

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD**

ALLAHABAD this the 17th day of July, **2007.**

**HON'BLE MR. K.S. MENON, MEMBER-A**

**ORIGINAL APPLICATION NO. 1431 OF 2004**

1. Akhilesh Kumar Asthana, S/o Sri U.S. Lal, T.No. 469/B, R/o G-1/148 Armapur Estate, Kanpur.
2. Robinson Albert, S/o Sri A. Albert, T.No. 105/B.
3. Daya Shankar Sahu, S/o Sri Bhiku Sahu, T.No. 407/B.
4. Shiv Prasad Singh, S/o Sri Vishwanath Singh, T.No. 408-B.
5. Sabhajeet Yadav, S/o Sri Pabhar Yadav, T.No. 421/MS-1.
6. Om Prakash Gupta, S/o Sri B.P. Gupta, T.No. 421/B.

.....Applicants

**V E R S U S**

1. Union of India through its Secretary, Ministry of Defence, New Delhi.
2. Chairman, Ordnance Factories Board, 10-A Khudiram Bose, Kolkata.
3. General Manager, Ordnance Factory, Kalpi Road, Kanpur.

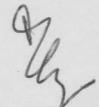
.....Respondents

Present for the Applicant: Sri A. Srivastava.

Present for the Respondents: Sri S. Singh.

**ORDER**

The present O.A. has been filed challenging the action of the respondent no.3 for deducting sum of Rs. 5,000/- per month from the pay and allowances of the applicants from the month of August payable in September, 2004. The applicants submitted a representation dated 12.10.2004, but the same has not been disposed of as yet. The applicants have, therefore, sought the following relief(s) in this O.A.

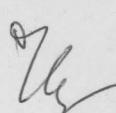


- (i) to set-aside the action of the respondents in recovering the amount from the pay bills of the applicants.
- (ii) direction to be issued restraining the respondent no.3 from effecting any such recovery in future.

2. The learned counsel for the applicants states that the applicants in this O.A. are similarly placed as the applicants in O.A. no. 1162 of 2004, which has been decided by this Tribunal on 315.2007. This contention has also been confirmed by the respondents vide para 19 of the Counter affidavit. I, therefore, feel that there is no need to reiterate the facts of the case in <sup>in this</sup> great detail in ~~its~~ order, but to state few facts, which are as under:

3. The learned counsel for the applicants argues that since the applicants have passed trade test and have been promoted to Highly Skilled Grade-II in the pay scale of Rs. 1200-1800 (as per IVth pay Commission's scales) <sup>(the</sup> new pay scale of Rs. 4000-6000/-) <sup>in</sup> and have been working satisfactorily since <sup>than</sup> till August, 2004, the sudden deduction of Rs. 5,000/- from the pay bill of August, 2004 is illegal and arbitrary. The learned counsel for the applicants contended that no prior intimation of this deduction was given, nor were they given an opportunity of hearing to present their views.

4. Countering to this, the learned counsel for the respondents states that notice was given to the applicants vide letter dated 3.3.2005. The learned counsel for the applicants, however, states that this letter was issued subsequent to filing

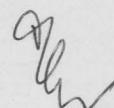


of this O.A. He further contends that even if the over payments were made, as per settled law, the recovery cannot be made as they have not contributed or have a role to pay in the over payments and the over payments occurred as a result of orders passed by the respondents and the Courts.

5. The learned counsel for the respondents, on the other hand, submits that the applicants were downgraded retrospectively and there was no interim order from the Hon'ble High Court against the Tribunal's order dated 8.5.2001, the excess payment had to be recovered from the salary, which was done from the salary of August, 2004 by the Pay & Accounts Officer. They further contend that this action is in pursuance of the recommendations of the Anomalies Committee, High Court orders and Central Administrative Tribunal, Allahabad judgments and, therefore, their action are neither arbitrary, nor illegal as alleged by the applicants.

6. Since the facts of the present case are similar with that of O.A. no. 1162/2004, I would like to reiterate the stand taken in judgment of that O.A.

7. On the issue of recovery of over payment, the applicants were upgraded to the scale of Rs. 260-400/- and subsequently promoted to H.S.G. II by the respondents and have been drawing their pay accordingly in pursuance of the Vth Pay Commission recommendations and subsequently due to Central Administrative Tribunal and Supreme Court judgments and erroneous up-gradation w.e.f. 16.10.1981, the up-gradation and

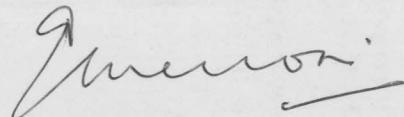
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promotion had to be cancelled necessitating recovery of the over payment. It must be said that the applicants had in no way contributed to or had any role to play in the over payment, which was purely due to an error on the part of the respondents and in pursuance of judicial pronouncements as such recovery of over payment is bad and untenable. The learned counsel for the applicants has relied upon the following case laws:

- (i) *Harish Chandra Srivastava Vs. State of U.P. & Others* (1996 (2) E.S.C. 317 Alld.).
- (iii) *Bihar State Electricity Board & Another Vs. Bijay Bahadur & Another* (2000) 10 SCC 99.
- (iv) *Bandu Mukti Morcha Vs. U.O.I. & Others.*
- (v) *Shyam Babu Verma & Others Vs. U.O.I. & Ors* (1994) 2 SCC 521).

8. In all the above mentioned cases, it was held that in case over payments have been made for no fault of the applicants, it shall only be just and proper not to recover excess payment from them.

9. In view of the above, the O.A. is allowed and order of recovery from the pay of the applicants is quashed. The recovery made so far from the pay of the applicants, shall be refunded to them. No costs.



MEMBER-A

GIRISH/-