

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 9776 OF 2003

K. SUBHAS BABU & ORS.

..... APPELLANTS

VERSUS

ENGINEER IN CHIEF, ARMY H.QRS & ORS. RESPONDENTS

O R D E R

1. This appeal is directed against the judgment and order dated 8th April, 2003 passed by the Division Bench of the Kerala High Court allowing the writ petition filed by the respondent Union of India, Ministry of Defence.

2. The issue that arose for consideration before the High Court and also before the Central Administrative Tribunal was whether the appellants herein were entitled to claim the benefit of three advanced increments from the dates of their appointment on the basis of higher

qualification of Degree in Engineering. The appellants claim the aforesaid benefits of grant of three advanced increments on the basis of their having higher qualification. They claim to be entitled to payment of such three advanced increments on the basis of the circulars dated 4th of February, 1969 and 2nd of June, 1971, which provided for grant of advanced increments. Both the aforesaid circulars were issued by the Ministry of defence.

3. In the said circulars issued, it was provided that non-gazetted civilians paid from Defence Service Estimates and serving in technical/scientific grade and who possessed a Degree in Engineering would be entitled to three advanced increments for possessing such qualifications. It is clearly revealed from the record that the aforesaid incentives and benefits which were allowed in favour of the non-gazetted civilians belonging to the Defence Establishments were, however, withdrawn by a subsequent circular issued by the Ministry of Defence on 18th of March, 1974. In the subject of the said circular it was mentioned that the circular relates to the issue of grant of advanced increments to Engineering graduates appointed to the post for which the minimum prescribed qualification is

an Engineering Diploma. It was also mentioned therein that the subject matter of the circular relates to withdrawal of the aforesaid concessions on the basis of and due to the recommendation of the Third Pay Commission.

4. After referring to the recommendation of the Third Pay Commission recommending withdrawal of the existing concession of grant of advanced increments to the Engineering graduates appointed to the posts for which minimum prescribed qualification is an Engineering Diploma was accepted by the Government. Consequently the decision of the President was communicated under the aforesaid circular to the effect that the Engineering graduates appointed on or after December 1, 1973 to posts in the Defence Establishments for which the minimum qualification for recruitment is a Diploma in Engineering would not be eligible for the aforesaid concession and benefit which was sanctioned in the Ministry's letter dated 4th of February, 1969 as amended by circular dated 2nd June, 1971. Therefore, whatever benefits of advance increments were granted by the earlier circulars were all withdrawn by issuing the aforesaid circular.

5. Counsel appearing for the appellant, however, relies on the circular issued by the Department of Personnel & Training, Government of India dated 28th June 1993. In the said circular, it is intimated that the Committee of Secretaries reviewed the existing Scheme of giving incentive in the form of advanced increments to those employees who acquired higher qualification in various Ministries and Departments and that it was felt that there was a clear need for switching over from the system of advanced increments to the system of payment of one time lump-sum incentive. It was also stated that certain guidelines could be adopted and one such guideline suggested was that incentive payment should be given only for higher qualification acquired after induction into service.

6. The aforesaid circular does not appear to have laid down any specific policy of the Government for making payment of any advanced increments for three years specifically to civilian employees working in the Defence Establishments. The circular was issued by the Department of Personnel and Training and not by the Ministry of Defence. The said circular also speaks of only a system of payment of one time lump-sum incentive instead of three advanced increments. Paragraph 2 of

the said circular is also relevant for the purpose of showing that the Committee of Secretaries directed for formation of a Centralized Committee under the aforesaid circular for drawing up the list of qualification which should entitle sanction of lumpsum incentives. Therefore no definite decision or scheme was laid down therein so far as civil employees serving in the Defence Establishments are concerned.

7. Reliance is also placed by the counsel appearing for the appellants on the circular dated 3rd June 1996 which refers to the copy of the Ministry of Defence's circular regarding acquiring of higher qualification. Counsel heavily relies on the said circular and particularly on the contents that the Department's O.M. dated 31st January, 1995 were applicable from the financial year 1993-94 and also on the fact that persons who were granted advanced increments prior to financial year 1993-94 would continue to draw advanced increments and that persons who acquired higher qualification examination on or after 1.4.1993 are to be granted lumpsum amount as an incentive under the new Scheme.

8. We fail to understand as to how the said circular also becomes applicable to the cases of the appellants

as no case is made out that the appellants at any stage were granted advanced increments prior to the financial year 1993-94. Only those persons who were getting advanced increments prior to financial year 1993-94 were continuing to draw advanced increments. The appellants were never granted any such advanced increments and their prayer for grant of the said benefit was rejected by the Ministry of Defence. The High Court has considered the issue raised before it and after an indepth study of those circulars the High Court has come to the conclusion that the appellants are not entitled to claim the aforesaid benefit. The High Court has also recorded that the appellants are not entitled to the aforesaid benefit as the Ministry of Defence has withdrawn such benefit specifically by issuing the notification on 18th March, 1974. Considering the aforesaid facts and circumstances of the case, we are of the considered opinion that there is no infirmity in the order passed by the High Court. We, therefore, find no merit in this appeal which is, accordingly, dismissed.

9. However, before parting with the records, we may record the submission of the counsel appearing for the appellants that the appellants have already been paid benefit in terms of the order passed by the Central

Administrative Tribunal and that some of the appellants have since retired from service and therefore should not be directed to recover the amount from the appellants. We have considered the said prayer. The High Court had directed for restoration of the amount, however considering the contention of the appellants to grant liberty to the appellants to file a representation before the respondents for waiver of the aforesaid amount, Mr. Doabia, the learned Senior Counsel appearing for the respondents also states that if a representation is filed by the appellants the same shall be considered by giving due weightage to the contentions raised in the said representation.

10. In that view of the matter, the appellants may file their representations within two weeks which shall be considered and disposed of in terms of the statement made by the counsel for the respondents as expeditiously as possible preferably within a period of eight weeks from the date of the said representation.

.....J
[DR. MUKUNDAKAM SHARMA]

.....J
[ANIL R. DAVE]

**NEW DELHI
SEPTEMBER 07, 2011.**

