

T. Balakrishnan

Vs

Union of India and Another

Civil Appeal No. 7059 of 1996

(G. N. Ray, B.L. Hansaria JJ)

11.04.1996

JUDGMENT

G. N. RAY, J.-

1. Leave granted.
2. Heard the 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 OA 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 re-fixation of the pay has been upheld by the Tribunal. The direction for recovery of overpayment has however been cancelled by the Tribunal.
3. The appellant was appointed as Junior Engineer on 7-1-1963 and with effect from 1-1-1973 his pay was fixed at Rs 425-700 in the cadre of Junior Engineer as per the recommendation of the 3rd Pay Commission. The appellant was appointed as Junior Engineer, Selection Grade, in the scale of Rs 650-900 with effect from 1-8-1982. On 3-7-1987 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) with effect from 1-1-1986. Under the rules which came into effect on 26-5-1987 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 1640-2900. It may be stated here that 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.
4. 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) i. The Central Government issued a memorandum on 18-5-1989 stating that the promotion given after the scrutiny by the Departmental 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 1-1-1986, the pay of the appellant in the post of Junior Engineer (Grade I) would be fixed under FR 22-C.
5. The CPWD Junior Engineers' Association entered into an agreement with the Government in which the statutory right to get pay fixed for Junior Engineers (Grade I) under FR 22-C was waived. It was agreed inter alia (a) that there would be two scales for the Junior Engineers/Sectional Officers (Horticulture) in the CPWD namely Rs 1400-2300 and Rs 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 1640-2900 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 duties and responsibilities. (b) Junior Engineers/Sectional Officers (Horticulture) who would not be promoted to the post of Assistant Engineer/Assistant Director (Horticulture) in the scale of 20003500 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 basis after completion of 15 years of total service as Junior Engineer/Sectional Officer (Horticulture), till the normal turn for functional promotion as Assistant Engineer/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 2000-3500 after completion of 15 years' service would get the benefit of FR 22(1) (a) (1). (6) 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) labove would be given effect from 1-1-1988 and at (b) above would take effect from 1-1-1991.

6. The learned counsel for the appellant has contended that on 20-3- 1991 when the aforesaid agreement was entered into between the CPWD, 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 a person who was Junior Engineer on 1-1-1988 and who also continued in that cadre till 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 pay of the appellant in terms of the said agreement and directed for recovery of the alleged overpayment 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 overpayment but maintaining the illegal order of refixation of the pay of the appellant as Junior Engineer (Grade I).

7. 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 CPWD Junior Engineers' Association, however, demanded that all the posts of Junior Engineers should be placed in the higher grade of Rs 16402900. After holding negotiation with 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 I 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 the 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 superseding 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 abeyance. The question of pay fixation on promotion to Junior Engineer (Grade I) was under consideration and a view was taken that as no additional responsibility 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 to Grade I under FR 22(A) (2), instead of 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 applications before Emakulam Bench of the Central Administrative Tribunal and obtained order of stay of recovery of overpayment. 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 Emakulam Bench, in view of such decision, closed OA No. 33 of 1989 filed before it by the affected Junior Engineers.

8. 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. 650-900 (pre-revised) on 1-8-1982, his pay was fixed only under FR 22(1) (a) (2) 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 the 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 pay fixation under FR 22-C.

9. 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 the scale of Junior Engineer (Grade I) was pending consideration and such consideration attained 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, clearly held that the appellant had failed to produce any material to show that he had discharged 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 similarly circumstance, the same has been given erroneously and on such account, the appellant cannot claim such benefit as of right.

10. 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.