

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**  
**JABALPUR**

**Original Application No.200/00441/2014**

Jabalpur, this Monday, the 20<sup>th</sup> day of August, 2018

**HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER**  
**HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER**

1. Dinesh Kumar Choudhary, aged about 53 years,  
S/o Late Shri C.L. Choudhary, R/o T-4 Shakti Vihar Apartment  
Wright Town, Jabalpur 482009
2. Gurdeep Singh Ahuja, Aged about 51 years, S/o Shri A.S. Ahuja,  
R/o Shukh Sagar Vally, Polipathar, Jabalpur 482001
3. Naresh Kumar Choubey, aged about 58 years,  
S/o Shri G.S. Choubey, R/o Kachnar Vihar Vijay Nagar,  
Jabalpur-482001
4. Dilip Kulkarni, aged about 55 years,  
S/o Late Shri Shriram Kulkarni, R/o Radhika Apartment,  
Yadav Colony, Jabalpur-482002
5. H.K. Bali, aged about 56 years, S/o Shri J.R. Bali,  
R/o Narsingh Nagar, Ranjhi, Jabalpur-482005
6. P. M. Buti, Aged about 56 years, S/o Late Shri M. Buti,  
R/o VFJ Estate Jabalpur, Jabalpur 482009
7. M.K. Kanojia, aged about 54 years,  
S/o Late S.R. Kanojia, R/o Vikas Nagar,  
Krishi Upaj Mandi, Jabalpur 482002
8. A.K. Tamhane, aged about 56 years,  
S/o Late Shri R.G. Tamhane, R/o Vivek Colony,  
Kanchanpur, Jabalpur 482004
9. A.K. Guha, Aged about 57 years, S/o Late Shri T.P. Guha,  
R/o Satna Building, II Floor, Jabalpur 482002
10. M. K. Kendurkar, aged about 56 years,

S/o Late Shri Krishana Rao,R/o Ashok Nagar Adhartal,  
Jabalpur 482004

11. R.L.Tiwari, Aged about 57 years,  
S/o Late Shri V.P.Tiwari, R/o Maha Kahshal Nagar,  
Adhartal, Jabalpur-482004

12. M.K.Sharma, Aged about 58 years,  
S/o Late Shri P.S.Sharma, R/o Vehicle Estate, VFJ,  
Jabalpur 482009

13. H.K. Newley, aged about 59 years  
S/o Late Shri M.L.Newley, R/o Ashok Nagar,  
Adhartal, Jabalpur 482004

14. S.L. Kartikey, aged about 54 years,  
S/o Late Shri L.L. Kartikey, R/o Vehicle Estate, VFJ,  
Jabalpur 482009

15. Mahmood Ali, Aged about 58 years,  
S/o Late Shri Wahid Ali, R/o House No. 660 Cantt.  
Jabalpur 482001

16. R.K.Prasad, aged about 54 years,  
S/o Late Shri Ras Narain Lal, R/o House No. 4162,  
Ganga Maiya VFJ, Jabalpur 482009

**-Applicants**

(By Advocate –**Shri Pankaj Dubey**)

### **V e r s u s**

1. Union of India, through its Secretary,  
Ministry of Defence, New Delhi-110011

2. The Chairman, Ordnance Factory Board,  
10-A, Aucklnad Road,Kolkata-700001

3. The General Manager, Vehicle Factory,  
Jabalpur (M.P.)-482009

4. The General Manager, Grey Iron Foundry,  
Jabalpur (M.P.)-482009

**-Respondents**

(By Advocate –**Shri N.K.Mishra**)

(Date of reserving the order:-01.05.2018)

## **O R D E R**

### **By Ramesh Singh Thakur, JM:-**

By way of this Original, the applicants are aggrieved against the order dated 04.02.1969 (Annexure A-3). Hence they filed this Original Application.

**2.** The applicant has prayed for the following reliefs in this Original Application:-

#### **“8. Relief Sought:**

*(8.1) To grant the benefit of circular dated 04.02.1969.*

*(8.2) To grant the benefit of the judgment dated 07.10.99.*

*(8.3) To call for the entire record of the case for kind perusal of this Hon'ble Court.*

*(8.4) To grant the increment to the applicants from the dated of acquiring degree.*

*(8.5) To grant arrears of increment from the dated of entitlement at the rate of 18% interest.*

*(8.6) Cost of the application.”*

**3** The brief facts of the case are that the applicants Nos. 1 to 14 were working as supervisor with the respondents-Vehicle Factory Jabalpur. The applicants Nos. 15 & 16 were working as supervisor with the respondent-Grey Iron Foundry. All the applicants have acquired bachelor's degree in engineering in their respective years prior to 01.04.1993. The applicants are entitled to get three advance increments on obtaining the bachelor's degree in engineering, a copy of the service certificates are filed as Annexure A-2.

4. The applicants contended that as per the policy of the respondents notified in Memorandum dated 04.02.1969 "A person who acquired a degree in engineering/AMIE while they are serving in a non-gazetted technical/scientific grade shall have their pay reaffixed with effect from the date on which they acquired the above mentioned qualification, at this stage in his scale of pay which would give him three advance increments." A copy of the letter is attached as Annexure A-3.

**4.1** Learned counsel for the applicant further argued that vide office memorandum dated 28.06.1993 (Annexure A-4) the Department of Personnel and Training have issued a circular whereby they indicated that Ministries switching over from the existing system of advance increments based incentive to a new system of one time Lump-sum incentive, which has been made effective from the financial year 1993-94 mentioning that the present system of giving advance increments shall be replaced by grant of lump-sum amount as incentive.

**4.2** It has been further contended by the learned counsel for the applicant that the new scheme of granting one lump-sum amount for acquired higher qualification has been effective from the financial year 1993-94 and person who have acquired higher qualification on or after 01.04.1993 only are to be granted Lump-

sum amount as incentive under the scheme. It is further submitted by the learned counsel for the applicant that the respondents have wrongly followed the circular dated 26.09.1995 wherein at Para 2 it is stated that “the employees who have already acquired the higher qualification of degree in engineering AMIE after joining service will also be eligible for the incentive of Rs. 4000/- in Lump-sum”.

**4.3** Learned counsel for the applicant further averred that there is an omission/fault on the part of the respondents, that the person having higher qualification prior to 01.04.1993 should have received the benefits in terms of O.M. dated 04.02.1969, in that case the incentive of 4000/- in Lump-sum is not admissible. The payment of Rs. 4000/- as incentive for acquiring higher qualification was not justified in the case of applicants but respondents had not taken timely action for giving incentives to the applicants as per the existing rules. The learned counsel for the applicant submitted that a similar matter has already been decided by the Ernakulam Bench of this Tribunal in O.A. NO. 755/97 passed on 07.10.1999 in respect of the case of **Shri Ramaswami Superintendent MES vs. Union of India**. It is submitted that the applicant therein was granted the benefit of the relevant scheme in compliance of the orders of this Hon'ble Tribunal. A copy of the order dated 07.10.99 is annexed as Annexure A-6.

**4.4** Learned counsel for the applicant further submitted that several communications had been made to the respondents with regard to grant of three advance increments but no action has been taken by the respondents. A copy of the communication is filed herewith as Annexure A-8.

**5.** The main ground for challenge by the applicants in this O.A. is that the action of the respondents in not following the circular dated 04.02.1969 is arbitrary illegal and discriminatory. The applicants are put to discrimination as the similarly placed persons have been giving the benefits of the circular of 1969. The applicants made repeated representation which has not been decided by the respondents.

**6.** The respondents have filed their reply wherein they submitted that the applicants Nos. 15 & 16 both are employees of respondent No.4 Factory. The applicant No. 15 was appointed as Supervisor 'B'/Tech with effect from 22.10.1979 and applicant No. 16 was appointed as Supervisor 'B'/Tech (Met) with effect from 01.12.1980 with respondent No. 4. applicant No. 15 was holding qualification of Post Diploma in Automobile and applicant No. 16 was holding qualification of Diploma in Metallurgical Engineering. During the course of their duties they acquired Bachelor's Degree in Engineering in Mechanical and AMIIM respectively after

seeking prior approval from respondent No. 4. It has been further submitted by the respondents that a policy for grant of increment/lump-sum to employees on acquiring higher qualification was framed in the year 1969 and was subsequently revised from 1993-1994. The policy of 1969 prescribed grant of 2/3 advance increment upon acquisition of higher qualification by the government servant while in service. The revised policy replaced advance increments with grant of lump sum incentive.

7. The respondents have filed their Para-wise reply in which they submitted that the applicants on acquiring higher qualification were granted lumpsum incentive of Rs. 4000/-on 07.03.1996 in accordance with the orders given by the Ordnance Factory Board Kolkata vide letter dated 18.10.1995 (Annexure R-3). After receiving the amount the applicants (except applicant No. 6, 15 & 16 who were not employed in VFJ) on 07.03.1996 (Annexure R-4) had given an undertaking that “the incentive of Rs. 4000/- received by us is acceptable subject to the final outcome of the O.A.340/1991 pending at CAT, Jabalpur.

7.1 Learned counsel for the respondents further submitted that as per records available with the answering respondents no such representations were preferred by the applicants in the past. Even the applicants averred in the O.A. that they have repeatedly

represented in the matter. However, the applicants have not submitted any documentary evidence to the above effect. The unexplained delay of almost 18 years on the part of the applicants in approaching the Court dis-entitles them to grant any relief on the ground of delay and latches.

**7.2** It has further been contended by the learned counsel for the respondents that applicants were granted lump-sum incentives of Rs. 4000/- on 07.03.1996, in accordance with OFB order dated 18.10.1995 (Annexure R-5) and the same was accepted by the applicants, on protest by giving an undertaking dated 15.03.1996 (Annexure R-4) that the lump sum received by them is subject to the outcome of O.A. No. 340/1991 pending before CAT Jabalpur. However, after one month the Hon'ble CAT on 24.04.1996 dismissed the O.A. Since then and till filing of the present O.A. the applicants did not communicate regarding receipt of incentive of Rs. 4000/-. Neither any reply nor any confirmation regarding the acceptance of such incentive was given by these applicants, which means that the applicants were fully satisfied with the lump sum incentive they had received.

**8.** The applicants have filed their rejoinder to the reply filed by the respondents, wherein it is submitted that the respondents for the purpose of defending their case and preventing the applicants from

grant of their legitimate claim in terms of entitlement and parity as well are intending to misconstrue the cause of action which is not permissible in the present case. A kind attention of this Hon'ble Tribunal is invited to Annexure A-7, the persons mentioned therein have been given the benefits vide communication dated 18.08.2010 and 17.02.2014. The present applicants who are similarly placed are seeking parity in terms of the benefits given to them and therefore there is no question of the claim being submitted at a belated stage.

**8.1** It is further contended by the learned counsel for the applicant that the Ordnance Factory Board vide communicated dated 18.09.2013 has sent a proposal mentioning several communications including the names of the applicants and therefore, it was very much under consideration, however on filing the O.A. A copy of the order dated 18.09.2013 filed at Annexure A-9. It is further submitted by the applicant that MoD while granting the benefit to Shri Pulak Kumar Dutta has taken a note of delay held by the O.F.B. and has made a communication dated 18.11.2009 taking it to be a serious issue and against the interest of the similarly placed employees. A Copy of the said communication is marked with rejoinder at Annexure A-12.

9. The respondents have filed the additional reply to the rejoinder filed by the applicants, wherein it is submitted by the respondents that the applicants on 07.03.1996 had given an undertaking that incentive of Rs. 4000/- is acceptable on protest subject to final outcome of O.A. No. 340/1991. This Hon'ble Tribunal vide order dated 24.04.1996 dismissed the said case holding that there was no reason for directing the respondents to grant incentives as it prevalent in other Ministries. The respondents further averred that perhaps the applicants are not aware that DOPT vide letter dated 28.06.1993 had replaced the system for granting 3 advance increments to a lump sum incentive from the current financial year and the Ordnance Factory Board, Kolkata vide letter dated 18.10.1995 had given direction that the employees who have acquired higher qualification in Engineering/AMIE may be granted lump sum incentive of Rs. 4000/-.

**9.1** Learned counsel for the respondents further contended that it was specifically informed to the applicants that as he has claimed and accepted the incentive of Rs. 4000/- lump sum on acquiring degree in Engineering, therefore his request for grant of another benefits for the same reason can not be accede to at this belated stage. A copy of the order dated 19.05.2014 is filed and marked as Annexure RR-1. With regard to consideration of representation

submitted by the applicants, it is submitted that the Board as per the directives of the Hon'ble Court, considered and decided the representation by passing a speaking order on 19.05.2014 in accordance with law. Thus, the averments made by the applicants in this O.A. are devoid of any merit.

**10.** We have heard the learned counsel for the parties and carefully perused the pleadings and the documents available on record.

**11.** The replying respondents have admitted the fact that the applicants Nos. 1 to 14 were working as Supervisor with the respondents Vehicle Factory Jabalpur. The applicants Nos. 15 and 16 were working as Supervisor with the respondents in Grey Iron Foundry. It has been submitted by the replying respondents that applicant No. 15 was appointed as Supervisor 'B'/Tech. with effect from 22.10.1979 and applicant No. 16 was appointed as Supervisor B Tech.(Met) with effect from 01.12.1980 with respondent No. 4. It has been submitted by the replying respondents that applicant No. 15 was holding qualification of Post Diploma in Automobile and applicant No. 16 was holding qualification of diploma in Metallurgical Engineering. It has been admitted by the replying respondents that during the course of their duties the applicants acquired Bachelor Degree in Engineering (Mech.) and AMIE

respectively after seeking prior approval from respondent No.4 and the applicants have intimated acquisition of higher qualification on 03.07.1990 and 21.03.1988 respectively.

**12.** It is further an admitted fact that the respondents have followed the circular dated 26.09.1995 (Annexure A-5), whereby in Para 3 it is stated that, “the employees who have already acquired the higher qualification of degree in engineering/AMIE after joining service will also be eligible for the incentive of Rs. 4000/- in Lump-sum”.

**13.** The main contention of the applicant is that all the applicants have acquired degree in engineering/AMIE before the cut off date i.e. 28.06.1993(Annexure A-4). The counsel for the applicant submits that as per Annexure A-3, all the applicants are entitled for three advance increments because they all have acquired the degree in engineering/AMIE and notification dated 28.06.1993, (Annexure A-4) is only applicable after 28.06.1993.

**14.** On the other side, the respondents have submitted that the applicant on acquiring higher qualification were granted lump-sum incentive of Rs. 4000/- on 07.03.1996 in accordance with the orders given by Ordnance Factory Board, Kolkata vide letter dated 18.10.1995 (Annexure R-3). After receiving the amount the applicants except applicants Nos. 6, 15 and 16 (who were not

employee in VFJ) on 07.03.1996 (Annexure R-4) had given an undertaking that “the incentive of Rs. 4000/- received by us is acceptable subject to final outcome of Original Application No. 340/1991 pending before CAT Jabalpur. However, after one month the Hon’ble CAT on 24.04.1996 dismissed the O.A. Since then and till filing of the present O.A. the applicants did not communicate regarding receipt of incentive of Rs. 4000/-. So the applicants were fully satisfied with the lump-sum incentive granted to them.

**15.** Further, the applicant in the rejoinder has submitted that the respondents cannot prevent the applicant for grant of their legitimate claim in terms of entitlement in parity and the applicant who are similarly placed are seeking parity in terms of the benefits given to them and there is no question of submitting their claim at a belated stage.

**16.** It is pertinent to mention that the applicants have specifically submitted that MoD while granting the benefits to Shri Pulak Kumar Dutta has taken a note of delay held by O.F.B. and has made a communication dated 18.11.2009 taking it to be a serious issue and against the interest of the similarly placed employees vide communication marked as Annexure A-12 with the rejoinder.

**17.** Learned counsel for the respondents submits that regarding the representation submitted by the applicant the Board as per

direction of the Hon'ble Court considered and decided the representation by passing a speaking order on 19.05.2014 in accordance with law.

**18.** The contention of the applicant is that the similarly placed persons have been given the benefits vide communication dated 18.08.2010 and 17.02.2014. The applicant has also relied upon the judgment passed by the Co-ordinate Bench, Central Administrative Tribunal, Ernakulam in Original Application No. 755/1997 passed on 07.10.1999 (Annexure A-6) in the matters of **S. Ramaswamy** (Supra) and the said order of the Tribunal has been complied with and similarly placed persons has been given the benefits of relevant scheme. The counsel for the applicant has also submitted that vide order dated 18.09.2013 (Annexure A-9) the Ordnance Factory Board has sent a proposal mentioning several communications including the name of the applicant which is under consideration with the respondents.

**19.** The counsel for the applicant has also relied upon the judgment of Central Administrative Tribunal Bangalore Bench in Original application No. 1075/2014 dated 11.11.2014 in the matters of **Shri S.K.Mudgil vs. Union of India and others**, whereby the Hon'ble Tribunal has granted the same relief which was granted to the similarly placed persons after 18 years.

**20.** So the contention of the replying respondents that the applicant has not pressed the issue after granting the lumpsum incentive of Rs. 4000/-, is not sustainable due to the fact that undertaking was given by the applicant on protest. Moreover, relying upon the judgment in the matters of **S.K.Mudgil** (Supra), the same issue has been discussed.

**21.** In view of the above discussion we have considered the submissions of rival parties and perused the material on record. We have also carefully gone through the judgment in order passed by the Coordinate Bench of CAT, Ernakulam in the matters of **S. Ramaswamy** (Supra) and order passed by the Coordinate Bench at Bangalore in the matters of **S.K.Mudgil** (Supra), we have no alternative except to allow the Original Application by following the order passed by the Co-ordinate Benches of CAT.

**22.** Accordingly, the Original Application is allowed. The respondents are directed to grant the benefit of circular dated 04.02.1969 from the date of acquiring degree by the applicants with all consequential benefits within a period of 60 days from the date of receipt of a certified copy of this order. No order as to costs.

**(Ramesh Singh Thakur)**  
**Judicial Member**

rn

**(Navin Tandon)**  
**Administrative Member**