

ORDER**PER VICE-CHAIRMAN**

The applicants are retired Asstt. Drilling Engineers, Groundwater Survey and Development Agency (GSDA). Their grievance is that they have not been granted the pay scale of Dy. Engineer (Mechanical) from 1/1/1986. They have filed the O.A. seeking the following reliefs as follow :-

- (i) Issue an appropriate writ, order or direction requiring the respondents to extend the benefits of G.R. dated 20-7-2001 to the respondent department and to implement the provisions thereof i.e. Sectional Engineer 8000-13500 and Deputy Engineer/ADE 10650-15850.
- (ii) Pass an appropriate order or direction requiring the respondents to remove the anomaly of pay scales for the post of Assistant Drilling Engineer, Deputy Engineer (M) and Senior Drilling Engineer and fix the applicants in the appropriate pay scales in view of the Government Resolution dtd. 20-7-2001.
- (iii) Grant any other or further relief including costs as may be deemed fit and proper in the facts and circumstances of the present case.

- (iv) Hold the GR dated 28/10/2005 made effective prospectively as illegal and direct the respondents to implement it w.e.f. 1/1/1986 in the interest of justice.

2. The applicants were promoted from Junior Engineer to Asstt. Drilling Engineer (ADE) in 1983 on a regular basis. Prior to the pay revision as per the 4th Pay Commission, w.e.f. 1/1/1986, there was a common pay scale of Rs.600-1150 for the post of ADE and Dy. Engineer. Pay revision as per 4th Pay Commission took place from 1/1/1986 and both the above posts were given the pay scale of Rs.2000-3500. However vide notification dtd. 28/11/1998, the post of Dy. Engineer (Mechanical) was granted the higher pay scale of Rs.2200-4000 w.e.f.1/1/1986. As per the pay revision (5th Pay Commission) as notified on 31/10/1998, w.e.f. 1/1/1996, the pay scale of ADE was revised to Rs.6500-10500 and that of Dy. Engineer (Mechanical) to Rs.8000-13500. On 11/2/1999 the Director, GSDA (R/2) wrote to the Govt. to remove the anomaly in the pay scale of these 2 posts as these posts are

equivalent to each other in terms of qualification and nature of work and responsibilities. During 1998-2001 and 2002, the applicants were posted as Dy. Engineer (Mechanical). During the time they worked on this post, they drew pay in the pay scale of the post and once they were posted back as ADE, they were given the lower pay scale of this post. On 20/1/2003 R/2 wrote to the Govt. submitting that the post of ADE and Dy. Engineer are equivalent and interchangeable and hence the difference in their pay scales is causing administrative problems of fixation of pay. He therefore recommended that the post of ADE should also carry the pay scale of Rs.2200-4000 w.e.f. 1/1/1986 and 8000-13500 from 1/1/1996. The Govt. issued a G.R. on 28/10/2005 vide which the two cadres of ADE and Dy. Engineer (Mechanical) were merged in the pay scale of Rs.8000-13500. Thereby all the ADEs were re-designated as Dy. Engineers (Mechanical). The G.R. further stated that it will be effective from the date of the G.R, subject to option in this regard exercised by the concerned officers and no arrears on this count will be



payable. The applicants have challenged this G.R. in the O.A.

3. On 20/7/2001, the Govt. issued a G.R. containing the scheme of Assured Promotion on completion of 12 years' service effective from 1/8/2001.

4. The applicants' grievance is that right from the beginning the post of ADE, which is substantially held by them and that of Dy. Engineer (Mechanical) are equal in all respects like duties and responsibilities and they have always been treated as interchangeable. The respondents admit this fact as can be seen from the preamble to the G.R. dated 28/10/2005. The disparity in the pay scales arose during the 4th Pay Commission Revision when the post of Dy. Engineer (Mechanical) was given a higher pay scale. R/2 had pointed out the disparity to R/1 as early as in 1999 and again in 2003 but the corrective steps were taken as late as in 2005 when the impugned order was passed. Hence on the principle of equal pay for equal work the pay scale of ADE

should have been given parity with that of the Dy. Engineer (Mechanical) starting from the 4th Pay Commission onwards.

5. The Secretary, Water Supply and Sanitation (R/1) and the Director, GSDA(R/2) filed their affidavit on 5/9/2005. They admit that the posts of ADE and Dy. Engineer (Mechanical) were treated at par considering the qualifications prescribed and the nature of work, till the pay scales were revised as per the 4th Pay Commission. They further submit that the proposal to remove the disparities the pay scales of Dy. Engineer (Mechanical)/ADE and Senior Drilling Engineer is under consideration of the Pay Anomaly Committee. According to the decision of the Pay Anomaly Committee, the matter of time bound promotion of Sectional Engineers will be decided. (It may be pertinent to note here that no record has been placed before us by either side whether the said Anomaly Committee had considered the issue of disparity between the pay scales of these posts).

6. Shri S.M. Khan, Id. Counsel for the applicant argued at length to submit that there is no dispute that the

nature of work and responsibilities and prescribed qualifications are common to the posts of ADE and Dy. Engineer (Mechanical). Hence no rationale existed for granting a higher pay scale to the Dy. Engineer (Mechanical) during the 4th Pay Commission and subsequently again during the 5th Pay Revision from 1/1/1996. The proposal of R/2 in 1999 to remove disparity and his subsequent proposal in 2003 were not acted upon till the G.R. dated 28/10/2005 was issued. Due to the delayed decision to remove the disparity in the two posts, the applicants have incurred substantial financial losses both during service and on retirement. He further submits that if the applicants had been rightly given the pay scale of Dy. Engineer (Mechanical) by granting parity between the two posts from 1986 itself, on completion of 12 years' service as ADE in 1995, under the Assured Progressive Scheme they would have been entitled to the next higher pay scale w.e.f. 1/8/2001.

7. Smt. M. A. Barabde, Id. P.O. for the respondents submitted that there is no dispute that both the posts are

similar. However, the applicants are rather belatedly agitating on the issue of parity. The disparity arose in 1998 when vide notification dtd.28/11/1998, when, on pay revision as per the 4th Pay Commission, the post of Dy. Engineer (Mechanical) was given a higher pay scale. This difference in the pay scales continued when further pay revision took place as per the 5th Pay Commission. However, the applicants or their Union/Association did not agitate before the Govt. appointed Committee for pay revisions or the Anomaly Committees which were empowered to consider the grievances against pay revision. The Govt. had set up aⁿ elaborate mechanism for reviewing the ⁱⁿequality or disparity between the pay scales across the entire civil service. This happened twice during the last 19 years from 1986 and the concerned Committees of experts had carried out elaborate exercise in this regard. The applicants did not represent their cases with facts and figures before these empowered bodies which they were required to do and now the Govt. cannot be expected to look into the issue afresh. She further stated that the applicants

who were in the pay scale of Rs.6500-10500 as on 1/8/2001, i.e. the date from which the Assured Progressive Scheme became effective, were granted the benefits of the higher pay scale of Rs.8000-13500 from 1/8/2001 ~~till they retired in 2007~~. Accordingly, their pension was fixed after considering this higher pay scale.

8. Having heard the arguments on both the sides and after going through the documents placed before us, we find that the applicants' main grievance and the only ground for challenging the G.R. of 28/10/2005 is that the disparity between the pay scales of ADE and Dy. Engineer (Mechanical) should have been removed from 1/1/1986, i.e. the date from which the higher pay scale of Rs.2200-4000 was granted to the latter post by notification dtd. 31/10/1998, instead of from the date of the G.R. dtd. 28/10/2005.

9. The following facts are relevant :-

The present O.A. is filed in 2005, i.e. 7 years after the issue of the above notification of 28/11/1998. The applicants, however, do not deny that they never agitated

Pr. the issue before the relevant Committees for implementing the 4th and 5th Pay Commissions. They only ~~relied~~ ^{referred to} on the suggestions/proposals of R/2 submitted to Govt. Their representations dtd.7/1/2004, 25/3/2004 and dtd.26/3/2004 on which they rely are for grant of benefits of time bound promotion as per the G.R. of 2001 on the assumption that they were actually working as Dy. Engineers (Mechanical). The applicants were never granted regular promotion as Dy. Engineer (Mechanical). After they worked for some time as Dy. Engineer (Mechanical), when they posted back as ADE , their pay was fixed in the lower pay scale of that post. They however did not agitate about reduction in pay at any stage. Thus the applicants appear to have acquiesced in fixation of their pay scale according to the situation when they were holding the post of ADE or Dy. Engineer (Mechanical).

10. The Id. P.O. has submitted that the pay scale of Dy. Engineer (Mechanical) was raised vis-à-vis that of ADE during the 4th Pay Revision and this disparity was maintained subsequently during the 5th Pay Revision. When

the elaborate exercise of pay revision took place, the applicants or their Union did not represent and they failed to avail an opportunity to argue for their cases before the Experts' Committees. We find merit in this submission. The issues like pay revision, removal of disparity in pay scales of similar posts and rationalization of pay structures are decided by the Govt. periodically after conducting an elaborate exercise in consultation with the various Administrative Departments and employees' representatives, every time the Govt. of India revised the pay scales of its employees by setting up a Pay Commission. The State Govt. also had set up Anomaly Removal Committees to settle the grievances of employees regarding their pay revision. Prior to issue of the G.R. dtd. 28/10/2005 the State Govt. had carried out the above exercise while implementing the 4th Pay Commission (w.e.f.1/1/1986) and 5th Pay Commission (w.e.f.1/1/1996). Shri S.M. Khan, Id. Counsel for the applicant, in response to our specific query in this regard, fairly admitted that the applicants had not agitated the issues raised in the O.A.

before the empowered Pay Revision Committees as well as the Anomaly Removal Committees during the 4th and 5th Pay Revisions. Thus, we find that the applicants had failed to utilize the opportunities available at the relevant time to raise and agitate on the issue of disparity between the two pay scales. With further pay settlement as per the 6th Pay Commission effective from 1/1/2006, the applicants' case for revision of their pay scale from 1/1/1986 has obviously become a stale one with lapse of time.

11. As regards the grant of benefits of the Assured Progressive Scheme under the G.R. dtd. 20/7/2001, we find that the scheme is made applicable from 1/8/2001. On that date, the applicants were holding the substantive post of ADE in the pay scale of Rs.6500-10500 (5th Pay Revision) and under the scheme they were granted the benefits of the higher pay scale of the post of Dy. Engineer (Mechanical), i.e., Rs. 8000-13500 (5th Pay Revision) w.e.f. 1/8/2001. Thus their prayer for grant of benefits of the scheme does not survive, particularly, as we have seen above, due to the reason that

they could not establish their claim to the higher pay scale of Dy. Engineer(Mechanical) prior to the issue of the G.R. dtd. 28/10/2005.

Hence we find that the O.A. is without any merit and stands rejected with no order as to costs.

sd/-

(R.B. Malik)
Member (J)

28. 11. 05

sd/-

(B. Majumdar)
Vice-Chairman.

Skt.