

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. No. 463 of 1996.

Present : HON'BLE DR. B.C. SARMA, ADMINISTRATIVE MEMBER.

HON'BLE MR. D. PURKAYASTHA, JUDICIAL MEMBER.

SUKUMAR MONDAL  
SAJAL KR. MONDAL  
RIPHAL KR. MONDAL  
TARAK NATH NASKAR.

... ... Applicants.

Vs.

1. Union of India,  
service through the Secretary,  
Ministry of Defence,  
Govt. of India, New Delhi.
2. E.-n.-Chief, Military Engineer Service,  
Ministry of Defence,  
Govt. of India, New Delhi.
3. AOE E/M (North), Calcutta,  
46, B.T. Road, Cal-50.
4. Garrison Engineer (North) -  
Calcutta, 46, B.T. Road,  
Calcutta-50.

... ... Respondents.

For Applicant : Mr. B.C. Sinha, Counsel.

For Respondents : Mr. M.S. Banerjee, Sr. Counsel.

Heard on : 5.3.97.

Ordered on : 5.3.97.

ORDER

B.C. Sarma, AM.

The limited question to be decided in this case is whether the respondents are entitled to ~~revert~~ the 4 applicants who are Diesel Engine Starter under the Garrison Engineer, Military Engineering service, from the scale of Rs. 950-1500/- to Rs. 800-1150/- and whether the respondents are also entitled to make recovery for the excess payment made to them.

*QF*

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2. The case has been contested by the respondents by filing a reply. A Rejoinder has also been filed to the Reply. We have perused the reply as well as Rejoinder.

3. There is no dispute about the fact that the applicants were given promotion to the scale of Rs. 950-1500/- from the scale of Rs. 800-1150/- some time in January, 1990, and afterwards. The applicants do not hold any I.T.I certificate. They contend that they had passed required Trade Test, which has, however, been denied by the respondents in their reply. In the Rejoinder filed by the applicants to the reply of the respondents, the averment made by the respondents has not been refuted. Be that as it may, as per the own admission of the respondents in their reply, action taken by the respondents for promotion to the applicants was by mistake and this mistake was detected some time in 1995. The respondents rely on the fact that as per instruction, which has been appended to the reply, the applicants are required to have I.T.I certificate in absence of which they cannot be given promotion to the scale of Rs. 950-1500/-. All the applicants were initially given appointment by the respondents themselves and at that time it must be known to the respondents that the applicants do not possess any I.T.I certificate. If that be so, it is not understood as to how the applicants now shall be in a position to have I.T.I certificate. The other condition, which is an alternative one, on which the respondents also rely is that the applicants must have to pass the Trade Test which they did not do. We note that promotion to the scale of Rs. 950-1500/- was given to the applicants by the respondents some time in January, 1990, and in that scale the applicants had rendered service under the respondents uninterruptedly till the notice was given to them on 29.2.96. This shows that even though, as per averment of the respondents, the promotion was given against the instruction of the Govt. of India, the performance of the applicants must have been

satisfactory; otherwise, the respondents would ~~have~~ de-graded them much earlier for the unsatisfactory service in that post/grade. In the reply there is no whisper to the effect that the performance of the applicants was not satisfactory. This being the position, we are of the view that reasonable opportunity must be given to the applicants to pass the Trade Test and till such opportunities are given, the respondents cannot be permitted to ~~de-grade~~ revert the applicants to the lower pay-scale. We are also of the considered opinion that in view of the fact that the applicants had drawn higher pay-scale in which they had been rendered satisfactory services, the respondents cannot be permitted to make any recovery of the alleged over-payment made to them from their pay and allowances at such a ~~distant~~ date.

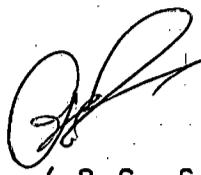
4. In view of the above, the application is disposed of with the following directions :-

- a) The applicants shall be given few chances to appear in the Trade Test as per rule;
- b) Till such chances are utilised by the applicants they shall not be reverted to the lower scale of Rs. 800-1150/-;
- c) If the applicants come out successful in the Trade Test, their appointment from the date of passing of the Trade Test in the higher scale of Rs. 950-1500/- shall be taken to be a regular service and the previous period shall be on ad-hoc basis.
- d) If after getting adequate opportunities the applicants failed to <sup>pass</sup> the Trade Test for that post, we give liberty to the respondents to revert them to the lower pay-scale of Rs. 800-1150/-.
- e) There shall be no recovery of excess amount paid to the applicants as per version of the respondents.

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f) No order is passed as regards costs.

  
( D. Purkayastha )  
MEMBER (J)

  
( B.C. Sarma )  
MEMBER (A)

P/K/C.