

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on October 21, 2013

Judgment Delivered on October 30, 2013

+ W.P.(C) 430/2013

All INDIA CPWD ENGINEERS ASSOCIATION & ANR.

..... Petitioners

Represented by: Mr. Vinay Kr.Garg, Advocate
with Mr.Fazal Ahmad, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Represented by: Mr.Rajeeve Mehra, ASG with
Mr.Joginder Sukhija, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The petitioners impugn order dated November 27, 2012 passed by the Central Administrative Tribunal in O.A. No.396/2012 whereby the claim for Assistant Engineers to be placed in Pay Band 3 with Grade Pay of ₹5400/- is rejected.

2. The brief facts are the 6th Central Pay Commission, which is an expert body, was constituted to recommend pay structure etc. of Central Government employees. In para 7.46.12 of its recommendation it had made a specific recommendation for Assistant Engineers of CPWD to place them in Pay Band 2 with Grade Pay of ₹4600/-. The relevant recommendation with respect to para 7.46.12 is reproduced hereunder:-

*“7.46.12 Higher pay scales of ₹6,500-10,500 and
₹8,000-13,500 have been demanded for Junior*

*Engineers (JEs) and Assistant Engineers (AEs) in CPWD. All diploma holder Engineers are placed in the scale of ₹5,000-8,000. **The post of Junior Engineers may, therefore, be placed only in the corresponding replacement pay band and grade pay.** Scale of ₹8,000-13,500 is the entry scale for Group A posts. The same cannot be extended to the Group B post of AE. However, the Commission has recommended the scale of ₹7,450-11,500 for all posts of Engineers carrying minimum qualifications of a degree in engineering. Post of Assistant Engineer in CPWD carries these minimum qualifications. **The post may, therefore, be placed in the scale of ₹7,450-11,500 corresponding to the replacement pay band PB 2 along with grade pay of ₹4,600.**”*

3. In para 3.4.7 comprising chapter 3.4 of the report the 6th Central Pay Commission recommended as under:-

“(2) In para 3.4.7 of Chapter 3.4 on Engineering Services the Commission has made following recommendations for subordinate Engineering cadres.

*“.....The Commission recommends that all posts in Subordinate Engineering Cadres carrying minimum qualification of diploma in Engineering for direct recruits and having an element of direct recruitment should be placed in the running pay band PB-2 of ₹8700-24800/- along with a grade pay of ₹4200/- corresponding to the pre-revised pay scale of ₹6500-10500/-. Simultaneously, all posts in subordinate Engineering cadres carrying minimum qualifications of a degree in engineering and having an element of direct recruitment should be placed in the running pay band PB 2 of ₹8700-34800/- along with the grade pay of ₹4600/- corresponding to the pre-revised pay scale of ₹7450-11500/-. **These posts will form feeder cadre for promotion to the posts in***

running pay band PB3 of ₹15600-39100/- carrying grade pay of ₹5400/- (pre-revised ₹8000-13500) in which direct recruitment to group 'A' Engineering cadre posts is made".

4. The petitioner No.1, as the name signifies, is an association of Assistant Engineers. The recruitment to the said post is governed by CPWD (Subordinate Officers) Assistant Engineers (Civil/Electrical) Recruitment Rules, 2003. As per the said Rules, 80% of vacancies are filled by Junior Officers with five years regular service and 20% vacancies are filled up on the basis of LDCE from amongst Junior Engineers with four years regular service.

5. We may note here that the recruitment to the post of Junior Engineer is governed by CPWD (Subordinate Officers) Junior Engineer (Civil/Electrical) Recruitments Rules, 2003. As per these Rules 95% posts are filled up by direct recruitment and 5 posts are filled up on the basis of Limited Departmental Competitive Examination from amongst the departmental employees with five years service and possessing diploma in the Engineering as qualification.

6. We also note here that the post of Assistant Engineer is a Group 'B' post.

7. There is a service in the CPWD which is called Central Engineering Service (Civil) Group 'A' service which is governed by CES Service Rules, 1996.

8. The entry grade in the Central Engineering Service (Civil) is the post of Assistant Executive Engineer (Civil). The same is filled by direct recruitment through UPSC. Recruitment for the next higher post i.e. Executive Engineer is by promotion. Recruitment to the post of Executive Engineer (Civil) is done in the following manner:-

“(i) 33 1/3 % from Assistant Executive Engineer (Civil) Pay Band-3 15600-39100 + Grade Pay of 5400/- with four years regular service in the grade and have successfully completed two week course on Contract Law, e-Governance Building Bye-laws and Building Electrification.

(ii) 66 2/3% from Assistant Engineer (Civil) in Pay Band-2 9300-34800+Grade Pay of 4600/- with seven years regular service in the grade and possessing Degree in Civil Engineering from a recognized University or Institution or any other equivalent qualification and having successfully completed a two week course on Contract Law, e-Governance, Building Bye-laws and Building Electrification.

The officers in the grade of Assistant Engineer (Civil) on the date of the notification of these Rules and possessing Diploma in Engineering shall however, continue to be eligible on completion of nine years regular service for consideration to the post of Executive Engineer (Civil) limited to 33 1/3% vacancies arising in the grade on annual basis;

Provided that the Assistant Engineers (Civil) with seven years regular service, who at the time of recruitment as Junior Engineer (Civil) were possessing Diploma in Engineering but subsequently acquired Degree in Engineering and those Assistant Engineers (Civil) with seven years regular service, who were possessing degree in Engineering at the time of recruitment as Junior Engineer (Civil) shall also be eligible for consideration to the post of the Executive Engineer (Civil), in case a junior Diploma holder Assistant Engineer (Civil) is considered for promotion.”

9. A perusal of the CES Service Rules reveal that the Assistant

Executive Engineer (Civil) is a Group A post and under the 6th Central Pay Commission the pay is in Pay Band 3, ₹15600-39100 with Grade Pay of ₹5400/-. Similarly the pay of Assistant Engineer (Civil) is in Pay Band 2 ₹9300-34800 + Grade Pay of ₹4600/-.

10. It appears on the basis of para 3.4.7 the petitioners claimed that they are also entitled to Pay Band 3 with Grade Pay of ₹5400/-. The representations of the petitioner association was considered at the administrative ministry level and was sent to Departmental of Expenditure, Ministry of Finance. The Department of Expenditure, Ministry of Finance considered the proposal of the Ministry of Urban Development and the Department of Expenditure was of the following view:-

“Ministry of Urban Development may please refer to their proposal for placement of the Assistant Engineers of CPWD in PB-3 in grade pay of ₹5400.

2. The matter has been examined. It has been observed that the 6th CPC in para 7.46.12 has clearly recommended the scale of ₹7450-11500 corresponding to the grade pay of ₹4600 in PB-2 to the AEs of CPWD as the post of AE in CPWD carried the minimum qualification of degree in Engineering. Further in para 3.4.7, the 6th CPC has recommended the same that all posts in subordinate Engineering cadres carrying minimum qualification of a degree in engineering and having an element of direct recruitment should be placed in the running pay Band PB-2 of ₹8700-34800/- alongwith a Grade pay of ₹4600/- corresponding to the pre-revised pay scale of ₹7450-11500/-. Therefore, there appears no contradiction between the recommendations of 6th CPC contained in para 3.4.7 and para 7.46.12.

The recommendations of 6th CPC contained in para 7.46.12 have been accepted and notified under Part-C of the CCS (RP) Rules, 2008. The pay scales of the AEs of CPWD are in the line with the recommendations of Sixth CPC and there is no case for further upgradation of the post of Assistant Engineers of CPWD.

3. Further, it has been observed that the pre-revised pay scale of the post of Assistant Engineer in most of the States was ₹8000-13500. Thus, the post of AEs in the States have been placed in PB-3 with GP of ₹5400 as a normal replacement scale. However, in the instant case, the pre-revised pay scale of AEs in CPWD was ₹6500-10500. Moreover, the Grade pay of ₹5400 in PB is a Group 'A' entry pay scale and the post of AE is a Group 'B' post. In view of the above, the proposal from Ministry of Urban Development has not been agreed to."

11. Before the Tribunal, it was the contention of the petitioners that since Junior Engineer is part of subordinate engineering cadre having an element of direct recruitment in terms of para 3.4.7 of the recommendation of the 6th Pay Commission the post for which the same is feeder cadre should be placed in the Grade Pay of ₹5400/-.

12. The Tribunal rejected such a claim by holding as under:-

"We are afraid that the interpretation of the aforementioned recommendation given by applicants is not accurate and correct. In terms of the recommendation of 6th CPC (i) the minimum qualification of degree in engineering and an element of direct recruitment for appointment in the feeder cadre is sine qua non to place the promotional post in running pay band PB 3 of ₹15600-39100 carrying grade pay of ₹5400/-. In CPWD the minimum qualification for

the post of Junior Engineers (Civil and Electrical) is diploma in Civil or Electrical or Mechanical from an Institute recognized by the Central Government or equivalent qualification. Thus since for JEs in CPWD degree is not minimum essential qualification, the next promotional post, i.e. AE cannot be placed in the pay band PB 3 of ₹15600-39100/- in grade pay of ₹5400/-. In other words, the category represented by applicant, i.e. AE in CPWD are not entitled to the benefit of para 3.4.7 of 6th CPC (ibid)."

13. Mr.Vinay Garg, learned counsel for the petitioners has taken us through para 3.4.7 of Chapter 3.4 of the 6th Central pay Commission recommendations to reiterate his contention that the Assistant Engineer for which the Junior Engineer is a feeder cadre should be placed in the Grade Pay of ₹5400/-. He had also taken us through the proposal of the Ministry of Urban Development in this regard. According to him the matter was considered at the highest level and there is no reason why the petitioner could have been denied Pay Band 3 with Grade Pay of ₹5400/-. Mr.Vinay Garg also relied upon the judgments reported as 2000 (7) JT 471 Dy.Dir.Gen.of Geo Survey of India & Anr. v R.Yadaiah, 2008 (13) SCC 463 Union of India v. S.Thakur, 1996 (7) SCC 120 Sisir Kumar Mohanty & Anr. v. State of Orissa & Ors. and 1999 (3) SCC 435 State of Orissa & Ors. v. Kishore Chandra Samal & Ors.

14. On the other hand, Mr.Rajeeve Mehra, learned Additional Solicitor General has taken us through para 7.46.12 to submit that the Assistant Engineers in CPWD being Group 'B' post cannot be granted entry scale of Group A engineering cadre post. In so far as para 3.4.7 is concerned he submits that in terms of para 3.4.7 the 6th Pay

Commission has recommended that all posts in subordinate engineering cadres carrying minimum qualifications of diploma engineering for direct recruitments and having an element of direct recruitment should be placed in the Pay Band 2 along with Grade Pay of ₹4200/- corresponding to the pre-revised pay scale of ₹6500-10500. Simultaneously all posts in subordinate cadres carrying minimum qualifications of a degree in engineering and having an element of direct recruitment should be placed in the running Pay Band 2 of ₹8700-34800 in the Grade Pay of ₹4600/- corresponding to the pre-revised pay scale of ₹7450-11500. These posts will form feeder cadre for promotion to the post in running Pay Band 3 of ₹15600-39100 carrying Grade Pay of ₹5400/-, pre-revised being ₹8000-13500 in which direct recruitment to Group 'A' engineering cadre post is made. In other words the recommendations in para 3.4.7 are not applicable to Assistant Engineers.

15. We have considered the rival submissions of the learned counsel for the parties. It is an admitted position that the members of the petitioner No.1 association are working as Assistant Engineer which is a Group 'B' post. Their claim is for Pay Band 3 and Grade Pay of ₹5400/-. PB 3 with Grade Pay of ₹5400/- has been given to those incumbents who were in the pre-revised Group 'A' scale of ₹8000-13500 in which Assistant Executive Engineers were placed in 5th CPC. The Assistant Engineers like the members of the petitioner No.1 Association were in the pre-revised scale of ₹7450-11500 of which the corresponding scale under the 6th CPC is Pay Band 2 of ₹8700-34800 with a Grade Pay of ₹4600/-, in terms of para 7.46.12.

16. We note even under the 5th CPC there has been a difference in

pay scales between Assistant Executive Engineers (Group 'A') and Assistant Engineers (Group 'B'). The attempt on the part of the petitioners to be treated as Assistant Executive Engineers is not permissible. The mode of recruitment to the post of Assistant Executive Engineer and Assistant Engineer is under different set of rules and such an equation is impermissible.

17. The claim of the petitioners is premised on para 3.4.7. Para 7.46.12 cannot be overlooked.

18. The recommendations of the pay Commission has been accepted. That apart the Department of Expenditure, Ministry of Finance which is a nodal department with regard to the implementation of the Pay Commission recommendations have gone into the aspect and did not find it viable to agree with the claim of the petitioners. In fact the Department of Expenditure has concluded that there is no contradiction between the recommendations of the 6th CPC contained in para 3.4.7 and para 7.46.12. The recommendations as given in para 7.46.12 having been accepted and notified there cannot be a case of a further upgradation of the post of Assistant Engineers of the CPWD.

19. Even otherwise on the interpretation of para 3.4.7 it is noted that as per the recommendation of the 6th CPC where the minimum qualification of degree in engineering and an element of direct recruitment for appointment in the feeder cadre is a pre-requisite to place the promotional post in the running Pay Band 3 of ₹15600-39100 carrying Grade Pay of ₹5400/-. In CPWD it is noted from page 62 of the paper book the minimum qualification is diploma in Civil, Electrical or Mechanical, from an institute recognised by the Central Government of equivalent qualification. Hence the benefit under para in 3.4.7 of the

6th CPC would not be applicable to the Assistant Engineers. The reliance placed by Mr.Vinay Garg on the judgments referred to above, are not applicable in the facts of this case. Before we deal with those judgments we hold that in view of our aforesaid conclusions there is no apparent error which has crept in the implementation of the recommendations of the 6th CPC.

20. A bare perusal of the judgments referred by Mr.Vinay Garg would reveal the following:-

In the case reported as JT 2000 (7) SC 471 Dy. Dir. Gen. of Geo. Survey of India vs R. Yadhav & Ors. the question before the Supreme Court was whether it was appropriate on the part of the Tribunal to go into the question of up gradation of pay of a particular employee and give the relief from a particular date. The Court held that the Courts or Tribunals should not go into the question of fitment of the officers in a particular group or the pay scale thereto, and leave the matter to the discretion and expertise of the Special Commission like Pay Commission, unless the Courts find on materials produced that there is some apparent error. Further reliance was placed on the case reported as (2008) 13 SCC 463 UOI & Anr. vs S.Thakur. In the said case the Fifth Central Pay Commission had submitted its report relating to the structure of emoluments, allowances and benefits to be paid to the Central Government employees and also recommended that out of 52 posts of Assistant Director in the Intelligence Bureau, 40 posts be upgraded and placed in the pay scale of ₹3700-5000 whereas 12 posts be upgraded as Joint Deputy director and placed in the pay scale of ₹4500-5700. Accordingly, the Central Government, vide its order, placed 40 posts of Assistant Directors in the pay scale of ₹12000-16500

corresponding to the pre-revised scale of ₹3700-5000 and remaining 12 posts were placed in the scale of ₹14300-18300 corresponding to pre-existing scale of ₹4500-5700 and redesignated as Joint Deputy Directors. It was further mentioned in the said order that the higher scales would be applicable only prospectively from October 01, 1997. The incumbents, who were similarly situated, were granted benefit of higher pay scale with effect from January 01, 1996. The respondent who retired from service as Assistant Director (Executive) on January 31, 1997 gave a representation that the benefit of upgraded pay scale be extended to him from January 01, 1996. However, the same was rejected by the appellants. The Tribunal found that Assistant Directors (Executive) in the group of 40 could have been placed in the higher grade w.e.f. January 01, 1996 itself and delaying the benefit of revision of pay scale till October 01, 1997 was unreasonable. Thus, the Tribunal directed the appellants to grant the upgraded pay scale to the respondent with effect from January 01, 1996. The Supreme Court, with regard to the argument on behalf of the appellants that the interference of the Tribunal and the High Court with respect to the restructuring of cadres and redistribution of posts is devoid of merits since the same is executive function and therefore scope of judicial review is limited, held that such interference is justified if it is found that such administrative decisions are unreasonable, unjust and prejudicial to a section of the employees. The Court conferred with the stand taken by the Tribunal and the High Court and hence, the instant appeal failed and was dismissed. Reliance was also placed by Mr. Vinay Garg on the case reported as 1996 (7) SCC 120 Sisir Kumar Mohanty vs State of Orissa wherein the appellants were members of ministerial staff in the Police

Department of Orissa working as LDC in the offices of the SP and other district offices. They claimed a parity of pay scales and other benefits with the ministerial staff working in the offices of DIG, IG, or DGP at the headquarters. This relief was denied by the Tribunal on the ground that they constitute separate cadre and therefore, the ministerial staff working in the district headquarters could not be considered to be on par with the staff working in the offices of DIG, IG, or DGP as the case may be. It was contended by the appellant that all the police ministerial officers were treated as a whole unit though they had earlier formed part of separate cadres and were given the all benefits of the common cadre. Per contra it was contended by the State that the aforesaid method was adopted only for the purpose of disciplinary control. It was further submitted on behalf of the State that the recruitment, appointment and control of the police ministerial staff are controlled by the Police Act, 1862 and Orissa Ministerial Service Rules. The Court held that there is no sub-division amongst the ministerial staff working in the district headquarters and those working in the head offices i.e. DIG, IG, DGP. Thus, the Court directed that the appellants are entitled to the parity of the treatment with the ministerial staff working in the offices of DIG, IG, DGP. Finally, the case reported as 1999 (3) SCC 435 State of Orissa vs Kishore Chandra Samal was relied upon by Mr. Vinay Garg wherein the stand of the appellant before the High Court as well as the Supreme Court was that all the respondents had been initially appointed as LDC-cum- Assistant Octroi Superintendents and on several occasions they have been transferred to the General Section and from General Section to the Octroi Section. There is no separate cadre of Octroi Superintendents or Inspectors. The stand of the

respondents has been that under Section 81 of the Orissa Municipal Act the State Government is empowered to create a Local Fund Service and can make rules regulating the classification, method of recruitment, conditions of service, pay and allowances, discipline and conduct of the officers and servants belonging to the Local Fund Service and such rules may vest jurisdiction in relation to such service in the State Government or in such other authority or authorities as may be prescribed therein. It was further submitted that the State Government while constituting the Local Fund Service and while constituting a cadre of the municipal employees is guided by the two conditions, namely, (i) that they must be in equal time scales and, (ii) their duties and degree of responsibilities of the posts must be of the same nature. The High Court took the view that the respondents who were working in the Octroi Section cannot claim to constitute an independent cadre by themselves. The Supreme Court held that the question of parity in pay and duties and responsibilities would arise only in case of constituting a cadre by integrating several cadres. In the present cases, there is no integration of cadres inasmuch as the respondents and others working in the common cadre would constitute one single cadre, as noticed by the High Court. If that position is correct, it hardly lies in the mouth of the respondents to contend that they cannot be equated with other employees working in the other sections of the municipalities. In the present case, all of them belong to one cadre and it is the first time when the State is constituting the cadre as provided under the Rules. Therefore, the Supreme Court held that when the posts were interchangeable and the responsibilities discharged by the respondents and the others were identical in constituting such a service the action of the

State appears to be unexceptionable.

21. In view of the above we agree with the ultimate conclusion of the Tribunal. For the reasons stated by the Tribunal and for our own reasons we do not find any merit in the writ petition.

22. Writ petition is dismissed.

23. No costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

OCTOBER 30, 2013

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