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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 365 of 2008

Cuttack, this the 27th day of March, 2011

Khirod Kumar Padhi and othersApplicants

-v-

Union of India & Others.... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *Yes.*
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not? *Yes.*

A.K.
(A.K.PATNAIK)
Member(Judl)

C.R.
(C. R. MOHAPATRA)
Member (Admn.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No.365 of 2008

Cuttack, this the 2nd day of April, 2011

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THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

AND

THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

1. Khirod Kumar Padhi, aged about 36 years, Son of Sailendra Padhi, working as Senior Fireman 'A'.
2. Samray Hansda, aged about 40 years, Son of Late Kanda Hansda, working as Technician 'A'.
3. Anil Chandra Jena, aged about 34 years, Son of Suresh Chandra Jena working as Fireman.
4. Dipak Kumar Maity, aged about 38 years, Son of Susil Kumar Maity, working as Sr. Fireman 'A'.
5. Bhanu Charan Saren, aged about 36 years, Son of Bhanja Saren, working as Fireman.

All the Applicants are working under Director,
Proof & Experimental Establishment, Chandipur,
Dist. Balasore.

.....Applicants

By legal practitioner: M/s. Biswajit Mohanty-I
S.Patra,P.K.Mohapatra,
A.Panda, Counsel.

-Versus-

1. Union of India represented by Secretary to Government of India, Ministry of Defence, South Block, New Delhi-11.
 2. Under Secretary to Government of India, Ministry of Defence, Department of Defence Research and Development South Block, New Delhi-11
 3. Director General, Defence Research and Development Organization, Ministry of Defence, DRDO Head Quarter, DRDO Bhawan, New Delhi-11.
 4. Joint Director, Man Power Planning and Development Ministry of Defence, Defence Research and Development Organization, DRDO, Head Quarter, DRDO Bhawan, New Delhi-11.
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5. Director, Proof and Experimental Establishment, Chandipur, At/Po-Chandipur, Dist.Balasore.
6. Joint Director (Administration), Office of Director, Proof and Experimental Establishment, Chandipur, At/Po-Chandipur, Dist.Balasore.
7. Joint Director (Personnel-I), O/O the Director General, Defence Research and Development Organization, Directorate of Personnel 'A Block', DRDO Bhawan, New Delhi-11.

....Respondents

By legal practitioner: Mr.S.Barik, ASC

ORDER

MR. C.R.MOHAPATRA, MEMBER (ADMN.):

Undisputedly, all the Applicants joined the post of Fireman Grade II under the Respondents during April, 1996. The cadre structure of firefighting prevailing then was as under:

Sl.No.	Name of the Post	Pay Scales in Rs
1.	Fireman-II	775-1035
2.	Fireman-I	800-1150
3.	Leading Hand Fire	950-1400
4.	Fire Engine Driver	950-1400
5.	Supervisor (Fire	1200-1800
6.	Civilian Assistant Fire Master	1320-2040
7.	Junior Instructor	1400-2300
8.	Senior Instructor	2000-3200
9.	Chief Instructor	2000-3500
10.	Fire Officer	2000-3500

Vide letter No.DRDO/76664/MPD/FF/CR/1032/D

(R&D) dated 26th March, 2991 (Annexure-A/2), the aforesaid cadre was restructured with effect from 15-04-1998, with

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stipulation that the Recruitment Rules will be amended in due course. The restructuring cadre is as under:

Sl.No.	Name of the Post	Pay Scales in Rs
1.	Fireman	2750-4400
2.	Senior Fireman 'A'	3050-4590
3.	Senior Fireman 'B'	3200-4900
4.	Fire Engine Driver 'A'	3050-4590
5.	Fire Engine Driver 'B'	4000-6000
6.	Fire Engine Driver 'C'	4500-7000
7.	Fire Supervisor	4000-6000
8.	Fire Master	4500-7000
9.	Fire Superintendent	5000-8000
10.	Fire Officer	6500-10500
11	Chief Fire Officer	7500-12000

In terms of the Government of India, Ministry of Defence letter under Annexure-A/2, quoted above, vide order dated 07-05-1998, (Annexure-A/3, all the Applicants were re-designated as Fireman with effect from 15th April, 1998. On 29.5.1998, in supersession of earlier Rules, new Recruitment Rules for Group 'C' & 'D' (Fire Service) posts 1998 came into effect. On successful completion of the probation period of the Applicants, in the grade of Fireman, vide order dated 31-07-1998 (Annexure-A/4&A/5), all of them were confirmed in the grade of Fireman. In letter under Annexure-A/6 dated 05-01-1999, Respondent No.4 issued clarification that individual

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holding the posts of Fireman Grade-II would continue to hold the designation till they were appointed as Fireman as per Rules, 1998. Despite the letter under Annexure-A/6 dated 05-01-1999, Respondent No.5 vide order dated 17-02-1999 (Annexure-A/7) fixed the pay of the Applicants in accordance with the orders under Annexures-A/2. Again the Respondent No.4 in letter under Annexure-A/8 dated 23.3.1999 intimated that in terms of Recruitment Rules, 1998 [SRO 14-E], Fireman Grade II are eligible for promotion to the grade of Fireman. While the matter stood thus, Respondent No.5 issued an order under Annexure-A/9 dated 23-06-1999 restoring the designation of the Applicants with a further order for re-fixation of their pay in grade of Fireman Grade II retrospectively. In pursuance of the said order, vide order under Annexure-A/10 dated 06-07-1999 the pay of the Applicants was re-fixed in the lower grade of Fireman Grade II. Accordingly, recovery of the differential pay and emoluments drawn by the Applicants in the grade of Fireman was started. After the order under Annexure-A/10, Respondents issued another order dated 21.12.1999 (Annexure-A/11) in which the man power requirement in Proof and Experimental Establishment Chandipur was provided in which

the post of Fireman Grade II does not find place. According to the Applicants, by making representations they sought removal of the injustice caused to them. However, meanwhile during 2001, the Applicants were promoted to the post of Fireman and, thereafter, Applicant Nos.1 to 4 were promoted to the post of Senior Fireman-A and the Applicant No.2 was promoted to the post of Technician-A. The representations of the Applicants were rejected and communicated to them in Annexure-A/13 dated 05-03-2008 and Annexure-A/14 dated 29-04-2008. According to the Applicants the order withdrawing the benefits without any notice in compliance of the principles of natural justice is per se void and that the Recruitment Rules which came into effect w.e.f. 29.5.1998 cannot have retrospective application. As such, the order withdrawing the benefit is not sustainable. Hence by filing the present OA, the Applicants have sought the following relief:

- "A. Order under Annexures-A/6, A/9, A/10 and A/14 be quashed after declaring those as illegal;
- B. Respondents be directed to allow the Applicants to continue as Fireman in pay scale of Rs.2750-4400/- w.e.f. 07-05-1998 and return them the recovered amounts;

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C. Any other order/orders be passed as would be deemed fit and proper under the circumstances.”

2. Respondents' contention, in their counter, is that based on the letter dated 26th March, 1998, Respondent No.5 re-designated Fireman I/II as Fireman in the Pay Scale of Rs.2750-4400/-. This order of restructuring of Fire Fighting Cadre was with effect from 15th April, 1998. Meanwhile, Recruitment Rules were amended and SRO 14E dated 29th May, 1998 was issued by the Government of India, Ministry of Defence, Department of Defence Research & Development. The salient feature of the SRO 14E is that the Post of Fireman-I (not the post of Foreman-II) only was to be re-designated as Fireman and placed in higher scale of pay of Rs.2750-4400/- and the post of Fireman was to be the entry level post in the revised cadre structure of Fire Fighting staff in DRDO and was to be filled up 50% by Direct Recruitment and 50% by Promotion from existing Fireman -II. The post of Fireman was to be entry level post in the revised cadre structure of Fire Fighting Staff in DRDO and was to be filled 50% by Direct Recruitment and 50% by Promotion from existing Fireman-II. Fireman II with 5 years of regular service who possess the educational qualifications

prescribed for direct recruitment or equivalent or have qualified the Limited Departmental Competitive Examination conducted for this purpose. No Recruitment Rule was framed for the post of Fireman-II in the SRO 14E as Fireman II has been declared as dying cadre and no more induction is to be made to the post of Fireman II. In view of the above, clarification was sought from DRDO Headquarters and during protracted correspondence with DRDO Headquarters it was established that the Government ^{vide} letter dated 26th March, 1998 has only restructured and re-designated the posts of Fireman I&II. It does not change the status of the individuals. Thus, the individual holding the post of Fireman II will continue to hold the designation till they are appointed as Fireman as per the revised SRO. Under the revised SRO 14E, the post of Fireman will be filled up 50% by Direct Recruitment and 50% by Promotion from the existing Fireman-II failing which by Direct Recruitment. In view of the above clarification from DRDO Headquarters, the order placing the Applicants in the grade of Fireman in the pay scale of Rs.2750-4400/- was amended by placing them in the pay scale of Rs.2610-3540/- as Fireman II, a corrective measure to place them in the pay scale of Fireman-II.

The applicants were wrongly re-designated as Fireman in higher pay scale of Rs.2750-4400/-. None of the Applicants were possessing the educational qualifications/eligibility as mentioned in columns 9 & 13 of SRO 14E. Therefore, the placement of the applicants in the higher pay vide order under Annexure-A/3 was irregular. Hence, the same was amended vide order under Annexure-A/9. Accordingly, the Respondents have stated that as the applicants were not entitled to the revised higher pay scale applicable to the post of Fireman but were wrongly allowed, the same was liable to be recovered from them. On the above grounds, the Respondents have prayed that this OA being devoid of any merit is liable to be dismissed.

3. The Applicants in their rejoinder more or less while reiterating some of the stand taken in the OA, have stated that the Applicants were re-designated vide order under Annexure-A/3 in accordance with the presidential order under Annexure-A/2 viz; much prior to the new Recruitment Rules came into force. The new Recruitment Rules, 1998 came into force w.e.f. 29.5.1998 and the same has no retrospective application. As such rescinding the order under Annexure-A/3 in terms of the new Recruitment Rules, which has no retrospective application

is not sustainable in the eyes of law. Further stand of the Applicant is that since the order under Annexure-A/3 was rescinded by the Respondents without giving the applicant any show cause, the impugned order being a nullity is liable to be set aside. Respondents have also filed reply to the rejoinder which has also been taken into consideration.

4. Learned Counsel appearing for both sides have reiterated the stand taken in their respective pleadings. Having heard them at great length, perused the materials placed on record. It is seen that while conveying the approval/sanction of restructure of Fire Fighting Cadre in the DRDO, in Annexure-A/2 dated 26th March, 1998 it was made clear by the Respondents that 'the Recruitment Rules will be amended in due course'. In the Recruitment Rules under Annexure-R/3 it was made clear that the post of Fireman will be filled up 50% by promotion and 50% by direct Recruitment. It was provided therein that Fireman II with five years regular service possessing the educational qualification prescribed for direct recruitment or equivalent or who have qualified the LDCE conducted for this purpose will be promoted to the post of Fireman. The qualification for direct recruitment to the post of Fireman is

Secondary School Certificate (10th standard pass under 10+2 system) recognized by Central/State Governments etc. As stated by the Respondents, the Applicants do not possess the qualification as required under SRO 14E. As it appears from the record, on the clarification sought by Respondent No.5, Respondent No.3 in letter under Annexure-R/4 dated 30th December, 1998 clarified as under;

“The post of Fireman II has been declared as a dying cadre. Since no more induction is to be made to this post, no recruitment rules have been included for this post under SRO 14-E.

All future inductions are to be made only at the level of fireman (Revised Scale Rs.2750-4000/-). This post is to be filled 50% by Direct Recruitment and 50% by promotion of Fireman II failing which by Direct Recruitment, as per SRO 14E.”

Again in letter under Annexure-R/5 dated 5th January, 1999 it was clarified as under;

“It is intimated that the Government Letter No. DRDO/76664/MPD/FF/CR/1032/D (R&D) dated 26th March, 2991 has only restructured and re-designated the posts of Fireman I & II. It does not change/status of the individuals. Thus, the individuals holding the posts of Fireman II will continue to hold that designation, till they are appointed ‘Fireman’ as per revised SRO.

All future inductions are to be made only at the level of Fireman (Revised Scale Rs.2750-4400/-). The post is to be filled 50% by Direct Recruitment and 50% by promotion of the existing Fireman II

failing which by Direct Recruitment as per SRO 14-E dated 29 May, 1998.”

Further in letter under Annexure-R/6 dated 23rd March, 1999 it was clarified as under:

“It is confirmed that the pay scale of existing Fireman Grade-II is Rs.2610-3540/- and not 2750-4400/-. Fireman II are eligible for promotion to the grade of Fireman as per the provisions under Column 13 of the revised SRO 14-E/93, which are summarized as under:

“Fireman II with 5 years regular service in the grade and possessing the following Educational Qualifications are eligible for promotion:-

(i) Secondary School Certificate (10th standard pass under 10+2 system) recognized by the Central/State Governments or equivalent.

(ii) Physical fitness and capability to perform sternov duties.

Those Fireman II, who have completed 5 years regular service, but do not possess the above qualifications may also be considered for promotion, if they qualify the Limited Departmental Competitive Examination conducted for this purpose by PXE. The syllabus for the LDCE has already been indicated in our letter No. DRDO/96432/FF/MPD dated 4th October, 1998.”

5. Law is well settled in a plethora of judicial pronouncements that no indefeasible right is vested on any employee to claim retention of any benefit wrongly given. No equity can be claimed on the basis of an illegality. The Government has every right to rectify its mistake at any

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point of time and there is no wrong in withdrawing the benefits if it has wrongly been allowed to an employee which he/she is not entitled to. Creation, abolition and amalgamation of posts are policy matter of the Government and Tribunal can have hardly any jurisdiction to interfere in the matter. Similarly, it is open to the Government to frame necessary rules prescribing the requisite qualifications and it is also open to the authorities to lay down such requisite conditions for appointment as would be conducive to the maintenance of proper discipline amongst Government servant. We are aware that scale of pay is attached to a post and not to an employee and the post can be held only if the employee is otherwise eligible and suitable for the same as per Rules. In the present case since there was a time gap between the order of restructuring and the promulgation of the Recruitment Rules, obviously a wrong implementation order had been issued by the local authorities which has been eventually corrected as per clarification given by the competent authority. Hence, we do not find anything wrong in the withdrawal of the benefit which was given by an authority due to apparent misgivings.

In so far as compliance of principles of natural justice is concerned, we may note that it is trite law that the

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principles of natural justice is also not required to be complied with as the same would have been an empty formality. The court will not insist on compliance with the principles of natural justice if only one conclusion is possible (Ref. **Punjab National Bank v. Manjeet Singh** [2007] 1 SCC (L&S) 16). In the instant case had the applicant been given notice the result would have been same as the local administration had committed a mistake by not appreciating the actual import of the restructuring of the cadre and the modalities for its implementation.

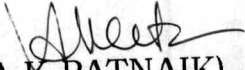
6. But we find, in view of the order under Annexure-A/2, the Applicants were placed in the grade of Fireman and they were accordingly allowed the pay scale of the Fireman by the Respondents. The Applicants were in no way responsible for change of their designation and re-fixation of their pay in the higher scale. Since the payment was released by the Respondents and not because of any misrepresentation by the Applicants, the Respondents are not justified for the recovery of the amount paid to them in the higher grade of Fireman. In this connection the decision of the Hon'ble Apex Court in the case of **Registrar cooperative societies Harayana and others v Israil Khan and others**-(2010)1 SCC (L&S) 1123 is relied on. Hence


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while maintaining the orders challenged by the applicants in this OA, we direct the Respondents that as the recovery is not found to be justified, the amount already recovered should be returned to the applicants, forthwith, at any rate within a period of thirty days from the date of receipt of copy of this order.

7. With the aforesaid observation and direction this OA stands disposed of. No costs.


(A.K.PATNAIK)
Member (Judicial)


(C.R.MOHAPATRA)
Member (Admn.)