

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

+ W.P.(C) No. 7102/2001

% **23rd March, 2015**

SHRI S.P.ASTHA Petitioner
Through: Mr. M.L.Bhargava, Adv.

Versus

DELHI AGRICULTURAL MARKETING BOARD Respondent
Through: Ms. Avnish Ahlawat and Ms. Latika
Chaudhary, Adv.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, petitioner, who was a Superintending Engineer with the respondent- Delhi Agricultural Marketing Board, impugns the office order of the respondent dated 17.10.2001 whereby petitioner's scale of pay was fixed at Rs.12,000 w.e.f 8.11.1997 in the pay-scale of Rs.12000-375-16500. The impugned order recalls the earlier office order dated 22.2.1999 whereby

pay-scale of the petitioner was fixed at Rs.14300-400-18300 w.e.f 8.11.1997.

2. The case of the petitioner is that he was appointed as an Assistant Engineer (AE) with the respondent whereafter he was promoted as Executive Engineer w.e.f 1.7.1989 and thereafter he was promoted after completing 8 years and 5 months of service to the post of Superintending Engineer in the pay-scale of Rs.3700-125-4700-150-5000 (pre-revised) vide office order dated 7.11.1997. Petitioner was therefore promoted to the post of Superintending Engineer by this office order dated 7.11.1997 and he claims that this pay-scale of Rs.3700-125-4700-150-5000 on implementation of the 5th Central Pay Commission recommendation became Rs.14300-400-18300 inasmuch as, with respect to the posts of Superintending Engineers as per the 5th Central Pay Commission Report there was only one pre-revised pay-scale of Rs.4500-5700 and which pay-scale in terms of the 5th Central Pay Commission Report became Rs. 14300-400-18300. Petitioner's contention is that once he was appointed as a Superintending Engineer by the office order dated 7.11.1997, and as per the 5th Central Pay Commission Report, the pay-scale of Superintending Engineer (pre-revised) Rs.4500-5700 is enhanced to Rs. 14300-18300 post-revision, the original office order dated 22.2.1999 fixing the pay of the petitioner in the pay-scale of Rs.14300-

18300 w.e.f 8.11.1997 was correct because petitioner was a Superintending Engineer on 8.11.1997 and hence the impugned office order dated 17.10.2001 be recalled by which his pay-scale has been fixed from 8.11.1997 at Rs. 12000-16500.

3. As per the counter-affidavit filed by the respondent, it is stated that the higher pay-scale of Rs.4500-5700 (pre-revised)/Rs.14300-18300 (after revision), was to be granted only to those officers who had put 13 years of service in Group A cadre and since petitioner would complete 13 years of service in Group A cadre only on 6.6.2002, hence the petitioner can be granted the pay-scale of Rs.14300-18300 only w.e.f 6.6.2002 ie the petitioner from an earlier date of 8.11.1997 could not have been granted, the pay-scale of Rs.14300-18300.

4. Petitioner in rejoinder has sought to rely upon the certificate issued by CPWD that the pay-scale of Superintending Engineer is Rs.14300-18300 and that there is a single scale of pay for Superintending Engineer.

5. In my opinion, the arguments and contentions of the petitioner are misconceived inasmuch as, it is upon the government to decide and interpret as to how a 5th Central Pay Commission Report with its pay-scales is to be applied to the posts of Superintending Engineer. As per the interpretation given and the clarification given by the government in terms

of its circulars, the pay-scale of Rs. 14300-18300 could only be granted to such Superintending Engineers who had completed 13 years of service in Group A cadre. This aspect is specifically stated by the Ministry of Finance, the Ministry which interprets and decides the applicability of the 5th Central Pay Commission Report, in its Office Memorandum (OM) dated 26.4.2001 as under:-

*“G.I., Dept. of Telecom., Cir. Lr.No. 1-4(39)/98-PAT,
dated 26-4-2001*

Clarification regarding revised pay scales of Superintending Engineers in P&T Civil, Electrical and Architectural wing and JAG Officers belonging to Grade ‘A’ Engineering Services

Instructions regarding the revised upgraded pay scale were issued *vide* this office Letter No.1-1/97/PAT, dated ..10-1997 (*Sl. No 132 of Swamy’s Annual, 1997*) for Superintending Engineers in P&T Civil, Electrical and Architectural wing and JAG Officers belonging to Grade ‘A’ Engg. Service. Some of the circles had raised some points for clarifications. The matter has been considered in consultation with Ministry of Finance and the points are clarified as under:-

Sl. No.	Clarification sought by the Deptt.	Clarification given by the MoF
“1.	Whether the upgraded pay scale of Rs.14,400-400-18,300 is applicable to Direct Recruitment Group ‘A’ Officers and Promotee officers as well.	The upgraded pay scale of Rs.14,300-18,300 is applicable to all the SEs, whether DR or promotees who were holding the post as on 1-1-1996 <u>and had put in 13 years of Group ‘A’ service on that date.</u> However,

		in case of promotees, the condition of 13 years of regular Group 'A' service would be relevant, if they also like DRs enter Group 'A' through JTS. If they enter through STS directly, then only 9 years of Group 'A' service will be required."
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(underlining added)

6. A reading of the aforesaid clarification dated 26.4.2001, issued by the Ministry of Finance, shows that a Superintending Engineer can be granted a pay-scale of Rs.14300-18300 only after his having completed 13 years of service in Group 'A' cadre. It is further clarified that the requirement of 13 years of service in Group 'A' is with respect to promotees and not direct recruits and even those Group 'A' employees who enter the post of Superintending Engineer directly by STS method will be required to complete 9 years of service in Group 'A' cadre. Therefore, it is clear that government itself has clarified that to get the pay-scale of Rs.14300-18300, a Superintending Engineer who has become a Superintending Engineer by promotion, must complete 13 years of Group 'A' service. It cannot be doubted and disputed that the Ministry of Finance is the final authority to interpret and decide the implementation of the terms of the 5th Central Pay W.P.(C) No. 7102/2001

Commission Report, and once the Ministry of Finance does so stating that a Superintending Engineer can be granted the pay-scale of Rs.14300-18300 only after completion of 13 years of service in Group A cadre, and which interpretation is consistently and uniformly applied by the Ministry, this Court cannot substitute its views for that of the Ministry and hold that a pay-scale of Rs.14300-18300 is to be granted to the all the Superintending Engineers irrespective of the length of their services in the Group 'A' service.

7. Learned counsel for the petitioner has relied upon Annexure R-1 filed by the respondent, and which is an extract from the 5th Central Pay Commission Report, to argue that this para 50.45 uses the expression “promotions” and therefore, once this para 50.45 talks of a promoted employee being a Superintending Engineer to be granted the pre-revised pay-scale of Rs.4500-5700 to Rs.14300-18300 (after revision), then, since the petitioner already was a Superintending Engineer from the date of implementation of the 5th Central Pay Commission Report, and since there is only a single pay-scale for a Superintending Engineer, hence the petitioner rightly was granted the pay-scale of Rs.14300-18300 by the office order dated 22.2.1999 and which has been wrongly recalled by the impugned office order dated 17.10.2001.

8. I cannot agree with the argument urged on behalf of the petitioner by placing reliance upon para 50.45 of the 5th Central Pay Commission Report inasmuch as what should be the interpretation of the 5th Central Pay Commission Report and who are the persons who are entitled to the benefit of the pay-scales, and on satisfying which conditions, falls into the exclusive prerogative of the Ministry of Finance and the Ministry of Finance has clarified by issuing clarification dated 26.4.2001. Thus para 50.45 of the 5th Central Pay Commission Report has necessarily to be read with the clarification dated 26.4.2001 that merely because a person is a Superintending Engineer he will not automatically get the pay-scale of Rs.14300-18300 and which scale the Superintending Engineer will get only if he has completed 13 years of service in Group A post. Therefore, the respondent was justified in issuing the office order dated 17.10.2001 recalling its earlier wrongly issued office order dated 22.2.1999 fixing the pay-scale of the petitioner as Rs.14300-18300.

9. Reliance placed by the petitioner upon the certificate of the CPWD dated 24.2.2003 is of no effect because that circular can in no way mean that 13 years of service in Group 'A' is not required for Superintending Engineer for being granted the pay-scale of Rs.14,300-18,300 and as clarified by the Ministry of Finance vide its clarification dated

26.4.2001, inasmuch as the competent authority is not the CPWD but the Ministry of Finance.

10. The final contention of the petitioner that the petitioner in terms of the Rules of the respondent has become a Superintending Engineer, and since a Superintending Engineer has to get a revised pay-scale of Rs.14300-18300, hence petitioner is entitled to this pay-scale, the same is misconceived because entitlement of promotion and what is the pay-scale of the promoted post are separate issues. Surely, the respondent-employer alongwith the Ministry of Finance (inasmuch as respondent is a government organization), is entitled to fix a particular pay-scale of a particular post being the Superintending Engineer in this case, and hence once the Ministry of Finance requires a particular eligibility criteria to be complied with being 13 years of service in Group 'A' service for being granted the pay-scale of Rs.14300-18300, this Court cannot hold that every Superintending Engineer on becoming a Superintending Engineer must necessarily receive a pay scale of Rs.14,300-18,300, although the Ministry of Finance has clarified the issue vide its clarification dated 26.4.2001 that 13 years of service is required in Group A for a Superintending Engineer to be granted the pay-scale of Rs.14300-18300.

11. I may finally note that it is not even the case of the petitioner that petitioner had worked for 13 years in Group A service as on 8.11.1997, and, it is not the case of the petitioner that he got appointed to the post of Superintending Engineer by direct recruitment or that he was appointed through STS method by completing 9 years of service in the Group A service, and which are the other conditions in which a Superintending Engineer can get a pay-scale of Rs.14300-18300. In fact, as per para 2 of the writ petition, petitioner admittedly stood promoted only as a departmental candidate to the post of Superintending Engineer after completion of 8 years and 5 months i.e the petitioner had not even completed either 13 years of service in Group A Cadre or that petitioner had completed 9 years of Group A service for being considered as a STS promotee.

12. Dismissed. Since the petition is dismissed, interim orders naturally would be vacated.

MARCH 23, 2015
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VALMIKI J. MEHTA, J.