

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/32/2018

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member

1. Anup Kumar Mukhopadhyay,
S/o Late Beman Behari Mukhopadhyay,
Aged about 58 years,
Working as Superintending Engineer(C),
Civil Construction Wing,
AIR, Doordarshan Bhawan,
Kolkata – 700095.
2. Ram Kumar Singh,
S/o Shri Kedar Nath Singh,
Aged about 58 years,
Working as Superintending Engineer,
CCW, AIR, Room No. 113,
Lodi Road, CGO Complex,
New Delhi – 110003.
3. Ashok V. Naik,
S/o Late Venkatraman G. Naik,
Aged about 59 years,
Retired as Superintending Engineer (C),
CCW, AIR, TV Annexe Building, Chepauk,
Chennai – 600017,
At present residing at 2,
Thakur Ram Krishna Lane, Garfa,
PO - Santoshpur, PS – Garfa,
Kolkata – 700075.

..... Applicants.

-Versus-

1. Union of India
through the Secretary,
Ministry of Information and Broadcasting,
Shastri Bhawan, 5th Floor,
New Delhi - 110001.
2. Secretary,
Ministry of Personnel,
Public Grievances & Pensions,

Department of Personnel & Training,
Sansad Marg, North Block,
New Delhi – 110001.

3. The Chairman,
UPSC, Dholpur House,
Shahjahan Road,
New Delhi – 110009.

4. Director General,
AIR, Civil Construction Wing,
Akashvani Bhawan,
Sansad Marg,
New Delhi – 110001.

5. Chief Engineer – (C),
Civil Construction Wing,
AIR, Soochna Bhawan,
CGO Complex, Lodi Road,
New Delhi – 110003.

6. Prasar Bharti
Through Chief Executive Officer,
Prasar Bharti, Doordrshan Bhavan,
Mandi House, Copernicus Marg,
New Delhi – 110001.

..... Respondents.

For the applicant : Mr. C. Sinha , counsel

For the respondents : Mr. S. Paul, counsel

Heard on :08.08.2018

Order On : 12.10.18

ORDER

Bidisha Banerjee, Judicial Member

As a sequel to an earlier O.A.No.635/2017, three applicants have jointly preferred this O.A. to seek the following reliefs:-

"a) Liberty may be granted under Rule 4(5)(a)of CAT(Procedure) Rules, 1987 to file and maintain the Original Application jointly;

- b) To direct the respondents to cause them to act in accordance with DOP&T's Office Memorandum dated 18.01.2011 and grant of Grade Pay of Rs.10,000/- at SAG Level in the Organised Group-A Engineering Services w.e.f. June 2012 with all consequential benefits;
- c) To set aside and quash impugned letter dated 21.07.2017 issued by the Under Secretary to Government of India, Ministry of Information and Broadcasting under covering letters dated 03.08.2017 and letters dated 17.10.2017 issued by SSW-II, CCW, AIR;
- d) Any other order or orders as the Hon'ble Tribunal deems fit and proper."

2. Their case in a nutshell is as under:-

The applicant, A.K. Mukhopadhyay was recruited to the post of Assistant Engineer (Civil) through Engineering Services Examination , 1982 conducted by U.P.S.C. He was promoted to the post of Executive Engineer(Civil) in the year 1993 on ad hoc basis and thereafter in the year 1995 on regular basis. He was promoted to Superintending Engineer(Civil) in the Grade Pay of Rs.8700/- in 2009 on regular basis.

Though he belonged to 1982 Batch of U.P.S.C. he was not extended benefit of N.F.U. of in the Grade Pay of Rs.10,000/- as provided to Superintending Engineer(C)s in CPWD belonging to Batch of 1984/1991/1992. Aggrieved as such the applicant No.1 represented vide letter dated 08.08.2016(Annexure A/2) to expedite the Recruitment Rule of Organised Group 'A' Services of CCW AIR, so that, similar benefit of NFU could be provided to him.

The applicant No.2 namely, R.K. Singh similarly represented on 04.08.2016 . Identical representation dated 06.10.2016 (Annexure A/2) filed by Ahok V. Naik, Applicant No.3 wherein he stated that he joined Civil Construction Wing, All India Radio in the post of Assistant Engineer(Civil) on the basis of Engineering Services Examination 1982. On regular promotion

to the post of Executive Engineer(C) he was inducted into Group 'A' services since 20th June, 1995. As per the recommendation of 5th CPC, he was granted Non Functional Junior Administrative Grade(NFSG) in the pay scale of Rs.12000-16500(Grade Pay -7600 as per 6th CPC) w.e.f. 24th October, 2000. He was promoted to the grade of Superintending Engineer (C) in the scale of Rs.37,400-67000+8700 Grade Pay w.e.f. 31st December, 2008 and thereby completed more than seven years of regular service in the grade pay of Rs.,8700/- and also 21 years of service against a Group 'A' post. He, therefore, became entitled to Non-Functional Upgradation(NFU) to SAG(PB 4 Grade Pay Rs.10000) w.e.f. 2012, as the eligibility for SAG level is 3 years in the JAG grade or 17 years regular service in a Group 'A' post with at least 1 year of regular service in the PB-4 Grade Pay of Rs.8700. Though similar benefits have been provided to Engineers of All India Radio and CPWD who joined through same engineering service examination, he was deprived of NFU from JAG to SAG level and no benefit of ACP/MACP was granted to him. He has also stated in the representation that the distinction between organised Group 'A' Service and unorganised Group 'A' Service has been done away with by a judgment of Supreme Court in case of Appeal(Civil) 793 of 1998, State of Mizoram & another Vs. Mizoram Engineering Service

rendered on 6th May, 2004.

3. Since the representations of the applicants failed to yield any response they preferred O.A.635 of 2017 before this Bench which was disposed of on 20.07.2017 with a direction upon the Respondent No.2,4 and 5 to consider and dispose of the representations (Annexure A/2), if such representations were still pending for consideration with a well reasoned order as per rules to intimate the

result to the applicants within a period of six weeks from the date of receipt of the certified copy of the order.

4. The impugned speaking orders dated 21.07.2017 (Annexure A/4) that were issued to applicants whereby and whereunder the claim for Non-Functional Upgradation(NFU) in the Pay Band IV, Grade pay of Rs.10,000/- has been turned down in term of instructions contained in DOP&T O.M. No.AB14017/622008-Estt.(RR)/PT. dated 18.01.2011, is under challenge in the present O.A.. The order impugned in the present O.A. is extracted verbatim hereunder for clarity.

"F. No: V-11012/10/2017-BA(E)
 Government of India
 Ministry of Information & Broadcasting
 'A' Wing, Shastri Bhawan,
 New Delhi – 110001.

Date : 21.07.2017

To

Shri A.K. Mukhopadhyay,
 Superintending Engineer (Civil),
 CCW, AIR
 (Through Chief Engineer, CCW, AIR)

Subject:- Representation received from Superintending Engineers(C/E), CCW, AIR, New Delhi regarding grant of N.F.U. in PB-IV of Grade Pay Rs. 10,000/- as per 6th CPC.

Sir,

Please refer to your representation dated 8.8.2016 on the subject noted above regarding grant of Non-Functional Upgradation in Pay Band-IV of Grade Pay Rs. 10,000/-(Ten Thousand) in terms of instructions contained in DOP&T OM No. AB. 14017/ 622008-Estt(RR)/ PT. Dated 18.01.2011.

2. In this connection, it is informed that DOP&T OM No. AB. 14017/ 62/ 2008- Estt (RR)/ PT. Dated 18-01-2011 quoted by you relates to the guide lines issued for amendment of service/ recruitment rules for incorporating the changes arising out of 6th CPC for promotion to SAG/ HAG grade in Organized Group-A Engineering Service on fulfilling of the eligibility criteria laid down for the purpose and not for grant or placement in PB-4 with Grade pay of Rs. 10,000/-. The said DoPT OM states that "The matter has been examined in respect of the Organized Engineering Services where the

functional JAG is at Grade Pay of Rs. 8700/- and the eligibility requirement for SAG level is 3 years in the JAG grade. Accordingly, for promotion to SAG (PB-4 Grade Pay of Rs. 10000/-) level in **Organized Engineering Services**, the eligibility requirement shall be as under:-

"Officers in the grade of Superintending Engineer and equivalent (PB 4 Grade Pay of Rs. 8700/-) with 3 years regular service in the grade or officers in the grade of Superintending Engineer/ equivalent with 17 years regular service in Group-A posts in the service out of which at least 1 year of regular service should be in the PB-4 Grade Pay of Rs. 8700/-." A perusal of the eligibility requirement laid down in the said DoPT OM implicitly clarifies that the above indicated requirement for promotion in SAG level in PB-4 with Grade Pay of Rs. 10000/- level only pertains to Organized Engineering Service.

3. You have joined the Government service in Group "B" as Assistant Engineer (E) and subsequently promoted to Group "A" services as Executive Engineer (E) in Civil Construction Wing, AIR. According to the Recruitment Rules of Engineering Services in CCW notified on 20-06-1985 vide GSR 327 Titled as "**All India Radio Civil Construction Wing (Group-A and Group-B post) Recruitment (Amendment) Rules, 1995**", the engineering service of CCW belongs to "General Central Service" and not Organized Group-A Engineering Service. DOP&T OM No. AB.14017/62/2008-Estt (RR)/PT dated 18-01-2011 relates to service conditions for promotion to SAG and HAG in respect of Organized Group "A" Service whereas you belong to General Central Service and covered by specific Recruitment Rules namely "**All India Radio Civil Construction Wing (Group-A and Group-B post) Recruitment (Amendment) Rules, 1995**". Therefore, DOP&T OM No. AB 14017/62/2008-Estt (RR)/PT dated 18-01-2011 will not be applicable to you. The difference between Organized Group-A Service and those classified as General Central Service as per DoPT OM dated 20.11.2009 is that while a service may comprise one or more distinct cadre (s), all such cadres should be governed by composite Service Rules facilitating horizontal and vertical movement of officers of a particular cadre at least upto SAG level. The cadre posts of an Organized Service expressly belong to that service. The posts not belonging to any service are classified as General Central Service and, therefore, an Organized Group-A Service cannot have posts/grades classified as General Central Service. Further, DoPT vide its OM dated 20.11.2009 has laid down the parameters to be met for an Organized Group-A Service and a list of such services is provided vide OM dated 14.12.2010. The list of Central Group A service annexed to OM dated 14.12.2010 does not include the engineers of CCW in the list of Central Group A service. The engineers in CCW are classified as General Central Service.

4. You have represented that distinction between Organized Group-A service and **unorganized Group-A service** has been done away with by a judgment of Supreme Court in case of Appeal (Civil) 793 of 1998, State of Mizoram & another Vs. Mizoram Engineering Service passed on 6th May 2004. However the ratio of the Hon'ble Supreme Court in the said case relates to the terms **Organised** and **Unorganised** in a literal sense. DoPT OM

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dated 20.11.2009 relating to attributes of Organised Gp 'A' service pertains to the Organised Gp 'A' service viz-a-viz **General Central Service** and not to some **Unorganised service**. Hon'ble Supreme Court vide its above judgement has also observed that "the main reason for dubbing Engineering Service as an unorganized service in the State of Mizoram is absence of recruitment rules." While (the Engineering service in CCW has well laid down recruitment rules titled **All India Radio Civil Construction Wing (Group-A and Group-B post) Recruitment (Amendment) Rules, 1995**". Further the attributes of Organised Gp 'A' service were issued by DoPT vide its OM dated 20.11.2009 well after the above Supreme court's judgement dated 6th May 2004. Thereafter, the judgement was specific to the application of pay scales to the State Engineers of Mizoram and not to the Engineers belonging to General Central Service including the engineers of CCW, DG; AIR.

5. DoPT OM dated 18.1.2011 is with regard to qualifying service for promotion to SAG/ HAG Grades in Organized Group A Engineering Service subject to fulfilment of certain conditions viz availability of post / vacancy and following the due process for promotion and not for grant of Grade Pay Rs. 10000/- automatically.

6. You belong to General Central Service and governed by specific Recruitment Rules namely "**All India Radio Civil Construction Wing (Group-A and Group-B post) Recruitment (Amendment) Rules, 1995**". AS stated herein above, as per All India Radio Chief Engineer (Civil), (Level-II) Recruitment (Amendment) Rules, 1995, the promotional post of Superintending Engineer (Electrical) is Chief Engineer (Civil) (Level-II), whose sanctioned strength is one. For promotion to the post of Chief Engineer (Level-II), the method of recruitment is by promotion from Superintending Engineer (Civil) / (Elect.) with 7 years' regular service in the grade failing which by transfer on deputation.

7. You have joined CCW, AIR as Assistant Engineer (C) [Group 'B'] on 4th January, 1985 and promoted to the post of Executive Engineer (C) on 23rd June, 1995. You have also been granted Non-Functional Selection Grade (NFSG) w.e.f. 15th November, 2002 vide MIB order dated 4th August, 2008. You were further promoted to the post of Superintending Engineer (Civil) w.e.f. 11th December, 2009. Government of India introduced Assured Career Progression Scheme (ACP Scheme) w.e.f. 9.8.1999 on the basis of the recommendation of 5th CPC inter alia providing two financial upgradations in the hierarchy on completion of service of 12 years and 24 years respectively provided the Officer have not earned promotion. You were promoted to the post of Executive Engineer (C) on 23rd June, 1995 i.e. before completion of 12 years of service and to the post of Superintending Engineer (C) on 11.12.2009 i.e. the year in which you have completed the 24 years of service, you were not eligible for benefits admissible under ACP Scheme. You were also granted Non-Functional Selection Grade (NFSG) w.e.f. 15th November, 2002. MACP Scheme introduced by Central Government on the basis of the recommendations of 6th CPC provides for three financial upgradations in grade pay after completion of service of 10 years, 20 years

and 30 years respectively. You had been granted three financial upgradations i.e. promotion to the post of Executive Engineer (C), NFSG and Superintending Engineer (C) before completion of 30 years of service, you are, therefore, also not entitled for MACP.

8. In the light of position stated above, you are informed that DoPT OM dated 18.01.2011 is not applicable to you. Your representation for grant of N.F.U. in PB-IV of Grade Pay Rs. 10,000/- as per 6th CPC is accordingly disposed of.

9. This issues with the approval of Competent Authority.

Yours faithfully,

Sd/-

(Sanjay Dhar)

Under Secretary to the Govt. of India

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5. A bare perusal of the speaking order impugned in the present O.A. would reveal, demonstrate and exemplify that the respondents have sought to discriminate Superintending Engineers of CCW, AIR vis-à-vis the Superintending Engineers of CPWD on the following grounds:-

- (a) Engineers of CCW are classified as "General Central Service" whereas the Engineers of CPWD were classified as "Organised Group 'A' Service";
- (b) The basic difference between the two is that Organised Group 'A' Service is governed by Composite Service Rules facilitating horizontal and vertical movement of officers of a particular cadre at least upto SAG level and the cadre posts of an Organised Service expressly belong to that service whereas posts not belonging to any service are classified as General Central Service and, therefore, an Organised Group-A Service cannot have posts/grades classified as General Central Service.
- (c) The DOPT's circular dated 18.01.2011 applies to Organised Group 'A' Service and not to General Central Service, hence the applicants are not entitled.
- (d) The ratio of decision of Hon'ble Apex Court would not apply since Hon'ble Apex Court therein observed ["the main reason for dubbing Engineering Service as an unorganized service in the State of Mizoram is absence of recruitment rules. While the Engineering service in CCW has well laid down recruitment rules titled All India Radio Civil Construction Wing (Group-A and Group-B post) Recruitment (Amendment) Rules, 1995"].

6. The Id. counsel for the applicant strenuously urged that grant of NFU does not require availability of vacancies since it implies bestowing a higher grade pay without attached responsibilities while Id. counsel for the respondents vehemently opposed the claim.

7. We noted that the 18.01.2011 O.M. does not speak on Non-Functional Upgradation(NFU) to SAG(PB4 Grade Pay Rs. 10,000/-). It explicitly and deals with "Quality Service for promotion to SAG/HAG."

8. The respondents have not deliberated upon the eligibility to Non Functional Upgradation(NFU in short) to the Grade Pay of Rs.10,000/- which the applicants have claimed.

9. The respondents in their speaking order is also conspicuously silent about applicability of NFU to Superintending Engineers of CPWD irrespective of availability of vacancies.

10. In such view of the matter, the impugned order is quashed and the matter is remanded back to the authorities to clarify,

(i) Whether 18.01.2011 O.M. speaks of and includes Non Functional Upgradation(NFU) to SAG(PB 4 Grade Pay Rs.10,000) to Organised Group 'A' Engineering Services, to be bestowed with irrespective of availability of vacancy.

(ii) Whether such NFU is available to Superintendent Engineers of CPWD;

(iii) Subject to (i) (ii) above why the Superintending Engineers of AIR/ CCW would be deprived of NFU.

11. Let reasoned order be issued by eight weeks.

12. O.A. is accordingly disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

Banerjee
(Bidisha Banerjee)
Judicial Member

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