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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO.831/2003

NEW DELHI THIS...6th...DAY OF MAY 2004

HON'BLE SHRI JUSTICE V S AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A. SINGH, MEMBER (A)

1. Om Prakash, Dy Director (Engg)
S/o Late Shri Imrat Lal,
D-1/A-16, Lodhi Colony, New Delhi 110 003.
2. Naresh kumar Gupta
Director (Engg)
S/o Late Shri K L Gupta,
11, Asia House, KG Marg, New Delhi
3. B B Sharma,
Director (Engg)
S/o Suraj Prakash,
R/o 703, Asia House, KG Marg,
New Delhi
4. I S Mehla, Director (Engg)
S/o Late Shri Ranjeet Singh
C-703. Curzon Road Apartments,
K G Marg, New Delhi 110001
5. H K Bharani Dy Diretor (Engg)
S/o Shri Nihal Chand,
R/o 401, Asia House, KG Marg, New Delhi.

.....Applicants

(By Shri Gopal Dutt with Sh. Sanjeev Sharma,
Advocates)

VERSUS

1. Union of India through Secy to the Govt of India
Min. of Information & Broadcasting,
Shastri Bhawan, New Delhi
2. Union of India
Through the secy to the Govt of India,
Min. of Personnel, Public Grievances & Pension,
Department of Personnel & Trg. North Block,
New Delhi
3. Union of India
Through the Secretary to the Government of India
Ministry of Finance,
New Delhi

.....Respondents

(By Sh. N S Mehta, Advocate)

O R D E R

BY HON'BLE SHRI S.A. SINGH, MEMBER (A)

The applicants, 5 in numbers, working in the
Senior Time Scale (STS) of the Indian Broadcasting

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(Engineering Service), in short IB(E)S in the AIR under the Ministry of IBM.

2. They had been placed in the Non functional Junior Administrative Grade (NFJAG) in the pay scale of Rs. 12000-16500/- w.e.f. 16.1.2001. They made a representation to the respondents that this pay scale should be granted to them w.e.f. 1.1.96. They also filed an OA No. 1750/2002, which was disposed of with the direction to the respondents to consider the representation of the applicants and pass a reasoned and speaking order and while passing this order, take into account the Judgement rendered by the Tribunal in OA 1659/98 in the case of Sh. Anant Kumar & Ors Vs Union of India & Ors.

3. In compliance with the directions of the Tribunal, the respondents have passed order 25.11.2002 wherein they have stated that the NFJAG for Executive Engineer can only be applied prospectively, in consonance with the general policy of the Government for implementation of the recommendations of the 5th Central Pay Commission (CPC), where cadre re-structuring is involved. This is as per notification No. GSR 569(E) dated 30/9/97 and the same is re-affirmed in the clarification issued in the para 1(4) of DoPT's OM No. 22/1/2000-CRD dated 20.12.2000.

4. Aggrieved by this order the applicants filed the present OA praying that the date of grant of NFJAG scale of Rs. 12000 - 16500/- should be w.e.f. 1.1.96 in place of 16.1.2001 with consequential benefits.

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5. The respondents, in their order dated 25.11.2002 have denied grant of NFJAG with effect from 1.1.96 or from any other retrospective date on the grounds reproduced below:

"3. In view of the above, the non-functional JAG for the Executive Engineers can, therefore, only be applied prospectively in consonance with the general policy of the Government with regard to implementation of Fifth CPC recommendations involving cadre-restructuring/ redistribution of posts as enshrined in the notification No. GSR 569(E) dated 30.9.97 which is also reaffirmed in the clarification issued at para 1(iv) of DoP&Ts OM No. 22/1/2000/CRD dated 20.12.2000."

6. The case of the applicant is that the reasons given by the respondents are not justified as no change in the IB(E)S 's Recruitment Rules is necessary for grant of NFJAG because the length of service in the IB(E)S Rules is four years as JTS and five years as STs for promotion to JAG i.e. a total service of nine years. JAG has now been re-named as NFJAG by the 5th CPC and in the OM dated 6.6.2000 and its amended form dated 20.12.2000, the same provision of nine years i.e. 5 years in STS and four years in JTS has been provided. Therefore the respondents can be granted the NFJAG with retrospective effect i.e. from 1.1.96 as has been done in the case of Superintending Engineers and Programme Management Cadre and Programme Production cadre. The applicant further added that the position of the applicants on 16.1.2001 i.e. the date from which they have been granted NFJAG scale is not different from their position on 1.1.96 from the date from which they should actually be granted the scale. This is because

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no change has been made to the Recruitment Rules and the other conditions indicated in the IB(E) S Rules remain the same.

7. The respondents contest the claim of the applicant stating that the officers of the IB(E)S were considered for grant of NFJAG pay scales without amendment of the Recruitment Rules with the view to accelerate the same as amendment of the Recruitment Rules would have delayed the process. However, they added that it is not possible to dispense with other requirements like assessment of fitness, acceptance of the recommendations by the appointing authority. Promotions, therefore, can only be made prospectively.

8. They clarified that the NFJAG pay scale of Rs. 12000-16500/- for the STS Officers was to be granted through cadre re-structuring involving re-distribution of the posts, hence all the officers could not be placed on higher scale. Placement of eligible officers in the higher scale can only be done after consideration of these officers by the constituted committee for this purpose as such the promotions could only be made with prospective date.

9. The applicant have contested this strongly stating that it is wrong to state that NFJAG scale would be granted only after cadre re-structuring because re-structuring and re-distribution of the posts amounts to changing service conditions which cannot be changed unless Recruitment Rules of the grade are suitably amended. The respondents have admitted that they have



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not carried out any amendment in the recruitment Rules of the IB(E)S Officers, therefore they cannot claim that re-distribution of posts had been made.

10. In order to clarify the position the relevant portion of the para 50.45 of 5th CPC is reproduced below:

"Taking into account the significant role of engineering services in the nation-building process and that fact that the promotion prospects in engineering cadres are rather bleak, we recommend that the NFJAG of Rs.4500-5700 should be converted into a single functional scale for Superintending Engineers and the scale of Rs. 3700-5000 should instead of non-functional JAG for Exe. Engineers. However, in order to avoid too fast a rate of promotion in certain cadres to this grade, it is further recommended that promotions to the scale of Rs.4500-5700 would be permitted only on completion of 13 years of service in Group A. Although the above recommendations is being made in the context of CPWD Engineers it is clarified that this dispensation will be available to all Engineering cadres in the Government".

11. In pursuance of these recommendations Ministry of Finance, department of Expenditure issued a Gazette Notification dated 30.9.97 where the revised pay scales were indicated. The same are reproduced below:

VIII. GR. 'A' Engineering Services

<u>Post</u>	<u>Present scale</u>	<u>Revised Scale</u>	<u>para no. of report</u>
(a) Supdtg. Engineer	3700-125-4700 150-5000	14300-400-18300	50.45
(b) Exe. Engineer	3000-100-3500 125-4500	10000-325-15200 12000-375-16500 (Non-functional JAG)	50.45

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12. While notifying these revised pay scales a proviso was appended, which is reproduced below:

- i) The non-functional JAG has been granted to all organized Group 'A' Engineering Services under the provisions that the Non-functional JAG will be granted prospectively based on the findings of the DPC as applicable to all organised Engineering Services.
- ii) Further, in terms of the Notification G.S.R. 569 (E) dated 30.9.97 containing the Revised Pay Rules, 1997 issued by the Ministry of Finance, the higher pay scale in all cases of cadre restructuring /re-distribution of posts, etc, can be given only with prospective effect. The operative portion of the Notification is reproduced as under :-

" The revised scale of pay mentioned in Column 4 of this part of the Notification for the posts mentioned in column 2 have been approved by the Government. However, it may be noted that in certain cases of the scales of pay mentioned in column 4, the recommendations of the Pay Commission are subject to fulfilment of specific conditions. These conditions relate inter-alia to changes in recruitment rules, restructuring of cadres, re-distribution of posts into higher grades etc. Therefore, in those cases where conditions such as the rationale for the grant of those upgrades scales, it will be necessary for the Ministries to decide upon such issues and agree to the changes suggested by the Pay commission before applying these scales to these posts w.e.f. 1.1.96. In certain other cases where there are conditions prescribed by the Pay Commission as pre-requisite for grant of these scales to certain posts such as cadre restructuring, redistribution of posts etc. It will be necessary for the Ministries/Departments concerned to not only accept these preconditions but also to implement them before the scales are applied to those posts".

In certain other cases where there conditions prescribed by the Pay Commission as pre-requisite for grant of upgraded pay to certain posts, such as, cadre restructuring, re-distribution of posts, etc, it will be necessary for the



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Ministries/Departments concerned to not only accept these pre-conditions but also to implement them before the scales are applied to these posts. It would, therefore, be seen that it is implicit in the recommendations of the Pay Commission that such scales necessarily have to take prospective effect and the concerned posts will be governed by the normal replacement scales until then".

13. This proviso provides that it will be necessary for the Ministry to decide upon changes suggested by the Pay Commission, before applying the pay scales to the posts w.e.f. 1.1.96. And that in certain cases where conditions are prescribed as pre-requisites by the Pay Commission such as Cadre restructuring or re-distribution of posts are attached to certain posts, it is necessary for the Ministry and department concerned to implement, them before the scales are applied to the posts. Therefore, it is seen that it is implicit in the recommendations that such scales have to take prospective effect and till then, the concerned posts should be governed by the normal scales.

14. The department of DoPT in their OM dated 6.6.2000, commenting on the recommendations of the 5th CPC para 50.45 of the report, have indicated the following for Superintending Engineers and Executive Engineers:

- (a) The 'functional' grade of Rs.14300-18300 shall be applicable to the posts of Superintending Engineers and equivalent that are variously designated and included in the Organised Group 'A' Engineering Services, recruitment to which is made through Combine Engineering Service Examination. Placement of personnel in this 'functional' grade will, however, be subject to actual availability of vacancies in the grade.
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This shall be permitted only on completion of at least thirteen years of regular service in Group 'A' and the prescribed regular service of four years in the scale of pay of Rs.12000-16.500, which will henceforth be the 'non-functional' second grade for Executive Engineers and equivalent.

- (b) it is likely that 'functional' promotions to posts of Superintending Engineers and equivalent may be possible in some of the organised Group 'A' Engineering Services before completion of thirteen years of regular service in Group 'A' as stipulated by the FCPC because the cadre structure of individual Services. Members of Services so promoted will continue to remain only in the scale of pay of 12000-16500 till they become eligible for the scale of Rs.14300-18300 in terms of (a) above. They will, however, be entitled to the benefit of pay fixation under F.R.22 (1)(a)(i) on promotion. This benefit will not be available again on their replacement in the scale of Rs 14300-18300/-.
- (c) The 'non-functional' grade of Rs.12000-16500 now to be introduced for the Executive Engineers and equivalent will be admissible on completion of.
- (i) minimum regular service of nine years in Group 'A' (four years in the pay scale of Rs.8000-13500 and five years in the pay scale of Rs.10000-15200) in respect of those officers who are at least recruited or promoted to the pay-scale of Rs.8000-13500; and
- (ii) minimum regular service of five years in the pay scale of Rs 10000-15200 in respect of those officers are likely promoted from Group B to posts in this pay scale.
- (d) the number of posts of Executive Engineers and equivalent to be operated in the 'non-functional' pay scale of Rs.12000-16500 shall be restricted to 30% of the Senior Duty Posts (i.e. posts in the pay scale of Rs.10000-15200 and above) in the respective cadres, ensuring at the same time that (i) there is no increase in the overall strength of the cadre; and (ii) the number of posts to be operated in the 'non-functional' grade
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(Rs.12000-16500) does not exceed the number of posts available in the pay scale of Rs.10000-15200.

- (e) Placement of officers in the 'functional' grade of Rs.14300-18300 shall be done through the process of 'Selection by Merit' subject to actual availability of vacancies in the grade. On the other hand, placement of officers in the 'non-functional' pay scale of Rs.12000-16500 shall be done subject to sustainability in terms of guidelines contained in the Department of Personnel and Training O.M. No.28038/1/88-Estt.(D) dated October 9, 1989 (copy enclosed). These should be adhered to.

15. In the same OM they have further clarified that the implementations of the recommendations of the posts of Executive Engineers would involve re-structuring of the Cadre and the relevant portion is reproduced below:

" In view, however, of the fact that the implementation of the recommendations in respect of Executive Engineers and equivalent would involve the restructuring of the cadre by redistributing the existing posts in the 'functional' and 'non-functional' scale of Rs.10000-15200 and Rs.12000-16500 prospectively in the ratio of 70 : 30, the 'non-functional' pay-scale of Rs.12000-16500 is applicable only prospectively based on the recommendations of the Departmental Promotion Committee to be constituted for the purpose. Till such time as the existing regular incumbents of the post of Executive Engineer and equivalent are appointed to the 'non-functional' pay scale of Rs.12000-16500 after due observation of the prescribed procedure, they shall be entitled only to the 'functional' scale of Rs.10000-15200. It should also be ensured that they had been promoted functionally to the post of Executive Engineer and equivalent against vacancies and after observing the prescribed qualifying service of nine years before they are placed in the 'non-functional' scale".

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The position of prospective effect has also been reiterated in OM dated 9.10.89 of DoPT and also in their GI DoPT dated 20.12.2000 and the relevant portion is reproduced below:

"(ii) The conditions stipulated in Paragraph 3 will be prospective in nature and will, as such, be effective from the date of notification of the revised Service/Recruitment Rules."

16. Various circulars and orders issued make it clear that in case there is need for re-structure or making changes in the Recruitment Rules before granting of revised scales, then the effective dates of new scales would have to be prospective rather than retrospective. It is a fact, not denied by the respondents, that no change in the Recruitment Rules has taken place, both, in the case of Superintending Engineers and Executive Engineers before granting them scales recommended by the 5th Central Pay Commission. However, in the case of SEs the 5th Central Pay Commission recommendations have been made effective from 1.1.96 whereas in the case of Executive Engineers they have been granted the NFJAG Grade from 16.1.2001. It is clear that the next scales have been given effect to in both cases, without making changes to the Recruitment Rules but from different dates. Hence the grievance of the applicants.

17. In this connection the observations of this Tribunal in the analogous case of Sh. Anant Kumar & ors Vs. UOI & Ors. in OA 1659/98 are pertinent. Though the case pertains to the Executive Engineers of CPWD yet the issue is identical as it arises from para 50:45 of the 5th CPC report.

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"12. It is thus observed that while in the case of Superintending Engineers, the respondents have granted the benefit of the new functional scale automatically, on the premise that they have completed 13 years in Group 'A' service, the benefit has been held back in the case of Executive Engineers; holding that amendment to recruitment rules redistribution of posts, etc. was called for before the new non functional JAG could be granted to them."

It is further observed that:

" In terms of the new dispensation of para 3(c) of the DoPT's OM dated 6.6.2000, modified by that of 20.12.2000 the eligibility for placement in the non functional JAG of Rs.12,000-16,500/- is indicated as completion of five years regular service as Executive Engineer in the pay scale of Rs.10,000-15,200/- for which in turn the eligibility is fixed as completion of four years of regular service as Asstt. Executive Engineer in the pay scale of Rs. 8000-13500/- . Thus only on completion of 5+4 years in Group 'A' Service one becomes eligible for placement in the new nf JAG. Admittedly all the applicants have also completed nine years of service in Group 'A' having joined the department as direct recruits between 1981 and 1986. Still the benefit of the n.f. JAG has been denied to him on the ground that fresh recruitment rules have to be framed. In our views this distinction is disturbingly glaring."

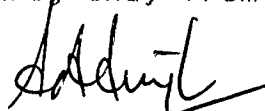
In the present case also the respondents have not been able to place before us reasons robust enough in explaining their inability to grant NFJAG scales to the applicants w.e.f. 1.1.96, and we also find the distinction between SEs and the applicants as disturbingly glaring.

18. No change in Recruitment Rules have so far been made and without making any changes, NFJAG has been granted to the applicants from 16.1.2001 . The ground that the NFJAG to the applicants could only be granted prospectively i.e. after the cadre had been restructured seems to be a pretext for covering delay in

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granting the grade rather than a genuine reason because the respondents have not been able to show any compelling reasons that prevented them from carrying out this exercise for granting scale w.e.f. 1.1.96 or earlier. The impugned OM dated 25.11.2002, which has been passed in compliance of this Tribunal's order dated 10.7.2002 in OA No. 1750/2002 is silent as to the exact grounds that delayed the grant of the revised scales. Even though the respondents were required to pass a reasoned and speaking orders, they have merely reproduced the extract from notification no. ~~18~~ GSR 569(E) dated 30.9.97 and made a general statement that in consonance with the general policy of the Govt. with regard to implementation of the 5th CPC recommendations involving cadre re-structuring and redistribution of the posts the NFJAG for Executive Engineers can only be applied prospectively.

19. In view of the above the OA is allowed. The respondents are directed to give to the applicants, if otherwise eligible, notional placement and fixation in NFJAG w.e.f. 1.1.96. They will be entitled to pay and any arrears, only from 16.1.2001.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

Patwal/