

CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.250 of 1993
Cuttack, This the 9th day of September, 1999.

Shri Khageswar Bantha Applicant

Versus

Union of India and Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? NO.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
SOMNATH SOM
VICE-CHAIRMAN
9.9.99

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK.

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ORIGINAL APPLICATION NO.250 OF 1993
Cuttack, this the 9th day of September, 1999.

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

Shri Khageswar Bantha, aged 35 years,
Son of Shri Maheswar Bantha, Solapatta,
P.O.-Gotisahi, Dist.Puri at present working
as MATE-MPA, Garrison Engineers R&B Balasore. ... Applicant

Advocates for applicant-M/s.A.K.Misra
S.K.Das
S.B.JENA
A.K.Guru

Versus

1. Union of India, Ministry of Defence,
Government of India, New Delhi.
2. Office of the Army Head Quarters, Engineer in Chief,
New Delhi-11.
3. Chief Engineer, Eastern Command,
Fort William, Calcutta-21.
4. Garrison Engineer, R&B, Organisation,
Chandipur, Dist. Balasore. ... Respondents

Advocate for respondents-Mr.B.Dash,
Addl.Standing Counsel,
(Central)

ORDER

SOMNATH SOM, VICE-CHAIRMAN

S.Som.
In this application under section 19 of the
Administrative Tribunal Act, the applicant has prayed for a
direction to the opposite parties to regularise the service
of the petitioner as a MPA/Pump House Operator. He has also
asked for a direction to the respondents to pay him the scale
of Rs.260-400/- revised to Rs.950-1500/- with effect from 1.1.1986

along with arrears and service benefits.

2. The case of the applicant is that he had registered his name in Employment Exchange Office, Balasore and after selection conducted by Garrison Engineer, Chandipur (Opposite party No.4) he was appointed as a skilled Labourer in 1976. He was later on absorbed as a regular Mazdoor. While he was working as such a trade test was conducted for Motor Pump Attendant on 10th and 11th October, 1983. He came out successful in the trade test and was promoted on 28.12.1983 to the post of Motor Pump Attendant, on probation for two years. The order of promotion is at Annexure-1. On 10.1.1986 the Chief Engineer issued an order with regard to payment of industrial worker in the pay scale recommended by the third pay commission to the Motor Pump Attendant in the skilled pay scale. This order is at Annexure-2. It has been mentioned in that order that Motor Pump Operator comes in the category of skilled worker in pay scale of Rs.260-400/-. The feeder category for promotion to the post of Motor Pump Attendant is semi-skilled in the pay scale of Rs.210-290/-. According to the prevalent recruitment Rules Mazdoor, Chowkidar and Safaiwalla who are unskilled category were eligible for promotion to the post of Motor Pump Attendant. As some of the incumbents were promoted to the post of Motor Pump Attendant without proper identification of the feeder category, it was decided that Motor Pump Attendant should be brought down to the post of Mate in the scale of Rs.210-290/- and excess payment made to them on account of wrong payment should be recovered. In June, 1987 the opposite party No.4 conducted a trade test for the post of Motor Pump Attendant.

S. Som.

The applicant was called to the test. He submitted representation stating that as he had already passed trade test for Motor Pump Attendant it will be redundant on his part to appear at the same trade test again. He has been promoted to the post of Motor Pump Attendant on 28.12.1983. Later on an amendment was issued which stated that petitioner should be promoted from Mazdoor to the post of Mate in the scale of Rs.210-290/-. The applicant approached the Tribunal in O.A. No.158/89. Tribunal in their order dated 23.5.1989 disposed of the application with a direction that applicant should be given the scale of Rs.260-400/- for the period he has worked as Motor Pump Attendant and no recovery should be made from him on this account. The Tribunal also held that from 15.12.1987 the applicant will get the payscale of Rs.210-290/- and in case any recovery had been made from the applicant then the same amount should be refunded within two months. In obedience to the direction of the Tribunal the opposite party refunded the amount which was recovered from him. The applicant has stated that he had all along been working in the higher grade Pump House Operator. But he has been denied the financial benefits in the scale of pay applicable to Motor Pump Attendant in Rs.260-400/- and has been given in the lower scale of Rs.210-290/-. He has stated that he is entitled to the scale of Rs.260-400 and the revised scale of pay Rs.950-1500/- from 1.1.1986. He has stated that he is working as Motor Pump Attendant till today and therefore he could not be given a lower scale of pay. On the above grounds he has come up with the prayers referred to earlier.

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3. The respondents in their counter have stated that the applicant was not selected by the opposite party No.4 on being sponsored by Employment Exchange, Balasore. He was appointed by Garrison Engineer, Binnaguri, West Bengal. He was posted under Garrison Engineer, Balasore on his own request on compassionate ground and joined on 2.2.1980. The respondents have further stated that initially Mazdoors/Chowkidars were being promoted to the post of Motor Pump Attendant. This was being done before Motor Pump Attendant was designated as skilled category. Mazdoor and Chowkidar are unskilled category and promotion to skilled category from unskilled category is not in order. Promotion to a skilled category should be from semi skilled category, Motor Pump Attendants were identified as skilled category in May, 1983. After that promotion of Mazdoor to Motor Pump Attendant post was not in order. Accordingly the applicant who was promoted to the post of Motor Pump Attendant from the post of Mazdoor in December, 1983 was brought down along with some others to the semi skilled category namely Mate (Motor Pump Attendant) which is a feeder grade for promotion to Motor Pump Attendant. Accordingly along with others the applicant was brought down to the post of Mate (MPA) in the scale of Rs.210-290/-. As regards the contention of the applicant that he was wrongly called to appear at the trade test again, respondents have stated that applicant had given his willingness to appear at the trade test. This is clear from Annexure-R/3. Some other individuals similarly placed, like Shri Jogendra Samal appeared at the trade test without any hesitation. The respondents have referred to C.A.No.158/89 earlier filed by the applicant. The respondents

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have denied that any illegality has been committed with regard to applicant. They have also stated that they have fully complied with the order of the Tribunal in Original Application No.158/89. They have further stated that they have disposed of the representation of the applicant and communicated the decision to the immediate Superior Officer of the applicant for communicating the same to the applicant. Lastly they have stated that the applicant has passed the trade test in April, 1989. But after that no promotion has been made in General category. The applicant will be entitled for promotion when vacancy arises and his turn according to seniority comes. On the above ground respondents have opposed the prayer of the applicant.

4. We have heard Shri Aswini Kumar Misra, Learned Counsel for the applicant and Shri B. Dash, Learned Additional Standing Counsel for the respondents and have perused the records. Records of O.A.No.158/89 to which reference has been made have also been perused.

5. We find from the records of Original Application No.158/89 that in that Original Application the petitioner had prayed for the same relief which he has asked for in the present application. In Original Application No.158/89 the applicant had prayed for a direction that he is entitled to the scale of Rs.260-400/- revised to Rs.950-1500/-. He had also prayed for quashing the order of recovery of excess payment allegedly made to him in the post of Motor Pump Attendant. The Tribunal in their order dated 25.3.1989 held that from 15.12.1987 the applicant would be entitled to pay scale of Rs.210-290/-. Tribunal also held that for the period the applicant actually worked as Motor Pump Operator prior to 15.12.1987, he should

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be given the pay scale of Rs.260-400/- and any recovery made from him should be refunded. The respondents have stated that this order has been fully complied with by them. From the above, it is clear that the applicant in this petition has asked for relief which he had prayed for in his earlier Original Application and which was not allowed by the Tribunal. In view of this it must be held that the applicant cannot be allowed to raise the same claim and make the same application and ask for the same relief in this Original Application. In view of this we hold that this Original Application is without any merit and the same is rejected, but under the circumstances without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

(SOMNATH SOM)

VICE-CHAIRMAN

Somnath Som
9.9.99

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