

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 515/89

T.A. NO.

DATE OF DECISION

17-8-94

Mr. R.N. Patel and Others

Petitioner

Mr. K.K. Shah

Advocate for the Petitioner (s)

Versus

Union of India and Others

Respondent

Mr. Akil Kureshi

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr.

K. Ramamoorthy

Member (A)

The Hon'ble Mr.

Dr. R.K. Saxena

Member (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No

1. R. N. Patel,
2. Fateh Bahadur Harmal Singh,
3. C. A. Solanki,
4. Thakur Govind,
5. B. N. Poddar,
6. Parmar D. M.
7. Thakur Man Singh
8. Sudarkumar Mohan

All C/o Sri R. N. Patel,

C/o A.G.E EIM.

Near Camp Harruman
Ahmedabad camp,
Ahmedabad.

— Applicants

VS.

1. Union of India,
through Ministry of Defence,
New Delhi,
2. The Commandos Works Engineers,
Head Quarter, Makarpura Road,
ONGC P. O. Baroda.
3. The Garrison Engineer,
Near Camp Harruman Mandir,
Cantt. Ahmedabad.
4. A.G.E - EIM Ahmedabad,
Near Camp Harruman Mandir,
Cantt. Ahmedabad.
5. A.G.E. B/R.
Air Force Station,
Vadodara, Tal. Kalol
Distt. Mehsana.

— Respondents.

For Appellant - Sri K. K. Shah, Advocate.

For Respondents - Sri Akil Kureshi, Adv.

JUDGMENT

IN

O.A. 515189

(P3)

Date: 17/8/94

Re: Hon'ble Dr. R.K. Sarawat.

This is the second round of litigation before the Tribunal. In the first round was filed O.A. 349189 which was decided on 25.9.89 directing the respondents that the application be treated as representation and the same be decided within a period of three months from the date of order. The respondents then passed order 2 on the impugned Annexure - A on 21.11.89 whereby it was intimated that the applicants were previously promoted to the semi-skilled grade post then designated as motor pump attendant (for short M.P.A.). Due to upgradation of post of M.P.A. as that of skilled grade, the order of promotion was changed to mate M.P.A. Since the grade was also lowered, the orders of recovery were also issued. Hence this second O.A. 515189, has been filed.

Facts in brief are that the applicants were initially appointed as Mazdoor on different dates as given in the application. They were promoted to the post of M.P.A. on different dates shown in Annexure A-2 dated 6.7.84 and 18.2.84. It is contended that these promotions were made on the bases of trade test of which result was declared on 12.12.83 - Annexure A-3 and the applicants were declared successful.

The applicants are discharging their duties of the promotion-posts from the year 1984 and are drawing salary as M.P.A. The respondents never issued any notice either of revision or of recovery of salary in the scale of 260-400.

The case of the respondents is that Mazdoor, Safaiwala and Chautidaar are eligible to appear in trade-test for the post of M.P.A in the pay scale of Rs 210-290. The Expert Classification Committee appointed by the Ministry of Defence upgraded the post to skilled scale of Rs 260-400. The skilled scale for the post of M.P.A. feeds category for the post of M.P.A which has now become Mate (M.P.A) which is filled from amongst Mazdoors, Safaiwala and Chautidaars who qualify the trade-test. According to the contention of the respondents the promotion with effect from 20.12.83 were made to the posts of Mate (M.P.A) of pay scale Rs 210-290 and not on the posts of M.P.A. carrying pay scale of Rs 260-400. It is further averred that the promotion orders of the applicants were corrected from M.P.A. skilled to Mate M.P.A. semi-skilled. It is then urged that the action of the respondents is quite reasonable. The recovery is also stressed to be justified.

Neither the applicants nor the respondents have brought on record the rules governing the service or promotion of the applicants. One copy of judgment dated 26.12.93 in T.A. 1536/86, 1537/86 of the Tribunal of Jaipur Bench dealing with

The same service has been filed by the applicants. The reading of this judgment indicates that Rules of this service were framed in 1969. Those Rules were not produced even before Jaipex Bench because no Rule is quoted in the judgment. In the absence of Rules or administrative orders of the service of the applicants we will have to base our findings only on the pleadings of the two sides.

There is no dispute that the applicants were appointed initially as Mazdoor on the different dates given in the application. There is also no denial to the fact that they appeared in trade-test and were ~~declared~~ qualified for the post of M.P.A. The applicants filed two orders of promotion annexure A-2 which speak about applicants no 1, 3 to 5 and 7 only. There is no order of promotion of remaining applicants but there is no denial also from the side of the respondents. It can, therefore, be accepted that all the applicants were promoted to the post of M.P.A. The applicants categorically stated in rejoinder that they were given grade of Rs 260-400.

The appointment orders- annexure A-2 do not disclose the grade but the impugned order of the respondents dealing with the recovery, does suggest that the applicants, on promotion, were given the grade of

Rs 260-400. It is for that reason alone that the recovery was necessitated. (b)

As already pointed out, the Service Rules have not been shown to us. We are, therefore, unable to find out as to what were the posts available for promotion and what qualification were necessary. Even if the contention of the respondents that the post of M.P.A. was upgraded, is made basis of reaching some conclusion, it becomes clear that the post was not upgraded when the applicants were promoted. There can be no doubt that the Government is competent to upgrade the post and fix the necessary qualifications therefor but this decision, if taken, cannot be made effective retrospectively and without making amendment in the statutory rules or administrative orders. The respondents have failed to establish these conditions. It follows that the employees who have been promoted and worked for some years, cannot be reverted on this ground.

So far as the recovery of salary is concerned, that too cannot be recovered because the applicants were placed in the said grade by the respondents themselves.

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and the applicants had worked
on the posts.

On the consideration of the
facts of the case, we come to
the conclusion that the impugned
order is bad in law and is
quashed. The application is
disposed of accordingly. costs
made easy.

D. Basak

(Dr. R. K. Basak)

P. R. S.

(K. Rammoorthy)

AS
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT AHMEDABAD.

Original Application No. 515 of 1989.

R. N. Patel

and others.

... . . . Applicants.

Versus.

Union of India.

and others.

... . . . Respondents.

With respect the applicant's advocate
submits as follows :—

The applicants submit that they have filed
the aforesaid matter jointly, since the cause of
action is the same and that the relief prayed for
is the same. And, therefore, they should be
permitted to sue and agitate their grievances by
way of the present proceeding in the interest of
justice.

Ahmedabad :

Date:- 30-11-1989.

(N. D. Gohil)

Advocate for the applicants.

Sl. No 557/89
1/12
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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT AHMEDABAD.

Original Application No. 515 of 1989

R. N. Patel and others. Applicants.

Versus.

Union of India and others. Respondents.

6/1989/50
The Registrar,
C.A.Tribunal,
Ahmedabad.

Sub:- For placing the matter for admission
on ~~22/11/1989~~ -12-1989

1. The applicants are challenging the action
of reverting from the post of M.P.A. to Mate(MPA)
and also recovering the salary drawn as M.P.A.
without following due procedure of law. And,
therefore, the applicants are constrained to
approach this Hon'ble Tribunal for seeking appro-
priate relief. If the matter in question is
not placed for hearing earlier then the applicants
would be reverted and the recovery of the amount
be recovered from the pay of the applicants. ~~if~~
It is pertinent to note that as per the order of
Hon'ble Tribunal dt. 25/9/1989. The applicants
are protected for 2 weeks from the respondents
order after the decision taken by the respondent
ed
his convey to the petitioner and the same was
conveyed to petitioner on 22/11/1989 as such the
stay upto 6th December, 1989.

Yours faithfully,

N.D. Gohil
(N.D. Gohil)
Advocate

5/14/89

✓ Note

After V. S. Pechan by Request
No notes be placed on
the process

✓ 1/12/89

5120 53718 ②
5120 53718 ③
5120 53718 ④
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

AT AHMEDABAD

Original Application No. 515 of 1989

R. N. Patel

and others.

...Applicants

v/s.

Union of India

and others.

...Respondents

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Revised
R. N. Patel
Tentative
11/12/89

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

AT AHMEDABAD

Original Application No. ~~5457~~ of 1989

(U/s. 19 of the Administrative Tribunal Act, 1985)

1. R. N. Patel, ✓
2. Fateh Bahadur Harmansingh
3. C. A. Solanki ✓
4. Thakur Govind, ✓
5. B. N. Poddar, ✓
6. Parmar D. M.
7. Thakur Mansingh ✓
8. Inderkumar Mohan

all are C/o.

Shri R. N. Patel,

C/o. AGE E/M,

Near Camp Hanuman,
Ahmedabad Cantt
Ahmedabad-3.

...Applicants

Versus

1. Union of India,

Notice to be served through:

the Ministry of Defence,

New Delhi.

2. The Commander Works Engineers,

Head Quarters, Makarpura Road,

ONGC P.O., Baroda-390 009.

3. The Garrison Engineers,

Near Camp Hanuman Mandir,

Cantonment, Ahmedabad-3.

4. AGE-E/M, Ahmedabad,

Near Camp Hanuman Mandir,
Cantonment, Ahmedabad-3.

5. AGE-B/R,

Air Force Station,
Vadsar, Tal. Kalol,
Dist. Mehsana.

... Respondents

The applicants most respectfully beg to submit as follows:-

Details of application:

1. Particulars of the applicants:

i) Name of the applicant:

ii) Name of father/husband:

iii) Age of the applicant

iv) Designation and particulars of office in which employed/or was last employed before ceasing to be in service. As shown in the title clause.

v) Office address:

vi) Address for service of notices.

2. Particulars of the respondent:

i) Name of the respondent:

ii) Name of Father/husband:

iii) Age of the respondent As shown in the

iv) Designation and particulars of office in which employed. As shown in the title clause

- v) Office address:
- vi) Address for service of notices.

3. Particulars of the order against which application is made: The application is against the following order:-

The applicants by the present application challenge the most unreasonable and arbitrary order dated 21.11.1989 whereby the previous application which was to be treated as representation has been rejected. The applicants submit that all the applicants have been issued alike orders and the applicants hereto annex as Annexure 'A' the copy of one such order dtd. 21st November, 1989.

4. Jurisdiction of the Tribunal:

The applicants declare that the subject matter of the order against which they want redressal is within the jurisdiction of the Tribunal.

5. Limitation:

The applicants further declare that the application is within the limitation prescribed in Section 21 of the Administrative Tribunals, Act, 1985.

6. Facts of the Case:

The facts of the case are given below:-

6.1 The applicants state that prior to the filing of the present application whereby the applicants are challenging the rejection of representation by an order dtd. 21.11.89, the applicants

preferred Original Application No. 349 of 1989 in this Hon'ble Tribunal and this Hon'ble Tribunal. Coram: P. M. Joshi and M.M. Singh, JJ.) were pleased to pass the order to the effect that the respondent No. 2 (Commands Works Engineer)(P) Barodato decide the said representation within a period of 3 months and it was also directed that the respondents shall not revert the applicants to a lower posts till the period of 2 weeks after the decision taken by the respondent No.2 each conveyed to the Applicants. Hereto annexed and marked as Annexure 'A-1' is a copy of the said judgment and order dtd. 25.9.1989.

Ann. 'A-1'

6.2 The applicants submit that the applicants Nos. 1 to 7 were initially appointed as Mazdoor 18-10-82, 16-7-78, 1-4-81, 20-4-81 under Respondents vide 25.3.1981, 1.1.80, 25.3.81 and the applicant No. 8 was appointed as Chowkidar on 23.6.1972 respectively. The applicants further submit that applicants were further promoted to the post of M.P.A. on 13.7.84, 28.1.84, 22.2.84, 10.7.84, 11.7.84, 27.1.84, 12.7.84 and 20.5.1984 respectively. Hereto annexed and marked as Annexure 'A-2' are the copies of letter dtd. 6.7.84 and 18.2.84 collectively. The applicants submit that they have cleared the Trade Test in the year of 1983 and that they have been declared pass in the said test vide P.T.O. No. 50 dtd. 12.12.83 of Garrison Engineers Ahmedabad. Hereto annexed and marked as Annexure 'A-3' is the copy of the said letter. The applicants

Ann. 'A-2'

Ann. 'A-3'

submit that since the applicants cleared the Trade Test in question and they possessed all the requisite and necessary qualifications to be promoted to the post of M.P.A., the respondents promoted the applicants to the post of M.P.A. in the year 1984 on various dates as mentioned aforesaid. It is pertinent to ~~make~~ point out that all the applicants are working on the post of M.P.A. since the respective dates of their promotion i.e. from the year 1984 continuously and without any break and that they are drawing the salary of M.P.A. till today and that today also they are working as M.P.A. under the respondents and drawing the salary ~~fix~~ for the said posts.

6.3 The applicants submit that it is worth to mention that although the applicants are not intimated about their reversion but by letter dtd. 21.11.1989 as per Annexure 'A' only recovery of salary drawn as M.P.A. has been ordered by the respondent authorities.

6.4 The applicants submit that the service record of the applicants as ~~xxxxxxxxxxxxxx~~ M.P.A. is blemishless and spotless and that there is no complaint about their discharge of duties in the aforesaid ~~make~~ capacity whatsoever. In other words it is submitted that the service record is laudable and praise-worthy.

6.5 The applicants thus are challenging the

action of the respondent authorities of reverting ~~and recovering~~ the applicants from the Post of M.P.A. to Mate (M.P.A.) and recovery of salary drawn as M.P.A. as per the Annexure 'A' dtd. 21.11.1989, on the following amongst other grounds that may be urged at the time of hearing:-

G R O U N D S

a) The impugned action of reverting ~~and recovering~~ the applicants from the post of M.P.A. to Mate (M.P.A.) is contrary to law and all cannonee of law. In this connection it is submitted that the respondents authorities are seeking to revert the applicants and recover the salary drawn as M.P.A. on the basis of their order dtd. 21.11.1989 (Ann. 'A'). Thus the applicants submit that the entire action of reverting the applicants and recovering the salary drawn as M.P.A. is unilateral and does not afford the applicants any opportunity of personal hearing;

b) It is pertinent to point that all the applicants have cleared the said Trade Test in the year 1983 and which is a sinaquanon for being promoted to the post of M.P.A. It is also necessary to point out that the applicants haveing cleared the said test in the year 1983, they were promoted in the year 1984 and that since the applicants are working on the said post without any hinderance and drawing the salaries. In other words the applicants possess~~es~~ the requisite

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qualification for being promoted as M.P.A. under the respondents and thus, once having promoted and having put in about 5 years and 6 months service on the said post in question. It would be most unjust and arbitrary action on the part of the respondents to revert the applicants to the post of Mate (MPA) and to recover the salaries drawn as M.P.A. In this connection it is submitted that once the applicants have appeared in the Trade Test and passed, it would be unwise to compel the applicants to appear for the said test twice and again to stand in queue for being promoted. In the case of Barade Kanta Misra v/s. State of ~~ex~~ Orissa - 1967 1 LLJ p. 663, it is decided that reversion after ~~x~~ a long continuation i.e. after 6 years is void.

c) The action of the respondents in reverting and recovering the salary ~~from~~ drawn as M.P.A. is also violative of principles of natural justice, because the applicants are not given any personal hearing and reverting and recovering the salary of the applicants is illegal as per the decision rendered in the case of Chairman Cochin Port Trust and others v/s. M. N. Sukhmeran Iteyar and others reported in 1979(1) SLR 122 (Kerala) and in the cases reported in (1987) 4 ATC 788, ATR (1988) & 1 CAT 26 and (1989) 3 ATC page 342.

d) The applicants submit that the act on the

part of respondents is also violative of Article 211 of the Constitution of India inasmuch as it mandates that no person can be reduced in ~~xx~~ rank without rendering opportunity of personal hearing.

- e) The applicants submit that once the applicants have been promoted as M.P.A. having found fit in all respect and working on the said post since 1984, it would be most unjust and harsh to revert them and recover the salary drawn as M.P.A. without ~~hearing~~ giving any opportunity of personal hearing;
- f) That even otherwise the action-order of the respondents of reverting the applicants from the post of M.P.A. to Mate (M.P.A.) and recovering the salaries drawn by them on the post of M.P.A. is illegal, arbitrary, contrary to law and violative of Article 311 of the Constitution of India;
- g) The respondent No. 2 failed to appreciate that after undergoing necessary formalities the applicants were promoted in the year 1984 to the post of M.P.A. in the pay scale of Rs.260-400 and that the promotion orders do not state so that promotions are hereby ordered till further orders. It is submitted that all the applicants are working as M.P.A. since the year 1984 without any break whatsoever, and that they are drawing pay scale of Rs.260-400.

h) The respondent authorities also failed to appreciate that the applicants were promoted to M.P.A. in the year 1984. For the sake of arguments assuming without admitting that there was upgradation on the post of M.P.A. as skill and unskill for which the order is silent as to on what date the upgradation of the post ~~was~~ in question took place. All of a sudden at the end of year 1989 they are coming up with such a case of upgradation of the post in question. Assuming without admitting that the upgradation of the post of M.P.A. has taken place then also the said upgradation cannot be given retrospective effect and if at all such upgradation of the post in question had taken place in any case, the same should not be applied to the applicants and prospective effect should be given. In any case there is change in designation of the post from M.P.A. to Mate (MPA) then also the pay scales of Rs. 260-400 which the applicants are enjoyed are required to be protected.

i) The applicants submitted that while passing the impugned order the applicants have not been heard at all and, therefore, there is violation of principles of Audi Alterem Palterem and on this ground also the impugned order should fall down;

: 10 :

j) That even otherwise the impugned order of the respondents of reverting the applicants from the post of M.P.A. to Mate (MPA) and recovering the salaries drawn by them on the post of M.P.A. is illegal and arbitrary to law.

k) The applicants crave leave to add, alter, amend or rescind any of the grounds as and when necessary at the time of hearing.

7. Relief(s) sought:

In view of the ~~xx~~ facts mentioned in para 6 the applicants pray for the following reliefs:

(A) to quash and set aside the ~~prosecution~~ order of reverting the applicants from the posts of M.P.A. to the post of Mate (MPA) and recovering the salaries drawn as M.P.A. as arrears ~~xxxxx~~ as per Annexure 'A';

8. Interim order if prayed for:

(A) pending the admission, hearing and final disposal be pleased to restrain the respondents their agents, servants, officers, etc. from reverting the applicants from the post of M.P.A. to the post of Mate (MPA) and recovering the salaries drawn as M.P.A. consequent thereto;

(B) any other and further relief that may be deemed fit and proper as the case may be, be granted in the interest of justice;

: 11 :

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9. Details of the remedies exhausted:

The applicants declare that they have availed of all the remedies available to them under the relevant service rules, etc.

10. Matter not pending with any other court etc.

The applicants further declare that the matter regarding which this application has been made is not pending before any Court of law or any other authority or any other bench of the Tribunal.

11. Particulars of Bank Draft/Postal order in respect of the application fees:

1. Name of the Bank on *Cour. High Court Post. Office, Amritsar*
which drawn.

2. Demand Draft No. or *DD 194223*
Number of Indian Postal
order(ss)

3. Date of issue of Postal
order(s) *29.11.88*

4. Post office at which
payable.

12. Details of Index. *1 to 24.*

An index in duplicate containing the ~~details~~ details of the documents to be relied upon is enclosed.

13. List of enclosures.

'A' order dtd. 21.11.1989

'A-1' Judgment and order dtd. 25.9.89 of the Hon'ble Central Administrative Tribunal.

'A-2' Letter dtd. 6.7.84, and 18.2.84 colly. regarding promotion to the post of MPA.

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: 12 :

A-3 Copy of the letter dtd. 12.12.83

In verification:

I, C.A. Solanki, aged 35 years, working as M.P.A. resident of Ahmedabad, do hereby verify that the contents from 1 to 13 paras are true to my personal knowledge and belief and that I have not suppressed any material facts.

Place: Ahmedabad

Date: 01-12-83

Applicant

N. D. Gohil

(N. D. Gohil)
Advocate for the applicants

To,

The Registrar,
Central Admn. Tribunal,
Ahmedabad.

(1) C.A. Solanki Solanki, C.A.
APP. NO. 3

(2) R.N. Patel Patel
APP. NO. 1

(3) F.B. Hassansingh Pandit Chandra Singh
APP. NO. 2

(4) Thakur Govind Singh
APP. NO. 4

(5) B.N. Poddar Brajendra Nath
APP. NO. 5

(6) P. Somu D.M. D.M. Parmer
APP. NO. 6

(7) Thakur Mansingh M. Thakur
APP. NO. 7

(8) Inder Kumar Mohan Inder Kumar Mohan
APP. NO. 8.

All are c/o Shri. R.N. Patel

c/o Ag. I.E.M. Narel and Hanuman,
Ahmedabad, court. Ahmedabad-3

filed by Mr. N. D. Gohil
Learned Advocate for Petitioners
with second set & 5 copies
copy served/not served to
other side

Dy. Registrar C.A.T (1) 1/12/88
A'bad Bench

Headquarters,
Commander Nirman Engineers,
Commander Works Engineers,
Makarpura Road, ONGC PO
Baroda-9.

10759/MEA/50/EI 21 Nov. 89

MES/117306
Shri R. N. Patel, Mate. (MPA)

(Through GE Ahmedabad)

Recovery of unentitled excess payment of
skilled grade made to unskilled category

1. Refer your representation filed in the Central
Administrative Tribunal, Ahmedabad bench and the
Court order dtd. 25th Sept. 89 and this office
No. 10759/MPA/32/EI dt. 24 Oct. 89 and your reply
dtd. 7 Nov. 89.

2. Your contention is not agreed and not acceptable. As per rule, those Mazdoor/Safaiwala/Chowkider in the unskilled category who passed the Trade Test for MPA were to be deemed to have passed the Trade Test of Mate (MPA) in the semi-skilled pay scale of Rs.210-290 (old scale.) Since you had passed the Trade test, while serving in an unskilled category, you were promoted to semi skilled grade. The designation in this grade was renamed as Mate (MPA) as higher grade, i.e. skilled grade, in this trade was simultaneously designated as MPA. On completion of 3 years service in the semi skilled grade of pay scale of Mate (MPA), you will become eligible for promotion to the skilled grade of pay scale of MPA is Rs.260-400 subject to passing of trade test and selection by DPC. Accordingly, after completion of 3 years in the semi-skilled grade of ~~MR~~ Mate (MPA), you were given many chances to appear for the Trade Test, for considering your promotion to skilled grade of MPA but have not

appeared for the same.

3. You were promoted to semi-skilled grade of post, then designated as MPA during 1984, based on your passing the trade test for the semi skilled grade that too on condition, i.e. "promotion are hereby ordered till further orders". In other words you were promoted as MPA (semi-skilled). Due to upgradation, the post of MPA was classified as skilled grade and feeder category (semi skilled grade) for which you were promoted, was designated as Mate (MPA). Therefore, the conditional promotion order issued by this HQ was amended to read the designation as Mate (MPA), which is designation for semi-skilled grade post qualified by you and the semi-skilled pay scale was also notified in our letter dtd. 16 May 87.

4. In view of the above, the over payment made to you so far is to be recovered as per orders of Govt. and you are entitled to the pay scale of Rs.210 -290 only. Accordingly orders are being issued to regulate your pay and recover over payment made to you.

Sd/-
(V S Makkar)
Co.
Commander Works Engineers

True copy
V. S. Makkar
Co. Commander Works Engineers

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O. A. No. 349 of 1989

1. Shri R. N. Patel
2. Fateh Bahadur Harmansingh
3. C. A. Solanki
4. Thakur Ma Govind
5. B. N. Poddar
6. Parmar D. M.
7. Thakur Mansingh
8. Inderkumar Mohan

All are C/o.

Shri R. N. Patel,

C/O. AGE E/M,

Nr. Hanuman Camp Mandir.

Ahmedabad.3 ...Applicants

Versus

1. Union of India,

Notice to be served through:

the Ministry of Defence.

New Delhi

2. Commanding Officer,

CWE (P) Baroda-3.

Command Works Engineer (P)

Nr. E.M.E. School.

Bāroda-3.

3. The Garrison Engineer.

Cantonment Ahmedabad-3.

Nr. Camp Hanuman Mandir.

4. AGE-E/M, Ahmedabad.

Nr. Camp Hanuman Mandir,

Cantonment, Ahmedabad.

5. AGE-B/R,

Air Force Station,

Vadsar, Tal. Kalol,

Dist. Mehsana.

... Respondents

Coram: Hon'ble Mr. P. M. Joshi... Judicial Member

Hon'ble Mr. M. M. Singh... Administrative Member.

O. A. 349/89

Oral Order:

Dt. 25.9.89.

Per: Hon'ble Mr. P. M. Joshi... Judicial Member.

This matter is taken on Board to-day at the request of Mr. Gohil, the learned Counsel for the petitioner Mr. J. S. Yadav for Mr. J. D. Ajmera the 1d. counsel for the respondent is also present.

2. The petitioners (8 in all) apprehending their reversion in ~~their~~ case, have filed this application, under Sec. 19 of the Administrative Tribunals Act, 1985. They have prayed that the proposed action of the respondents in reverting the petitioners from the post of M.P.A. "Motor Pump Attendant" (scale Rs. 260-400) to the post of Mate (M.P.A.) (Scale Rs. 210-290) and recovering salaries drawn as M.P.A. on the basis of the internal correspondence dt. 20.6.89, 29.7.89 and 10.7.89 is illegal and they may be restrained from effecting such recovery.

3. This matter came up for admission on 30.8.89.

We ordered to issue notices to the respondents, pending admission, to show cause why the application should not be admitted and in the meantime they were restrained

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from recovering the excess payment made to the petitioner, when they were promoted to the post of M.P.A. vide orders dt. 6th July '84 and 18.2.84 i.e. in the year 1984.

4. Again when the matter came up for admission on 20.9.89, as the respondents did not file any reply or objections and having regard to the points raised in the application, we admitted the application and directed the 'interim relief' to continue till further orders.

5. At this stage Mr. Gohil the learned Counsel for the petitioners states that the ~~paki~~ respondents now offer the salary of the lower post i.e. Mate (M.P.A.) (Scale Rs.210-290), which the petitioners have refused. According, to him the petitioners should be protected against such action of reversion, as such action is done without giving them any opportunity of hearing. In his submission, the respondents be directed to treat the present application as the representations against the orders of reversion, if any, sought against the petitioners and the competent authority should decide, their claim and in the meantime, they should be directed to continue to pay salary to the petitioners in terms of the orders of promotion passed earlier in the year 1984. In this regard, we have heard Mr. Yadav also, the learned counsel for the respondents. In his submission, there was a typographical mistake in the previous order~~s~~ and the respondents authority are seeking to correct the same by passing proper orders.

6. In the facts and the circumstances of the case the present application can be disposed of by a short direction in the following terms:

The present application filed by the petitioners, be treated as their representations against the proposed action of the respondents. It is directed that the respondent No. 2 (Command Works Engineer) (P) Baroda, shall decide the said representations within a period of 3 months from the date of this order. In the meantime, it is directed that the respondents shall not revert the petitioners to a lower post till the period of 2 weeks after the decision taken by the respondent No. 2, is conveyed to the petitioners.

One set of the copy of the application filed by the petitioners, with enclosures and also a copy of this order be sent to the respondent No. 2 by the Registry. A postal acknowledgement be retained on the file.

With the aforesaid direction the application, stands disposed of, with no order as to costs.

Sd/-

Sd/-

(M. M. Singh)
Administrative Member.

(P. M. Joshi)
Judicial Member.

For
M. M. Singh
Advocate

Office order by

Garrison Engineer Ahmedabad-3.

Office order No. 191

Date: 6 July, 1984.

Promotions Industrial Personnel

1. The following promotion are ordered. Individuals promoted will be placed in position on or before 15 July, '84, and date of placing in position will be intimated to this office.

Sr.No. MAMES No. Name and Designation to be promoted Post-

1. NYA Shri Rameshbhai Nikuldas MPA In situ
Mazdoor (GE E/M
Ahd.)

2. NYA Shri Mansing Chaturji MPA In situ
Thakur Mazdoor (AGE+B/R
Wadsar)

3. NYA Shri Govindji Hemataji MPA In situ
Thakur Mazdoor (GE A'bad)

4. NYA Shri Podar Brajiendra- MPA In situ-
nath Thourulal, (GE Abad)
Mazdoor.

2. They ~~xx~~ will be on probation for 2 years.

3. Their promotion is subject to their not being involved in any disciplinary cases. Please confirm that they are not so involved.

4. A tention of promotees will be drawn to Govt. of India, Min of Def. New Delhi letter No. 25(3)66/3490/S/D(Appts) Dt. 17 Dec. 76 No. 32(13)/66/139/S/D (Appts) dtd. 20th Apr. 76 and Min of Home Affairs (Dept. of Personnel of AR) OM NO. 22034/3/84/Estt. (D) dtd. 01 Oct. 81 according to which refusal of promotion for reasons accepting for a period of One year from the date of such refusal is accepted by the Competent

authority. The individuals on eventual promotion will loose seniority vis-a-vis their erstwhile juniors promoted to higher grade earlier than them. In case the reasons are not acceptable disciplinary action will be taken as provided in COS (GCA) Rules 1965 for refusing promotions clarified vide E-in-C's Branch Army HE. New Delhi letter No. 43319/E 12 dtd.

30. 77.

5. Authority: CRE (R (P) Baroda letter No. 10607/202/E dtd. 06 June, 84.

1143 / 972 / E1

(S N Gupta)

Office of the Garrison Engineer
Ahmedabad-3.

SE
Garrison Engineer

COI
True
Copy
Dwarka

Annexure

Office order

BY

Garrison Engineer Ahmedabad-3.

18 Feb. 84.

Office Order No. 888 417

Date: 10/10/2019

Promotions Industrial Personnel

к. **Хижахакланынхаркемакхонжакхакасхаккынхиндикх**
хижахакхакасхаккынхиндикх

1. Further to this office order No. 17 dtd. 14 Jan.
84 and 24 dtd. 23 Jan. 84.

2. The following promotion/postings are ordered.

Individuals promoted will be placed in position on or before 28 Feb. 1984 in their new subdivisions and date of placing in position will be intimated to this office. Move of the individuals will be carried out with direct consultation of concerned sub-divisions and copies of movement orders will be endorsed to this office.

Sr.No. MES No. Name and designation Promoted to Posted to

1.	NYA	Sh. Solanki C.A. M Mazdoor	MPA	AGE B&R-II to AGE E&M
2.	101785	Sh. Vasudev Kalidas Motibhai, MAz (SC)	Mate	BSO to AGE B&R-I
3.	101781	Sh. Ramanbhai Shankar- bhai Maz (SC)	Mate	AGE-B&R- II in situ
4.	101786	Sh. Penjab Parsuram Maz.	Mate	AGE B&R WadSar to AGE E&M

2. They will be on probation for 2 years.

3. Their promotion is subject to their not being involved in any disciplinary case. Please confirm they are not so involved.

4. Before promotionses are placed in position, it should be ensured that SC/ST certiricates in accordance with Mon of Home Affairs No. BC/1025/2/76-SCT-I dt. 22 Marz. 77 in respect of individuals who belong to SC/ST exist. Necessary confirmation to this effect should be given to this office by the respective sub-division.

5. Attention of promottree will be drawn to Govt. of India Min. of Def. New Delhi letter No. 25(3)/66/3490/S/D(Appts) dt. 17 Dec. 76, No. 32(13)66/139/S/D/Appts/3/81 Esta. (D) dtd. 01 Oct. 81 according to which refusal is accepted by the competent authority. The individuals con eventual promotion will lost seniority vis-a-vis their earstwhile juniors promoted to higher grade earlier than them. In case the reasons are not acceptable, disciplinary action will be taken as provided in CCS(CCA) Rules 1965 for refusing promotion as clarified vide E-In-C's Branch Army HQ New Delhi letter No. 43319 dtd. 22 Jun. 77.

66. Personnel posted to other sub-divisions will be relieved from their duty forthwith.

7. Authority: CWE Baroda letter No. 10607/93 dtd. 09 Jan 84.

1143/926/E1
Office of the Garrison Engineer. Sd/-
Ahmedabad. (S N Gupta),
Garrison Engineer.

Distribution:

1. OO Book.
2. CWE Baroda-9.
3. All Sub-divisions.
4. All effected individuals.
5. Record/Pay Clerks/Steno

*For
MC
S
1/2*

Garrison Engineer Ahmedabad PTO No. 50, Dated 12 Dec. 1983

Sheet Number 09

Leave

Leave (Contd.)

69.	101717	Maz.	3.10.83	ECL/W/OMC for one day.
	Sh. Ishwar Kukad	Pt.	4.10.83	Rejoined duty.
	Sh. Tarade		6.10.83	ECL/W/OMC for one day.
			7.10.83	Rejoined duty.
			10.10.83	ECL W/OMC for 04 days.
			14.10.83	Rejoined duty.
			20.10.83	ECL W/OMC for 98 days
			20.10.83	Rejoined duty.
				Balance Leave - Nil

Group 'D' TY/OPT Industrial Personnel Pension Optees : Service Books not centralised with OE SC Pune.Trade Test: Result.

70.	NYA	L/Man	24.10.85	Appeared in the Trade Test for promotion to Electrision and declared "passed".
	Sh. S.J. Diggrkar	Qpt.		
71.	10749	Maz.	24.10.83	Appeared in the Trade Test for promotion to MPA and declared "Failed".
	Sh. Wandulrang	Qpt.		
	Vithoba			
72.	NYA	MAZ		
	Sh. Ranal Somabhai			
	Narayan			
73.	101786	MAZ		
	Sh. Panjab Parsuram	Qpt.		
74.	101747	MAZ		
	Sh. Inderkumar	Qpt.		
	Mohanlal			
75.	NYA	MAZ		
	Sh. Solanki	Qpt.		
	Chatrasinh			
	Abmirsingh			
76.	NYA	MAZ Ty.		
	Sh. Poddar Bhrajandranath			
	Thcrulal			
77.	NYA	MAZ Ty.	24.10.83	Appeared in the Trade Test for promotion to MPA and declared "passed".
	Sh. Thakur Mansingh			
	Chaturji			
78.	116869	Maz Ty.		
	Sh. D.M. Parmar			
79.	NYA	Maz Ty.		
	Sh. Rameshbhai			
	Patel			

15
63
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT

A H M E D A B A D .

O.A. No. 515 of 1989.

R.N. Patel & Ors. .. Applicants

Versus

Union of India & ors. .. Respondents

REPLY on behalf of the respondents :

*Copy sent to
Applicant by Post*
for
11-1-90
I, Capt. A B LANATE, working
as off G B Albad in the office of Garrison
Engineer Ahmedabad, do state as under :

That I have read the copy of the application
and am conversant with the facts and circumstances
of the case and am being authorised to file this
reply on behalf of the respondents.

1. At the outset, I deny the all averments made
by the applicants in this application except which
are specifically admitted by me hereinafter. I further
say that the contents of this application are miscon-
ceived by the applicants and therefore the same is
not maintainable and deserves to be dismissed. It is
submitted that the instruction, rules and guidelines
governing the service condition of the applicants
are misconceived by the applicants and therefore the
application being devoid of any merits deserves to

be dismissed.

2. With regard to para 3, 4 and 5, I say that the action of the respondents is legal and valid and the same being an administrative ~~error~~ and taken in accordance with the rules and instructions of the department. The applicants have no locus standy to challenge the same before this Hon'ble Tribunal and therefore this Hon'ble Tribunal have no jurisdiction to adjudicate the ~~subjective~~ matter of the application. The application is time barred and therefore the same is not maintainable and deserves to be dismissed.

I say that the Mazdoor, Safaiwala and Chowkidar are eligible to appear for trade test for the post of M.P.A. when the pay attached to this post was Rs. 210-290. As a result of job

evaluation by the Expert Classification Committee

appointed by the Ministry of Defence the post was

upgraded to the ~~skilled~~ skilled pay scale of Rs.

260-400/-. It is submitted that the ^{fitter} ~~fitter~~ category

of this post has been made as Mate (MPA) in the

pay scale of Rs. 210-290 and Mazdoor, Safaiwala

and Chowkidar who have ^{qualified} clarified the trade test

all for M.P.A. were deemed to have passed the

trade test for Mate (MPA) in the skilled pay of

Rs. 210-290. Accordingly, all Mazdoor, Safaiwala and Chowkidar were to be promoted with effect from 20.12.1983 to the post of Mate(MPA) in scale of Rs. 210-290 and not MPA in the pay scale of Rs. 260-400. The applicants' Mate(MPA) promotions orders were accordingly corrected from MPA to Mate(MPA) is the below the post of MPA.

3, with regard to para 6 (1), I deny the contents thereof and I say that earlier the applicants had filed an application challenging the action of the respondents by way of O.A./349/89, after hearing the parties at pre admission stage, the Hon'ble Tribunal was pleased to dispose of the matter directing the respondents to give opportunity of making representation and thus the contents of the earlier application were treated ~~as~~ as a representation. It is submitted, that thus, the respondents had issued show cause notice vide a letter dt. 24.10.1989 and after considering the facts, contentions, grounds of the case and additional replies of the applicants, the C.W.E., Baroda has carried out the directions of the Hon'ble Tribunal dt. 25.9.1989 and the decision taken thereon was communicated to the applicants by the C.W.E., Baroda vide his order dt. 21.9.1989 whi

is annexed as Annexure A-1 to the application.

It is submitted that the above stated decision is legal, valid and a reasoned one which is passed by the competent authority and after this decision it appears that the grievances of

the applicants appears to be redressed by the explanation contained therein. Therefore, the

action of the respondents is quite reasonable

and passed in accordance with the instructions,

rules and guidelines of the department. I say

that the applicants are not entitled to the over-

payment made to them therefore the same is to be

recovered as early as possible. I also say that

in pursuance of the above stated facts, the orders

are being issued to regulate the pay/salary of

the applicants and of recovery for the over-payment

made to the applicants.

4. With regard to para 6 (2), I say that the

applicants have merely enumerated the facts of

the case and therefore I ~~don't~~ don't comment upon

it much but I say that the Mazdoor, Safaiwala and

Chowkidar working in unskilled category ~~should~~ had

passed the trade test for M.P.A. were deemed to

have passed the trade test of Mate(MPA) in the

semi skilled pay scale of Rs. 210-290 (old scale).

17
69

I say that the applicants had passed the trade test while serving in unskilled category, they were promoted to semi skilled grade. The designation in this grade was named as Mate(MPA) whereas at the higher grade i.e. skilled grade in this trade they were simultaneously upgraded as MPA. The applicants become eligible for promotion to the skilled grade of pay scale of MPA i.e. Rs. 260-400 on completion of three years service subject to passing the trade test and as per E.I.C's letter no 9-270/82/E.I.C.L.L.7.68 and selection by DPC. They were given many chances for the same but same was not availed by the applicants.

It is also agreed that the applicants are carrying out duties of MPA and not as unskilled working since 1984 till date as MPA, in semi skilled category of MPA trade i.e. Mate (MPA) and not as MPA. Due to upgradation in this category MPA was put in skilled class of this category whereas semi skilled category was named as Mate(MPA). There is no provision to promote individual two steps up. Unskilled category of Chowkidar and Safaiwala have first to be promoted in semi skilled category of Mate(MPA) before they go up to the skilled category of MPA. It is submitted that, though the functioning of Mate(MPA) and MPA is same, whereas difference is in the degree of skillness. When there was no upgradation in the trade, the MPA was not considered as skilled

category and subsequent to upgradation of MPA

to skilled category the feeder category from

unskilled to skilled category has been made as

Mate(MPA). The applicants were promoted to semi-skilled category and the ~~same~~ same has therefore

been correctly named as Mate(MPA). The correction

to this effect was issued vide CWE, Baroda letter

No. 10607/401/E1 dt. 16th May, 1987 and same was

notified to the individuals through G.E., Ahmedabad

part II order No. 49/88 dt. 5.12.1988.

5 . With regard to para 6(3), I deny ~~the~~ the contents thereof. I deny that the applicants were

not ~~the~~ intimated/communicated of their reversion

and I say that the applicants were intimated/

communicated about their reversion vide G.E.

Ahmedabad part II order No. 49/88 dt. 5.12.1988,

which order is issued in ~~the~~ name of G.W.E. and is based on ~~the~~ authority of C.W.E., Baroda order

dated 16.5.1987. Moreover, the applicants being

intimated on ~~the~~ contents of the order, I say that they have been communicated of their reversion and I

say that the applicants were intimated/communicated

about their reversion vide ~~the~~ G.E. Ahmedabad

part II order dt. 16.5.1987. Moreover, the applicants

have been communicated in this regard ~~the~~ the

Part II order referred to above is official and

authentic document of communication of all concerned.

(S)
6b

6. With regard to para 6 (4), I say that apart from praiseworthy record of the applicants, it is imperative for the applicants to go through the departmental procedure prior to obtaining higher grades. Therefore whether they have acquired the required skillness while undergoing on job training as Mate (MPA) do need to be testified by organised tests under the rules and therefore the applicants are obliged to undergo the test.

7. With regard to para 6 (5), I say that the respondents have passed a reason and valid order dt.

21.11.1989 pursuant to the directions of this Hon. Tribunal and after giving fullest opportunity to the applicants of making representation to the competent authority and therefore there is nothing left to the applicants to challenge the same.

I submit my reply for the grounds taken by the applicants as under :

as Mate (MPA) where the skilled category in this
grade is designated as MPA. The question of getting
promotion from unskilled category of Matzdoor, Chowkidar
and Safaiwala to direct skilled category of MPA is
out of question. Due to this upgradation, the applic-
ents' designation was corrected as Mate (MPA) and
this was done to regularise irregular promotion of
MPA. These actions are all in order and as per existing
rules position. The contention of the applicants
that the order dt. 21.11.1989 reverting the applicants
and recovering the salary drawn as MPA is unilateral
and without opportunity of personal hearing is
misconceive one and denied hereby. The applicants
have been given opportunity of personal hearing
vide letter dt. 24.10.1989.

b) With regard to para 6(5)(b), I deny the
contents thereof and I say that the contention of
the applicant that the trade test given by the
applicants at any point of time is denied. The
MPA was initially semi-skilled grade prior to
upgradation. When MPA was upgraded as ~~skilled~~ skilled

grade of RS. 260-400 simultaneously feeder grades/trades

(S)
6b

6. With regard to para 6 (4), I say that apart from praiseworthy record of the applicants, it is imperative for the applicants to go through the departmental procedure prior to obtaining higher grades. Therefore whether they have acquired the required skillness while undergoing on job training as Mate (MPA) do need to be testified by organised tests under the rules and therefore the applicants are obliged to undergo the test.

7. With regard to para 6 (5), I say that the respondents have passed a reason and valid order dt.

21.11.1989 pursuant to the directions of this Hon.

Tribunal and after giving fullest opportunity to the applicants of making representation to the competent authority and therefore there is nothing left to the applicants to challenge the same.

I submit my reply for the grounds taken by the applicants as under :

A) With regard to para 6 (5) (a), I make it clear emphasis supply by that the applicants are not reverted from the post of MPA to Mate (MPA). In fact they were promoted to semi-skilled category from unskilled ~~category~~

Ann. R-1 category. Hereto annexed and marked Annexure R-1 (Colly) are the copies of the promotion orders. I say that the semi-skilled category in this trade is designated

as Mate (MPA) where the skilled category in this grade is designated as MPA. The question of getting promotion from unskilled category of Mazdoor, Chowkidar and Safaiwala to direct skilled category of MPA is out of question. Due to this upgradation, the applicants' designation was corrected as Mate (MPA) and this was done to regularise irregular promotion of MPA. These actions are all in order and as per existing rules position. The contention of the applicants that the order dt. 21.11.1989 reverting the applicants and recovering the salary drawn as MPA is unilateral and without opportunity of personal hearing is misconceive one and denied hereby. The applicants have been given opportunity of personal hearing vide letter dt. 24.10.1989.

b) With regard to para 6(5)(b), I deny the contents thereof and I say that the contention of the applicant that the trade test given by the applicants at any point of time is denied. The MPA was initially semi-skilled grade prior to upgradation. When MPA was upgraded as ~~skilled~~ skilled grade of Rs. 260-400 simultaneously feeder grades/trades in the semi-skilled grade of Rs. 210-290 as Mate (MPA) was identified. I say that on the base of this change the Mazdoor, Chowkidar and Safaiwala

(19)

(61)

who had qualified trade test for MPA were deemed to have passed trade test for Mate (MPA) in the semi-skilled pay scale of Rs. 210-290. Same time it was also clarified that such individuals will become eligible for promotion to skilled grade MPA in scale of Rs. 260-400 subject to passing of trade test and selection by DPC. The applicants cannot be promoted to skill grade MPA from their existing semiskilled grade Mate (MPA) unless they pass trade test and get selected in DPC. There is no question of reversion after 6 years time. The department is correcting the status of individual and regularising irregular promotions of MPA as per rules and also recovering excess payment/over payment made to the applicants, to which they are not entitled as per rules.

c) With regard to para 6 (5) (c), I deny that the action of the respondents is violative of any rules, law or principles of natural justice and I say that the same is legal and valid and it is taken after providing to the applicant an ample opportunity of hearing. I also say that each of the applicants were individually explained the position time to time and opportunity of hearing to the applicants were given vide following letters :

- i) GE Ahmedabad letter No. 1143/52/E1 dt. 16th October, 1989.
- ii) Show cause notice issued by CWE, Baroda letter No. 10659/MPA/32/E1 dt. 24 Oct., 1989.

d) With regard to para 6 (5) (d), I deny the contents thereof and I say that I have replied in the foregoing paragraph.

e) With regard to para 6 (5) (e), I deny the contents thereof. I deny that the action of the respondents is unjust, unfair and I say that the action of the respondents is not to be treated as reduction in rank of the applicant. Therefore, the respondents are entitled to recover the over-payment made to the applicants for which applicants are given ample opportunity of hearing as stated above.

f) With regard to para 6 (5) (f), I deny the contents thereof and I say that due to upgradation of MPA into skilled category the semi-skilled category in this trade has been designated as Mate (MPA) and accordingly the actions envisaged correction only. The recovery of unentitled and excess payment made to the applicants is in order and in accordance with the rules.

g) With regard to para 6 (5) (g), I deny the contents thereof and I say that the contents of this para are misconceived by the applicant inasmuch as the say of the applicant that necessary formalities were not performed. It is submitted that the contentions of the applicant

(20)

(28)

is misconceived. Due to upgradation of MPA in the skill grade and simultaneously creation of semi-skilled grade as Mate(MPA), promotions of the applicants from unskilled to semi-skilled grade i.e. to the post of MPA in 1984 was deemed to be in the post of Mate(MPA) i.e. redesignated semi skilled Mate(MPA) grade of Rs. 210-290. The initial order of their promotion to the post of MPA in the scale of Rs. 260-400 was therefore required to be corrected as Mate(MPA) in the scales of Rs. 210-290. The applicants are working as MPA semiskilled since 1984. Since they are drawing pay of skilled category i.e. MPA RS. 260-400, recovery will have to be effected in accordance with Government orders which are based on the rules.

h) With regard to para 6 (5) (h), I say that the applicant has merely repeated the facts of the case and therefore I don't ~~now~~ repeat the same.

i) With regard to para 6 (5) (i) (j), I deny that the applicants were not heard before passing the impugned orders and I say that they had been given personal hearing vide ~~order~~ letters which are referred in the foregoing paragraphs and therefore the impugned order is valid, legal and is in accordance with the principles of natural justice.

In view of the foregoing paragraphs, it

is clear that the applicants are not entitled to
retain the amount of over-payment which is ~~exposed~~

by them nor they are entitled to any relief/interim

relief whatever as prayed for by them and therefore
interim relief granted to the applicants earlier

may kindly be vacated.

Place :

Date : /12/1989. Alwarh

Verification

I, Capt. A B Lawali son of Shri. Bapu Avanna Lawali
working as effg. G.E. Ahmedabad in the office
of Garrison Engineer Ahmedabad do state
on solemn affirmation, that what has been stated
by me hereinabove is true to my knowledge and
belief and I believe the same to be true.

Place :

Date : /12/1989. Alwarh

(Deponent)

Reply/Rejoinder/written submissions
filed by M: J. D. Agarwal ...
learned advocate for petitioner /
Respondent with second set
Copy served/not served Examiner side

11/1/1990

J. D. Agarwal
Dy. Registrar C.A.T. (J)
Ahmedabad

Tele/Civ : 42365

Headquarters
Commander Nirman Engineers (P)
Commander Works Engineers (P)
Majarpura Road,
Baroda-390 009

No. 10607/ 10/11

26 JUN '84

GE BARODA
GE AHMEDABAD
GE DHARANGADHRA
GE (P) GANDHINAGAR

PROMOTION : INDUSTRIAL PERSONNEL

1. The following promotions are hereby ordered till further orders :-

Ser	No.	MES No.	Name and designation	Whether SC/ST	Promoted to	Promotion where posting
			S' Shri			
1.	NYA		Rameshbhai Nikuldas Pate, Mazdoor	-	M P A	GE Ahmedabad (Wadsar)
2.	NYA		Mansing Chaturji, Mazdoor Thakur	-	M P A	GE Ahmedabad (Wadsar)
3.	NYA		Govindji Hentaji Thakur, Maz	-	M P A	GE Ahmedabad
4.	NYA		Podar Brajandranath Thorurilal, Mazdoor	-	M P A	GE Ahmedabad
5.	NYA		Vankar Bhailabhai Dalsukhbhai Mazdoor	SC	M P A	GE Bareda
6.	116937		Raju Atulkar, Mazdoor	SC	M P A	GE (P) Gandhinagar
7.	116926		Parmar Natwarlal Ranjibhai, Chowkidar	SC	M P A	GE (P) Gandhinagar

(Item 1 to 7 only)

2. Consequent on the above, the following posting are hereby ordered in the interest of date. Voluntary if any may be considered, first.

Ser	No.	MES No.	Name and Designation	From	Posted
			S' Shri		
1.	NYA		Rameshbhai Nikuldas, MPA (Designate)	WADSAR	GE Ahmedabad against existing vacancy.
2.	NYA		Mansing Chaturji Thakur MPA (Designate)	WADSAR	To be retained at Wadsar against existing vacancy.

04/06/84

Posted

From

To

Ser No. IES No. Name and designation

3. IYA Govindji Mehtaaji Nalani
MPA (Designate)

GE Ahmedabad

- To be retained at GE A'bad
against existing vacancy.4. IYA Pedar Brajandranath Thorulal
MPA (Designate)

GE Ahmedabad

- To be retained at GE A'bad
against existing vacancy.5. IYA V. Var Bhailalbhai Dalsukhbhai
MPA (Designate)

GE Baroda

- To be retained at GE
Baroda against existing
vacancy.

6. 116937 Raju Atulkar, MPA (Designate)

GE(P)

Gandhinagar

- To be retained at GE(P)
Gandhinagar against
existing vacancy.7. 116926 Partner Natwarlal Ramjibhai,
MPA (Designate)

GE (P)

Gandhinagar

- To be retained at GE (P)
Gandhinagar against
existing vacancy.

(Item No.1 to 7 only)

3. They should be placed in position on or before 15 Jul 84. The date on which they are placed in position should be intimated to this HQ as soon as their names are completed, and FTO published.

4. They will be on probation for 2 years.

5. Their promotion is subject to their not being involved in any disciplinary case. Please confirm that they are not so involved.

6. Before the promotees are placed in position, it should be ensured that SC/ST Certificates in accordance with Min of Home Affairs HQ/SC/1025/2776-SOT-1 dt. 22 Mar in respect of individuals belonging to SC/ST exist. Necessary confirmation to this effect should be given to this HQ by the respective formation where the individuals are at present serving with a copy to the formation where they are posted.

7. Attention of promotees will be drawn to Govt of India, Min of Def, New Delhi letter No.25(3)66/3490/S/D(Appts) dt. 17 Dec 76, No.32(13)/66/139/S/D(Appts) dt. 20 Apr 78 and Min of Home Affairs (Dept of Personnel of AR) CM No.22034/3/81/Batt(D) dt. 07 Oct 81 according to which refusal of promotion for reasons acceptable for a period of one year from the date of such refusal is accepted by the competent authority. The individuals on eventual promotion will lose seniority vis-a-vis their erstwhile juniors promoted to higher grade earlier than them. In case the reasons are not acceptable, disciplinary action will be taken as provided in CCS(COA) Rule 1965 for refusing promotion as clarified vide Einc's Branch Army HQ, New Delhi letter No.47319/DIR dt. 30 Jul 77.

(KK Sabherwal)

Lt Col
Commander Works Engineers

para/.../

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT

AHMEDABAD

O. A. No. 515 of 1989

R. N. Patel & ors.

...Applicants

vs.

Union of India & ors.

...Respondents

Affidavit- in - Rejoinder

Applicant

CA Somnath Patel, No. 3
I have gone through the copy of the reply
filed on behalf of the respondents by Captain
A.B. K Lavate, and in reply thereto I state as follows:-

1. Unless specifically and categorically admitted hereinafter, each and every averment made in the reply is denied in toto.
2. I say that under the guise of upgradation of the post in question, i.e. M.P.A., we are sought to be brought in a lower post carrying pay scale of Rs. 210-290 of Mate (MPA). I further say that if at all the upgradation of post has taken place in the year 1989, the applicants who have cleared the trade test in 1983 and by valid orders as are shown at Ann. A-2, they have been promoted to the post of M.P.A. in the pay scale of Rs. 260-400, the upgradation of the post should not cause harm to applicants and the effect at all has to be given with ~~retrospective~~ prospective effect. I further say that under the guise of upgradation of the post in question the respondents cannot put in a lower pay scale and in any case ~~even~~ if this Hon'ble Tribunal

comes to the conclusion that the action on the part of the respondent is proper then also the pay-scale of Rs. 260-400 which the applicants are till date getting is required to be protected. I further say that the question of recovering the amount is out of question for the simple reason that the applicants have worked on the post in question and they were paid the salary accordingly. It is in this context it is submitted that the question of effecting recovery of ~~xxx~~ skilled post of MPA is out of question. I further say that the promotion= order at Ann. 'A-2' are self explanatory in nature and no further interpretation is required. I further say that if at this juncture after ~~xxxxxxxxxxxx~~ holding the post in question for about 6 years, if the respondents are permitted to act injuriously under the guise of upgradation, there is no safety at all of any employee.

3. I say that the story of correcting the promotion orders issued in the year 1984 that too in the year 1980 should not be permitted after about 6 years of holding the position after undergoing all the legal formalities. If the same is permitted at such a belated stage, the interest of the applicants would be seriously jeopardised.

4. I say that under the guise of upgradation of the post in question in effect and in reality, the applicants are reduced to a lower rank carrying

: 3 :

(23)

X At

a pay scale of Rs.210-290. In reality if the promotion order at Ann. 'A-2' are perused, it is manifest that the applicants have been promoted to the post of MPA in the year 1984 carrying pay scale of Rs.260-400. By the impugned action what is being done is that they are brought down to a lower position carrying a pay scale of Rs. 210-290, under the guise of up-gradation of post of MPA into skilled and semi-skilled I say that the respondents may give any nomenclature but the pay scale is required to be protected in any case. There is no question of correcting the status and regularising the salary at such a belated stage.

In view of what is stated in the body of the application and in view of what is stated hereinabove, I say that all the prayers as prayed for are required to be granted in the interest of justice.

Ahmedabad.

Date: 19.4.1990

X Solanki C.A.
Applicant

Moh

(N. D. Gohil)
Advocate for the applicants

St. 29/90 (24)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.

RA/M.A./O.A./T.A. 220 1980 in O.A/515/89

Union of India vs. Applicant (s).

J.D. Ajmera Adv. for the
P.M. Raval Petitioner (s).
Versus (Original Respondent)

R.N. Patel & Ors.

Respondent (s).

N.D. Gohil (Org. Applicant)
Adv. for the
Respondent (s).

R NO.	DATE.	ORDERS.
		For Vacating IR (Copy served) by post
8/6/90	BIR (obj. based)	
8/6/90		Parties absent. No documents produced. Adourned on same stage to 26/6/90.
26/6/90	BIR	Dismissed w/c 8/6/90
26/6/90		Parties absent. No office objections has been removed. Adourned on same stage to 24/7/90.
24/7/90	BIR obj. completed	
31/10/90	Pls	Matter is not dealt with due to disturbance of Samajmohini & Babri masjid 31/10/90
4/12/90	Pls	Pls 30/10/90
10/12/90	Pls	Pls
21-12-90	Pls	(No one bench is available on 21-12-90)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT

A H M E D A B A D .

M.A. No. 220 of 1989

in

O.A. No. 515 of 1989

Union of India,
Through,
Garrison Engineer,
Ahmedabad.

.. Applicant
(Orig. Respondent)

Versus

R.N. Patel & Ors.

.. Respondents
(Orig. Applicants)

Application for vacating interim relief

The above-named applicant most respectfully
state as follows :

1. The respondents (orig. applicants) have
filed the application challenging the action of
the department (applicant herein) of so called
reversion and thereby recovery from the respondents.
The matter came up for hearing on admission on
5.12.1989 and the Hon'ble Tribunal was pleased
to admit the same and granted interim relief
restraining the respondents (applicant herein) from
recovering the excess salaries paid to the applicant
(respondents herein).

2. It is submitted that the contention of this
original application are misconceived by the
applicant and the sole basis of the application

As I sent to
Applicant by Post

F-190

11.1.90

is this that whether the respondents (orig. applicants) are obliged to appear in trade test for making themselves ~~xx~~ eligible for the promotion to the post of MPA or not. The applicants (orig. respondents) have filed their reply in the main matter and in view of the same it has been made clear that the respondents (orig. appli.) are obliged to appear in the trade test for the promotion to the post of MPA. It is submitted that as the matter has been admitted and the Hon'ble Tribunal has granted stay against recovery, the respondents (applicant herein) are restrained from recovering legitimate dues for the excess payment of salaries made to the respondents (orig. applicants) and as long as the interim relief granted in this case operates the ~~xx~~ respondents applicants (orig. resp.) will be restrained from doing the same. Simultaneously, it is also made clear that the respondents (orig. appli.) were never promoted to the post of MPA in view of the fact that they were not eligible ~~f~~ without appearing in the trade test.

In view of the foregoing paragraphs, it is in the interest of justice and balance of convenience that the interim relief granted may please be vacated to enable the applicants (orig. resp) to

recover the dues for which the respondents (orig. appl.) are given ample opportunity of hearing.

3. Therefore this Hon'ble Tribunal may be pleased:

A) To vacate the interim relief granted in O.A.

No. 515 of 1989;

IN ALTERNATIVE

B) To fix the main matter for final hearing in the month of April, 1990 or as may be deemed fit, proper and convenient to the Tribunal.

C) To pass all other necessary orders as may be deemed fit and proper.

Place : A'bad

Date : 29/12/1989

H. Mavali

Verification

I, Capt. H B Mavali son of Shri Bapu Mavali aged about 41 years working as offg. G.E. Ahmedabad in the office of

do state and verify that what has been stated by me hereinabove is true to my knowledge and belief and I believe the same to be true. I further say that I have not suppressed any material facts.

Place : A'bad

Date : 29/12/1989.

H. Mavali
(Deponent)

Dy. Adv. for Petitioners
A'bad

Filed by Mr. J. S. Amin
Learned Advocate for Petitioners
with second set & 1 copies
copy served/not served to
other side

Dt. 11/1/90 / Dy. Registrar A.H.U
A'bad Bench

Shri R.N. Patel & Ors.

Applicants

Shri N.D. Gohil

Advocate

v/s.

Union of India & Ors.

Respondents

Shri J.D. Ajmera

Advocate

Coram : Hon'ble Mr.P.H. Trivedi ... Vice Chairman

25.12.1989

Heard Mr.N.D. Gohil and Mr.J.S. Yadav for Mr. J.D. Ajmera learned advocates for the petitioner and respondents respectively. Petition admitted. So far the interim relief is concerned, the learned advocate for the respondents states that there may be no order of reversion but the initial promotion might be as given due to some typographical error which the respondents may be liable to correct even if they do so the petitioner will be given notice of the nature of the error and reason for correction and before effecting the correction the petitioner will have to be given an opportunity of making his representation. The respondents are expected to abide by this requirement. Subject to this observation beyond this extent no ad interim relief allowed. In the meantime, no recovery should be effected. Issue notices on the respondents to reply on merits within 30 days.

Prepared by : P.H.T.

Compiled by : P.H.T.

TYPE COPY

25/12/89
(H.R. 547)
Second Officer (J)
Central Administrative Tribunal,
Ahmedabad Bench.

Sd/-
(P.H. Trivedi)
Vice Chairman

C. A. T.

Ahmedabad Bench

- (a) Serial Number of the Application
- (b) Name of the Plaintiff
- (c) Date of presentation of application for copy
- (d) Number of Pages
- (e) Application admitted
- (f) Date of filing of suit
- (g) Date of payment of filing fee
- (h) Date of payment of copying fee
- (i) Date of issue of warrant for copy
- (j) Date of payment of copy
- (k) Date of delivery of copy to the respondent

True COPY
Advocate

MRIT 325/91

28

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD

OA/TA/MA/RA/C.A. No. /255/91 in O/H 515/8

R N Patel & Ors

APPLICANT(S)

K K Shah v. D. Golil

COUNSEL

VERSUS

Union of India & Ors

P M Patel

RESPONDENT(S)

COUNSEL

Date	Office Report	Orders
2/8	Amendment ②	Copy served (Separable Heading) M.A. File at the stage of final hearing. D.H. 2/8/91

MAJ 327/91

(91)

(W)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

M.A.NO - 555 1991
O.A. NO. 515 OF 1989

R.N. Patel & Others. Applicants

V/s.

Union of India & Others. Respondents.

APPLICATION FOR AMENDMENT

1. The applicants have redressal their grievance before this Hon'ble Tribunal in the Original Application.

Since the important question of law remains out of sight the applicant seeks to amend the petition by asking the following ground :-

Ground:

(L) The Respondents in the original promotion order of the applicants, after passing the Test, have not given any reason or referred any rule and now the lapses on their part cannot be filled up by a fresh order retrospectively, which ~~is~~ adversely affects the service condition of the petitioners and amounts violation of Article 300 (1) A of the Constitution of India.

The respondent promoted the applicant after passing the Test held by them and now they cannot estoppel from the same and their action requires to be held violative of principle of Estoppel and Promissory Estoppel.

3 Rank copy
15/2/21

2. The applicants therefore pray that :

(a) The Hon'ble Tribunal may be pleased to allow this application and permit to carry out the amendment.

(b) Any other order or directions as deemed fit in the facts and circumstances may be passed.

VERIFICATION

Aged Adult worker M.P.A.

I, R.N. Patel, the applicant abovenamed

do hereby verify and state that what is stated above is true and correct to the best of my knowledge and belief and that I have not suppressed any material facts.

Place : Ahmedabad

Date :

*4/7/91
Sudarshan
Shah
for R.N.S.
Patel*

*Related
(R.N. PATEL)*

(Signature of Applicant)

Filed by Mr. *I.C. Shah*
Learned Advocate for Petitioners
with second set of spares
copies copy served to
other side

in a case
D. 15/7/91 By Petitioner C.A.T.O
A'Lee Bench

UNIT : GARRISON ENGINEER AHMEDABAD SPL PTO NO:02 DATED:01 SEPT' 89 SHEET:10-

1	2	3	4	5
111.	117259	SH Purani Shantilal Ramjibhai Attendant	Motor Pump	Pump House Operator
112.	117207	SH G B Makwana	-db-	-do-
113.	117212	SH K T Jani	-db-	-do-
114.	117306	SH Patel Mandubhai Ambalal	-do-	-do-
115.	117203	SH D H Bhatt	-do-	-do-
116.	102162	SH Dayabhai D Patel	-db-	-do-
117.	117243	SH Dilip D Patel	-do-	-do-
118.	117521	SH Solanki Chatrasingh Amirsinn	-db-	-do-
119.	117306	SH Patel Rameshbhai Nilaval	-db-	-do-

- 9 -

UNIT : GARRISON ENGINEER AHMEDABAD SPL PTO NO:02 DATED: 01 SEPT'89 SHEET:9

1	2	3	4	5
101.	101734			
SH Natwarlal Becharbhai		Electrician	Electrician	851.10
Makwana			(SK)	

102x

SBs NOT CENTRALISED WITH CE SC PUNE

102.	117329			
SH Parmar Kalubhai		Wireman	Electrician	-
Ibrahim			(SK)	

103.	117389			
SH Vasnik Vijay M		Mason	Mason (SK)	951.20
				951.40
				951.90
				952.10
				952.30
				952.60
				955.10

104.	117384			
SH Pardya Umehbhai Revabhai	-db-	-do-	-do-	

105.	117337			
			-do-	

- 11 -

WKT
UNIT : GARRISON ENGINEER AHMEDABAD SPL PTO NO:02 DATED:01 SEPT'89 SHEET: 11

2

3

4

5

125.	135023 SH Virendra Gangaram Rathod	Motor Pump Attendant	Pump House Eprator	961.70
126.	116891 SH Parmar Ramanbhai Valjibhai	-do-	-do-	961.70
127.	117308 SH Patel Mhendrabhai Erikanbhai	-do-	-do-	961.70
128.	101629 SH Ishwarji Chanduji	-do-	-do-	961.70
129.	117018 SH Parmar Gopalbhai Nasanbhai	-do-	-do-	961.70
130.	117350 SH Thakur Govind Hemtaji	-do-	-do-	961.70
131.	117340 SH Bulbule Vasant Totaram	-do-	-do-	961.70
132.	116741 SH Dasadiya Navirikhanda Amrutlal	-do-	-do-	961.70
133.	101738 Shanbhayam Shanabhai	-do-	-do-	961.70

UNIT : GARRISON ENGINEER AHMEDABAD SPL PTO NO:02 DATED:01SEPT'89 SHEET : 12

1 2 3 4 5

140.	117486	SH Rawal, Somalal Narayan	Mate	Mate (SS)	-
141.	117209	SH Amritlal Ialluram	-do-	-do-	-
142.	117250	SH Mohanji Karsenji	-do-	-do-	-
143.	117246	SH Vasudev Kalidas	-do-	-do-	-
144.	117210	SH Pandurang Vithoba	-do-	-do-	-
145.	117274	SH Ramabhai Shankarbhai	-do-	-do-	-
146.	4728	SH Ramchandra Lohar	-do-	-do-	-
147.	117489	SH Parmar Babubhai Virabhai	Valveman	Valveman (SS)	-
148.	116897	SH Augustus Topno	-db-	-do-	-
149.	116903	Shahai Dhu	-	-	-

SPECIAL PTO

GARRISON ENGINEER
MEDABAD - 3

2.1.89.
(LAST PTO NO : 01 DATED :)

PTO NO : 02
DATED : 01-9-89

Existing Designation Revised Designation.

NO.	MES No.	Name	Code No.	
			3	4
1	2			

PART - I
NIL

PART - II
NIL

PART - III

PART - IV

CENTRALISED WITH CE SEC PUNE

1. 101584 Sh Dhanji Jamaji.	Charge Elect.	Senior Electrician (HS-I)	851.10.
2. 117171 Sh Hasmukhjai Manishkumar Trivedi.	-do-	-do-	851.10.
3. 117191 SH Shah Samul Elbert	Charge Mechanic	Senior Mechanic (HS-I)	-
4. 117192 SH G S Soni	Charge Mechanic Refrigeration	Senior Mechanic Refrigeration & Air Condition- ing (HS-I)	845.70
5. 101674 SH Jyotiram Rambhai	Electrician	Electrician (SK)	851.10
6. 101578 SH Prabhakar R Ponkse	-do-	-do-	851.10
7. 101517 SH Gune Dayaram	-do-	-do-	851.10
8. 116281 SH Chandabhai Bhikhambhai	-do-	-do-	851.10

AGE	Authy : Govt of India Min of Defence New Delhi No. 91026/EIC/88/D (W-II) dated 24th June 1987)
B/R I	
B/R II	
SDC	
DATE	

Original
for GARRISON ENGINEER
....2/-

UNIT : GARRISON ENGINEER AHMEDABAD SPECIAL PTO NO: 02 DATED: 01 SEPT' 89 SFTN NOS 0

1 2 3 4 5

9. 117196 SH Nanjibhai Ramabhai Electrician Electrician (SK) 851.10
SBs NOT CENTRALISED WITH CE SC PUNE

10. 411346 SH Jiten Sharma Cabinet Maker Carpenter (SK) 811.10

11. 102567 SH Gafurbhai Shivabhai Rathod -do- -do- 811.10

SBs CENTRALISED WITH CE SC PUNE

12. 117193 SH Pratapji Chamanji Carpenter Carpenter (SK) 811.20

13. 101697 SH N B Goplani -do- -do- 811.20

14. 101666 SH R Sukumaran Nair Veh Mechanic Veh Mechanic (SK) 843.20

15. 116518 SH Madhukar Narayan Refrigerator Mechanic Mechanic Refrigerator 845.70
Wani

16. 101788 SH P Venugopalan -do- -do- 845.70

17. 101530 SH D B Thakur -do- -do- 845.70

18. 167055 SH S G Thakur -do- -do- 845.70
SBs NOT CENTRALISED WITH CE SC PUNE

19. 116561 SH R V Trivedi -do- -do- 845.70

SBs CENTRALISED WITH CE SC PUNE

20. 117184 SH Bgsheer Jukabhai Wireman Electrician (SK) -

21. 101531 SH Jaisingh Babaji -do- -do-

Authy B Govt of India Min of Defence
New Delhi No. 91026/EIC/88/D
(W-II) dated 24th June 1987

Rajendra
for GARRISON ENGINEER
.... 3/

		-do-	-do-	961.70
120.	117351 <u>SH B N Poddar</u>	-do-	-do-	961.70
121.	117208 <u>SH Inderkumar Mohanlal</u>	-do-	-do-	962.70
122.	117487 <u>SH Thakur Mansingh Chaturjibhai</u>	-do-	-do-	961.70
123.	116696 <u>SH Vankar Rameshbhanda Babubhai</u>	-do-	-do-	961.70
124.	116898 <u>SH Dhanjibhai Mathurbhai</u> Parmar	-do-	-do-	961.70

(Authy : Govt of India Min of Defence
 New Delhi No. 91026/EIC/88/D
 (W-II) dated. 24th June 1987d

✓ jail d
 AEE
 for GARRISON ENGINEER
 11/-

146. Shri Fatehbahadur
Harman Singh.

106. 117d23	SH Chavda Baldevbhai Motibhai	Plumber	Fitter Pipe	871.2
107. 116808	SH Johan Uroan	-do-	-do-	871.2
108. 117d24	SH Pathan Zafarullakhan Bilankhan	-do-	-do-	871.2
109. 117d25	SH Dalvadi Purshottambhai Bhavanbhai	Cane Weaver	Cane Man	942.30
110. 117017	SH Patel Sanatkumar Ratilal	Motor Pump Attendant	Pump House Attendant	961.70

(Authy : Govt of India Min of Defence
New Delhi No. 91026/E1C/88/D
(V-II) dated. 24th June 1987)

Cjail d
AEE
for GARISON ENGINEER
..... 10/-

SH Patai Ghalanji

134.	117244 SH P P Abraham	-db-	-do-	961.70
135.	117240 SH Ramsingh Narsingh	-do-	-do-	961.70
136.	117326 SH Rameshchandra Sjitram Arya	Blacksmith	Blacksmith (SK)	831.10
137.	117388 SH Kapadiya Dhirajkumar Ramjibhai	Painter	Painter (SK)	932.10 932.30
138.	117491 SH Vankar Becharbhai Panchhodbhai Mammerman	Mammerman	Mammerman (SS)	831.40
139.	4540 SH Bagal Prasad Church	Mate	Mate (SS)	

(Authy : Govt of India Min of Defence
New Delhi No. 91026/EIC/88/D
(W-II) dated. 24th June 1987)

(V)

SH Rohit Ramand

Labna

-do-

-do-

50. 118231

SH O P Harijan

-do-

-do-

-

151.

SBs CENTRALISED WITH CE SC PUNE

150. 101524

SH Shankar Bhavsingh
SBs NOT CENTRALISED WITH CE SC PUNE

-do-

-do-

-

152. 117547

SMT Samuben B Solanki

Mazdoor

Mazdoor(USK)

999

153. 117482

SH Ganpat Devjibhai Varatiya

-do-

-do-

-do-

117478

SH Dataniya Gautam Vithalbhai

-do-

-do-

-do-

Of India Min of Defence
No. 91026/ETO/38/D
(4th June 1987)

Arjail
AEH
for GARRISON ENGINEER
.... 13/-

PUMPHOUSE OPERATOR

(D) Existing Pay Scale : Rs. 75-1-85-EB-2-95
Revised Pay Scale : Rs. 210-4-226-EB-4-250-EB-5-290

Method of filling up Recruitment & Promotion % age	Qualification & Minimum service & Qualification for recruitment & in the grade for Promotion	Trade Test for Recruitment and Promotion					
		1	2	3	4	5	6

By promotion failing which
by transfer and failing
both by direct recruitment

Middle Standard
Pass
ITI in Electrician
Trade

Mazdoor, Chowkidars,
and Sweepers, who have
passed recruitment trade

Must be able to use and maintain in good order his
authorised tools such as spaners, screw drivers, hammers
and chisels and pliers.

Must be able to take charge and run small motor and pumps
(other than steam or oil driven movers
Must have ability to maintain small motors and pump
(other than steam or oil driven prime movers

Must be able to maintain log sheets for and Maintenance
chart.

Recruitment Rules for MPA amended for CD7
(Edn qualification for Promotes and it is
now shown in NIL i.e. no Edn qualification for
Promotes.

No. 325 of 2/11/78 & CENG Zone 13005/FRR/190/
EIP(S of 28.11.78

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH.

JAIPUR.

T.A. No. 1536/86
(CS 57/85)

Date of decision: 26.11.93

T.A. No. 1537/86
(CS 45/85)

RAJASTHAN AREA MES WORKERS' UNION : Applicants

VERSUS

UNION OF INDIA & ORS

: Respondents.

Mr. Virendra Lodha

: Counsel for the applicants.

Mr. H.N. Calla

: Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice D.L. Mehta, Vice-Chairman

Hon'ble Mr. P.P. Srivastava, Administrative Member

PER HON'BLE MR. JUSTICE D.L. MEHTA, VICE-CHAIRMAN:

The applicants filed the suit in the court of learned Additional Munsif, Jaipur West, Jaipur. The case of the applicants is that there were Rules of 1969 and under the Rules of 1969, the Motor Pump Attendant (M.P.A.) post was a promotion post which was to be filled 100% by promotion and the persons who were eligible were Mazdoors, Sweepers, Chowkidars who have passed the trade test for the post prescribed by the E-in-C with three years of service in the grade. This fact is not in dispute. The other admitted fact is that on 14.12.83, the trade test of Motor Pump Attendants was held and the result was declared subsequently in the year 1984. This fact is also not in dispute. The applicants have come with a case that the Rules of 1969 have not been amended so far, in para 5 of the plaint. The respondents, in their reply, have not denied this position also and are not in a position to say that the rules were amended any time according to the law. The applicants have also submitted that Jodhpur and Jaipur are both under the Southern Command and the persons who have passed the trade test in 1983 and whose results were declared in 1984 at Jodhpur have been promoted as M.P.A., whereas the persons who have appeared at Jaipur and who have passed the trade

test in 1984 at Jaipur have not been promoted even upto this date. So, they filed the suit. This fact is admitted one. The respondents invited the applications for the post of M.P.A. in 1985 and the court restrained and issued the injunction order against the respondents. The respondents' case is that earlier the post of the M.P.A. was considered as semi-skilled. However, subsequently, from 16.10.81, it is considered as skilled post. However, they admitted that no corresponding change was made in the rules and the rules as existed in 1969 continue.

2. The respondents have come with a case that the E-in-C's Branch issued a letter dated 20.12.83 that the post of the M.P.A. may be considered as skilled post and for this reason, appointments have not been made though the applicants have passed the trade test earlier for the post of M.P.A. Unless the rules are amended, the administrative instructions cannot over-ride the service rules. Under the Rules of 1969, Mazdoors were eligible and the applicants were admittedly Mazdoors and have passed the trade test held on 14.12.83 for the post of M.P.A. Thus, they are entitled for the benefit of the said test which was held earlier to the issuance of the so-called letter dated 20.12.83. Apart from that, the letter dated 20.12.83 is not before us and we can only consider ~~xxx~~ the reply submitted by the respondents that by this letter, the authorities directed that the post of the M.P.A. may be treated now as skilled post instead of semi-skilled post. It may be. But under the rules, the source of recruitment was the Mazdoors etc. and that continued for a pretty long time. Now the rules have been amended. Amendment of the rules cannot change the fact which was relevant at that time. This is a case of discrimination within the same Command. If the persons in the Jaipur area were promoted though they were Mazdoors and the trade test was held in 1983 and the result was declared in 1984 then the persons of Jaipur

.../3

having an identical case cannot be deprived of their right or promotion.

3. In the result, the application is accepted; the benefits of the passing of the trade test may be given to the applicants, taking into consideration the vacancies which existed on 14.12.83, at the time of the holding the examination. The benefit should be extended on the basis of ~~merit-cum-merit~~ ^{merit} in the trade test, as per rules.

4. The T.A.s are disposed of accordingly, with no order as to costs, and the persons so promoted will be promoted for all consequential benefits.

5. The T.A. relating to the grant of temporary injunction has become infructuous as today we have decided the main case and is accordingly disposed of.

SD-
(P.P. SHIVAWASTAVA)
Administrative Member

SD-
K.D.L. HEMTA JI
Vice-Chairman

TRUE - COPY
Dated 20/2/83
Section Officer (Judicial)
Central Administrative Tribunal
JAWAHAR LOKASHA, JAWAHAR

W. S. S.