

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This the 22nd Day of **January**, 2014)

Hon'ble Mr. Justice S.S. Tiwari- Member (J)
Hon'ble Ms. B. Bhamathi, Member (A)

Original Application No. 792 of 2002
(U/S 19, Administrative Tribunal Act, 1985)

Sohan Lal (SC) S/o Sri Dassu (SC) aged about 57 years R/o village Kamadipur P.O. Chhibaiya, District Allahabad. Presently is working as a Pipe Fitter Highly Skilled Grade II in the Pay Scale of Rs.1200-30-1440-EB-30-1800 under kind control of AGR B/R, GF (West) MES, Allahabad.

..... **Applicant**

By Advocate: **Shri R.C. Pathak**

Versus

1. Union of India through the Defence Secretary to the Govt. of India, Ministry of Defence South Block, New Delhi-110011.
2. The Engineer-in-Chief Engineer-in-chief's Branch Army Headquarters, Kashmir House, Rajaji Marg, New Delhi-110011.
3. The Chief Engineer Central Command Lucknow.
4. The Commander Works Engineer (West) MES Allahabad.
5. The Garrison Engineer (West) Allahabad Cantt, (U.P.).
6. Shri Nanchoo Pipe Fitter, H.S. Gde.II C/o GE (MES) Air Force Bamrauli, Allahabad.

..... **Respondents**

By Advocate: **Ms. Poonam Singh**

ORDER

Delivered by Hon'ble Ms. B. Bhamathi, Member (A)

This O.A. has been instituted for the following relief/s:-

(i) "issue a suitable order or direction to the respondent No.4 and 5 i.e. the Garrison Engineer (West) Allahabad and the Commander Works Engineer (CWE) M.E.S. Allahabad directing the respondents by way of mandamus to withdraw the illegal unlawful, unconstitutional, against law of natural justice, and against Rules, law Act and Policies of Govt. of India P.T.O. order No.47/94 Annexure A-7 and quashed and set aside the order of reversion from the post of pipe fitter H.S. Grade II to skilled pipe fitter from the pay scale Rs.1200/- 30-1440- EB-30-1800 to Rs.950-1500 of the applicant on Serial No.27.

(ii) issue of a suitable order or direction by way of mandamus directing the respondent No.4 and 5 not to recover the amount from the pay and allowance of for the period served as pipe fitter H.S. Grade II from 15.10.84 till filling this petition and further as the order/show cause notices of recoveries is illegal and unlawful. The aforesaid order only give effect and actually served to the applicant and the recoveries be stopped just to avoid financial hardship to the applicant and his family members of Scheduled Caste community. As the affidavit given as a Annexure A-10 for the order.

(iii) issue suitable order or direction by way of mandamus commanding the respondent No.4 and 5 not to give effect of illegal, unlawful unconstitutional and against the law of natural justice and also against Hon'ble Supreme Court, CAT Judgment



and directions and against Rule, Act, Law and Policies of Govt. of India order to revert the applicant after serving on the post of pipe fitter H.S. Grade II since 15.10.84 nearly 18 (eighteen) years without any charge and allegation and punishment and to be ordered to continue on the post of pipe fitter H.S. Grade II with all consequential benefits.

(iv) *issue suitable order or direction to the respondents No.4 and 5 not to deprive or give effect of reversion order dated 21.11.1994 and show cause notices dated 29.4.2001, 16.3.2002, 7.12.2001 and 10.12.2001 shown as Annexure A-7, A-1 to A-4 of Senior most applicant. And by retaining juniors to the applicant on the post of pipe fitter H.S. Grade II avoid violation of Article 14 and 16 of Indian Constitution Hence the aforesaid orders dated 24.11.91 29.4.2002, 16.3.2002, 7.12.2001 and 10.12.2001 shown as Annexure A-7 and A-1 to A-4 to this petition be quashed and set aside and be ordered the applicant continue on the post of pipe fitter H.S. Grade II with all consequential benefits.*

(v) *issue suitable order or direction by the Hon'ble Tribunal as deem fit and proper in case of applicant.*

(vi) *to award the cost of the application to the applicant."*

2. The case of the applicant is that he joined the Office of Garrison Engineer (West) Allahabad on 22.10.1969 as Pipe Fitter Civilian Class IV in MES Department. He was promoted as Highly Skilled Grade II Pipe Fitter from 15.10.1984 arising from the declaration of fitment of Industrial worker in the pay scale



recommended by the III Pay Commission Rs.330-480/- which was subsequently revised on 1.1.1986 on the recommendation of the fourth Pay Commission to Rs.1200-1800/-. However, vide order dated 21.11.1994, the Garrison Engineer (West) Allahabad (respondent No.5) cancelled the promotion of the applicant and reverted him to skilled (SK) category in the pay scale of Rs.950-1500/- even though he was senior most in the cadre of Pipe Fitter H.S. Grade-II and belonged to Scheduled Caste Community. The respondent No.5 ordered recovery from pay and allowances for the period 15.10.1984 to 22.1.1996 when he served as HS Grade II Pipe Fitter without giving due and reasonable opportunity. The applicant also alleged that one Shri Moti Lal Sharma, Pipe Fitter, junior to the applicant has been promoted to HS Grade II. Shri Nanchoo, Pipe Fitter HS Grade II also junior to the applicant was promoted on 21.11.1995 by respondent No.4 and was again promoted in the month of December 1995 in the pay scale of Rs.1500/-. Further, one Shri Jai Pal Sharma, Black Smith, HS Grade II, filed an O.A. No.175 of 1990 before this Tribunal against the reversion order on the post of Skilled Black Smith and recoveries of pay and allowances. This Tribunal passed an order on 30.03.1990 not to effect the recoveries from the salary of the applicant in O.A. No.175 of 1990 in respect of the alleged over payment till further orders. The O.A. No.175 of 1990 was finally

decided in favour of the applicant and order of the reversion was quashed and set aside.

3. The applicant represented his case vide letter dated 21.3.1995, 11.10.1995 to withdraw the reversion order dated 21.11.1994. The applicant then filed O.A. No.88 of 1996 for his claim. Vide order dated 7.9.2000, this Tribunal quashed the order of reversion dated 21.11.1994 and granted all the consequential benefits. The respondents complied with the order and the applicant was given all the benefits and arrears of pay and allowances due to him vide order dated 22.3.2001. Subsequently, the respondent No.5 using the observation of the Court in the later part of the operative portion of the above order in O.A. No.88 of 1996, wherein it was stated that "respondents are not precluded from passing fresh orders after following the procedure in accordance with the law and observation made in the judgment", issued show cause notices dated 29.4.2002, 16.3.2002, 7.12.2001 and 10.12.2001 for reversion and recovery from pay and allowances. The applicant gave representations on 9.1.2002, 31.3.2002 in reply to the show cause notice issued on 7.12.2001 and 16.3.2002 and demanded certain documents, policies rules regarding reversion etc but the same was not provided till date and the order of reversion was passed on 29.4.2002, which was amended on 23.7.2002.



4. The case of the respondents is that as per the policy of Fitment of MES Industrial workers in the light of the recommendation by the III Pay Commission, notified vide Govt. of India order dated 18.04.1984, personnel in each industrial trade were recategorised into skilled (SK)/Highly Skilled Grade (HS-II)/Highly Skilled Grade I (HS-I) in the ratio of 65%, 20% and 15%, respectively with revised pay scales on the basis of their existing seniority. In pursuance of this order, the HQ, CWE, Allahabad prepared fresh seniority lists vide letter dated 22.5.1986. The same was published. Applicant was also upgraded alongwith others from SK to HS II in the light of the above seniority list and as per the methodology given by the MOD for personnel in all trades within the existing strength of persons in only pipe fitter. The same was published. In the meantime, MOD letter dated 4.7.1985 had clarified that for the purpose of upgradation, the three trades of Fitter, Pipe Fitter and Plumber are to be merged together. Consequently, only 20% of persons out of this combined strength of these three merged categories were to be upgraded as HS II. Hence, this required a review of the seniority list for Pipe Fitter SK to Pipe Fitter HS II. The name of the applicant did not find place in the fresh seniority list and hence the applicant was reverted to his original post of Pipe Fitter (SK). The letter of 22.5.1986 was amended vide letter dated 29.9.1986. While communicating the reversion order and the seniority list to the



formation where the applicant was serving, by oversight the reversion order issued could not be published and the applicant continued in the same grade i.e. Pipe Fitter HS II. When this error was detected during the DPC for Pipe Fitter HS II to HS-I, his case was reviewed and a decision was taken to cancel the promotion order with retrospective effect from the date of promotion i.e. 15.10.1984. But, in compliance of the order of this Tribunal in O.A. No.88 of 1996 filed by the applicant, the promotion of the applicant was restored w.e.f. 15.10.1984 with all consequential benefits vide order dated 22.3.2001. Thereafter in keeping with the direction of the later part of the same order of the Tribunal and by way of giving reasonable opportunity, the applicant was asked to show cause through the four impugned notices as to why he should not be reverted back to the post of Pipe Fitter (SK) w.e.f. 15.10.1984 since his name actually had not come up in seniority list at the time of re-categorization under the three grade structure. After giving sufficient opportunity to the applicant, he was reverted vide order dated 29.4.2002 once again from Pipe Fitter HS-II to pipe fitter SK with retrospective effect i.e. w.e.f. 15.10.1984. On realizing that reversion with retrospective effect is incorrect in law, the above reversion order was amended vide letter dated 23.7.2002 to take effect from 29.4.2002. The respondents have also clarified that there has been no discrimination whatsoever, vis-à-vis the case of the applicant and



discrimination whatsoever, vis-à-vis the case of the applicant and the others. Shri Moti Lal Sharma did not figure in the seniority list within 20% quota for HS II. He was reverted to his original category on 29.9.1986. Subsequently, when in the order of the seniority Shri Moti Lal Sharma became eligible for promotion within 20% existing strength of Fitter/Pipe Fitter/Plumber, he was promoted to Pipe Fitter HS II vide letter dated 7.3.1989. The case of Shri Nanchoo, Pipe Fitter has no relevance with this case as he is senior to the applicant. The case of Shri Jai Pal Sharma, Black Smith has also no relevance with the applicant's case. Black Smith is an independent trade, and the calculation of 65%, 20% and 15% is based on the existing strength of Black Smith only. No other trade is merged therein. The seniority list of Black Smith is also a small one as there are very limited persons in this trade. Hence, there can be no parallel between two trades. Respondents have stated that the order of this Bench in O.A. No.88 of 1996 has been fully complied with through the impugned notices and reversion order of 29.4.2002 and their actions are within the extant rules and policies.

5. We have gone through the O.A., Rejoinder Affidavit of the applicant the annexures A-1 to A-13 accompanying the O.A. No written argument has been filed.



6. We have also gone through the Counter Affidavit, the Supplementary Counter Affidavit and the written arguments, as called for by the Bench, filed by the respondents

7. We have heard the learned counsels on behalf of the applicant and respondents and perused the facts and circumstances of the case.

8. We have noted that the respondents have taken action each time for promotion, reversion and revision of reversion order in line with the laid down policy. The order of applicant's initial promotion from SK to HS-II from 15.10.1984 was based on the recommendation of III pay commission. However, the Army Headquarter vide letter No.90270/89/EIC dated 4.7.1985 clarified that for the purpose of upgradation the 3 trades i.e. fitter, pipe fitter and plumber are to be merged and then the mandated percentage out of this combined strength are to be upgraded. A fresh seniority list after merger was prepared. The applicant did not figure in terms of the revised seniority list within the 20% strength of HS-II and hence applicant was reverted. We note that the respondents did make procedural errors. First, the order to upgrade the applicant was based on the seniority list for pipe fitter category on 22.5.1986, whereas the letter of MOD dated 4.7.1985 seeking merger of three categories predates the letter of 22.5.1986.



It is not clear how the letter of July 85 was not in the knowledge of the respondents when the upgradation was done in May 1986. However, when the error was detected, the second revised seniority list after merger was issued, which made reversion inevitable. Further, the error of timely non reversion was detected much later and only during the DPC exercise for promotion of all cases including that of the applicant, from HS-II to HS-I. Despite these errors, we are in no doubt that the orders eventually passed in the case of the applicant were in tune with laid down policy.

9. The order of reversion being considered fait accompli by the Department, the consequential, actions resulting in recovery of pay and allowances for the period between 15.10.1984 to 22.1.1996 was done from the salary bill of January 1996, without giving opportunity to the applicant. This allegation was made good by the respondents, when applicant agitated before the Tribunal in O.A. No.88 of 1996. The respondents complied with the order of the Tribunal by first quashing the reversion order and granting all consequential benefits. But as the tribunal had also given the respondents liberty to pass fresh orders following due procedures of law, the respondents were within their authority to issue the impugned show cause notices in the present O.A., which must be seen as affording due opportunity to the applicant to explain his stand and the applicant was duty bound to reply to the



show cause notices, which he apparently has not done as is seen from the records.

10. When the respondents noted that applicability of cancellation of promotion with retrospective effect is not as per law, they suo moto issued an amended order dated 23.7.2002 by which no recovery was made from the salary of the applicant after reversion i.e. after 29.4.2002. Consequently relief No.ii sought for by the applicant has already been met with.

11. The respondents have also clarified as to why there has been no discrimination with reference to the case of Shri Moti Lal Sharma, Shri Nanchoo and Shri Jai Pal Sharma. The respondents have also given clear and categorical explanation as to why all these three cases along with that of the applicant's case cannot be deemed as similarity situated. On the other hand, the Rejoinder Affidavit filed by the applicant on 30.07.2003 at Para 7, 8, 9 and 10 states that all the 3 cases of alleged discrimination are similarly situated to the case of applicant and has full relevance to this O.A. But, the applicant has not given any relevant facts or circumstances to conclusively counter the claim of the respondents that there has been no discrimination. It has been stated by the applicant in the Rejoinder Affidavit that details will be provided and argued at the time of final hearing of the case. However, the

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details and arguments have not been provided orally. Nor has any written argument as called for by the Bench been provided.

12. Two rulings have been relied on by the applicant (**1987**)⁴ **Administrative Tribunals Cases 147; Jiten Kumar Swain vs. Union of India & Ors** and (**1990**) **12 Administrative Tribunals Cases 312; P. Joseph vs. Addl. Postmaster Central Tamil Nadu Circle, Madura and ors.** Both cases involve promotions based on selection through departmental examinations, which in our view has no relevance to the facts and circumstances in the instant case. In the present case the promotions/reversions etc. were based on a laid down policy uniformly applicable to all who come within its purview. We have already observed that no case of discrimination by the respondents in the application of the policy has been made out by the applicant.

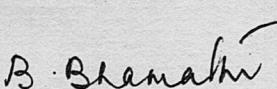
13. In the supplementary counter affidavit filed by the respondents have stated that after reversion there is no financial loss to the applicant because he has been upgraded in the same scale i.e 4000-6000 under w.e.f 29.4.2002. After completion of 24 years of service he has again been upgraded in the pay scale of Rs 5000- 8000 w.e.f 7.2.2003. Besides, it has been stated that there has been no loss in his terminal benefits on the date of retirement.

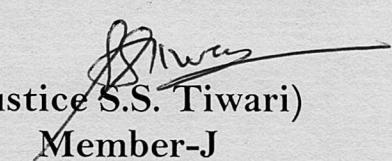
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Further, no recovery from his salary has been made after reversion.

14. Hence, we do not see any basis to interfere with the issue of the impugned show cause notices to the applicant, by way of giving due opportunity, which had been done in compliance of the Tribunal order dated 7.9.2000. It was for the applicant to respond to the show cause notices and bring all the facts and circumstances with documentary evidence, if any, to counter the notices for reversion. The applicant failed to respond appropriately and adequately to the show cause notices. Not having done so, the respondents, after affording due opportunity to the applicant passed the order of reversion on 29.4.2002, which was duly amended to have retrospective effect from the date of above reversion order. Hence, we also see no infirmity in the reversion order.

15. In view of the foregoing, the OA is dismissed without costs.


(Ms. B. Bhamathi)
Member-A


(Justice S.S. Tiwari)
Member-J

Sushil