

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
JABALPUR**Original Application No.200/00423/2017**

Jabalpur, this Wednesday, the 23rd day of January, 2019

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Subrata Kumar Bandopadhyay, S/o Late R.K. Banerjee, aged about 62 years, Retired J.W.M. (PV) Gun Carriage Factory, Personal Number 816758, Resident of 16/C, Block 'C', Pavitra Apartment, South Civil Lines, Jabalpur - 482001
-Applicant

(By Advocate – Shri M.N. Banerjee)

V e r s u s

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi 110011.
2. Director General, Ordnance Factory Board, 10-A, S.K. Bose Road, Kolkata – 700001.
3. General Manager, Gun Carriage Factory, Jabalpur 482015.
- Respondents

(By Advocate – Shri N.K. Mishra)

(Date of reserving order : 20.08.2018)

O R D E R

By Ramesh Singh Thakur, JM.

The applicant, who retired from service as J.W.M, is aggrieved by the fact that he has been denied three advance

increments on acquiring higher qualification of B.E. (Electrical Engineer).

2. He has, therefore, sought for the following reliefs:

“8. Relief Sought:-

In view of facts and circumstances as submitted in paras above, applicant most respectfully begs to seek following relief viz.

8.1 To kindly command respondents to produce all relevant records pertaining to the subject.

8.2 Respondents be kindly commanded to grant three advance increments w.e.f. Oct. 1986 as an incentive for acquiring higher qualification BE as he is entitled to get the benefit of three advance increments w.e.f. Oct. 1986. Arrear w.e.f. Oct. 1986 with interest be kindly ordered to be paid to applicant by respondents.

8.3 Quash and set-aside Note: PER/NG dated 27.02.2017 (Ann. A-1) of Director HQ & NG rejecting claim of applicant.”

3. The brief facts of the case, as stated in the Original Application, are that the applicant was appointed as Supervisor (T) in Gun Carriage Factory, Jabalpur on 18.06.1981. At the time of joining the service, the applicant had qualification of Diploma in Engineering. Subsequently, he had acquired qualification of B.E. (Elect. Engineering) in October, 1986 on the basis of which, he was being paid lump-sum incentive of Rs.4,000/- on account of acquiring higher qualification on 23.01.1996.

4. It is the case of the applicant that he is entitled for three advance increments on acquiring higher qualification. He submits that one similarly placed employee Shri Pulak Kumar Datta was sanctioned three advance increments on acquiring of higher qualification and his pay was revised vide order dated 03.12.2010 (Annexure A-3). He places reliance on the orders passed by the coordinate Bench at Bangalore in Original Application No.1075/2014, decided on 11.11.2014 (**S.K. Mudgil vs. Union of India & Ors.**), wherein the similar issue has been dealt with by the coordinate Bench at Bangalore.

5. In their reply, the respondents have stated that the Ministry of Defence had issued circular dated 04.02.1969 (Annexure R-1), which provides that civilians paid from the Defence Services Estimates, who acquires a degree in an Engineering or an equivalent qualification, which is among the qualifications prescribed for recruitment to the Central Engineering Class-I and while he is serving in a Non-Gazetted technical/scientific grade shall have his pay re-fixed w.e.f. the date on which he acquires the above mentioned qualification at the stage in his scale of pay which would give him three advance increments. However, the Ministry of Defence vide OM dated 18.03.1974 had withdrawn the aforesaid

incentives and benefits. It has been mentioned in the circular that the scheme of advance increments introduced vide OM dated 04.02.11969 ceased to exist w.e.f. 01.12.1973. Thereafter, DOP&T vide OM dated 28.06.1993 replaced the scheme of giving advance increments by the scheme of granting lump-sum amount as incentive. The scheme was effective from the financial year 1993-94. Thus, there was no existing and sanctioned scheme in force in the Ministry of Defence after the scheme of 03 advance increment ceased to exist w.e.f. 01.12.1973 in terms of OM dated 18.03.1974. Therefore, the employees who acquired the Engineering Degree on or after 01.12.1973 were not entitled for grant of three advance increments.

6. In regard to applicant's contention that three advance increment have been sanctioned to one similarly placed Shri Pulak Dutta, it has been submitted by the respondents that if at all an incorrect practice, contrary to the rules and instructions, was being followed in past, the same may not construe an authority and may not be allowed merely on the grounds of precedence. It has been further submitted by the respondents that the issue of grant of three advanced increments has already been put rest by the Hon'ble Apex Court in the matters of **K. Subhas Babu & Ors. vs.**

Engineer In Chief, Army H.Qrs & Ors., Civil Appeal No.9776
of 2003 decided on 07.09.2011.

7. We have heard the learned counsel for the parties and gone through the pleadings and documents available on record.

8. It is an admitted fact that the Ministry of Defence had issued the circulars dated 04.02.1969 for grant of three advance increments for the civilian employees paid from the Defence Service Estimates, who acquires a degree in Engineering or an equivalent qualification which is among the qualifications prescribed for recruitment to the Central Engineering Class-I. It is also admitted fact that the applicant acquired higher qualification of B.E. (Electrical Engineer) in 1986. It is also not in dispute that the applicant was sanctioned lump-sum incentive of Rs.4,000/- on 23.01.1996. The case of the applicant is that he is entitled for three advance increments w.e.f. October, 1986, i.e. that date on which he acquired the higher qualification of B.E.

9. From the reply filed by the respondents, it is clear that the Ministry of Defence vide OM dated 18.03.1974, had withdrawn the circular dated 04.02.1969 on the basis of the recommendation of the Third Pay Commission and the same had been accepted by the

Government. Further, a new scheme of granting one time lump-sum incentive to employees for acquiring higher qualifications was introduced w.e.f. 01.04.1993 vide OM dated 28.06.1993. Hence, the applicant was paid lump-sum amount of Rs.4,000/- w.e.f. 23.01.1996, as per the existing scheme and there was no scheme in vogue after the scheme of three advanced increments ceased to exist w.e.f. 01.12.1973.

10. The applicant has failed to establish his case that at any stage, he was granted advanced increments prior to the financial year 1993-94. Only those persons who were getting advanced increments prior to financial year 1993-94, were continuing to draw advanced increments. The applicant was never granted any such advanced increment and, therefore, his claim for grant of the said benefit has been rightly rejected by the respondents.

11. We may note that the issue regarding the granted of three advance increment on acquiring higher qualification has already been settled by the Hon'ble Apex Court in the case of K. Subhas Babu (supra). The relevant Para 8 of the judgment reads as under:

“8. We fail to understand as to how the said circular also becomes applicable to the cases of the appellants as no case is made out that the appellants at any stage were granted advanced increments prior to the financial year 1993-94. Only those persons who were getting advanced increments prior to financial year 1993-94 were continuing to draw

advanced increments. The appellants were never granted any such advanced increments and their prayer for grant of the said benefit was rejected by the Ministry of Defence. The High Court has considered the issue raised before it and after an indepth study of those circulars the High Court has come to the conclusion that the appellants are not entitled to claim the aforesaid benefit. The High Court has also recorded that the appellants are not entitled to the aforesaid benefit as the Ministry of Defence has withdrawn such benefit specifically by issuing the notification on 18th March, 1974. Considering the aforesaid facts and circumstances of the case, we are of the considered opinion that there is no infirmity in the order passed by the High Court. We, therefore, find no merit in this appeal which is, accordingly, dismissed

(emphasis supplied)

12. Regarding the applicant's claim that one similarly placed employee Shri Pulak Kumar Datta was sanctioned three advance increments on acquiring of higher qualification and his pay was revised vide order dated 03.12.2010, we may observe that the Hon'ble Apex Court in catena of judgment has held that if an illegality or irregularity has been committed in favour of an individual or even a group of individuals, others, through falling in the same category, they cannot take benefit of the same irregularity on the reasoning that the similar benefit has been denied to them. Since, the applicant is seeking benefit, as has been given to Shri Pulak Kumar Datta, we have no hesitation to held that the benefit conferred on basis of violation of prescribed procedure, cannot form a legal premise to claim parity with the said illegal or irregular order.

13. The applicant has also placed reliance on a decision of co-ordinate Bench at Bangalore of this Tribunal in the case of **S.K. Mudgil** (supra). On careful reading of the order, we find that the OM dated 18.03.1974 issued by the Ministry of Defence, whereby the benefit of three advance increments on acquiring higher qualification as granted vide OM dated 04.02.1969 were withdrawn, was not put on notice before the co-ordinate Bangalore Bench and this fact could not be brought out in the order. Since, in the present case, it has been clearly established by the respondents that the benefits granted vide OM dated 04.02.1969 were subsequently withdrawn vide OM dated 18.03.1974, there is no question to take a similar view particularly when the Hon'ble Apex Court has taken cognizance of this issue in the case of **K. Subhas Babu** (supra).

14. In the result, we do not find any merit in this Original Application. Hence, the O.A is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/-