

Central Administrative Tribunal
Principal Bench, New Delhi

O.A.No.1147/94

New Delhi this the 22nd day of March, 1995.

Hon'ble Shri J.P. Sharma, Member (J)
Hon'ble Shri B.K. Singh, Member (A)

Shri Vijay Kumar Sharma,
R/o 60/13 Sector III,
R.K. Ashram Marg,
New Delhi-110001.

Working as Junior Engineer (Elect.)
(Electrical Divn. No.8, CPWD),
Vidyut Bhavan, Near Shankar Market,
Connaught Place,
New Delhi.Applicant

(By Advocate : Shri B.T. Kaul)

Versus

Union of India, through

1. The Secretary,
Ministry of Urban Development,
Nirman Bhavan,
New Delhi.
2. Director General of Works,
C.P.W.D.
Nirman Bhavan,
New Delhi-110011.
3. Superintending Engineer (Elect.)
Delhi Central Electrical Circle VI,
C.P.W.D.
4. Executive Engineer (Electrical),
Central Electrical Division No.VIII,
C.P.W.D. Vidyut Bhavan,
Connaught place,
New Delhi.Respondents

(By Advocate : Shri M.M. Sudan)

Judgement

(By Hon'ble Shri B.K. Singh, Member (A))

This O.A. No.1147/94 filed is directed
against the order dated 21.4.94 which resulted in
refixation of pay taking recourse to condition
No.24 contained in the O.M.No.9(121)/85
BCEC/E-II(Coord)/1100 dt 1.5.85 which stipulated

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that if the applicant does not pass the simple accounts test his second and future increments would be withheld.

(a)

2. The material averments are these. The applicant while working with Beas Construction Board as Section Officer since 1973 was declared surplus and was transferred to the surplus Cell of Union Government. He was subsequently redeployed in C.P.W.D. vide letter dated 21.1.85 in the scale of Rs.425-700. Originally he was appointed as Section Officer and was subsequently redesignated as Junior Engineer. These letters enclosed with O.A. as annexures A-2 and A-3. Vide order dated 14.5.85 the applicant was posted to work under subordinate offices under the control of D.G.(CPWD). This offer of appointment is Annexure A-1.

3. The offer of appointment contained 30 conditions of which condition No.24 is quoted below :-

"He will have to pass departmental test in simple accounts within 2 years from the date of joining of duty, failing which his second increment and future increments will be withheld until he passes the said examination."

4. The applicant was granted pay scale of Rs.1640-2900 w.e.f. 1.1.1986 in compliance to the judgement and order of this Tribunal dated 18.5.92 in O.A.No.2241/91.

b

5. It seems that the applicant was allowed to draw increments without passing the test in simple accounts and when this was detected respondents ordered to deduct excess payments made to him in the form of second and future increments not due to him. Aggrieved by that order the applicant filed this O.A. on 31.5.94 against the recoveries from his pay. The stay was granted against recovery on 2.6.94 which has remained in operation till date.

6. The reliefs sought are these.

- (i) Call for the records of the case.
- (ii) Issue a writ of Mandamus or any other appropriate Writ, Order or Direction quashing the office order dated 21.4.94 issued by the respondent No.4 with all its consequences;
- (iii) Declare the action of the respondents enforcing condition No.24 of O.M. dt 1.5.85 as illegal, arbitrary, discriminatory and violative of Article 14 & 16 of the Constitution of India & quash the said condition No.24 with all its consequences;
- (iv) Direct the respondents to release 2nd increment onwards which fell due in 1986 & onwards in the scale of Rs.1640-2900

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with all consequential benefits e.g. arrears of pay & allowances along with interest @ 24% p.a.;

(v) Allow costs of the application;

(vi) Pass any other order or orders which this Hon'ble Tribunal may deem just & equitable in the facts & circumstances of the case.

7. A notice was issued to the respondents who filed the reply and contested the application and grant of reliefs prayed for. We heard the learned counsel Shri B.T. Kaul for the applicant and Shri M.M. Sudan for the respondents and perused the record of the case.

8. The learned counsel for the applicant argued that the condition No.24 is for fresh recruits and is not meant for surplus staff redeployed under C.P.W.D. He said these conditions cannot be enforced in case of the applicant. He further argued that the scale of Rs.1640-2900 granted to him in compliance to the direction of the Tribunal w.e.f. 29.5.90 gave him the benefit of the annual increment due to him and, therefore, it should be presumed that Condition No.24 was not enforced in his case. This contention of the learned counsel is not borne out by the documents placed on record. A Contempt Petition was moved by the applicant along with Shri P.S. Saine against the



the direction of the Tribunal w.e.f. 29.5.90 give him the benefit of the annual increment due to him and, therefore, it should be presumed that Condition No.24 was not enforced in his case. This contention of the learned counsel is not borne out by the documents placed on record. A Contempt Petition was moved by the applicant along with Shri P.S. Saine against the non-implementation of the judgement and order dated 18.5.92 in O.A.No.2241/91. The proceedings in the Contempt Petition were dropped and the Tribunal in CCP No.328/93 observed that the judgement of the Tribunal has been complied with by passing the order dated 20.12.93 granting the pay scale of Rs.1640-2900. And it was further observed that the second and future increments were withheld on the ground that the petitioners have not passed the prescribed test as contained in Condition No.24 imposed by the Order of appointment itself, which stipulates such a condition. Therefore, Tribunal felt that it was not possible to take the view that the action of the respondents in withholding the increment was in contempt. The other arguments were that by granting the pay scale of Rs.1640-2900, the respondents were estopped from enforcing condition No.24 and, therefore, this action in ordering recovery from the pay of the applicant was arbitrary and illegal. He further pointed out that there was discrimination since no recoveries are being made from the pay of Shri

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(6)

Mohan Lal Nirankari and Shri P.S. Saini and, therefore, article 14 & 16 (1) are attracted since all are similarly situated.

(3)

9. The respondents have stated that the applicant's pay was fixed under rules and regulations of the Government of India. Since the applicant had accepted condition No.24 at the time of acceptance of the offer of appointment he was not entitled to second increment and future increments and therefore action of the respondents as held in the CCP is not unjustified.

10. After hearing the rival contention of the parties we are of the view that the increment has been withheld on the ground that the applicant has not passed the prescribed test as stipulated in condition No.24. The increments which were allowed inadvertently were proposed to be recovered. All this is a fall out of condition No.24 imposed by the Order of appointment itself. Hence as held in the C.C.P. it is not possible to take the view that the action of the respondents is wrong.

11 Once the offer of appointment with all the conditions including No.24 is accepted the applicant is estopped from raising question about its validity subsequently. He could have declined the offer as a protest against the stipulation of this condition of withholding 2nd

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(7)

and future increments. Based on enforcement of condition No.24 recovery of any excess payment made is perfectly justified. The basic principle of estoppel is that a person should abide by the past statement or representation of fact or acceptance of any term and condition which causes another to act to his detriment relying on the truth that he cannot be allowed to deny it later even though it may be wrong. Justice here prevails over truth. The estoppel is often described as a rule of evidence. But more correctly it is a principle of law. As a principle of common law it applies only to acts of the past or present acts. The learned counsel for the applicant has not been able to prove that condition No.24 is not a valid condition or is not a part of the job requirement with which the applicant is entrusted. It is only when a condition is shown to be ultra vires that the court can interfere and strike down that condition. This is not so in the present case. The fact is that the applicant and similarly situated colleagues accepted offer of appointment with all the 30 conditions contained in the appointment letter of which condition No.24 is one. The applicant accepted it knowing it fully well that this condition will cause a detriment to the grant of second and further increments. Thus, he is estopped from raising any objection to this condition subsequently.

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11. The provisions contained in condition No.24 are clear and unambiguous and passing of the test in simple accounts is a mandatory condition for grant of second and future increments. There is a nexus between this condition and the job requirements of the applicant. A Junior Engineer is required to maintain measurement book, take the measurement of the Civil work being executed by the contractors and to scrutinise the bills submitted by such contractors. And as such the condition is based on an intelligible critaria and its vires cannot be challenged. The critaria is reasonable and the words also in this connection are plain and clear. The period of 2 years is prescribed as a rule for passing test in simple accounts. And if one does not pass, he is not entitled to the grant of second or future increments, and this was the view held in the C.C.P. quoted above. Since Condition No.24 is a pre-condition for the grant of the second and future increments, therefore, not passing the same within the prescribed period would entail loss of second and future increments given inadvertently. No notice is required to be served on the applicant for its recovery. The respondents are well within their right to recover any excess amount paid. Once condition No.24 was accepted along with other conditions of offer of appointment, the applicant is deprived of any right to seek a remedy before the Court.

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He has accepted the condition so he is debarred from questioning its validity or its vires subsequently.

13. Any condition of service or the terms of appointment to the Office, reasonably fixed by the administration has to be followed in case of all similarly situated people, uniformly and consistently in consonance with the doctrine of equality. The order in question conferred upon the first respondents the right to fix the pay in the manner specified in Condition 24 but this condition will have to be applied uniformly and consistently in case of all the similarly situated people without any exception otherwise it will violate the guarantee of equality. Secondly, it is a rule of administrative law that an executive agency should follow the standards laid down by itself in order to avoid invalidation of act in violation of that condition or term of service. The principle is the same, namely, that arbitrariness should be eliminated in State action. If the recovery is being effected from the applicant, the same yardstick will have to be applied to in the case of Shri Mohal Lal Nirankari and Shri P.S. Saini who are similarly situated as the applicant. This is the view held in case of Shri Sukh Dev Singh Vs. Bhagat Ram 1975(1) 1 SCC 421 :: Shri R.D. Shetty Vs. International Airport Authority of India 1979(3) SCC 489.

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(10)

(A)

11. The application is disposed of as follows :

(i) The respondents are directed to accord equal treatment to the applicants case and if in other similar case the Condition No.24 has been waived or kept in cold storage the applicant be also considered from that perspective and necessary orders be passed.

(ii) In case the passing of the test is considered uniformly, applicable to such deployed persons the applicant be allowed 3 chances of six monthly interval to clear the same.

(iii) The recovery of any arrear granted to the applicant earlier be not effected but the fixation of pay w.e.f. the date of the issue of the impugned order will be subject to the outcome of decision of (i) & (ii) above.

15. In the circumstances parties to bear their own costs.


(B.K. SINGH)
MEMBER(A)

/SSS/


(J.P. SHARMA)
MEMBER(J)