

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: March 3, 2015

% **W.P.(C) No. 6673/2003**

SHANKAR SINGH

..... Petitioner

Through: Mr. U. Srivastava, Adv.

versus

UOI & ORS

.....Respondents

Through: Mr. R.V. Sinha, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. Aggrieved from the order of the Central Administrative Tribunal, Principal Bench, New Delhi dated 23.07.2003 in O.A. No. 2268/2002, the petitioner has preferred the present writ-petition under Articles 226 and 227 of the Constitution of India for setting aside the aforesaid order and for issuing necessary directions to the respondent. The present writ-petition is arising out of above-mentioned O.A. on the basis of the rejection of the petitioner's representation dated 06.08.2001.
2. The brief facts of the case are that the petitioner, an ex-serviceman/qualified draughtsman after release from the Army where he

served for eighteen years, was appointed as draughtsman in the scale of Rs. 1400-2300/- on 12.09.1991, for which the revised pay scale after the recommendations of the Fifth Central Pay Commission were accepted, stood at Rs. 5000-8000/-. However, the respondents had fixed him in the pay scale of Rs. 4500-7000/- which is nowhere found in the entire recommendations of the Fifth Central Pay Commission. The petitioner had filed representation to this effect but finding no response from the respondent, filed an O.A.-296/2002 before the Tribunal which was disposed of on 06.08.2002. The Ld. Tribunal passed the directions to the respondents to pass a reasoned order in the aforesaid O.A. The respondents, thereafter, in compliance of the aforesaid order, passed an order dated 12.04.2002. Aggrieved from the said order, the petitioner filed O.A. before the Ld. Central Administrative Tribunal, and the Central Administrative Tribunal relying on the reason given by the respondent dismissed the aforementioned O.A. and the petitioner aggrieved from the said order has filed the present writ claiming the pay scale of Rs. 5000-8000/- as per the Fifth Central Pay Commission's recommendations w.e.f. 01.01.1996. The petitioner is claiming the pay scale of Rs. 5000-8000/- as he is already drawing the pay scale of Rs. 1400-2300/- as per order dated 30.06.1998. Hence the present writ.

3. The learned counsel for the petitioner argues that the petitioner was wrongly placed in the pay-scale of Rs. 4500-7000/- vide order dated

30.06.1998. It is contended that since the pay-scale of Rs. 1400-2300/- has been replaced by the pay-scale of Rs. 5000-8000/- by the Fifth Central Pay Commission, the petitioner should have been granted the pay-scale of Rs. 5000-8000/- and not the pay-scale of Rs. 4500-7000/-.

4. On the other hand, the learned counsel for the respondents argues that the petitioner was originally placed in the pay-scale of Rs. 1200-2040/- and was entitled to next pay scale of Rs. 1400-2300/- only after the completion of five years service from the date of his appointment i.e. 11.09.1991.

5. It is an admitted fact that the petitioner was appointed as a draughtsman on fulfilling the requisite eligibility criteria of ten years. The pay-scale of petitioner as per the appointment letter dated 11.09.1991 was Rs. 1200-2040. Later, as per Order No. 13(1)-1C/91 of the Deptt. of Expenditure dated 19.10.1994, the draughtsmen who had completed minimum period of service of five years were made entitled to higher pay scale of Rs. 1400-2300/-. It is not in dispute that the petitioner-appellant was appointed initially in the pay scale of Rs 1200-2040/- but after some time, the petitioner was given the higher pay scale of Rs. 1400-2300/- without the completion of 5 years service which was *sine qua non*. The five years service of petitioner was to be completed on 11.09.1996 but the petitioner managed to get the pay scale of Rs. 1400-2300/- even before the completion of five years service. However, the petitioner's pay-scale

has already been revised to Rs. 4500-7000/- vide order F.No. 207/8/97 – DPO dated 14.10.1997 in pursuance of O.M. No. 50 (I)-1C/97 dated 30.09.1997 on the basis of the option exercised by him after the Fifth Central Pay Commission Report. The aforesaid order of the Govt. of India, Ministry of Finance, Deptt. of Expenditure (Order No. 13(1)-1C/91) and its consequential order are reproduced as under:

*No. 13(1)-IC/91 Government of India
Ministry of Finance
Department of Expenditure*

New Delhi,

the 19th October 1994

Subject: Revision of pay-scales of Draughtman Grade – I, II and III in all Government of India Offices on the basis of the Award of Board of Arbitration in the case of Central Public Works Department.

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The undersigned is directed to refer to this Department's O.M. No. F. (59) – E.III/82 dated 13.03.1984 on the subject mentioned above and to say that a Committee of the National Council (JCM) was set-up to consider the request of the Staff side that following scales of pay, allowed to the Draughtsmen Grade – I, II and III working in CPWD on the basis of the Award of Board of Arbitration, may be extended to Draughtsmen of Board of Arbitration, may be extended to Draughtmen in all Government of India offices:

	<i>Original Scale (Rs)</i>	<i>Revised scale on the basis of the award (Rs.)</i>
<i>Draughtsmen Grade – I</i>	<i>425-700</i>	<i>550-750</i>
<i>Draughtsmen Grade – II</i>	<i>330-560</i>	<i>425-700</i>

<i>Draughtsmen Grade – III</i>	<i>260- 430</i>	<i>330-560</i>
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2. *The president is now pleased to decide that the Draughtsman Grade I, II, III in offices/departments of the Government of India other than in CPWD may also be placed in the scales of pay mentioned above subject to the following:*

*Minimum period of Service for placement
from the post carrying scale of Rs. 975-1540 to Rs. 1200-2040(pre-revised Rs. 260-430 to Rs. 330-560).* 7 years

***Minimum period of Service for placement
from the post carrying scale of Rs. 1200-2040 to Rs. 1400-2300 (pre-revised Rs. 330-560 to Rs. 425-700).*** 5 years

*Minimum period of Service for placement
from the post carrying scale of Rs. 1400-2300 to 1600-2660 (pre-revised Rs. 425-700 to Rs. 550-750).* 4 years

3. *Once the draughtsmen are placed in the regular scales, further promotion would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in recruitment rules.*

The benefit of this revision of scales of pay would be given effect from 13.05.1982 notionally and actually from 1.11.83.

*sd/-
(Shyam Sunder)
Under Secretary to the Govt. of India*

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The Order dated 30.06.1998 is reproduced hereinunder:

*F. No. 201/11/91-DPO. Estt. 2850
Directorate of Prev Operations
Customs and Central Excise
7th Street, Shopping Centre
Shantiniketan, New Delhi-21*

*New Delhi, the 19th October
1994*

ORDER

In pursuance of Ministry of Finance, Deptt. of Revenue letter F.No. A-26017/59/91-AD. II(A) dated 25.06.1998, the scale of pay of Shri Shankar Singh, Draughtsman of this Directorate is revised from Rs. 1200-2040 to Rs. 1400-2300 from the date of appointment i.e. 12.09.1991 on award of arbitration in the case of CPWD. Accordingly, the pay is also fixed as under:-

<i>Date from which the pay is fixed</i>	<i>Pay drawn in the scale of pay of Rs. 1200-2040.</i>	<i>Pay fixed in the revised scale of pay of 1400-2300.</i>	<i>Date of next increment.</i>
<i>12.09.91</i>	<i>Rs. 1200.00</i>	<i>Rs. 1400.00</i>	<i>1.9.92</i>
<i>1.9.92</i>	<i>Rs. 1230.00</i>	<i>Rs. 1440.00</i>	<i>1.9.93</i>
<i>1.9.93</i>	<i>Rs. 1260.00</i>	<i>Rs. 1480.00</i>	<i>1.9.94</i>
<i>1.9.94</i>	<i>Rs. 1290.00</i>	<i>Rs. 1520.00</i>	<i>1.9.95</i>
<i>1.9.95</i>	<i>Rs. 1320.00</i>	<i>Rs. 1560.00</i>	<i>1.9.96</i>

Consequent upon the recommendation of the 5th Pay Commission, the scale of pay is revised from Rs. 1400-2300 to Rs. 4500-7000 w.e.f. 1.1.96 and the pay is fixed as under:-

<i>1.1.96</i>	<i>Rs. 4750.00</i>	<i>Rs. 1.9.96</i>
<i>1.9.96</i>	<i>Rs. 4875.00</i>	<i>Rs. 1.9.97</i>
<i>1.9.97</i>	<i>Rs. 5000.00</i>	<i>Rs. 1.9.98</i>

Shri Shankar Singh, Draughtsman who is entitled to draw arrears of pay and allowances w.e.f. 12.09.1991.

The above fixation of pay is subject to post audit and in the light of audit observation, the over payment made, if any either in the form of arrears or otherwise shall be recoverable from the individual concerned.

s/d
(P.V. VIRMANI)
DEPUTY DIRECTOR (ADMN.)

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6. The draughtsmen who have already been given the benefit under the Order No. 13(1)-1C/91 of the Deptt. of Expenditure dated 19.10.1994 (*Supra*), were to be excluded from availing the pay-scales recommended by the Fifth Central Pay Commission as per Para 3 of the Order dated 1.06.2001 (No. 6/1/98-1C) passed by the Government of India, Ministry of Finance. The abovementioned order is reproduced hereinunder:

No. 6/1/98-1C
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF EXPENDITURE
(IMPLEMENTATION CELL)
New Delhi, dated June 1, 2001.

Subject - Recommendation of the Fifth Central Pay Commission – Revision of pay scales of Draughtsmen in Government of India Offices

1. In pursuance of an award of the Board of Arbitration, Draughtsman in Grades I, II and III in the Central Public Works Department in the 3rd CPC pay

scales of Rs.425-700, Rs 330-560 and Rs. 260-430 respectively were placed in the higher pay scales of Rs. 550-750, Rs. 425-700 and Rs. 330-560 respectively. Orders were also issued subsequently in this Department's O.M. No. F.5 (59)-E.III/82 dated March 13, 1984 extending these scales of pay to Draughtsmen in all Government of India offices notionally from May 13, 1982 and actually from November 1, 1983, subject to their recruitment qualifications being similar to those applicable in the Central Public Works Department. Following further consideration, orders were issued in this Department's O.M. No. 13(1)-IC/91 dated October 19, 1994 extending the corresponding 4th CPC pay scales to even those not possessing the prescribed qualification, subject to the condition that they had instead rendered the length of service prescribed therein specifically for the purpose.

2. The Fifth Central Pay Commission having been appointed in the meantime, the benefits of the higher scale had not flown, as envisaged, to all personnel in various departments who had not completed the prescribed service in the applicable scales of pay. The Fifth Central Pay Commission had also further revised the scales of pay of the common category of Draughtsmen.

3. The staff side has invited attention to the anomalous situation that has arisen as a consequence in the National Anomalies Committee. They had raised the demands that the revised pay scales recommended by the Fifth Central Pay Commission should be extended to the Draughtsmen in all Central Government offices, due weightage being given for the service rendered by the personnel not possessing the prescribed qualifications in the different departments as envisaged in this Department's O.M. dated October 19, 1994. Following consideration of this demand in consultation with the Staff side, the President is now pleased to decide that Draughtsmen in different departments other than the Central Public Works Department who do not possess the prescribed qualifications and **excluding those who have already derived the benefits envisaged in the O.M. dated October 19, 1994** may be placed in the scales of pay recommended in the 5th CPC on completion of the

minimum service (including service rendered in the corresponding pre-revised scales) as indicated below:

Minimum period of service to be rendered for placement from the scale of Rs. 3200-4900 (pre-revised:975-1540) to the scale of Rs. 4000-6000 (pre-revised: Rs. 1200-2040) 5 years

Minimum period of service to be rendered for placement from the scale of Rs. 4000-6000 (pre-revised:1200-2040) to the scale of Rs. 5000-8000 (pre-revised: Rs. 1400-2300 revised to Rs. 1600-2660 by the 5th CPC)8 years

Minimum period of service to be rendered for placement from the scale of Rs. 4500-7000 (pre-revised:1400-2300) to the scale of Rs. 5500-9000 (pre-revised: Rs. 1640-2900)6 years

4. *In determining the eligibility to be placed in the revised scales of pay, the service already rendered in the pre-revised scales will also be duly taken into account. Once the Draughtsmen in various Central Government Departments are placed in the applicable revised scales of pay, further promotion to the higher grades will be made only against the available vacancies in such higher grades in accordance with the normal eligibility criteria prescribed in the Recruitment Rules.*

5. *These orders shall be applicable to such of those Draughtsmen in various Central Government Departments who had not derived the benefits, envisaged in this Department's O.M. dated October 19, 1994 as on January 1, 1996. The revised pay scales shall also be extended to them only on their fulfilling the revised eligibility criteria now prescribed in paragraph 3 above.*

6. *Draughtsmen who have already been covered by the orders contained in the O.M.s dated March 13, 1984 and October 19, 1994 shall be eligible to be placed only in the applicable revised scales of pay already approved*

for the common category of Draughtsmen in pursuance of the recommendations of the Fifth Central Pay Commission.

7. Ministries/Departments of the Government of India may also initiate immediate action, in consultation with the Department of Personnel & Training, to amend the Recruitment Rules in respect of the posts of Draughtsmen administered by them so that these conform to the recommendations of the Fifth Central Pay Commission.

8. Hindi version will follow.

s/d

(MANOJ JOSHI)

Deputy Secretary to the Government of India

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7. It is an admitted position that the petitioner was already availing the benefits under the Order No. 13(1)-1C/91 of the Deptt. of Expenditure dated 19.10.1994 (*Supra*) on the date of representation i.e. 06.08.2001 which disentitles him from availing the pay-scales recommended by the Fifth Central Pay Commission in accordance with the order dated 1.06.2001 passed by the Ministry of Finance (*Supra*). However, the petitioner's pay-scale has already been revised to Rs. 4500-7000/- vide order F.No. 207/8/97 – DPO dated 14.10.1997 in pursuance of O.M. No. 50 (I)-1C/97 dated 30.09.1997 on the basis of the option exercised by him after the Fifth Pay Commission Report. Since the petitioner has already availed the benefit under the OM dated 19.10.1994, therefore, the representation made by the petitioner before the Commissioner is without merit and the Commissioner has passed a well-reasoned order.

Consequently, we do not find any infirmity in the order passed by the

Commissioner and the impugned Order dated 23.07.2003 passed by the learned Central Administrative Tribunal, New Delhi in O.A. No. 2268/2002. The present writ-petition is accordingly dismissed.

8. There shall be no order as to costs.

I.S.MEHTA, J

KAILASH GAMBHIR, J

MARCH 3, 2015

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