

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

**O.A. No.139/2014
O.A. No.140/2014
O.A. No.141/2014**

Reserved on :06.04.2021
Pronounced on:09.04.2021

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)**

O.A. No.139/2014

Ram Chander son of Shri Megh Singh aged about 56 years, resident of Village Amargarh Post Roodlai, Tehsil Pisangan Distt. Ajmer at present working FGM-HS, MES No.169042, Military Engineering Services, Office of Garison Engineer, Military Engineering Service, Itarna Cant. Alwar-301001.

...Applicant.

(By Advocate: Shri Rajendra Soni)

Versus

1. Union of India, through Engineer In-Chief, Branch Army, H.Q.Kashmir House, Rajaji Marg, New Delhi-110011.
2. Command Chief Engineer, Military Engineering Service (MES), Southern Western Command C/O 56, A.P.O., Jaipur Cantt, Military Engineering Services, Jaipur.
3. Chief Engineer, Military Engineering Service (M.E.S.), Jaipur Zone, Ram Mandir Road, Banipark, Power House Road, Post Office, Jaipur.
4. Commander, Works Engineer, Military Engineering Service (M.E.S.), Kalyan Marg, Bani Park, Jaipur.
5. Garison Engineer, Military Engineering Service, Itarana Cantt. Alwar-301001.

...Respondents.

(By Advocate: Shri Rajendra Vaish)

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O.A. No.140/2014

Bhoop Singh son of Banshidhar, aged about 58 years, resident of Village Naharkhera, Post Khanpur Ahir, Tehsil Mundawar, Distt. Alwar at present working FGM-HS, MES No.191276, Military Engineering Services, Office of Garison Engineer, Military Engineering Service, Itarna Cant. Alwar-301001.

...Applicant.

(By Advocate: Shri Rajendra Soni)

Versus

1. Union of India, through Engineer In-Chief, Branch Army, H.Q.Kashmir House, Rajaji Marg, New Delhi-110011.
2. Command Chief Engineer, Military Engineering Service (MES), Southern Western Command C/O 56, A.P.O., Jaipur Cantt, Military Engineering Services, Jaipur.
3. Chief Engineer, Military Engineering Service (M.E.S.), Jaipur Zone, Ram Mandir Road, Banipark, Power House Road, Post Office, Jaipur.
4. Commander, Works Engineer, Military Engineering Service (M.E.S.), Kalyan Marg, Bani Park, Jaipur.
5. Garison Engineer, Military Engineering Service, Itarana Cantt. Alwar-301001.

...Respondents.

(By Advocate: Shri Rajendra Vaish)

O.A. No.141/2014

Fateh Singh (now deceased) S/o Shri Ramchandra, aged about 56 years, by caste Jat, resident of Village Gundpur Post Khanpur Jat, Tehsil Alwar Diss. Alwar through L/Rs

1/1 Smt. Heera Devi w/o late Shri Fateh Singh, aged about 55 years, by caste Jat, resident of Village Gundpur Post Khanpur Jat, Tehsil Alwar District Alwar.

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1/2 Smt. Anjana wife of Shri Lala Ram Jat D/o late Shri Fateh Singh, aged about 33 years, resident of Mugshka Suraj Nagar behind St. Anslems school, Delhi Road, Alwar District Alwar.

1/3 Mukesh Kumar s/o late Shri Fateh Singh, aged about 31 years, resident of Village Gundpur Post Khanpur Jat, Tehsil Alwar District Alwar.

1/4 Hariom s/o late Shri Fateh Singh, aged about 28 years, resident of Village Gundpur Post Khanpur Jat, Tehsil Alwar District Alwar.

...Applicants.

(By Advocate: Shri Rajendra Soni)

Versus

1. Union of India, through Engineer In-Chief, Branch Army, H.Q.Kashmir House, Rajaji Marg, New Delhi-110011.
2. Command Chief Engineer, Military Engineering Service (MES), Southern Western Command C/O 56, A.P.O., Jaipur Cantt, Military Engineering Services, Jaipur.
3. Chief Engineer, Military Engineering Service (M.E.S.), Jaipur Zone, Ram Mandir Road, Banipark, Power House Road, Post Office, Jaipur.
4. Commander, Works Engineer, Military Engineering Service (M.E.S.), Kalyan Marg, Bani Park, Jaipur.
5. Garison Engineer, Military Engineering Service, Itarana Cantt. Alwar-301001.

...Respondents.

(By Advocate: Shri Rajendra Vaish)

ORDER

Per: Dinesh Sharma, Member (A):

The OAs listed above have almost similar facts and common issues and are, therefore, disposed of with the following common order.

2. The applicants, who were initially appointed as unskilled workers by the respondents, were given their second promotion from the post of what is now known as FGM-SK (Skilled) to FGM-HS (High Skilled) w.e.f 20.05.2003, by order annexed at Annexure A/6. A review DPC was held to review promotions made from 01.01.1996 to 20.05.2003 which found that the applicants were not eligible for promotion since no vacancy was available for their promotion following the 200 point reservation roster. Since "the promotion from SK to HS was done erroneously by wrongly interpreting the rules" the applicants were reverted to the post of FGM-SK, by order dated 21.03.2009, annexed at Annexure A/3. A process for recovery of amounts allegedly paid in excess was also set in motion. The applicants represented against it and approached this Tribunal through OA No.788/2012, which was disposed of with direction to the respondents to issue a reasoned and speaking order. The applicant also prayed, through letter dated 24.09.2012, for grant of 2nd ACP and 3rd MACP from

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due dates, in case they were not to be given regular promotions (Annexure A/10). The original orders reverting the applicants dated 21.03.2009 (at Annexure A/3), the speaking orders issued following the Tribunal's direction, dated 17.12.2013 (at Annexure A/2) and the orders rejecting their claim for ACP, dated 05.02.2014 (Annexure A/1) are challenged in this OA. The applicants have claimed that their reversion without any fault of theirs, without any notice, is in violation of the principles of natural justice and any recovery of any alleged excess amount is against judicial pronouncements by the Hon'ble Supreme Court and the Hon'ble High Courts. The applicants (in OA Nos. 139/2014 and 140/2014) have claimed that they were never asked to appear in the trade test since they were already promoted as FGM-HS. Hence, the failure to pass the test cannot be cited as a reason for not giving them 2nd ACP. The applicant in OA No.141/2014 did appear in a trade test in the year 2004 (and did not pass) but was never asked to appear in the trade test thereafter, for the same reason that he was already promoted as FGM-HS. Hence, denying the applicants the benefit of promotion/ 2nd ACP on ground of there being no vacancies/not passing the trade test, without following the principles of natural justice, is wrong.

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3. The respondents have denied the claim of the applicants. It is stated in their reply that the respondents have all the right to correct a mistake. They have passed a reasoned and speaking orders following this Tribunal's direction, and these orders are self-explanatory. The reply, accepts that no recovery shall be made for the period for which the respondents worked against the higher post. The speaking order also states that the second and the third financial upgradation under the MACP Scheme will be granted as per the existing policy. Thus the applicants have no case.

4. Rejoinders have been filed in these OAs reiterating the earlier claims. It is also stated, annexing a copy of the order dated 24.03.2009 (at Annexure A/13) that similarly situated persons have been given promotion without passing the trade test.

5. The matters were heard through video conferencing on 06.04.2021.

6. After going through the pleading and hearing both the learned counsels of the parties, it is clear that there are mainly two issues involved in these cases:

- i) Whether the applicants' reversion to the post of FGM-SK, on ground that their promotion to FGM-HS was on incorrect application of rules/assessment of vacancies; and also denial of grant of 2nd ACP instead, on ground of

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their not appearing/passing the trade test; are legally correct and sustainable.

ii) Whether the respondents can recover any excess amount paid to the applicants due to such incorrect promotion.

7. On the first issue, admittedly, there was no fault of the applicants when they were promoted as FGM-HS in the year 2003. The respondents have quoted the ruling of the Hon'ble Supreme Court [**Union of India and Another vs. Narendra Singh** decided on 13.12.2007 in Appeal (Civil) No.5865/2007] in support of their argument that they are well within their rights to correct a mistake. We agree with that argument and find that any bona-fide mistake must be corrected and any unintended gains from a bona-fide mistake should not be allowed to continue, especially at the cost of the exchequer. There can also be no arguing about the need to follow the rules of natural justice before any action prejudicial to an employee is taken. It can be argued that the action to correct a mistakenly granted promotion is not a punitive action and no prejudice is caused against a person who is reverted for want of a vacancy. This may be true, but it is also true that the applicants are not only reverted for want of vacancies but are also being denied the 2nd ACP which they would have got if they were not

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promoted. This denial is on ground of their not having passed a trade test, which they were apparently not required to pass having already been promoted to the higher post without passing this test. This, what can be termed as double denial- of promotion on a later realisation of want of vacancies; and of 2nd ACP, for want of passing of trade test not required to be passed due to earlier promotion; is definitely prejudicial and unreasonable. We also cannot fail to observe that the applicants, who are (low paid) employees, have been very reasonable. Instead of insisting on keeping their promotion, they have, in their representation dated 24.09.2012 (Annexure A/10), asked for the 2nd ACP/MACP which they deserve to get, if no promotion is given. Taking into account these undisputed facts, we have no hesitation in deciding the first issue in favour of the applicants. Their reversion from a promoted post, coupled with denial of ACP that they would have got, if they were not promoted, on ground of their not fulfilling a condition, which they need not have fulfilled as they were already promoted, is patently unreasonable. The applicant have also cited cases of employees granted promotion without passing trade test along with their rejoinder. This has not been denied by the respondents either through written, or even oral, submission during the arguments. Under these circumstances, we, quash the orders dated

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17.12.2013 and 05.02.2014 (Annexure A/2 and A/1). We direct the respondents to pass fresh orders, either to continue the applicants at their original promotion posts of FGM (HS) or to grant them the 2nd ACP from the date it would have become due if they were not promoted. This shall be done without insisting on fulfilling a condition (of passing a trade test) which could not be fulfilled at the relevant time due to their having been already promoted. The respondents should also pass orders for grant of MACP benefits under the rules from the dates it became due.

8. The respondents have already hinted in their reply that they are not insisting on recovery of pay granted for the period the applicants worked at the higher post. In the light of our decision on the first issue of reversion/grant of 2nd ACP, there can be no recovery on this account (of reversion from FGM HS to FGM SK by orders dated 21.03.2009) and the respondents are permanently restrained from doing so.

9. The OAs are disposed of accordingly. No costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

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