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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH.**

O. A. NO. 279 OF 2005

April 4, 2007

CORAM : HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN (JUDICIAL) &
HON'BLE MR. R.R.BHANDARI, ADMINISTRATIVE MEMBER.

Jai Singh Chouhan S/o Sh. Govind Singh Ji, aged about 42 years, R/o C/o Sh. Idan Singh, House No.74, Old police Line, Rai Ka Bagh, Jodhpur (Rajasthan), Presently working on the post of Chowkidar in the office of Assistant Director, Office of Development Commissioner (Handicrafts), Carpet Weaving Training-Cum-Service Centre, Barmer (Rajasthan), Camp 2, Rai Ka Bagh, Jodhpur (Rajasthan).

Applicant

Versus

1. Union of India through the Secretary, Ministry of Textile, Govt. of India, Udyog Bhawan, New Delhi.
2. The Regional Director (NR), Office of Development Commissioner (Handicrafts), West block No.VIII, R.K. Puram, New Delhi-110066.
3. The Assistant Director, office of Development Commissioner (Handicrafts) Carpet Weaving Training-cum-Service Centre, Barmer (Rajasthan), Camp 2, Rai Ka Bagh, Jodhpur (Rajasthan).

Respondents

Present : Mr.S.K.Malik, Advocate, for the applicant.

Mr.M.Prajapat, Advocate for Mr.Ravi Bhansali,
Advocate for the respondents.

ORDER (ORAL)
KULDIP SINGH, V.C(JUDL.)

Shri Jai Singh Chauhan has filed this O. A. under section 19 of the Administrative Tribunals Act, 1985, seeking the following relief :-

- (a) By an appropriate order, writ or direction, fixing of basic pay of the applicant at Rs.2550/- as on 27 Apr, 2001, at the minimum of pay scale of Rs.2550-3200, be declared illegal and be quashed and set-aside as if the same was never done against the applicant.
- (b) By an appropriate order, writ or directions, respondents may be directed to fix the pay of applicant, after taking into account his basic pay as Rs.2780/- as on 26 Apr 2001 instead of fixing basic pay at Rs.2550/- as on 27 Apr 2001, after taking into account the increments already earned by the applicant and thereafter accord due increments to the applicant as and when due.
- (c) & (e) x x x"

The facts in brief, as alleged by the applicant are that he was initially engaged on the post of Chowkidar on 19.5.1985. His services were terminated

[Signature]

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Present : Mr.S.K.Malik, Advocate, for the applicant.
Mr.Vinit Mathur, Advocate for the respondents.

ORDER (ORAL)
KULDIP SINGH, V.C(JUDL.)

Shri Jai Singh Chauhan has filed this O. A. under section 19 of the Administrative Tribunals Act, 1985, seeking the following relief :-

- (a) By an appropriate order, writ or direction, fixing of basic pay of the applicant at Rs.2550/- as on 27 Apr, 2001, at the minimum of pay scale of Rs.2550-3200, be declared illegal and be quashed and set-aside as if the same was never done against the applicant.
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- (c) & (e) x x x'

The facts in brief, as alleged by the applicant are that he was initially engaged on the post of Chowkidar on 19.5.1985. His services were terminated



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on 22.12.1990. The applicant challenged this order of termination before the learned Industrial Tribunal-cum-Labour Court, Jaipur which culminated into an award passed in favour of the applicant, setting aside his termination and the respondents were directed to reinstate the applicant. The applicant was reinstated in service vide order dated 23.4.2001. His services were regularized on 27.4.2001. The applicant also refers to Annexure A-1, wherein it has been specifically stated that the applicant would be treated as continuous in service w.e.f. 26.6.1996. The applicant has a grievance that after he had joined, his pay was fixed in the pay scale of Rs.2550-3200 w.e.f. 26.6.1996 to 26.4.2001 along with all the admissible allowances. His services would be treated as continuous as per Annexure A-4. Accordingly, his pay was also fixed at Rs.2550/- w.e.f. 26.6.1996. However, on regularization w.e.f. 27.4.2001, the basic pay of the applicant was reduced to Rs.2550/- in the pay scale of Rs.2550-3200. He has also annexed copy of calculation sheet and extract of service book as Annexures A-5 and A-6.



The applicant made a representation that his basic pay should not have been reduced and his past service wherein he has earned certain increments w.e.f. 26.6.1996 should also be taken into consideration for pay fixation but to no avail and as such he filed this O.A.

Respondents have filed a detailed reply contesting his case. They submit that pay of the applicant was fixed as per the rules. The applicant was regularized w.e.f. 27.4.2001 so his pay was fixed at the minimum of the basic pay at Rs.2550/- w.e.f. 27.4.2001. Respondents further submit that the judgment of this Tribunal was duly implemented and he was reinstated in service. He was to be paid salary only from 27.4.2001, the date from which he was appointed as Chowkidar on regular basis. However, the applicant was erroneously paid allowances as regular Chowkidar from 26.6.1996 to 26.4.2001 and he was over paid and this O.A. has been filed only with a view to stall the process of recovery of over payment. Thus, it is submitted that the O.A. is not maintainable. It is liable to be dismissed.

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We have heard the learned counsel for the parties and have gone through the record.

Learned counsel for the applicant has submitted that in similar circumstances, an O.A. had been filed by some employee at Principal Bench of C.A.T. New Delhi and the matter was taken to the Delhi High Court titled **Union of India & Others Vs. Shri Nathu Singh & Others**, 2006 (3) ATJ Page 370. In that case, controversy was whether the increments earned by a person during the period he worked as temporary status employee are to be counted for pay fixation or not. The Hon'ble Delhi High Court held that the increments earned by him while working in the temporary status have to be given due weightage while fixing the pay on regularization. Learned counsel has submitted that the applicant had initially joined the respondent department in 1985 and he was working on regular basis from 26.6.1996 and as per the calculation sheet of the department itself, which has been placed on record as Annexure A-5, the applicant had been earned increments during the period June, 1996 onwards so whatever the increments had been given to the applicant, are to be counted while fixing his pay on his regular appointment as Group D employee. In our view also since the department itself has given increments to the applicant from 26.6.1996 till he was regularized, he is entitled to counting of increments earned as a temporary or daily wage employee, while fixing pay on his regularization.

So, we allow the O.A. to the extent that the pay of the applicant be refixed by calculating the increments earned by him towards his pay fixation at the time of regularization. However, we leave open to the department that if some erroneous payment has been made to the applicant otherwise, they are free to take appropriate action in accordance with law. No costs.

R.R.Bhandari
(R.R.BHANDARI)
MEMBER (A)

Kuldeep Singh
(KULDIP SINGH)
VICE CHAIRMAN(JUDL.)

HC*

9/3/14
S.P.

Part II and III cases
In my presence on 03-06-14
under the supervision of
Section Officer () as per
order dated 26-03-14

Section Officer (Records)

Copy Recd.
D.S.L
11/4/14
S.R.
R.R. Bhagat
S.D.