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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1229/2003

New Delhi, this the 15th day of July, 2004

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri S.K. Naik, Member (A)

1. S.R. Saini
s/o Shri Sadhu Ram Saini
r/o 1731A, Housing Board Colony
Sector 31, Gurgaon-122001
2. Mansa Ram
s/o Shri Karhiley Ram
r/o A-00/589, Sector-02
Rohini, Delhi-85
3. S.K.Saini
s/o late Shri Hans Raj Saini
r/o AG-1/127D,
Vikas Puri, New Delhi
4. RMP Chaudhary
s/o late Shri R.S.Chaudhary
r/o G-168/B-3
Dilshad Colony
Delhi-95
5. B.K.Bansal
s/o late Shri B.D.Bansal
r/o 550 Sector 4, R.K.Puram
New Delhi
6. S.K.Jha
s/o late Shri R.P.Jha
r/o D-615, Sector I
Avantika, Rohini
Delhi-85

...Applicants

(By Advocate: Shri L.R.Khattana)

Versus

1. Union of India
through Secretary to the Govt. of India
Ministry of Defence
South Block, New Delhi
2. Secretary (Research & Development)
Ministry of Defence
South Block, New Delhi
3. Secretary
Dept. of Personnel & Training
North Block, New Delhi
4. Secretary
Dept. of Expenditure
Ministry of Finance
North Block, New Delhi

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5. Joint Secretary (Trg. & CAO), *Mn of Def*,
C-II Hutmants,
New Delhi-11

6. Director JCB
Ministry of Defence
D-1 Block, Sena Bhavan
New Delhi-11

.. Respondents

(By Advocate: Smt. Meenu Mainee)

O R D E R

Shri S.K. Naik:

Applicants, six in number, in this OA are working as Senior System Security Officer-II (Sr. SSO-II)/Programmers in the Joint Cipher Bureau (JCB), Deptt. of Research & Development, Ministry of Defence. They are aggrieved against what they call as illegal, arbitrary, irrational and incorrect fixation of pay in the promotional grades of Junior Programmers and Programmers under FR 23 read with FR 22 (I) (a) (ii) instead of FR 22 (I) (a) (i).

2. In order to place in perspective the background giving rise to the dispute under challenge, it may be stated that 4th Central Pay Commission had suggested that the Department of Electronics should examine and suggest re-organisation of the then existing Electronic Data Processing (EDP) posts and prescribe uniform pay scales and designations in consultation with the DOPT. Consequent thereto, a Committee had been set up by the Deptt. of Electronics. The report submitted by the said Committee was considered by the Govt. and vide Ministry of Finance OM dated 11.9.1989, the decision of the Govt. to revise the pay structure for EDP posts as per terms and conditions laid down therein was conveyed. All the Ministries/Departments under the Govt. of India having

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EDP posts under their administrative control were directed to review the designations and pay scales and recruitment qualifications, etc. and revise the same to the extent necessary as per pay structure and categories prescribed in the said Memo. While originally it was stipulated that the revised pay scales will be operative from the date of issue of the notification, the same, however, was revised to take effect from 11.9.1989. The OM further stipulated that if there be any change in the pay scale because of review the pay of the incumbents will be fixed as per FR 23 read with FR 22 (a) (ii).

3. The respondents undertook the restructuring of the EDP posts in pursuant to the said OM and as per para 3 thereof, they have proceeded to fix the revise pay of the applicants in accordance with FR 23 read with FR 22 (I) (a) (ii). The applicants contend that they are entitled to fixation of their pay in accordance with FR 22 (I) (a) (i). Hence this OA.

4. The counsel for applicant has primarily relied upon the advice of the DOPT rendered in the matter in PC to MF No. 11005/Programmer/JCB which was referred to them by respondent No.6. The counsel contends that the DOPT being the nodal Ministry with regard to matters involving fixation of pay, respondent No.5, who is the controlling authority of the applicants, should have followed their advice and fixed the pay of the applicants under FR 22 (I) (a) (i). The counsel has further contended that the respondents have gone to the extent of misleading the Tribunal that the subject matter of fixation of pay falls within the domain with the Ministry of Finance, Deptt. of

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Expenditure which is not so. In this regard, he has referred to OM dated 29.9.2003 of the DOPT in which ACC's decision to settle such matter in consultation with the DOPT has been prescribed. The counsel has produced an extract from the Allocation of Business Rules, para 23 (a) of which states that the administration of all service rules including F.Rs. SRs and C.S.Rs (but excluding those relating to Pension and other retirement benefits) falls under the charter of the duty of the DOPT. The counsel, therefore, vehemently and emphatically argues that respondent No.5 had in a malafide manner ignored the suggestion of the DOPT and has relied on the advice of the Deptt. of Expenditure, Ministry of Finance, who had nothing to do in the matter.

5. The counsel for respondents on the other hand has contended that the applicants have tried to make out a case by which they want to take double benefit of the restructuring which has been adopted consequent to the OM of 11.9.1989. The counsel contends that the respondents had issued placement orders in respect of various EDP grades in 1995-97 taking into consideration the grade held by the individuals at the time of issuance of the Govt. letter dated 20.1.1995. Accordingly, the TAs who were possessing the requisite qualifications were placed in the grade of DPA 'B' in the scale of Rs.2000-3500 and others in the grade of DPA 'A' in the scale of Rs. 1660-2660. The eligible STAs were placed in the grade of Jr. Programmer in the scale of Rs.2000-3500 and eligible SSOs were placed in the grade of Programmer in the scale of Rs. 2375-3500. Subsequent to the decisions of this Tribunal in OA-2691/96 and OA-2516/96, those who did not possess

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the qualifications were also placed along with others and the date of placement was made effective from 11.9.1989. Further the applicants who joined as TAs got their promotion as STAs and SSOs prior to the implementation of the revised pay structure laid down vide letter dated 20.1.1995 which was made effective from 11.9.1989. All of them were promoted to the post of STA in the grade of Rs. 1640-2900 on various dates and further promoted to SSOs in the scale of Rs.2000-3500. Consequent to the issuance of the letter dated 11.11.1997 vide which the revised pay structure was made effective from 11.9.1989, the applicants who were TAs in the scale of Rs.1400-2600 were placed in the grade of DPA 'B' in the scale of Rs. 2000-3200. and in order to protect the pay of the applicants in the promoted scale, they had to be placed in the corresponding revised pay scale which were higher to the promoted pay scales. This was done in order to avoid any disadvantage to the applicants and, therefore, the counsel contends that no prejudice has been caused to the applicants.

6. With regard to the claim of the applicants that subsequent to 11.9.1989 their promotion to the post of STA/ Junior Programmer and SSO/Programmer, they should have been entitled to a pay fixation under FR 22 (I) (a) (i), the counsel contends that the same is misconceived. According to him, the applicants had already got promotions to STAs and SSOs based on the provisions of the recruitment rules then existing and because it involved higher responsibilities, they were allowed the benefit of fixation of pay under FR 22 (I) (a) (i). It was ensured that they did not lose the benefit they had already

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acquired on account of the promotions based on the then recruitment rules and, therefore, they were placed on the higher post in restructuring scheme corresponding to their promoted post. Their placement did not involve any change in the responsibilities and, therefore, the question of application of FR 22 (I) (a) (i) did not arise.

7. Referring to the additional affidavit filed by the respondents, the counsel contends that respondent No.5 is the cadre controlling authority of the applicants and in that capacity, he was the controlling officer for deciding the matters with regard to pay fixation, etc. A reference by respondent No.6, who is only a Director of a Technical Department directly to the DOPT, was not warranted and in any case the matter at the final stage having been seen both by the DOPT and Ministry of Finance and finally accepted by the competent authority, i.e., respondent No.5, the applicants are unnecessarily trying to make a case on technical grounds. Respondent No.5 being the final authority can seek the advice/opinion from the Department he considers it to be relevant and in any case since the matter also involves finance, it cannot be said that the opinion expressed by the Finance Ministry should be ignored. The counsel has further objected to the repeated reference made by the counsel for applicants to the various internal notings on the files of the respondents and stated that the Tribunal take a serious view of the matter specially taking into account that the applicants are working in Ministry of Defence and that too in a Joint Cipher Bureau.

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8. We have considered the arguments advanced by the counsel for both the parties and have also perused the records of the case. The moot point involved in this matter relates to whether the applicants are entitled to the benefit under FR 22 (I) (a) (i). As is clear from para 3 of the Memo dated 11.9.1989, if the pay scale of any post was to undergo a change, the pay of the existing incumbents were to be fixed as per FR 23 read with FR 22 (a) (ii). As has been explained by the counsel for respondents, the applicants had already derived the benefit of fixation of pay under FR 22 (I) (a) (i) when their pay scales were earlier revised on promotion to various categories and, therefore, they could not again take advantage of the same.

9. The arguments of the counsel for applicants that just because the DOPT had given an advice in their favour, the same should be mechanically adopted by the competent authority, we are afraid, will not be tenable, specially when the instructions on the subject are clear that unless the placement amounts to higher responsibility which in this case is clearly not there, the mere placement will not entitle the benefit of pay fixation under FR 22 (I) (a) (i).

10. Under the circumstances, we find no merit in this application and the same is accordingly dismissed with no order as to costs.

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(S. K. Naik)
Member (A)

S. Raju
(Shanker Raju)
Member (J)

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