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C.A.No. 68 OF 2001

ITEM No.102

Court No.11

SECTION XVI

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Civil Appeal No.68/2001

Union of India & Ors.

Appellant (s)

vs.

Kalyan Ranjan Basak & Ors.

Respondent (s)

(With office report)

Date:12/2/2003 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE BRIJESH KUMAR

HON'BLE MR. JUSTICE ARUN KUMAR

For Appellant (s)

Mr. L.N. Rao,ASG.

Mr. S. Wasim A. Qadri,Adv.

Mr. D.S.Mahra,Adv.

Mr. Arvind Kumar Sharma,Adv.

For Respondent (s)

Mr. Rakesh Dwivedi, Sr.Adv.

Mr. P.K. Dey,Adv.

Ms. Abha R.Sharma,Adv.

Mr. K.K. Joshi,Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is dismissed in terms of the signed order.

(Sarojbala)(Promila Nagpal)

PA to Addl.Registrar

file)

Court Master(The signed order is placed on the

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.68 OF 2001

Union of India & Ors.

Appellant(s)

Vs.

Kalyan Ranjan Basak & Ors.

Respondent(s)

O R D E R

This is an appeal preferred by the Union of India against the judgment and order passed by the Calcutta High Court allowing the writ petition preferred by the Respondents herein, challenging the order of the Central Administrative Tribunal rejecting their claim for parity in the scale of pay as Junior Engineers of CPWD. The dispute related to only at the stage of Rs. 200 0-3500 in the scale of pay on completion of 15 years of service.

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It appears that initially the Junior Engineers working in the two organizations namely the CPWD and the Farakka Barrage Project have been in the same scale of pay viz. Rs. 425-750 and the Selection Grade being Rs.550-750 for both was prevailing prior to 1986. The scale of pay of 25% of the Junior Engineers in the CPWD was revised to Rs. 1400-2300 and the remaining 75% in the still higher scale of Rs.1640-2900. So far as the Junior Engineers in FBP are concerned they were placed in only one revised scale of Rs.1400-2300. There was no scale of pay for them, in Rs. 1640-2900. On the refusal of their demand to the same, they approached the Central Administrative Tribunal. The Central Administrative Tribunal comparing the nature of duties performed by the two as well as their qualifications at the time of entry in service and other factors held that they were similarly situated discharging the same nature of job. The same scale of pay as admissible to the Junior Engineers in CPWD was granted to them by means of Judgment dated 11.5.1990 passed by the Central Administrative Tribunal. The said judgment was also implemented on 19.5.1990 without challenging the same before any forum whatsoever.

It appears, after the judgment of the Central Administrative Tribunal and its implementation, the Junior Engineers in CPWD were given still higher scale of pay namely

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Rs.2000-3500 on completion of 15 years of service. The Respondents also raised the same claim, but the said request was rejected. The Respondents again approached the Central Administrative Tribunal but their O.A. was rejected by order dated April 30, 1997. Against the order passed by the Central Administrative Tribunal, the Respondents approached the High Court. The High Court while dealing with the matter observed that once the findings recorded by the Central Administrative Tribunal in O.A. preferred earlier by order dated May 11, 1990 were accepted and not challenged but implemented, there was no occasion for the Central Administrative Tribunal to go again into the question of similar nature of duties to hold that the two are different. We also find that the High Court was right in observing that this issue was not open in view of the applicability of principle of res judicata.

It appears that one of the grounds which was put forward by the appellants before the High Court was that since the scales of pay as admissible to the Junior Engineers of CPWD were not acceptable to them namely Rs.1400-2300, & Rs.1640-2900 and since they had been agitating against the same, later on a higher scale of pay was provided, namely Rs.2000-3500, to those who had completed 15 years of service. But so far as the respondents are concerned, the appellant's case is that their

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demand was already met and they had accepted the scales of pay which were being given to the Junior Engineers of CPWD in the scales of pay of Rs.1400-2300 & Rs.1640-2900. We hardly find any logic in such a submission which appears to have been made before the High Court and the High Court was right in rejecting the same. Having decided that the Junior Engineers in both organisations performed similar nature of work and duties, simply because in one of the organisation (CPWD) there was no acceptance of certain scale of pay and some agitational approach was adopted by them, hence they were provided yet higher scale, which was not made admissible to the similarly situated employees in other departments since they had not adopted any of such means to express their demand bears no justification to refuse it to them on such flimsy grounds. The Respondents did make the demand for the newly introduced scales of pay for those who have completed 15 years of service but ultimately had to approach the Central Administrative Tribunal.

The Notification issued by the Government of India, Directorate General of Works, Central Public Works Department dated 27.3.1991 provides that w.e.f. 1.1.1991, the Junior Engineers (Civil & Electrical) and the Sectional Officers (Horticulture) of CPWD, on their completion of 15 years service may also be given further higher pay scale of Rs. 2000-60-2300-

EB-75-3200-100-3500. Certain conditions were also specified

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while making provisions of scales of pay of Rs. 2000-3500 namely it was admissible on personal basis and as and when regular vacancies in the cadre of Assistant Engineer/Assistant Directors (Horticulture) arise, the Junior Engineers/Sectional Officers enjoying this notional promotion will be adjusted against those vacancies. It is then clarified that on being granted this notional promotion they will continue to perform the same duties/function of the Junior Engineers/Sectional Officers (Horticulture). It is thus clear that while getting the scales of pay of Rs.2000-3500 on their completion of 15 years of service such persons continue to perform the same duties and functions. It cannot be said to be a situational change as submitted, if at all, then the same will apply to the Junior Engineers of FBP also. In case promotion is available to the Junior Engineers working in FBP they would obviously be getting the promotion in his department, if not, they would be in the same situation of stagnation as Junior Engineers in CPWD and both would continue to be the Junior Engineers even after 15 years of service after discharging the same nature of duties. The High Court has also observed that these revised scales of pay have been extended to Junior Engineers of the other departments as well.

Yet another submission which is sought to be made on behalf of the appellants is that percentage of recruitment on

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the basis of promotion is more in FBP. We find no substance in the said submission as it is pointed out by the learned counsel for the Respondents that there are more posts available in the CPWD for promotion as compared to FBP where the number is much smaller. We, thus, hardly find any good reason to interfere in the order passed by the High Court. The appeal has no substance and it is, accordingly dismissed.

There is no order as to costs.

The directions given by the High Court shall now be implemented within a period of three months from today.

.....J.
(BRIJESH KUMAR)

.....J.
(ARUN KUMAR)

NEW DELHI
FEBRUARY 12, 2004