
(2020) 03 CAT CK 0016

In the Central Administrative Tribunal

Case No : Original Application No. 148 Of 2015

Girish Kumar (Assistant Engineer CPWD)

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 04-03-2020

Acts Referred:

Citation : (2020) 03 CAT CK 0016

Hon'ble Judges : Vijay Lakshmi, Member (J); Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : Karishma Singh, Shivangi Sharma

Final Decision : Disposed Of

Judgement

Pradeep Kumar, M(A)

1. The instant case is one wherein the applicant was promoted as Assistant Engineer vide order issued on 17.03.1998. In the said list, a total of 113 officers were promoted. Applicant's name appears at Sl. No.52 of the said list. He took charge as Assistant Engineer from 07.04.1998. He superannuated on 31.07.2015.

2. The CPWD Manual issued in 1992 had a clause to govern the increments in respect of Assistant Engineers promoted from lower levels. This clause reads as under:-

"(d) Assistant Engineers promoted from the grade of Junior Engineers:

"(i) An Assistant Engineer promoted from the grade of Junior Engineer is required to pass the departmental Examination in Simple Accounts prescribed for Junior Engineers before they are allowed to draw the first increment in the post of Assistant Engineer, unless they have already passed the examination while employed as Junior Engineer or they pass the departmental examination in Accounts (3 papers) prescribed for Assistant Engineers before completing one year's service as Asstt. Engineers. In any case, before they are allowed to cross the efficiency bar stage in the post of Assistant Engineer, they must pass the

departmental examination in Accounts (three papers) prescribed for Assistant Engineers. The Assistant Engineers who might have been appointed to the grade of Junior Engineer prior to 17-3-58 are, however, allowed their normal increments in the grade of Assistant engineer, even if they have not passed the Accounts Examination prescribe for Junior Engineer;

(ii) An Assistant Engineer who is promoted from the grade of Junior Engineer is allowed a period of two years from the date of his/her promotion to pass the departmental Examination in Accounts (three Papers);

(iii) On his/her passing the departmental examination within the said period of two years from the date of his/her promotion, such promotee Assistant engineer may be deemed to have passed the Departmental Examination from the respective date of his/her promotion; and allowed to cross the Efficiency Bar, if otherwise found fit from the due date (Office Order No.5/2/81-EC.I dated 4-3-82 refers."

(Emphasis supplied)

2.1 It appears that this clause was not implemented in large number of cases and officers were granted their increments, and with a view to mitigate the difficulty, the respondents came out with an Office Memorandum on 02.03.2000 wherein certain relaxation was granted.

This reads as under:-

"The undersigned is directed to convey the approval of the competent authority to the effect that those promote AEs whose pay has been fixed in the Pre revised scale of pay of Rs. 2000-60-2300-EB-75-3200-100-3500 at the stage beyond the EB stage of Rs. 2300/- will draw annual increments in his pay scale even if, he has not passed the departmental accounts Exam prescribed for AEs for AEs provided that he has passed the simple accounts exam prescribed for Junior engineers."

(Emphasis supplied)

3. The applicant produced an office order dated 20/21.10.1997 which indicates that the applicant was already drawing the pay scale of 2000-60-2300-75-3200-100-3500 and he was at the stage of Rs.2450 as on 01.01.1996.

4. On the basis of this pay scale and the OM dated 02.03.2000, and also on the fact that applicant had already passed the simple accounts Exam as was prescribed for the post of Junior Engineer, applicant pleads that he was exempted from passing the departmental accounts Exam prescribed for Assistant Engineers and was allowed to draw all annual increments.

5. Subsequently, the respondents came up with certain clarifications issued on 05.01.2006, which read as follows:-

"The undersigned is directed to convey the approval of competent authority to the effect that the promotee, Assistant Engineers will; (i) Earn their first increment only if they have passed the simple accounts exam as Junior Engineer (or if they pass the Departmental Exam of Accounts for Assistant Engineers in that one year). (ii) Earn 2nd increment only if they clear the Departmental Exam for Asstt. Engineers."

5.1 Thereafter, another clarification was issued on 04.04.2006 which reads as under:-

"Subject :- Departmental Accounts Exam for AEs - release of increment clarification - regarding The provisions of this Directorate O.M. of even No. dated 5.1.2006 on the above mentioned subject, are further clarified as under:

I) The clarifications are with reference to relevant Paragraph of CPWD Manual Volume-I and will be effective prospectively i.e. from 5.1.2006.

II) The Assistant Engineers shall be allowed a further period of two years to clear the departmental accounts exam.

III) No recovery from any Assistant Engineer on this account will be made, for the increments released in the past.

IV) Clarification have similar effect in case of ACP also.

2. These clarifications are issued with the approval of Competent Authority."

6. On the basis of these OMs (para 5 & 5.1 above), the respondents issued an order on 17.12.2014 revising the salary of the applicant on the plea that he has not passed the departmental exam and with this, the 2nd increment and onwards were disallowed and certain reduction in his salary took place.

7. The applicant felt aggrieved at such reduction and preferred the instant OA. While the OA was still pending applicant had since superannuated from service on 31.07.2015.

Certain interim stay, against recovery, was ordered by the Tribunal in the first date of hearing on 15.01.2015.

However, at the time of superannuation on 31.07.2015, the entire amount has since been recovered from the gratuity. The applicant preferred MA No.2886/2016 seeking refund of the same. The applicant is also claiming interest on the same.

8. The respondents drew attention to the CPWD Manual issued in 1992 which had provided that the Assistant Engineers shall have to pass a departmental exam to be able to draw the increments (para 2 supra).

Subsequently, since respondents found that many employees had not passed such an exam, they issued certain relaxation on 02.03.2000 (para 2.1 supra). Thereafter, another clarification was issued on 05.01.2006 as well as one more

clarification on 04.04.2006 (para 5 & 5.1 supra).

In this context, the respondents plead that the sole purpose of these clarifications was to give some more time to these employees to pass the said exam, which was required to be passed as per CPWD Manual.

However, there are many employees, including the applicant, who did not pass the same and in fact misused the lenient way and time permitted by the respondents to clear those exams.

9. The respondents also bring about that those who have crossed the age of 57 years could also apply for one time exemption from passing of those exams. For this purpose, the respondents also issued an OM dated 04.02.2014 according to which such of the employees who had attained the age of 57 years could also apply for one time waiver of the condition of qualifying the departmental accounts exam. This circular reads as under:-

"Subject: Regarding granting one time waiver of the condition of qualifying the departmental accounts examination to Assistant Engineers promoted during the period 01.01.1997 to 05.01.2006.

On the demand of All India CPWD Engineers Association, a proposal for one time waiver from the condition of qualifying the Accounts Examination to the Assistant Engineers promoted during the period from 01.01.1997 to 05.01.2006 was initiated by this Directorate. Accordingly, all the cadre controlling authorities vide O.M. dated 18th December, 2008 were requested to send the details/names of AEs who were promoted during that period and want one time waiver from the condition of qualifying the Accounts Exam.

2. The proposal has been examined in consultation with Ministry of Urban Development and Department of Personnel & Training. The proposal could not be acceded to. However, as per the existing guidelines, the individual Assistant Engineer can apply for exemption after attaining the age of 57 years."

10. However, the applicant herein neither passed the departmental exam nor did he apply for one time waiver. The Superintending Engineer under whom the applicant was working wrote a letter on 09.04.2014, wherein it is clearly brought out that even though the applicant had crossed the age of 57, he did not apply for one time waiver. Under such circumstances, certain clarification was also sought from head quarter office on four items pertaining to the applicant.

The headquarters office replied on 10.07.2014, wherein the Superintending Engineer was advised to "examine the matter and settle the same accordingly".

11. Subsequent to that, the applicant did apply for one time waiver and the same was granted vide OM dated 01.09.2014.

12. With this in view, the respondents plead that the said waiver which was granted to the applicant, was applicable w.e.f. 07.05.2014 only and accordingly, on this basis, the respondents plead that the increments granted prior to this

grant of waiver, are not admissible and recoveries are admissible on account of excess payments.

13. The respondents also drew attention to a judgment passed by the Tribunal in OA No.2534/2019 dated 25.10.2019 (Jai Bhagwan Vs. Union of India). That OA was allowed under similar circumstances. However, the respondents drew attention to para 20 of the said judgment wherein it was held that OM dated 05.01.2006 was a clarification to the OM dated 02.03.2000 and pleaded that the provisions of the CPWD Manual and the OMs issued subsequently, are required to be read harmoniously and with this in view, the relief sought by the applicant is not admissible, as he did not pass the requisite exam.

14. Matter has been heard at length. Ms. Karishma Singh appeared for Shri girish Kumar on behalf of the applicant and Ms. Shivangi Sharma appeared for Shri Rajpal Singh on behalf of the respondents.

15. The instant case is one wherein the applicant, while working as Junior Engineer, had already crossed the EB stage of Rs.2300 in the scale of pay of Rs.2000-60-2300-EB-75-3200-100-3500 as of 01.01.1996 as his basic pay at that time was Rs.2450/-

16. He was promoted to the post of Assistant Engineer on 07.04.1998. As per the provisions of CPWD Manual, he was required to pass the said departmental examinations as AE(para 2 supra).

However, the OM dated 02.03.2000 permitted those employees who had already crossed the EB stage from passing the said examination (para 2.1 supra). The further clarifications issued by the respondents on 05.01.2006 and 04.04.2006 (para 5 & 5.1 supra) cannot alter this permission in respect of applicant as he was already promoted and was drawing the increments.

Further, in the wake of OM dated 04.02.2014, wherein one time exemption could also be granted to those above 57 years of age, and which exemption was actually granted to the applicant on 01.09.2014, the pleas of the respondents that the recoveries are still due, is without any logic and is not acceptable.

17. In view of the foregoing circumstances, the pay fixation order issued on 17.12.2014 cannot be allowed to stay in place and the same is quashed and set aside ab-initio.

18. The respondents are directed to restore the salary of the applicant and to settle and release all his retiral dues including pension accordingly within a period of eight weeks of receipt of certified copy of this order. The recoveries already made shall also be released in this time. However, these recoveries shall not carry any interest, if released in this time. In case these are not released in this time, they shall carry interest at GPF rate from the date of superannuation till the date they are actually released. No cost.

Pending MA(s), if any, are also disposed off accordingly.