

(TS)
(P)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.668/2002

New Delhi, this the 12/5 day of May, 2003

HON'BLE MRS. LAKSHMI SWAMINATHAN, VICE CHAIRMAN (J)
HON'BLE MR. V.K. MAJOTRA, MEMBER (A)

Shri Jai Karan Choudhary, aged about 59 years,
Assistant Engineer,
S/o Shri Babu Lal Choudhary,
Resident of House No.178/M-25, Ward No.2,
Mehrauli, New Delhi-110030

... Applicant

(By Advocate : Shri Surender Singh)

Versus

1. Union of India : Through
Director General of Works
Central Public Works Department,
Nirman Bhawan,
New Delhi - 110 001
2. The Executive Engineer,
Electrical Division No.3,
C.P.W.D.,
I.P. Bhawan,
New Delhi-110002
3. The Deputy Controller of Accounts,
(Internal Audit),
Ministry of Urban Development,
507-C, Nirman Bhawan,
New Delhi-110001

... Respondents

(By Advocate : Ms. Avinash Kaur)

O R D E R

BY V.K. MAJOTRA, MEMBER (A) :

Applicant has challenged Annexure A-1 dated 10.1.2002, which is an internal audit report conducted during 12.7.1999 to 20.7.1999 stating that the applicant was promoted as Assistant Engineer from the grade of JE without clearing the departmental examination in simple Accounts prescribed for the purpose within one year so as to draw first increment in the post of Assistant Engineer (AE); further that as and when he passes the departmental examination then his pay will be refixed w.e.f. 1.10.1990 and thereafter. As such his pay as AE be refixed as on

V

(2)

1.10.1989 in the pay scale of Rs.1640-2900/- and refixation done earlier be cancelled. He has also challenged Annexure A-2 dated 10.1.2002 vide which, on the basis of the objection taken in the internal audit report, recovery of excess amount made on account of pay and allowances by granting him increments after 1.10.1990 has been directed. The applicant has sought direction to respondents to grant him exemption from passing the departmental examination in Accounts (Part I to III) and refix his pay from 1.1.1986 with consequential arrears and interest.

2. Learned counsel of the applicant Shri Surender Singh stated that the applicant was promoted to the post of Assistant Engineer (Electrical) on 18.9.1987. His pay was fixed in the pay scale of Rs.1640-2900/- as JE w.e.f. 1.1.1986. After availing of one increment, his pay was fixed at Rs.2300/-. In accordance with the recommendations of the Fifth Pay Commission report he was awarded replacement scale of Rs.6500-10500/- w.e.f. 1.1.1996. On completion of 24 years of service, he was granted financial upgradation in the pay scale of Rs.10,000-15,200/- w.e.f. 9.8.1999. The learned counsel stated that grant of ACP would mean that he had rendered a good service record to become eligible for financial upgradation after service of 24 years. Learned counsel stated that whereas applicant's juniors S/Shri Satya Paul and Rambir Singh were granted ^{increments} _{without} qualifying the departmental examination (Accounts), applicant has been accorded discriminatory treatment and without any show

(26)
(19)

(3)

cause notice recovery has been ordered against him. The applicant has retired on 31.8.2000.

3. On the other hand, Ms. Avinash Kaur, learned counsel of the respondents stated that it is mandatory that under paragraph 13 (D) Chapter V Section 4 of CPWD Manual Vol. I, an AE promoted from the grade of JE is required to pass the departmental examination consisting of three papers in simple Accounts prescribed for AEs before completion of one year's of service as AE. Learned counsel stated that applicant got his promotion on 18.9.1987 when he was about 45 years of age. At that time he was not entitled for grant of exemption from passing the departmental examination being below 50 years of age at the time of getting his promotion. He did not appear in the departmental examination and as such he was not entitled to increment after one year of joining as AE. Learned counsel explained that so far as applicant's junior R.B. Singh is concerned, he had qualified the departmental examination. However, exemption from taking the departmental examination had been accorded in the case of Shri Satya Paul who had crossed 50 years of age at the time of his promotion. Learned counsel was specifically asked whether any show cause notice was issued to the applicant before directing recovery of excess payment made to him. On instructions, the learned counsel stated that no show cause notice has been served on the applicant in this regard.

4. We are not dwelling on the fact whether or not applicant's juniors had been granted increments after one

V

(4)

year of promotion by granting them exemption from appearance in the departmental examination. For the present, it would suffice to hold that respondents had resorted to recovery of excess payment without issuing a show cause notice to the applicant. He was promoted as JE in 1987. Respondents granted him increments though the applicant did not qualify in the departmental examination after one year of working as AE. The audit report came up in January 2002 after an inordinate delay and also after the applicant had retired and availed of increments, pay and allowances without clearing the departmental examination (Accounts) within the stipulated period. The respondents have grossly violated the principles of natural justice by not putting the applicant on notice, but ordering recovery of excess payment for non-qualifying the prescribed departmental examination. Such an arbitrary action on the part of the respondents cannot be permitted in the facts and circumstances of the case.

5. Considering the totality of facts, Annexures A-1 and A-2 are quashed and set aside. Respondents are directed to refrain from making any recovery of excess payment made to the applicant in respect of pay and allowances for not having qualified in the departmental examination (Accounts).

6. The OA is disposed of in the above terms.



(V.K. MAJOTRA)
MEMBER (A)



(MRS. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN (J)

/pkr/