

PETITIONER:
T. BALAKRISHNAN

Vs.

RESPONDENT:
UNION OF INDIA AND ANR.

DATE OF JUDGMENT: 11/04/1996

BENCH:
RAY, G.N. (J)
BENCH:
RAY, G.N. (J)
HANSARIA B.L. (J)

CITATION:
JT 1996 (4) 348 1996 SCALE (3)676

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

G.N. Ray, J.

Leave granted.

Heard learned counsel for the parties. This appeal is directed against that part of the order dated 16.2.1994 passed by the Central Administrative Tribunal, Madras Bench in O.A. No. 290 of 1994 by which the office order dated 16.2.1994 issued by the Government of India reducing the pay of the appellant on refixation of the pay has been upheld by the Tribunal. The direction for recovery of over payment has however been cancelled by the Tribunal.

The appellant was appointed as Junior Engineer on 7.1.1963 with effect from 1.1.1973 and his pay was fixed at Rs.425-700 in the cadre of Junior Engineer as per the recommendation of 3rd pay Commission. The appellant was appointed as Junior Engineer, Selection Grade, in the scale of Rs. 650-900 with effect from 1.8.1987 under the Central Public works Department (Subordinate Offices) Junior Engineers Grade I and Grade II (Civil and Electrical) Recruitment Rules, 1987 (hereinafter referred to as the Rules), the appellant was promoted as Junior Engineer (Grade I) came into effect on 26.5.1967 promotion opportunities were given to the Junior Engineers and it was indicated that 75% of the total number of posts in the cadre of Junior Engineers would be Junior Engineers (Grade I) in the pay scale of Rs. 1649-2900. It may be stated the Pre-revised Pay of Junior Engineer (Selection Grade) coincided with the revised pay for Junior Engineer (Grade I), The appellant was further promoted as Assistant Engineer in the scale of Rs.2000-3500 with effect from 13.9.1987.

A question was raised as to whether the promotion of persons to Junior Engineer (Grade I) involved assumption of higher responsibilities and whether the pay of Junior Engineer (Grade I) should be fixed under FR 22-C [now FR 22(1) (A) (1)]. The Central Government issued a memorandum on 18.5.1989 stating that the Promotion Committee involved

assumption of higher responsibilities and as such the pay should be fixed under FR 22-C. Accordingly an office order was issued that with effect from 1.1.1966, the pay of the appellant in the post of Junior Engineer (Grade I) would be fixed under FR 22-C.

The C.P.W.D Junior Engineers Association entered into an agreement with the Government in which the statutory right to get pay fixed for Junior Engineer (Grade I) under FR 22-C was waived. It was agreed inter alia (a) that there would be two scale for the Junior Engineers/Sectional officers (Horticulture) in the CPWD namely is, 1400-2300 and 1640-2900 and the incumbents would be designated as Junior Engineers/Sectional Officers (Horticulture) and initially the scale would be 1400-2300 and on completion of five years' service in the said grade. such Junior Engineer/Sectional Officer would be placed in the scale of 1640-2906 subject to the rejection of unfit. Such higher grade would not be treated as promotional grade but the same would be non-functional and the benefit of FR 22-(1)(A)(1) (Old FR 22-C) would not be admissible in higher grade because there would be no change in outside and responsibilities: (b) Junior Engineers/Sectional Officers (Horticulture) would not be promoted to the post of Assistant Engineer/Assistant Directors (Horticulture) in the scale of 2000-3500 due to non-availability of vacancies in that grade,, would be allowed the scale of Assistant Engineer/Assistant Director (Horticulture) i.e. Rs.2000-3500 on Personal basic after completion of 15 years of total service as Junior Engineer/Sectional officer (Horticulture), till the normal turn for functional promotion as Assistant Engineers/Assistant Director (Horticulture) would come. Such personal promotion would be given on the basis of fitness. (c). Junior Engineers/Sectional Officers (Horticulture) who would be given personal scale of Rs.2000-8500 after completion of 15 years' service would get the benefit of FR 22 .(i)(a)(i). (d) On getting personal promotion, the junior Engineer/Sectional Officer (Horticulture) would continue to perform the same duties and functions as Junior Engineer/Sectional Officer (Horticulture). (e) Agreement at (a) above would be given effect from 1.1.1988 and at (b) above would take effect from 1.1.1991.

The learned counsel for the appellant has contended that on 20.3.1991 when the aforesaid agreement was entered into between the C.P.W.D., Junior Engineers Association and the Government, The appellant had already been promoted to the cadre of assistant Engineer. The appellant was therefore not a member of Junior Engineers Association and The aforesaid agreement did not concern him. It has been submitted that the said agreement was binding on such person and was Junior Engineer on 1.1.1988 and who also continued in that cadre on 20.3.1991. So, on a total misconception of The scope and ambit of the said agreement, which was not applicable to the appellant, the respondents reduced the day of the said agreement and directed for recovery of alleged over payment made to the appellant on account of giving benefit of FR 22-C in the grade of Junior Engineer (grade I). The Tribunal failed to appreciate the case of the appellant and gave only a partial relief to the appellant by quashing The direction for recovery of alleged over payment but maintaining the illegal order of refixation of the pay of the appellant as Junior Engineer (Grade I).

It will be appropriate at this stage to indicate the case of the respondents before the Central Administrative Tribunal. It was contended by the respondents that with the introduction of the scales of pay recommended by the Fourth

Pay Commission, the Junior Engineers were given pay scales of Rs.1400-2300 and Rs.1640-2900 by treating the incumbents of higher grade as holding promotional grade. The C.P.W.D. Junior Engineers Association, however, demanded that all the posts of Junior Engineers should be placed in the higher grade Rs.1640-2900. After holding negotiation which the Association it was decided by the Central Government that 75% of The posts of Junior Engineers would be in higher grade with effect from 1.1.1986 and the revised recruitment rules dated 26.5.1987 were issued. Instructions were issued to implement such revised recruitment rules. The Junior Engineers however were not satisfied with the said concession of giving higher grade to 75% of the posts and they resorted to indefinite strike. Thereafter, further negotiations were held with the Junior Engineers Association and it was decided that the demand for uniform pay scale would be referred to a group of Ministers and as per Associations demand it was decided that no further order of promotion as Junior Engineer (grade I) would be issued. A copy of the instructions issued in that regard was also filed along with counter affidavit of the respondents before the Tribunal. The Group of Ministers considered the demand of the Junior Engineers ventilated through the Junior Engineers' Association and on the basis of the agreement reached, the order dated 22.3.1991 was issued suppressing all earlier instructions and directing for implementation of the agreement. It was further averred that the Superintendent Engineer, Trivandrum Circle, had issued orders of promotions on the basis of earlier instruction and pay of such promotee was fixed as per FR 22-C. Such order and fixation was made before issuance of subsequent instruction to keep the promotion as Junior Engineer (Grade I) in advance. The question of pay fixation on promotion to Junior Engineer (Grade I) was under consideration and a view was taken that as no additional responsibilities or duty had been assigned on being appointed as Junior Engineer (Grade I), the pay of such Engineer could not be fixed under FR 22-C. Accordingly, Sectional Engineer, Trivandrum Circle issued orders on 2.1.1989 fixing the pay of Junior Engineers on promotion of Grade I under FR 22-C. Against such decision various representations were received from Junior Engineers and Superintendent Engineer, Trivandrum Circle, was directed to keep the said order dated 2.1.1989 at abeyance until further instructions were issued. The affected Junior Engineers filed application before Ernakulam Bench of Central Administrative Tribunal and obtained order of stay of recovery of over payment. The question of Pay fixation was examined with consultation with the Department of Personnel and Ministry of Finance and as per their instructions it was decided to fix the pay of Junior Engineer (Grade I) under FR 22-C. The Ernakulam Bench, in view of such decision, closed O.A. No.33 of 1989 filed before is by the affected Junior Engineers.

It may be noted here that the Tribunal in the impugned order has specifically held that when the appellant was promoted to the Selection Grade of Rs. 550-900 (per revised) on 1.8.1992, his pay was fixed only under FR 22 (a) (ii) and with the implementation of the revised pay scale with effect from 1.1.1986, he was placed in the equivalent scale. Hence, question of re-fixing the scale of the appellant at Rs.1640-2900 under FR 22-C did not arise. The Tribunal has also observed that neither in the pleadings nor during argument, the appellant had placed any material to show that when he was working as Junior Engineer in the Selection Grade or as Junior Engineer (Grade I) from 1.1.1986 to 18.9.1987, he was

given any higher duty or responsibility which would entitle him for day fixation under FR 22C.

After giving our careful consideration to the facts of the case, it appears to us that although on 20.3.1991 when the agreement was entered into between the Junior Engineers' Association and the Central Government on the basis of recommendations by the group of Ministers, the appellant was promoted to the post of Assistant Engineer. but the question of promotion as Junior Engineer (Grade I) and the applicability of FR 22-C at the relevant time when the appellant was given scale of Junior Engineer (Grade I) was pending consideration and such consideration attained the finality in terms of the said agreement. In our view, on these facts, the Tribunal was Justified in holding that the agreement relating to the period when the appellant was Junior Engineer and a member of the said association was binding on the appellant. That apart, the Tribunal has, on a question of fact, has clearly held that the appellant had failed to produce any material to show that he had discharge any additional duty or responsibility during the entire period when he was given the scale of Junior Engineer (Selection Grade) and Junior Engineer (Grade I) Accordingly, there was no justification to claim benefit under FR 22-C. If such benefit has been given to any other Junior Engineer erroneously and on such account. The appellant cannot claim such benefit as of right.

In the aforesaid facts, we do not find any reason to interfere with the impugned order. The appeal, therefore, fails and is dismissed without any order as to costs.