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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

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Date of Order : 7.9.2001.

O.A.NO. 26/1999

1. Rajasthan Area MES Workers Union, Jaisalmer, through its Secretary Devi Singh S/o Shri Bher Singh aged 30 years, Peon, in the Office of Garrison Engineer 860, Engineering Works Section, Jaisalmer.
2. Sultan Khan S/o Shri Nagodar Singh Khan aged 48 years, Pipe Fitter, in the Office of Garrison Engineer, 860, Engineering Works Section, Jaisalmer.

.....Applicants.

VERSUS



1. Union of India through the Secretary to the Government, Ministry of Defence, New Delhi.
Garrison Engineer, 860, Engineering Works Section, Jaisalmer.
3. Senior Accounts Officer (Pay Tech), CDA(OO), Pune.
4. Chief Engineer, Headquarters, S.Command, Pune.
5. Chief Engineer (Zone), MES, Jaipur.
6. Commander Works Engineer (Army), Jodhpur.

.....Respondents.

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CORAM :

HON'BLE MR. A.P.NAGRATH, ADMINISTRATIVE MEMBER

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Present :

Mr. Vijay Mehta, Counsel for the applicants.
Mr. Kuldeep Mathur, Adv. Brief holder for
Mr. Ravi Bhansali, Counsel for the respondents.

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O R D E RBY THE COURT :

The applicants' which include members of the Rajasthan Area MES Workers Union, were in receipt of Special Allowance w.e.f. January 1993 at the rate of Rs. 175/- per month as they were posted in the Modified Field Areas. They are civilian employees of 860 Engineering Works Section (In short 'EWS') in the MES. By an order dated 6th January, 1999 (Annex.A/1), the respondents decided not only to stop the payment of this allowance but also to make recoveries of the amount already made as a special pay for the modified field areas. The plea of the applicants is that the Government of India, has not yet taken any decision to the contrary and thus, the action of stopping payment of the special allowance and its recovery, is illegal and deserves to be quashed and set aside.

2. This Tribunal vide order dated 1st February, 1999, had stayed the recovery of the modified field area allowance already paid and that order has continued since then.

3. The respondents, in reply, have stated that these civilian employees are posted in the modified field areas and they are only entitled to modified field area concessions but are not entitled to any allowance as per the orders of the Government dated 31st January, 1995 (Annex.R/2), 17th April, 1995 (Annex.R/3) and 12th September, 1995 (Annex.R/4). This allowance had been paid under erroneous interpretation of the rules and thus, the respondents maintain that they are within their rights to make recovery of the excess payments made. A reference has also been made to an audit objection on this point wherein, it has been noted that this payment was being made without proper sanction of the Government. An undertaking was also obtained from these employees that any excess payment made as a result of incorrect modified field area allowance in the light of discrepancy noticed subsequently, will be refunded by the employee to the Government. In view of this, the respondents contend that the employees are prevented from raising any



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objection to the recovery now ordered.

4. I have perused the Government Instructions as applicable to these defence civilian employees posted in the modified field areas. In para (ii) of the letter dated 31st January, 1995 (Annex.R/2), it has been provided that defence civilians employees serving in the newly defined field areas and modified field areas will be entitled to payment of special compensatory (remote locality) allowance and other allowances as admissible to defence civilians as per the existing instructions. On 17th April, 1995, a Corrigendum to the said order was issued wherein the said para (ii) was deleted and substituted as under :-

" The Defence Civilians employees, serving in the newly defined modified Field Areas, will continue to be entitled to the Special Compensatory (Remote Locality) Allowance and other allowances as admissible to Defence Civilians, as hitherto, under existing instructions issued by this Ministry from time to time. However, in respect of Defence Civilians employed in the newly defined Field Areas, Special Compensatory (Remote Locality) Allowance and other allowances are not concurrently admissible alongwith Field Service Concessions."



As per this order, the special compensatory allowance and other allowances, are not admissible concurrently with field service concessions. It is apparent that there was a confusion prevailing in the department which was corrected only by the Corrigendum dated 17th April, 1995 (Annex.R/3). Obviously, till that date, the instructions as per the letter dated 31st January, 1995 prevailed and it was also stated in that order that those instructions would take effect from 1st April, 1993. It is a clear case where the payment of special allowance has been permitted by the department itself without any mis-representation on the part of the applicants. It also appears from the records that the matter has been remaining under confusion in different agencies in the Government. As per Annex.R/7 a case appears to have been made-out that civilian employees in the field areas even as per the Government letter

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of 2nd March, 1968, were entitled to only concessions and not allowances and a distinction has been sought to be made between the letters of the Army Headquarters and the Ministry of Defence. The fact remains, as we have observed above, there has been no mis-representation on the part of the applicants in this case. They have received the payment of special allowance as per the orders in the department. As per the settled legal position consequent to the decisions of the Apex Court in a catena of cases and as held in O.A.No. 161/1998 decided on 7th November, 2000, by the Jaipur Bench of Central Administrative Tribunal, ^{that} if an employee receives some higher pay or allowances due to no fault or mis-representation on his part, no recovery can be made of the payments already made.

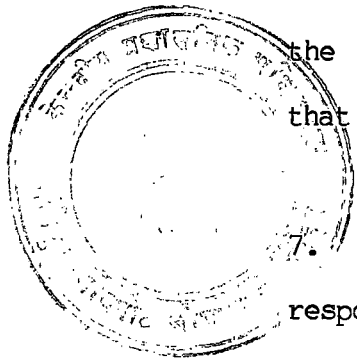


5. In Shyam Babu Verma and Ors. Vs. UOI & Ors. reported in (1994) 2 SCC 521, it was held by the Hon'ble Supreme Court that the petitioner who had received the higher scale due to no fault of his own, it shall only be just and proper not to recover any excess amount already paid to him. In Sahib Ram Vs. State of Haryana & Ors., reported in 1995 (Supp(1) SCC 18, it was held by the Hon'ble Supreme Court that upgraded pay scale as given to the appellant due to wrong construction of relevant order by the authority concerned without any misrepresentation by the employee and the Govt. was restrained from recovering the overpayment already made. In the case of Union of India and Ors. Vs. Ram Gopal Agarwal and Ors. reported in (1998) 2 SCC 589, it was held by the Hon'ble Supreme Court that the recovery would result in great hardship and the amount already paid to them in terms of the order of this Court or by the order of the Tribunals as aforesaid would not be recovered. and lastly in State of Haryana Vs. Om Prakash and Another reported in (1998) 8 SCC 733, it was directed by the Hon'ble Supreme Court that in case he had withdrawn that amount, the same should not be recovered from him.

6. In view of the legal position explained hereinabove, I am of the view that the respondents cannot recover the payment of the Special

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Allowance which has already been made to the employees. However, they are within their rights to stop the future payment of this allowance, as the same is not payable under the rules. It appears from the records that the recoveries have not yet been affected.



7. I therefore, partly allow this application and direct the respondents not to recover the amount paid to the applicants as a Special Allowance for the Modified Field Areas. However, the respondents are free to stop further payment of this allowance as per rules. There is no order as to costs.

A.P. Nagrath
(A.P.Nagrath)
Administrative Member

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R. C. [unclear] 1879
M. C. [unclear] 1879/12/1

Part II and III destroyed
in my presence on 1.8.1907
under the supervision of
section officer (1) as per
order dated 1.3.1907

Man [unclear]
Section officer (Record)