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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 1897/2002

This the 13th day of January, 2003

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HON'BLE SH. V.K. MAJOTRA, MEMBER (A)
HON'BLE SH. KULDIP SINGH, MEMBER (J)

Sh. Jeet Ram
S/o Sh. Om Pookash
R/o Vill. Chuliana,
Teh. Sampura,
Distt. Rohtak,
Haryana.

(By Advocate: Sh. S.M. Rattanpaul)

Versus

1. Union of India
through the Secretary
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.
2. The Director General of Works,
Central Public Works Deptt.
(CPWD), Nirman Bhawan,
New Delhi.
3. The Superintending Engineer,
PWD Circle No.7,
2nd Nizamuddin Bridge,
Delhi-110091.
4. The Executive Engineer
P.W.D. Division No.23
G.N.C.T.D. Delhi.

(By Advocate: Sh. Vijay Pandita)

O R D E R (ORAL)

By Sh. Kuldip Singh, Member (J)

Applicant has filed this OA seeking the following
reliefs:

- (i) allow this original application with costs.
- (ii) declare the orders dated 25.1.2002 and 14.3.2002 and
25.6.2002 as illegal and quash the same.

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(iii) declare the applicant entitled to hold the Lab. Asstt. post in skilled category w.e.f. 14.5.93 onwards and continue the same.

(iv) direct the respondents to allow the applicant to hold the post of Lab. Asstt. in the skilled category in the pay scale of Lab. Asstt. w.e.f. 14.5.93 onwards and continue on the same with all consequential benefits with regard to arrears of pay etc.

(v) pass such other order or orders, direction or directions as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case to meet the ends of justice.

3. Applicant has also assailed orders dated 25.1.2002 as well as order dated 14.3.2002 and order dated 25.6.2002. Vide order dated 25.1.2002 (Annexure A-1) it has been directed by the respondents that the earlier order dated 24.11.2001 by which the pay of the applicant was fixed for the post of Lab Asstt. is cancelled. It was further directed that he shall be paid payment of Lab. Asstt. for the period of which he has performed the duty of Lab. Asstt. Vide order dated 14.3.2002 (Annexure A-2), a specific order was issued that the applicant shall be paid pay as per the scale of Lab. Asstt. up to 28.2.97 and after 28.2.97 he shall be paid as per pay scale of Beldar and vide order Annexure A-3 dated 25.6.2002 his representations regarding pay scale of Lab. Asstt. were rejected. The case of the applicant is that he was appointed on muster roll basis as Beldar w.e.f. 19.3.85. However, from

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19.3.85 itself, he had been asked to perform higher duties of Lab. Assistant (skilled category) in the Lab. under hot mix plant at Purana Qilla.

3. Applicant then relied upon an award which is commonly known as Arbitration Award for Beldar who were assigned higher duties and was given on 31.3.88 under which Beldar performing higher duties of Lab. Asstt. were to be recategorised as Lab. Asstt. in the skilled category as per the allegation of the applicant. Applicant has also prayed for regularisation as Lab. Asstt. on the basis of the said award and he has also referred to various orders issued by the department whereby applicant had been ordered to be paid salary as per the rates which were applicable to be paid to the Lab. Asstt.

4. OA is being contested by the respondents. Respondents in their reply pleaded that the applicant has been engaged as Beldar. He has never been appointed as Lab. Asstt. nor has been promoted as Lab. Asstt. but was only asked to do the duty of the helper to assist the Technicians/Junior Engineers from time to time. It is further stated that the applicant was regularised as Beldar w.e.f. 30.4.93 and Beldar is not a feeder category for Lab. Asstt. Since the applicant had never be recruited as Lab. Asstt. so he cannot be regularised. However, he has been paid salary for the post of Lab. Asstt. upto the period for which he has actually performed his duties.

5. We have heard the learned counsel for the parties and gone through the record.

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6. Though the learned counsel for the applicant has also claimed for regularisation of the applicant as Lab. Asstt., however, during the course of arguments, he has given up this relief and restricted his challenge to the impugned orders so far as it reduces his pay with retrospective effect.

7. The reading of the orders Annexure A-1 and A-2 show that the pay of the applicant had been reduced with retrospective effect and no show cause etc. has been given to the applicant for reduction of his salary with retrospective effect. Counsel for applicant has also relied upon the judgment given in Ex. NK Jasmer Singh vs. Union of India given by Hon'ble Punjab and Haryana High Court as reported in 2001 (1) SCT 53 wherein Hon'ble High Court has held that once a benefit is granted to a person under some rules or law, the same cannot be withdrawn with retrospective effect. Any such executive order would have only its prospective effect.

8. Since the applicant has been allowed higher salary of Lab. Asstt., the learned counsel for the applicant submitted that the respondents could not have withdrawn the benefit with retrospective effect. In our view, besides the judgment cited by the learned counsel for the applicant the principle of natural justice also require that whenever any order effecting civil rights of an employee has to be passed by the executives then show cause notice ordinarily should have been issued to the employee because it has a civil consequence. Since the respondents were going to pass an order reducing his pay with retrospective effect that definitely has a civil consequence. So it was required on the part of the respondents at least to issue a show cause notice to him which has not been done in this case.

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Thus, we are of the considered opinion that the orders Annexure A-1 and A-2 being retrospective in nature and having been issued without issue of show cause notice cannot be sustained and the same have to be quashed. However, we may mention that this case would not be treated as a precedent for other similar cases and department may pass a fresh order in accordance with law. In view of the above, OA stands disposed of.

Kuldeep Singh
(KULDIP SINGH)
Member (J)

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V.K. Majotra
(V.K. MAJOTRA)
Member (A)