January, 1986. The non-functional Selection Grade has been abolished as per Note below Part A of the first schedule of the Notification No.F-15(1)-IC/86 dated 13/9/86, the existing incumbents in non-functional Selection Grade have been allowed suitable revised scale of pay corresponding to the pre-revised non-functional scale of pay as personal to them.

In the case of JEs of CPWD, two pay scales have been prescribed as mentioned above. At the entry grade the pay scale would be Rs.1400-40-1800-EB-50-2300. Their promotional grade carries the pay scale of Rs.1640-60-2600-EB-75-2900 and 50% of the total number of posts of JEs will be in the lower grade of Rs.1400-2300 and remaining 50% in the grade of Rs.1640-2900. The existing incumbents in the pre-revised selection grade were allowed the revised scale of Rs.1640-2900 personal to them.

(c) The Central PWD Junior Engineers' Association (India) demanded cent percent posts to be placed in the pay scale of Rs.1640-2900. On consideration of their demands Government upgraded 75% of the total number of posts JEs in CPWD in the scale of Rs.1640-2900 with effect from 1/1/86 vide DG(W)'s O.M. No.A-11014/1/86-EV/VI(Vol.II) dated 11/6/87 (Annexure R-1).

The Recruitment Rules of JEs (Civil & Electrical) were revised accordingly in 1987 vide Ministry of Urban Development's Notification No.A-11014/1/86-EC-VI dated


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26/5/87 (a copy of the same is annexed as Annexure R-2). In the revised recruitment rules, 75% of total number of JEs were designated as Junior Engineer Grade-I, in the pay scale of Rs.1640-2900 and 25% of total number of posts of JEs were designated as Junior Engineer Grade-II, in the pay scale of Rs.1400-2300. The Recruitment Rules of JEs (Civil & Elect) have been amended retrospectively with effect from 1/1/86 (a copy of the said Rules is annexed as Annexure R-3) wherein the condition of 75% posts in the Pay Scale of Rs.1640-2900 and 25% in the scale of Rs.1400-2300 are no more in existence.

Instructions were issued to all Superintending Engineers, Superintending Surveyor of Works, to take urgent action to hold to fill up the posts in the higher grade i.e. Junior Engineer Grade-I on the basis of revised Recruitment Rules, vide O.M. No.A-11014/1/86-EC-VI(Vol.II) dated 11/6/87 (Annexure R-1). Subsequently, not satisfied with the bifurcation in the grade the JEs had gone on an indefinite strike which lasted for 37 days from 14/7/87 to 19/8/87. Their demands included uniform pay scale of Rs.1640-2900 for all Junior Engineers among many other demands. A consensus (a copy of the same is at Annexure R-4) was reached between the representatives of the Association and Govt. in which it was agreed that their demand for uniform pay scale will be referred to a Group of Ministers by the Ministry of Urban Development with appropriate recommendations. On their demand, it was decided that no further orders for promotion of JEs to Grade-I may be issued still further instructions from CPWD and the orders of promotion to Grade-I already issued may

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also be kept in abeyance till further instructions. A copy of the instructions issued in this regard dated 21/8/87 is annexed at Annexure R-5.

The Superintending Engineer, Trivandrum Central Circle, had issued the promotion orders of some Junior Engineers, based on the earlier instructions of DG(W) dated 11/8/87 referred to at Annexure R-1, and before the subsequent instructions dated 21/8/87 Annexure R-5, asking the Superintending Engineers to keep the promotion orders in abeyance their pay was also fixed under erstwhile FR-22-C. The question of fixation of pay on promotion to Junior Engineer Grade-I was under discussion and a view was taken that the pay cannot be fixed under erstwhile FR-22-C (now FR-22(I)(a)(i)) as no additional duties responsibilities had been given to JEs appointed in Grade-I. The Chief Engineer(SZ), CPWD, Madras accordingly directed officers under his Zone to fix the pay of JEs in Grade-I without giving the benefit of FR-22-C. The Superintending Engineer, Trivandrum Central Circle, issued orders on 2/1/89 to fix the pay of JEs, who have been appointed as Grade-I under FR-22(a)(ii) instead of FR-22-C and all were directed to recover the excess payment already from salary bill of February, 1989 onwards in six instalments. On receipt of a number of telegrams from the affected persons the 3rd respondent had instructed the Superintending Engineer, Trivandrum Central Circle, to keep his order dated 2/1/89 in abeyance till further instructions from him. On 13/1/89 itself the affected Junior Engineers filed an application in the CAT, Ernakulam Bench and obtained a stay on the recovery. The question of pay fixation as then examined


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in consultation with DP&T and Ministry of Finance, who advised that pay fixation on promotion from Junior Engineer Grade-II to Junior Engineer Grade-I is to be done under erstwhile FR-22-C (now FR-22(I)(a)(i)). Accordingly, the Superintending Engineer, Trivandrum Central Circle, was asked to withdraw the order dated 2/1/89. As the impugned order in the O.A. filed in Ernakulam Bench of this Hon'ble closed.

(d) In the consensus referred to above, (Annexure R-4) it had been agreed that the demand of the JEs' Association for a uniform pay scale would be referred to a Group of Ministers with appropriate recommendation. The matter was considered by Govot. and a decision was taken with the approval of Cabinet to grant the Junior Engineers the following package:-

(i) There will be two scales of Junior Engineers/Sectional Officers (Hort.) in the CPWD viz. Rs.1400-2300 and Rs.1640-2000 and the incumbents thereof will be designated as Junior Engineers, Sectional Officers(Hort.) in the grade of Rs.1400-2300 and JEs/SO(Hort.) in the grade of Rs.1640-2900. The entry grade will be Rs.1400-2300. The Junior Engineers/Sectional Officers(Hort.) on completion of 5 years service in the junior grade, will be placed in the scale of Rs.1640-2900, subject to the rejection of unfit. This higher grade will not be treated as promotional one but will be non-functional and the benefits of FR-22(I)(a)(i) will not be admissible while fixing the


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pay in the higher grade, as there will be no change in duties and responsibilities.

(ii) Junior Engineers/Sectional Officers(Hort.), who could not be promoted to the post of Assistant Engineers/ Assistant Directors(Hort.) in the scale of Rs.2000-3500, due to non-availability of vacancies in the grade of /will be allowed the scale of Asst. Engrs./Asst. Directors(Hort.) Assistant Engineers/Assistant Directors(Hort.) / i.e. Rs.2000-3500, on a personal basis after completion of 15 years of total service as Junior Engineers/Sectional Officers(Hort.) till their normal turn for functional promotion comes as Assistant Engineer/Assistant Director (Hort.). This personal promotion will be given on fitness basis.

(iii) Junior Engineers/Sectional Officers(Hort.) allowed personal scale of Rs.2000-3500, after completion of 15 years of service as Junior Engineers/Sectional Officers (Hort.) will get the benefit of FR-22(I)(a)(i).

(iv) On being granted personal promotion the Junior Engineers/Sectional Officers(Hort.) will continue to perform the same duties/functions of Junior Engineers/Sectional Officers(Hort.).

20-2-91 / (v) The decision at (i) above will take effect from 1/1/86 and one at (ii) above will take effect from 1/1/91. The above decision had the approval of Cabinet.

An agreement was also entered into with the representatives of the Association to the above effect


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by Govt. a copy of which is annexed as Annexure R-6.

(e) (i) The spirit of agreement was implemented by the order of the Ministry of Urban Development in their letter No.12014/287-EW2 dated 22/3/91, addressed to DG(W) which was circulated alongwith O.M. No.A-11014/1/91-EC-VI dated 27/3/91 (Annexure R-7). According to the decision with effect from 1/1/1986, the Junior Engineers(Civil & Elect.) and Sectional Officers(Hort.) of CPWD, on their completion of their 5 years of service, in the entry grade of scale of Rs.1400-2300 (Pre-revised scale of Rs.425-700) will be placed in the higher grade of Rs.1640-2900 subject to rejection unfit and vigilance clearance. As per the aforesaid agreement, the higher grade scale will not be treated as promotional but will be non-functional and the benefit of FR-22(C) (now FR-22(1)(a)(i) will not be admissible to them, as there will be no change in their duties and responsibilities. By this fresh decision all the earlier orders issued in connection with JEs' promotion from Gr.II to Gr.I were superseded. Therefore, the decision taken earlier to give the benefit of pay fixation under FR-22(C) no longer exists, except in the case of the applicants in O.A. NO.856/91 and 281/92 filed in Madras and Ernakulam Benches of this Hon'ble Tribunal. The recovery from the said applicants has been stayed.

(ii) As stated the order dated 27/3/1991 is a package deal by the CPWD JEs' Association and SOs'(Hort.) Association (CPWD) with the Govt. The deal has also extended the benefit of further higher scale of Assistant


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Engineer of Rs.2000-60-2200-EB-75-3200-100-3500 on personal basis to those JEs/SOs(Hort.), who completed 15 years of more service with effect from 1/1/91. The personal promotion will be given on fitness basis subject to vigilance clearance on the conditions that JEs, SOs(Hort.) enjoying this personal promotion will be adjusted against those vacancies subject to observance of normal procedure as and when vacancies arise and on being granted this personal promotion, they will continue to perform the same duties/functions of the JEs and SOs(Hort.). In the matter of pay fixation, they will be allowed the scale of Rs.2000-3500 on personal promotion and they will get benefit of FR-22(1)(a)(i).

(f) From the above, it follows that the fresh agreement dated 20/3/91 as implemented, in the order, has given the following pay scales to JEs.

- | | |
|--------------|--|
| Rs.1400-2300 | - Entry grade scale. |
| Rs.1640-2900 | - Effective from 1/1/86 and allowed in favour of JEs who have completed 5 years of service in the entry grade. |
| Rs.2000-3500 | - Effective from 1/1/1991 and allowed in favour of JEs who have completed 15 years of service in the grade. |

(g) Giving two higher scales to JEs and giving personal promotion in the scale of Rs.2000-3500 having regard to their stagnation is more beneficial than the


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pay scale originally given to them based on the Fourth Central Pay Commission recommendations as included in CCS(RP) Rules, 1986 as stated. In the agreement made with the CPWD JEs' Association and SOs(Hort.) Association, the benefit of pay fixation under FR-22(C) now FR-22(1)(a)(i) was allowed when they were given personal promotion from Rs.1640-2900 scale to Rs.2000-3500 scale. This benefit has not been extended to them on their placement from Rs.1400-2900 scale.

Government has taken the above decision on demand of CPWD JEs' Association and representatives of the Association are signatories to the agreement with the Government. Government has taken the above decision on the bonafide belief that the Association represents its members. The pay of the Applicant herein was wrongly fixed vide order No. 16/7/90 of EE(E), Trivandrum 75 of 1990 dated which has been corrected by the impugned order dated 19/12/94 issued by the 1st Respondent.

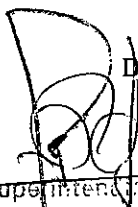
In reply to the contents of para 4 of the O.A., the Respondents submit their reply as follows:

(a) The contention of the Applicant in para 4 (b) order dated 4/1/94 has been issued all of a sudden is not correct as under the CCS (Revised Pay) Rules, 1986, which had come into force with effect from 1/1/1986, the non-functional selection grade was abolished and as per Note below Part-A of the first schedule of the Notification No.F-15(i)-IC/86 dated 13/9/1986. The existing incumbents



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in non-functional selection grade had been allowed suitable revised scale of pay Rs.1640-60-2600-EB-75-2900 corresponding to be pre-revised non-functional scale of pay as personal to them. The impugned office memorandum dated 4/1/94 is a clarification issued by the 3rd Respondent which was sought by the SSW(SZ)I, CPWD, Madras, vide his letter No. dated 5/11/1993. The orders of promotion to Grade-I already issued were kept in abeyance vide DG(W)'s O.M. dated 21/8/87 and 18/5/1989 (Annexure R-5) which were subsequently cancelled vide para 2(b) of DG(W)'s O.M. dated 27/3/91 (Annexure R-7).

(b) The contention of the Applicant in para 4 (c) that the O.M. dated 4/1/1994 issued by Respondent No.3 is only clarificatory and prospective in nature is incorrect. The Applicant was in the selection grade in the pay scale of Rs.550-900 before 1/1/86 and as such to be fixed in the corresponding suitable scale of Rs.1640-2900 with effect from 1/1/1986 under Rule 7 of CCS (Revised Pay) Rules, 1986. Therefore, the impugned office order dated 10/12/94 issued by Respondent No.1 is correct. In addition, the Audit in their para No.23 has also commented that the pay fixation in the case of Applicant is not correct and the excess amount of Pay and Allowances drawn may be covered from the Applicant. Since the pay fixation of the Applicant was wrong it was required to be rectified under the appropriate Rule and the over payments made is required to be recovered from him. There is no necessity to give any prior intimation to the Applicant as the error done has to be corrected which was

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also pointed out by Audit to set right the mistake. It is further submitted that the Applicant himself is also duty bound to bring to the notice of authorities about the benefit which he ought have not entitled under Rules.

(c) Since the pay fixation of the Applicant was wrong it required to be corrected and the over payments made to be recovered from him in accordance with relevant rules.

In reply to the legal plea taken by the Applicant, it is submitted that the impugned O.M. dated 4/1/1994 is in no way arbitrary and illegal and is in no way against the principles of natural justice. The pay fixation of the Applicant was wrong. As such, it requires to be corrected under the appropriate Rules as stated in the aforesaid paras and over payments made are required to be recovered in accordance with relevant rules and orders.

For the reasons stated above, the Applicant has not made out any case either on facts or on law and there is no merit in the O.A. It is, therefore, prayed that this Hon'ble Court may be pleased to dismiss the O.A., with costs and pass such further and other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Solemnly and sincerely
affirmed this 26th day
of Feb. 1996 and he signed
his name in my presence.

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BEFORE ME

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