

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

O.A./T.A. ICCA No. 1218/03 with 1217/03

Date of decision 17-8-07

N. K. Jais Applicant(s)

Shri A.P. Singh Counsel for the applicant(s)

Versus.

Union of Indus & ors Respondents(S)

Shri S. Singh counsel for the respondent(s)

CORAM

Hon'ble Mr. Justice V.C./Member()

Hon'ble Mr. _____ Member ()

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether their Lordship wish to see the fair copy of the judgment?
4. Whether to be circulated to all Benches?

SIGNATURE

Manish/-

Rule 106.

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ORIGINAL APPLICATION NO. 1218 OF 2003
CONNECTED WITH
ORIGINAL APPLICATION NO. 1217 OF 2003.

ALLAHABAD THIS THE 17 TH DAY OF August 2007.

Hon'ble Mr. Justice Khem Karan, V.C.

N.K. Jain S/o P.K. Jain aged 40 years, presently working as T. No.6719,
Radar Mechanic, M.C.O. Group 509 Army Base Workshop, Agra.

.....Applicant In O.A. No. 1218/03

(By Advocate: Shri A.P. Singh)

Versus.

1. Union of India through Secretary, at South Block, Ministry of Defence, New Delhi.
2. Director General, E.M.E., Army Headquarters, New Delhi.
3. Commandant, 509 A.B Workshop, Agra.
4. Establishment Officer, 509 Army Base Workshop, Agra.
5. Department of Personnel and Training Ministry of Parliamentary Affairs, through its Secretary, Govt. of India, New Delhi.

.....Respondents in O.A No.1218/03

(By Advocate: Shri S. Singh)

WITH

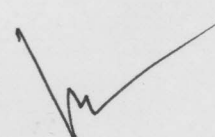
ORIGINAL APPLICATION NO. 1217 2003.

Dharmendra Kumar Singhal s/o Sri S.S. Singhal aged 36 years, presently
working as T. N.6838 Instrument Mechanic (Electrical) A.R.C.C 509, Army
Base Workshop, Agra.

.....Applicant in O.A. NO.1217/03

(By Advocate: Shri A.P. Singh)

Versus.

1. Union of India through Secretary, at South Block, Ministry of Defence, New Delhi.
 2. Director General, E.M.E., Army Headquarters, New Delhi.
 3. Commandant, 509 A.B Workshop, Agra.
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4. Establishment Officer, 509 Army Base Workshop, Agra.
5. Department of Personnel and Training Ministry of Parliamentary Affairs, through its Secretary, Govt. of India, New Delhi.

.....Respondents in O.A No.1217/03

(By Advocate: Shri S. Singh)

ORDER

Both these O.As are connected with each other and involve a common question of law and facts, so are being disposed of by common orders.

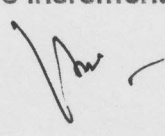
2. While in O.A. No.1217/03, applicant Shri N.K. Jain prays for quashing order dated 10.4.2003 (Annexure A-1) and in O.A No. 1218/03, Shri Dharmendra Kumar Singhal prays for quashing similar order dated 18.8.2003 (Annexure A-1). By both these orders, benefit of incentive increments which both of them were getting, was withdrawn and in lieu thereof benefit in terms of letter dated 1/2/1989 Estt. (Pay-1) dated 31.1.1995 D.O Pt II order No. 49/E1/02/2003 dated 14.3.2003 and in terms of order dated 14.3.2003 was given and decision was taken to recover the amount, which they received in the shape of incentive increments in terms of earlier Government orders. They pray that the respondents be restrained from deducting any amount from their salary.

3. Undisputedly Shri D.K. Singhal joined as Instrument Mechanic (Electrical) in the year 1988 and Shri N.K. Jain, Radar Mechanic in the year 1987. Both were having diploma in Engineering. There was a general direction of Govt. of India (Annexure A-2) that Government servants, who acquire higher qualification, after induction in service, may be given increments by way of incentive subject to the conditions laid down in letter dated 4.2.1969 (Annexure A-2). It was applicable non-gazetted Government servants (Technical and Scientific Grade). They say that they obtained degree in Engineering from A.M.E.I. (India) and on the basis thereof, were given increments based incentives from 1994 and 1998 respectively. They continued getting these increments based incentive till January 2003. When they received salaries for the month of February, on 1.3.2003, they found that those increments based incentives had been withdrawn. Both of them preferred representatives to the Commandant, 509 ABWK SP respondent NO.3 trying to know the reasons from this stoppage and requesting him to pay the same as usual. Respondent NO.4 wrote to them on 10.4.2003 that in view of DOPT OM No.1/2/89 Estt. (pay-1) dated 31.1.1995 and DOPT II order

[Signature]

No.49/E1/02/2003 dt. 14.3.2003, increments based incentive were not to be paid to them and the same were to be replaced by lump sum amount and amount paid in excess was to be recovered from their salaries. They filed these O.As challenging O.A. dated 31.1.1995 and order dated 14.3.2003 saying that the same were violative of Articles 51 (J), 38 (2) of the Constitution of India as employees of Railways were still enjoining the benefit of such increments, so there was no justification for discriminating them. It was also said that no such recovery could have been ordered without giving them any show cause notice and their representations were disposed of in a mechanical and arbitrary manner.

4. The respondents have tried to defend their action by referring to office memorandum dated 31.1.1995 and 24.1.1996. They say that according to these new guidelines employees were to be paid a lump sum Rs.4000 in replacement of their increments based incentive. They say that Rules applicable to the employees of Railways cannot be pressed into service, to challenge the stoppage of benefit and against the proposal of recovery. It is stated that applicant of O.A. No.1218/03 passed Section A of A.M.E.I from Institute of Engineers (India) on 11.3.1999 and was granted one advance increments of Rs.33 a month with effect from the same date and thereafter he passed section B of A.M.E.I on 11.9.1997 and was granted two advance increments of Rs.100/- per annum w.e.f. 1.9.1998 in terms of Govt of India, Ministry of Defence letter dated 4.2.1969 and 2.6.1971. Likewise applicant Shri Singhal passed section B of AMIE degree on 8.4.1994 and was granted two special increments at the rate of 30 and 40 a month w.e.f. 1.5.1995 in terms of said letters. They go on to state that on recommendation of Committee of Joint Secretaries of various Ministries, the Govt of India decided, vide letter dated 31.1.1995 to grant one time lump sum increment, in replacement of increments based incentives, and so lump sum amount was given, in place of incentive increments. Attempt has also been made to say that passing of Section A and B of AMIE degree is not stipulated in Recruitment Rules, for appointment to the post of Rader Mechanic and Instrument Mechanical (Electrical), so the same had no direct relation with the functioning of these two. They want to say that employees were encouraged to achieve higher technical qualification that could benefit the department and if they achieved the higher technical qualification for their own benefits, the same was not to give them right to have incentive increments.



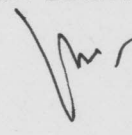
5. The applicants have filed rejoinder affidavits, saying that the qualifications they acquired, had direct relation to the duties to be discharged by them as the same enhanced their technical efficiency and moreover they did so acting on promise made in the Govt. of India letter of 1969.

6. The respondents have filed supplementary affidavit saying that on recommendation of 5th Central Pay Commission, new pay scale of Rs.4000-6000 was introduced w.e.f. 1.1.1996 and as per new incentive policy contained in Govt. of India's letter dated 24.1.1996, employees acquire higher qualification on or after 1.4.1993, only a lump sum amount was to be paid. They say that show cause notice was not required as it was not a disciplinary case.

7. Supplementary rejoinders have also been filed saying therein that like Circular of 2001 issued by Railway Board was struck down by Madras Bench of this Tribunal in OA. 1013/99, Babu Vs. Union of India and Special Leave petition filed against the same was dismissed by the Apex Court. Copy of that circulars is S.R-1.

8. The learned counsel for the applicant has placed on record his written arguments but learned counsel for the respondents has not been able to place on record his written argument, inspite of fact that sufficient opportunity was given to him.

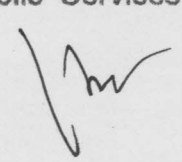
9. This much is clear that pursuant to the earlier policy of 1969, two applicants acquired higher technical education i.e. degrees in Engineering and were given incentive increments from different dates. They continued getting that benefit till January 2003. Relying on P.M. Babu and others Vs. U.O.I. and others decided by Madras Bench of this Tribunal on 28.1.1991 reported in (1992) 22 Administrative Tribunals Cases page 26, learned counsel for the applicant has contended once an employee has acquired certain vested right based on the policy decision taken by the Government, the employee cannot be divested of that right or denied that benefit on the basis of subsequent change in policy. In that case vide order dated 14.5.1966, Railway had introduced a scheme for grant of cash award and advance increments to Class III employees on passing part 1 and 2 of an examination respectively. That was continued from time to time upto 30.6.1988. After a gap, another order was issued on 29.5.1989, continuing



the said scheme with certain modification. Under revised scheme, employees were entitled two and four increments respectively on passing two parts of examination. Applicants passed B E examination on 26.12.1988 and were initially granted four increments and by subsequent order dated 12.4.1990 only two more increments were granted, making in all six advance increments. Thereafter there came order dated 21.11.1990 by which increments were withdrawn, on the ground the applicant could take advantage of instructions issued on 29.5.1989. Madras Bench of this Tribunal took a view that since the applicant there, had been sanctioned six increments and was paid the same, so had a vested right to get the same and same cannot be stopped or withdrawn.

10. Learned counsel for the applicant says that S.L.P. against the said decision of Madras Bench was dismissed by the Apex Court. Nothing has come from the side of the respondents to meet it. Tribunal is of the view that cases of the applicant in hand are similar to the case before the Madras Bench. Here also applicants were granted advance increments, in terms of earlier policy of 1969, on acquisition of degree in Engineering, so they are right in saying that Govt. cannot deprive them of that benefit. Now it cannot be said that acquisition of degree in Engineering, was not ^{to} ~~be~~ benefit ^{of} the Department. It cannot be said that applicants were granted those incentive increments without any basis or in breach of guidelines of 1969. Any change in the policy, will not affect applicant's rights to continue to get the benefits of incentive increments. The Tribunal finds no reason to take a view, different to one taken by Madras Bench of the Tribunal in the case of P.M Babu and others. If withdrawal of increments granted to P.M Babu and others could not be withdrawn on the basis of change in policy, benefit of incentive increments granted to the applicant ^{also} can not be withdrawn. Now the respondents cannot say that applicant should not have been given those benefits. The action of the respondents in withdrawing that benefit does not appear to be in consonance with the settled principle of law. Any change in policy may cover new cases, but the cases already dealt with under the old policy, can not be reopened.

11. Relying on Shyam Babu Vs. U.O.I and others Vs. Union of India and Ors. 1994 Supreme Court Cases (L&S) 683 Ram Prakash Bhatti Vs. Union of India and others, 2003 (2) Administrative Total Judgments (Chandigarh Bench) 430 and State of U.P & Ors. Vs. State Public Services Tribunal,



Lucknow & Ors. 2004 (1) AWC 438, the learned counsel for the applicant has submitted that the amount so received by two applicants in the shape of incentive increments cannot be recovered from them as there is nothing to show that they misrepresented the facts, in getting the said incentive increments. He has also argued on the basis of Bhagwan Shukla Vs. Union of India & Ors. 1994 Supreme Court Cases (L &S) 1320, S.V.V. Sathyanarayan Murthy Vs. The Director of Accts. A.P. Circle, decided on 14.2.2003 by Hyderabad Bench of the Tribunal that in any case, no such decision for recovering the said amount could have been taken without issuing show cause notice. I think it is difficult to brush-aside the said arguments of the learned counsel for the applicant. It is never the case of the respondents that applicants practiced any fraud or misrepresented any facts in getting the benefit of incentive increments. So the question of recovery of amount, which they have received upto January 2003 should not arise.

12. In view of what has been found, both the O.As are to be allowed. Impugned orders are set aside and respondents are hereby restrained from deducting any amount from the salary of the applicant and not to deprive them of the benefit of increments based incentives.

No order as to costs.

Copy of the O.A to be placed on record of connected O.As 1217/03

Manish
17.8.07

Vice- Chairman

Manish/-

17-8-07 Hon. M.K.S. Menon - AM

Order pronounced by me under
Rule 107 of C-A-T Rules of
Practice, 1993.

Menon
A.M.