

Central Administrative Tribunal
Principal Bench

O.A.No.457/2003

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 28th day of July, 2003

1. Manohar Lal
s/o Shri Kalu Ram
C/o GE (East)
Delhi Cantt-10.
 2. B.D.Sharma
s/o Shri S.P.Sharma
c/o GE (Airforce)
Gurgaon.
 3. Jagmohan Batra
s/o Shri Nand Lal Batra
c/o GE/Project (West)
Delhi Cantt.
 4. Kawal Nain Miglani
s/o Shri Manak Chand Miglani
c/o GE/Project (East)
Delhi Cantt.
 5. Brij Pal Singh Tomar
s/o Shri B.S.Tomar
c/o Chief Engineer
Bhatinda.
 6. S.C.Arora,
s/o Shri Ram Ditta Arora
c/o GE(AF)
Gurgaon.
 7. Dalbir Singh
s/o Shri Moti Ram
c/o CWE, New Delhi.
- .. Applicants

(By Advocate: None)

Vs.

Union of India through

1. The Secretary
MOD, South Block
New Delhi.
 2. The Engineer-in-Chief
Army HQ Kashmir House
New Delhi.
 3. The Chief Engineer
Western Command
Chandi Mandir
Chandigarh.
- ... Respondents

(By Advocate: Sh. R.P.Aggarwal)

-2-

O R D E R (O r a l)

(10)

By Shri Shanker Raiu, M(J):

Applicants have impugned respondents' order dated 1.10.2002 as well as order dated 19.12.2002 whereby their request for grant of three advance increments on acquisition of an higher qualification, i.e., Degree in Engineering has been turned down. Directions have been sought to quash the above orders with grant of three advance increments and also to accord benefit of Judgment in OA 1421/2000 of Ernakulam Bench of this Tribunal.

2. Applicants, who are qualified Engineers having acquired Degree in Engineering, have been working as Junior Engineers. Placing reliance on a decision of Ernakulam Bench of this Tribunal in OA 755/1997 in S. Ramaswamy v. Union of India & Others, decided on 7.10.1999, it is contended that they are entitled for benefit of advance increments.

3. Representation made for grant of increment has been turned down by the respondents on the ground that during the interregnum from 18.3.1974 to 27.6.1993 as no policy was in vogue for withdrawal of benefit of advance increments, OMs dated 28.6.1993 and 31.3.1995 would not be applicable.

4. Learned counsel for applicants contends that the applicants are legally entitled for the benefits as was the benefit has been restored by a letter dated 4.2.1969 by the respondents, the same cannot be denied to similarly situated employees which has been implemented in pursuance of directions of Ernakulam Bench of this Tribunal supra.

5. On the other hand, Shri R.P. Aggarwal, learned counsel appearing on behalf of respondents, contends that the present issue, in all fours, is covered by the order passed on 25th July, 2003 in OA 2944/2002 in Jay Singh Yadav & Others v. Union of India & Others, where the similar relief has been denied.

6. It is further stated that the decision in Ernakulam Bench has been over turned by the Kerala High Court in OP No.34436/2002, decided on 8.4.2003.

7. I have carefully considered the rival contentions of the parties and perused the material on record. The present controversy is, in all fours,, covered the ratio in Jai Singh Yadav's case supra, where the following observations have been made:

"16. In so far as extension of benefits of the decision of Eranakulam Bench is concerned, it is not disputed that from 1-12-1973 to 27-6-1993, no incentive scheme existed in the Ministry of Defence. Accordingly the admissibility of OM dated 28-1-93 and 3-1-1995 is out of question. The Scheme is applicable on replacement against the existing prevalent scheme. In absence of any scheme, this OM would have no application. However, the cardinal principle of interpretation that special provision over rides the general provision, applicants through out serving in the Ministry of Defence cannot have advantage of the general circular issued by the Ministry of Personnel which has no applicability on defence and was also not adopted by the Ministry of Defence.

17. Be that it may so the decision of the Ernakulam Bench has been set aside by the Kerala High Court, I do not find it to be per incurriam of any provision or law laid down to the contrary. Having a binding force and a precedent, the same has to be followed.

18. As regards implementation of the order of Ernakulam Bench of the Tribunal to similarly circumstanced, the wrong interpretation and its consequential benefits cannot bestow a valid legal right in favour of the applicants to claim similar benefits. This is an anti thesis to the principle of equality enshrined under Article 14 of the Constitution of India."

8. In view of the above, as OMs dated 28.6.1993 and 31.1.1995 were applicable to those Ministries and Departments where the incentive Scheme was prevalent, whereas no such Scheme existed in Ministry of Defence from 1.12.1973 to 27.6.1993.

9. Agreeing with the ratio laid down in OA 2944/2002 supra, the present OA lacks merit and is accordingly dismissed. No costs.

S. Raju

(Shanker Raju)
Member(J)

/rao/