

SUPREME COURT OF INDIA

Union of India

Vs.

Brig.Balbir Singh

C.A.No.337 of 2020

(L.Nageswara Rao and Hemant Gupta,JJ.,)

16.01.2020

JUDGMENT

L.Nageswara Rao,J.,

1. This appeal is directed against the judgment of the Armed Forces Tribunal, Regional Bench, Kolkata by which the Appellants were directed to consider the claim of the Respondent for payment of grade pay of Rs.10,000/- or more, at par with his civilian counterparts holding the post of Chief Engineer in the Military Engineering Services (MES), with all consequential benefits.

2. The Respondent was commissioned in the Army on 16.12.1978 and he was allotted to the Corps of Engineers in July, 2005. The Respondent was promoted to the rank of Brigadier and was posted as Chief Engineer, Shillong Zone in the Military Engineering Service. Aggrieved by the disparity with regard to grade pay of Brigadier vis-a-vis civilian Chief Engineer in the MES, the Respondent filed O. A. No.155 of 2012 before the Armed Forces Tribunal, Regional Bench, Jaipur and sought a direction to the Appellants that he shall be entitled to the grade pay of Rs.10,000/- at par with his civilian counterparts. The Respondent further sought a direction to the Appellants herein to pay the arrears consequent to re-fixation of grade pay at Rs.10,000/- with all benefits along with interest at 18 % on such arrears. The O.A. filed before the Armed Forces Tribunal, Regional Bench, Jaipur was transferred to the Armed Forces Tribunal, Regional Bench, Kolkata. By a judgment dated 13.08.2015, the Tribunal allowed the O.A. filed by the Respondent and granted the relief sought by the Respondent. The application filed by the Appellants seeking leave to appeal to this Court was dismissed by the Tribunal. military person or a civilian. The Tribunal was of the opinion that in case the work and duties are similar then the source is immaterial, and whosoever may be assigned the same duties shall be entitled for the same pay and pay band. The Tribunal was of the opinion that the disparity in pay leads to the reduction of status of an employee, and amounts to an adverse public perception of their capability and their efficiency. By placing reliance on several judgments of this Court on the principle of 'equal pay for equal work' including in *Randhir Singh v. Union of India* ¹, *Bhagwan Dass and Others v. State of Haryana and Others*² and

*Jaspai & Others v. State of Haryana and Others*³, the Tribunal held that the nature of appointment being tenure or temporary in nature does not make a difference to the claim made by the Respondent. In the opinion of the Tribunal, the payment of lesser salary to an employee or officer holding the same post affects his fundamental rights. On the basis of the above findings, the Tribunal allowed the O.A. filed by the Respondents.

4. Ms. Madhavi Divan, learned Additional Solicitor General appearing for the Appellants-Union of India argued that an Army Officer posted as Chief Engineer in the MES cannot seek parity of grade pay with his civilian counterparts in the Indian Defence Service of Engineers (IDSE) because members of the Armed Forces are a distinct and distinguishable class. The learned Solicitor General submitted that the Indian Defence Service of Engineers (Recruitment and Conditions of Service) Rules, 2016 (hereinafter referred to as "the IDSE Rules") are not applicable to the Respondent and he cannot seek the same grade pay as IDSE officers working as Chief Engineers. By relying on the judgment of this Court in *Confederation of Ex. Servicemen Associations v. Union of India*⁴, the learned Additional Solicitor General argued that the classification between defence personnel and other than defence personnel is reasonable and valid. It was further contended on behalf of the Appellants that the conditions of service of Commissioned Officers in the Army and civilian Chief Engineers are entirely different. Commissioned Officers are liable to be posted anywhere in the country including hard field areas such as Jammu and Kashmir and the North East, unlike civilian engineers who do not have an all-India liability. It was further submitted on behalf of the Appellants that the hierarchy of the ranks in the Indian Army are completely different from that of the IDSE. The pay structure and conditions of service are different and the Army Officers are entitled to Military Service Pay of Rs.15,000/- per month which is not available to their civilian counterparts. That apart, several other facilities in material form such as canteen facilities, mess, ration etc. are provided to the Army Officers, which disentitle them to seek parity with civilian Chief Engineers.

5. Countering the submissions on behalf of the Appellants, Mr. Rajeev Manglik, learned counsel for the Respondent submitted that the IDSE (Service Conditions) Rules are applicable only in respect of the 15 posts of civilian Chief Engineers and that the said Rules do not govern the recruitment and conditions of service of Army Officers and the posts earmarked for them. He relied upon the recommendations of the 6th Central Pay Commission by which the concept of grade pay and running pay band for various posts were introduced. According to Mr. Manglik, seniority of a post shall depend upon the grade pay drawn. It was further submitted that though the appointment of Respondent in MES is on a tenure basis, he is not disentitled from claiming parity of grade pay at par with his civilian counterparts. The learned counsel for the Respondent made it clear that the benefit claimed by the Respondent is only for the period during which he worked in the MES.

6. The contention of the Appellants is that the MES is governed by the provisions of the Military Engineer Services (Army Personnel) Regulations, 1989, (hereinafter referred to as MES Regulations) which are framed under Section 192 of the Army Act, 1950. Regulation

3 of the said Regulations provides for a number of posts and proportion or percentage of the Army Officers belonging to the Corps of Engineers in the MES for each post. In so far as the executive appointment of Chief Engineer is concerned, the total number of posts is 37, out of which 50 % of the posts are filled by Army Officers. In addition, 27 civilian and 9 military officers of the rank of the Chief Engineer are on staff appointment.

7. The IDSE Rules regulate the method of recruitment and conditions of service of persons appointed to the Indian Defence Service of Engineers in the Ministry of Defence, Government of India. Rule 3 of the IDSE Rules deals with the constitution of the Indian Defence Service of Engineers. The service in the Indian Defence Service of Engineers, according to Rule 3, shall consist of posts specified in Schedule I. The post of Chief Engineer, Senior Administrative Grade is shown against Serial No.3 of Schedule-I. The total number of posts of Chief Engineers are 45. The pay scale of Chief Engineer, Senior Administrative Grade is Rs.37400-67000 in pay band - 4. The grade pay applicable to the post of Chief Engineer, Senior Administrative Grade is Rs.10,000/-. It is categorically laid down in Rule 12 of the IDSE Rules that the Rules shall not apply to Army Officers appointed on a tenure basis as they are governed by the Army Act and the Rules framed thereunder. There is no dispute that the Respondent was appointed on a tenure basis in accordance with the MES Regulations. Therefore, there cannot be any doubt that the IDSE Rules are not applicable to the Respondent. As such, we are unable to accept the submission made on behalf of the Respondent that the IDSE Rules are applicable only to the 15 civilian posts and not to the others.

8. The Army Officers forming a separate class in comparison to the civilian employees is a point which is no more *res integra*. In *Confederation of Ex. Servicemen Associations (supra)* and *Union of India v. Capt. Gurdev Singh*⁵ this Court has clearly laid down that the classification of military personnel as different class from non-military personnel is permissible and valid. The submissions made on behalf of the Appellant that the Army Officers serving in the MES as Chief Engineers continue to get the same benefits and perks attached to the post of Brigadier has not been controverted by the Respondent. Though there is no dispute that the principle of 'equal pay for equal work' is applicable even to tenure or temporary appointments, in view of the IDSE Rules which govern the grade pay of the post of the Chief Engineer, Senior Administrative Grade, we are of the opinion that the Respondent is not entitled to claim parity with members of the IDSE. The validity of the IDSE Rules has not been challenged by the Respondent. We do not see any force in the submission of the Respondent that grade pay should be made available to all persons working as Chief Engineers irrespective of the source. We are in agreement with the Appellants that the Respondent continues to be a Brigadier for all practical purposes and is entitled for the benefits attached to the post of Brigadier, irrespective of the place and post in which he works.

9. In view of the aforesaid, the judgment of the Armed Forces Tribunal is set aside and the appeal is allowed.

Judgment Referred.

¹(1982) 1 SCC 0618

²(1987) 4 SCC 0634

³(1987) 4 SCC 0634

⁴(2006) 8 SCC 0399

⁵(2019) SCC OnLine SC 0173