

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00127/2014

Reserved on : 04.03.2020

Pronounced on : 20.03.2020

CORAM

HON'BLE MRS. HINA P.SHAH, MEMBER (J)

HON'BLE MS. ARCHANA NIGAM, MEMBER (A)

Kashmiri Lal son of Shri Pera Ram aged 55 years, Electrician HS-I in the office of Garrison Engineer, Abohar, District Fazilka, Punjab r/o Gali No.3, Waryam Nagar, College Road, Abohar, District Fazilka, Pujnab.

.....Applicant

By Advocate: Mr. Vijay Mehta

Versus

1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Commander Works Engineer, Air Force, Bikaner.
3. Garrison Engineer, Abohar, District Fazilka, Pujnab.

.....Respondents

By Advocate : Mr. Rameshwar Dave

ORDER

Per Mrs. Hina P.Shah

The present OA has been filed by the applicant seeking the following reliefs:-

“The applicant prays that impugned orders ANN A 1, ANN A 2 to ANN A4 qua the applicant may kindly be quashed and the respondents may kindly be restrained from demoting the applicant in compliance of the impugned orders. The

respondents may kindly be directed to continue to make payment of salary to the applicant in accordance with his initial promotion order ANN A 5. The respondents may kindly be restrained from reducing the salary of the applicant and from effecting recovery from the applicant. Any other order, as deemed fit, giving relief to the applicant may also be passed. Costs may also be awarded to the applicant."

2. Heard Shri Vijay Mehta, learned counsel for the applicant and Shri Rameshwar Dave, counsel for the respondents and perused the material available on record.

3. In the present OA, the applicant has prayed for quashing orders dated 13.1.2014 (Ann.A/1), 14.8.2007 (Ann.A/2), 25.8.2007 (Ann.A/3) and 15.11.2007 (Ann.A/4). From the material placed on record, it reveals that the applicant has previously challenged the orders now placed at Ann.A/2, A/3 and A/4 by filing OA No.312/2007 and this Tribunal vide order dated 27.7.2009 (Ann.A/13) has quashed these orders. Therefore, we are of the view that the applicant cannot now raise grievance in the present OA with regard to these orders. So far as the impugned order dated 13th January, 2014 (Ann.A/1) is concerned, a similarly aggrieved person namely Shri Mani Ram has earlier challenged this order by filing OA No. 45/2014 before this Tribunal and after considering the matter in detail, the Tribunal made the following observations:-

"9. A conjunctive perusal of the pleadings makes it clear that the jurisdictional High Court has given liberty to the respondents-Union of India vide its order dated 15.02.2010 to rectify their mistake, if the promotions had been made in violation of rule formulation. They have also put a rider that while rectifying their mistake they had to afford an opportunity to the affected persons. It is in furtherance to this leverage, the respondents has issued notice for review DPC and after considering the objection raised by the applicant and the similarly situated persons like the applicant, they had passed the impugned order, where they have re-cast the seniority and had promoted the eligible persons as per rule formulation. Since the applicant had not passed the trade test at the relevant point of time, when he was promoted, therefore, the respondents have also ordered for recovery of excess payment made to the applicant by giving retrospective promotion w.e.f. 20.05.2003. The pleadings also does not suggest that the applicant has contradicted the stand taken by the respondents that he was not eligible at that time. Therefore, we find no illegality in the impugned order. However, with regard to recovery pursuant to the impugned order for the excess payment made to the applicant is concerned, since the applicant is low paid employee and was given promotion vide order dated 07.02.2005 without there being any misinterpretation on the part of the applicant, therefore, the respondents cannot be allowed to effect recovery from the amount which they have already paid to the applicant. Our view also find support from the exceptions carved out by the Lordships in the case of Rafiq Masih (White Washer), (supra), where the Lordships have categorically held that the recovery from employees belonging to Class III and IV service shall not be effected and even recovery from the employees when the excess payment has been made for a period of in excess of five years before the orders or recovery is issued, cannot be made. In the Rafiq Masih's case the Hon'ble Supreme Court has held as under:-

.....

10. In the present case, the applicant was given financial benefits pursuant to promotion on 07.02.2005 and the impugned order has been issued in the year 2013 (sic). Therefore, we are of the view that the case of the applicant is covered under the exceptions carved out by the Lordship in the case of Rafiq Masih's case (supra) and accordingly the original application is partly allowed and the respondents are restrained from affecting any recovery from the applicant which they had already paid to the applicant."

4. After going through the order in the case of Mani Ram (supra), who was a similarly situated person, it is clear that

this Tribunal has partly allowed the OA upholding the action taken by the respondents with regard to withdrawal of promotion after affording opportunity to the affected persons, but in view of the law laid down in the case of Rafiq Masih (Whitewasher), the respondents were restrained from affecting any recovery from the applicant.

5. In view of above observations, since this Tribunal has already considered the matter of challenge to the impugned order Ann.A/1, therefore, on the same lines, we partly allow this OA and restrain the respondents qua the applicant from affecting any recovery from the applicant, which they had already paid to the applicant.

6. Besides above, it is noted that in reply at para 4.7 the respondents have submitted that the applicant has already been getting financial benefits of HS-II since 15.10.1984 under the directions of the Hon'ble Court, therefore, case is being taken up with competent authority to regularise/sanction this promotion with financial benefit to the applicant. Hence, it is agreed to grant promotion with financial benefits to the applicant w.e.f. 15.10.1984 and no recovery will take place till the required sanction is obtained from the competent authority. In view the above stand

taken by the respondents, it is made clear that if the competent authority agrees to grant of promotion w.e.f. 15.10.1984, the same shall be extended to him and if in case the applicant does not find positive response from the competent authority, no recovery shall be made from the applicant.

7. The OA stands disposed of in above terms with no order as to costs.

(ARCHANA NIGAM)
ADMV. MEMBER

(HINA P.SHAH)
JUDL. MEMBER

R/