

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Order : 4-02-06

Original Application No.181/2000.

1. C. M. Markose son of Late Shri C. I. Markose, aged about 56 years, resident of 76/3 JMTC Lines, Jaipur.
2. Om Prakash Gupta son of Late Shri Manohar Lal Gupta, aged about 59 years, resident of 68/333 Pratap Nagar, Sanjaner, Jaipur.
3. Suresh Chand Sharma son of Late Shri Duliram Sharma, aged 59-1/2 years, resident of B/192, Vaishali Nagar, Jaipur.
4. B.B. Mallick son of Late Shri M. D. Mallick, aged about 58 years, resident of T-20, Shanti Path, Sanjay Colony, Jaipur.
5. Bhujendra Kumar son of Shri Balwant Singh, aged about 58 years, resident of 207, Shanti Nagar, Durgapura, Jaipur.
6. Virendra Kumar Bhatia son of Shri Jugal Kishore Bhatia, aged about 56 years, resident of P-46, Green Huts Piru Lines, Jaipur Cantt.
7. Narendra Verma son of Shri Nawal Singh, aged about 59 years, resident of 37 A.K. Gopalan Nagar, Khatipura Jaipur.
8. Hanuman Prasad Kumkaria son of Shri Kishan Lal, aged about 42 years, resident of 76/4 MES Officer's colony, JNTC Lines, Power House Road, Bani Park, Jaipur.
9. Shri Paras Mal Jain son of Late Shri Tika Ram Jain, aged about 59 years, resident of 578, Shanti Nagar, Durgapura, Jaipur.
10. B. N. Singh son of Shri H. S. Tyagi, resident of 32/17, Pratap Nagar, Sanjaner, Jaipur.

... Applicants.

v e r s u s

1. Union of India through its Secretary, Ministry of Defence, New Delhi.
2. Engineer-in-Chief, Kashmir House, Army Headquarters, DHQ, P.O., New Delhi-11.

... Respondents.

Mr. P. P. Mathur counsel for the applicants.
Mr. S. K. Agarwal Adv. brief holder for
Mr. Sanjay Pareek counsel for the respondents.

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Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. A. K. Bhandari, Administrative Member.

: O R D E R :
(per Hon'ble Mr. M. L. Chauhan)

The applicants are aggrieved by the order dated 19.01.2000 (Annexure A-1) and order dated 24.01.2000 (Annexure A-2), whereby the respondents restructured the posts of Assistant Engineer (Civil)/(E&M), Assistant Engineer (Quality Surveying & Contracts) and Assistant Architect of MES by upgrading 50% of the total posts of the respective cadres from Rs.6500-200-10500 to Rs.7500-250-12000 and have filed this OA thereby praying for the following reliefs :-

"1. by an appropriate order or direction, the respondents be directed to kindly provide the pay scale of 7500-12000 to the Assistant Engineer (Civil and E/M) and the pay scale should be provided w.e.f. 1.1.1996 with all consequential benefits.

2. That the respondents be further directed that if at all upgradation in the pay scale of post of AE (Civil and E/M) is to be provided then after providing pay scale of 7500-12000 they should provide pay scale of 8000-13500 as a consequence of upgradation or in the alternative the respondents be directed to provide the pay scale of 8000-13500 to all AE (Civil and E/M) on the doctrine of equal pay for equal work as the AE (Civil and E/M) are discharging the same duties of the post of AEE and this regard also the applicants be given all consequential benefits arising out of it.

3. that the impugned order may kindly be struck down to the extent it provides the benefit of the pay scale from a prospective date instead of 1.1.1996 and while quashing the impugned order to that extent, the respondents be further directed to pay arrears arising out of it.

4. That the respondents be further directed to pay interest @ 18% p.a. on all sums which becomes due in view of the prayer so made herein and if the same are accepted by the Hon'ble Tribunal.

5. Any other relief in this regard may also be awarded to the applicant which the Hon'ble Tribunal deem fit in favour of the applicant.

6. Cost of the application may also kindly be awarded in favour of the applicant."

2. The facts of the case are that the applicants were holding the post lower than Assistant Engineer. Subsequently, they were promoted to the post of Assistant Engineer in different years and working on the pay scale as was prevalent for the said post. It is further averred that

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the promotion of the applicants to the post of Assistant Engineer (B/r) & (E/M) was made from the post of Superintendent Grade I and the prevalent pay scale of the post of Superintendent Grade I at the time of promotion was lower than the post of the Assistant Engineer. Even after the revision of pay scale and the recommendations of the IIIrd and IVth Pay Commissions, there were difference in the pay scale of the post of Assistant Engineer and Superintendent Grade I. It is further pleaded that pursuant to the implementation of IVth Pay Commission Report, the Assistant Engineer was given pay scale of 2000-3500 whereas the pay scale of the post of Superintendent Grade I was 1640-2900. Learned counsel for the applicants has further contended that the anomalous situation has been created now when the Vth Pay Commission had recommended the pay scale of 7500-12000 for the post of Assistant Engineer (B/R) & (E/M). However, contrary to the recommendations, so made by the Vth Pay Commission, the respondents had given the pay scale of 6500-10500 to the post of Assistant Engineer (B/R) & (E/M) and by virtue of this anomaly in implementation of the recommendation of Vth Pay Commission two posts i.e. Superintendent Grade I and the Assistant Engineer (B/R) & (E/M) were kept at par despite the fact that the post of Superintendent Grade I is a Group 'C' post whereas the post of Assistant Engineer (B/R) & (E/M) is a promotional and higher post. It is further pleaded that taking note of this anomaly, ^{effort was} ~~made~~ ^{made to remove} the said anomaly so that Assistant Engineer can be given the pay scale which was recommended by the Vth Pay Commission. However, the respondents in this regard have acted half heartedly and the anomaly which otherwise existing at the time of implementation of Vth Pay Commission Report even existing today after issuance of the order dated 19.01.2000 as well as the consequential order dated 24.01.2000. A perusal of the impugned order dated 19.01.2000 shows that the respondents have created two pay scales for the post of Assistant Engineer (B/R) & (E/M) for the first time and by virtue of such creation, the pay scale of 6500-10500 would be given to the Assistant Engineer (B/R) & (E/M) who were not senior enough to get the benefit of upgraded pay scale i.e. 7500-12000, though senior Assistant Engineer (B/R) & (E/M) is being benefitted with the pay scale of 7500-12000. The benefit of revised pay scale is being given to all employees w.e.f. 1.1.1996 whereas the order dated 19.01.2000 provides benefit of revised pay scale from the prospective date. Thus the action of the respondents is discriminatory. The applicant has further pleaded that in other departments more particularly in the department of Water Resource, the Assistant Engineers are being given pay scale of Rs. 7500-12000 and revised pay scale of Rs. 9000-13500 whereas the applicant

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is being given the pay scale of Rs.6500-10500, as such the action of the respondents is arbitrary. It is on these facts that the applicants have filed this OA for praying the aforesaid reliefs.

3. The respondents have filed reply. In the reply, the respondents have categorically denied that the pay scale of Rs.7500-12000 has been recommended by the Vth Central Pay Commission to Asst. Engineers E/M or B/M. It has been stated that Vth Central Pay Commission has recommended the pay scale of Rs.6500-10500 and the said scale has been correctly granted to the applicants. The Vth Central Pay Commission has also recommended upgradation of 50% posts in pre-revised pay scale of Rs.2000-3500 to be upgraded to pay scale of Rs.2500-4000 (Revised 7500-12000) at para 50.38 of its report. This has also been approved by Min. of Def. and executive orders issued vide letter No.85601/16/VCPB/3/CSOC/173/D (Works) dt. 19.01.2000.

4. Consequently the post of Assistant Engineer Grade I (in the pay scale of Rs.7500-12000) were upgraded.

Thus according to the respondents, the post in the higher scale were created as per recommendations of Vth Central Pay Commission. The respondents have further categorically denied that the post of Assistant Engineer and Superintendent Grade I have been kept at par. It is further pleaded that the Superintendents who could not be promoted to the post of Assistant Engineer after rendering a total service of 15 years were permitted to be given the personal pay promotion to the pay scale of Rs.2000-3500 (revised 6500-10500). These are to be adjusted as Assistant Engineer as and when regular posts of AE fall vacant. Thus according to respondents there is no anomaly in the pay scales attached to the posts of Supdt. Grade I/Assistant Engineer. Above two are two different posts with different pay scales.

5. As regards parity in the pay scale as was being given to the Assistant Engineers of other department, it has been explained that the comparison with Water Resources Department quoted by applicants is not relevant. In case of MES the post of Assistant Engineer is culmination of the career of Supdts mostly recruited at the lower entry grades of 5000-8000 as JE. Promotion to the post of Assistant Engineer is 100% from such lower posts. While in the case of Water resource development there is considerable direct inductions of

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graduate engineers. The posts are thus quite different in job requirement, qualifications, nature of duties etc. Applicants can compare their services only with similar posts carrying similar qualifications, job content, duties and responsibilities. Two posts in different department of Central Govt. with different qualifications do not become similar merely on grounds of similarity in designation. Applicants have been granted pay scale at par with other such incumbents with similar duties/qualifications etc. as for Assistant Engineers of CPWD with whom their services are broadly comparable. Thus the question of discrimination stands denied.

6. The applicants despite repeated opportunity ^{has} not filed a rejoinder, as such the submission made by the respondents in the reply has remained uncontraverted.

7. We have heard the learned counsel for the parties and perused the material placed on record.

8. Learned counsel for the applicants has raised mainly two contentions in support of grant of pay scale of Rs.7500-12000. First contention raised by the learned counsel for the applicant is that Superintendent grade I which is a feeder cadre to the post of Assistant Engineer is being granted the pay scale of Rs.6500-10500 on the recommendation of Vth Central Pay Commission, whereas the applicants were also being paid the same pay scale despite the fact that the Vth Central Pay Commission has recommended the scale of Rs.7500-12000 to this category. At the outset, it may be stated that the contention of the applicant is without any substance. The respondents have categorically stated that the Vth Central Pay Commission has not recommended the higher scale of Rs.7500-12000 to the category of Assistant Engineer. In fact the Vth Central Pay Commission recommended the scale of Rs.6500-10500 to the category of Assistant Engineer which pay scale is being paid to the applicants. As such the action of the respondents cannot be said to be arbitrary.

9. Further contention of the learned counsel for the applicants is that Superintendent Grade I is also being given the pay scale of Rs.6500-10500 is also without any basis. The respondents have categorically stated that the post of Assistant Engineer and Superintendent Grade I has not been kept at par. Those Superintendent who could not be promoted to the post of Assistant Engineer after rendering a total service of 15 years were permitted to be given the

personal pay promotion to the pay scale of Rs.2000-3500 (revised Rs.6500-10500). These are to be adjusted as Assistant Engineer as and when regular posts of AE fall vacant. Thus the contention of the applicants that the same scale is being given to the Assistant Engineer and Superintendent Grade I is wholly without substance and deserves out right rejection.

10. Now let us consider the contention of learned counsel for the applicants that the applicants should be granted a scale of Rs.7500-12000 as is being given to the employees of other department. The respondents have categorically stated that the pay scale of Rs.6500-10500 has been given to the applicants, keeping in view, the qualifications, job content, duties and responsibilities. The applicants have been granted the pay scale at par with incumbents with similar duties/qualifications as for Assistant Engineers of CPWD with whom their services are broadly comparable. The respondents have categorically stated that the appointment to the post of Assistant Engineer in Water Resource Department is made by direct inductions of Graduate Engineers whereas in the case of Assistant Engineers working in MES the post of Assistant Engineer is made 100% by promotion from lower posts. It has also been specifically pleaded that the post of Assistant Engineer in Water Resource Department are quite different in job requirement, qualifications, nature of duties etc. and as such the applicants are not entitled for the higher scale. The applicants have not refuted these allegations. Admittedly the applicants are being given the scale of Rs.6500-10500 at par with Assistant Engineer working in the CPWD with whom their services are broadly comparable. The scale of Rs.6500-10500 was also recommended by the Vth Central Pay Commission, the recommendation of which has been accepted by the Government and the applicants are being given the said pay scale. As such the action of the respondents in granting the said scale of Rs.6500-10500 to the applicants cannot be said to be arbitrary.

11. Before parting with the matter, it may also be relevant to notice here that the higher scale of Rs.7500-12000 was granted to the Assistant Engineers on the recommendations of Vth Central Pay Commission on account of restructuring and upgradation of 50% of posts of the Assistant Engineers vide order dated 19.01.2000. These upgraded posts were designated as Assistant Engineer Grade I whereas the remaining 50 % posts in the existing pay scale of Rs.6500-10500 were redesignated as Assistant Engineer Grade-II. Half hearted argument was advanced by the learned counsel for the applicants that the said

upgradation should have been granted with effect from 01.01.1996.

12. Suffice it to say that it is not a case of the revision of the pay scale. The Vth Central Pay Commission has recommended the upgradation of 50% of posts of Assistant Engineers to that of Assistant Engineer Grade-I in the pay scale of Rs.7500-12000. This recommendation was accepted by the Government subsequently and 50% of Assistant Engineers were upgraded in the pay scale of Rs.7500-12000. Since it was a case of ~~upgradation~~ upgradation of the posts and not revision of the pay scale, as such the action of the respondents cannot be faulted if the promotion/upgraded scale has been granted to the eligible persons from prospective date as the pay scale has to be given on the basis of selection-cum-seniority involving the element of promotion.

13. At this stage, it may be relevant to notice ~~the~~ the decision of the Apex Court regarding Equation of posts and equation of pay. It has been held by the Apex Court in the case of Randhir Singh vs. Union of India AIR 1982 SC 879, as under : -

"Equation of posts and equation of pay are matters, primarily for the Executive Government and expert bodies like the Pay Commission and not for Courts but we must hasten to say, that where all things are equal, that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to the different departments. Of course, if officers of the same rank perform dissimilar functions and the powers, duties and responsibilities of the posts held by them vary, such officers, may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same."

Further in the case of State of Haryana vs. Personnel Staff Association AIR 2002 SC 2589 (2593) ^{the Apex Court} has held that Fixation of Pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter several relevant factors, some of which have been noted by this Court in the decided case, are to be considered. The courts should approach such matters with restraint and interfere only when they are satisfied the decision of the Government is patently irrational, unjust and prejudicial to employee and the Government while taking the decision has ignored factors which are material and relevant for a decision in the matter. While making copious reference to the principle of equal pay for equal work and equality in the matter of pay the High Court overlooked the position that the parity sought by the petitioner in the case was with employees having only the same

designation under the Central Government. Such comparison by a section of employees of State Government with employees of Central Government based merely on designation of the posts was misconceived. At this stage, it will also be relevant to quote the decision of the Apex Court in the case of Union of India and Anr. v. P V Hariharan and Anr. 1997 SCC (L&S) 838, whereby the Apex Court has held as under :-

Quite often the Administrative Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunals should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it is the proper authority to decide upon this issue. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales. Sometimes orders have been passed by Single Members and that too quite often Administrative Members, allowing such claims. These orders have a serious impact on the public exchequer too. It would be in the fitness of things if all matters relating to pay scales, i.e. matters asking for a higher pay scale or an enhanced pay scale, as the case may be, on one or the other ground, are heard by a Bench comprising at least one Judicial Member."

14. Keeping in view the principle of law as laid down by the Apex Court, the applicants have failed to prove as to how the decision of the Government is patently irrational, unjust and prejudicial to the applicants. The applicants have further failed to show that while granting the pay scale, the respondents have ignored the factors which are material and relevant for decision in the matter. Rather the respondents have placed on record sufficient material to establish that the pay scale of Rs.6500-10500 is being granted to the applicants, keeping in view the qualifications, job contents, duties and responsibilities of the post and the applicants were granted the pay scale at par with other incumbents with similar duties and qualifications i.e. Assistant Engineer of CPWD with whom their services are broadly comparable. Further the pay scale of Rs.6500-10500 being granted to the applicants is in accordance with the recommendations made by the Vth Central Pay Commission which has been accepted by the Government.

15. In view of what has been stated above, the present OA is devoid of merit and is accordingly dismissed. No order as to costs.


(A. K. BHANDARI)
MEMBER (A)


(M. L. CHAUHAN)
MEMBER (J)