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CENTRAL ADMINISTRATIVE TRIBUNAL,

JODHPUR BENCH

O.A.NO.285 OF 2005

6TH February, 2007

CORAM :

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

1. Bharat Kumar Pant son of Shri Anand Ballabh, aged 41 years,
2. Laxmi Narain Sharma son of Shri Ramji Lal, aged 42 years.
3. Janak Raj Sharma son of Shri Mela Ram, aged 46 years.
4. Sampat Lal son of Shri Makoda Ram, aged 44 years.
5. Jeet Mal Swami son of Shri Ganesh Das, aged 48 years.
6. Chagan Lal Sharma son of Shri Baij Nath, aged 47 years.
7. Kishan Ram son of Shri Alphu Ram, aged 47 years,
All applicants working on the post of FGM HS under Garrison Engineer (Air force), Nal, Bikaner. Address of all the applicants C/o Shri Janak Raj Sharma, G 1-6, Indira Colony, Near Shekhawati STD, Bikaner.

Applicants

By : Mr.Vijay Mehta, Advocate.

Versus

1. Union of India through The Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Commander Works Engineer (Air Force), MES, Bikaner,.
3. Garrison Engineer (Air Force) MES, Nal Bikaner.

By : Mr. Vinit Mathur, Advocate.

ORDER
(HON'BLE MR.KULDIP SINGH,VC)

The applicants have filed this O.A. pleading that while working as FGM HS Grade II, they were put to trade test for promotion to HS Grade I and were promoted as such vide order dated 31.1.2000 (Annexure A-2), which carried higher duties and responsibilities, as is apparent from order dated 7.9.2001 (Annexure A-3). The applicants gave their options for fixation of pay and they were given benefit under

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FR 22 (1)(a)(i) vide order dated 13.1.2003 (Annexure A-4). They ~~were~~ paid arrears of fixation and salary.

The applicants submit that the post of FGM HS Grade I carries higher and greater duties and responsibilities and they are required to guide their juniors i.e. FGM (SK) and to keep track upon their subordinates in carrying out duties. They are responsible for complete maintenance of installation, which duties are not required to be discharged by employees holding posts of HS II and Skilled posts. FGM HS II is required to work under the supervision of HS I, as is apparent from Annexure A-5, dated 17.12.2002.

They submit that respondent no.3, vide order dated 3.11.2003 (annexure A-6) cancelled the pay fixation orders. They have annexed copies of order dated 5.7.1999 and 26.4.2000 (Annexures A-7 and A-8) respectively as per which fixation is to be done according to FR 22 (1)(a)(1) on promotion to a post carrying duties and responsibilities of higher and greater importance. Annexure A-6 was challenged in O.A.No.272/2003 which was disposed of vide order dated 27.8.2003 (annexure A-9) with direction to respondents to treat the O.A. as a representation and pass speaking order. Now, vide order dated 13.5.2005 (Annexure A-1) the claim of the applicants has been rejected holding that posts of HS II and HS I are same and therefore, the pay of the applicants was not to be fixed and wrong fixation has rightly been withdrawn and over payment made would be recovered. Thus, the applicants have prayed for quashing the impugned orders, Annexures A-1 and A-6 with direction to the respondents to continue the applicants paying the pay and allowances in accordance with Annexure A-4.

Respondents have filed a detailed reply contesting the O.A. They submit that when the applicants were promoted, at that time orders in regard to merger of HS II and HS I were not issued as the same were under consideration and as such the pay fixation of

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applicants was done. After merger of posts, actually no pay fixation was required to be done as they were also in the same pay scale of Rs.4000-6000, therefore, the pay fixation done under FR 22 (1)(a)(2) was incorrect and erroneous. When this mistake was discovered, the impugned orders have been passed, which are liable to be upheld.

We have heard learned counsel for the parties and perused the material on the file.

Learned counsel for the applicants produced copy of an order dated 13th December, 2006 in O.A.No.311 of 2004 titled **Nathu Ram & others Vs. Union of India & Others**, delivered by a Division Bench of this Tribunal in which one of us (Hon'ble Mr.R.R.Bhandari, AM), was a member, and submitted that the controversy involved in this O.A. is fully covered by the said decision and as such this case may also be disposed of in the same terms. We have perused the same. In that case, the Bench observed that after merger of the HS I and HS II in the pay scale of Rs.4000-6000 w.e.f. 1.1.1996, the subsequent promotion of the applicants in the year 2000 itself lost its significance. Had the order of merger been issued earlier to the date of their date of promotion, the promotion could not at all been granted. In other words, after merger, may be that order of merger came to be issued subsequent to the order of promotion, no promotion as such, could be termed as effective promotion, promotional post being not-existing. There was no question of any fixation of pay under any of the rules. The counsel for applicants in that case, did not press re-fixation part of the order and as such the Bench did not examine the issue relating to the correctness or otherwise of fixation of pay on from the date of their so called promotion as HS I. The same applies to this case also, as it is statement of counsel for applicants to dispose of this O.A. in terms of the said decision.

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In so far as recovery part is concerned, the Bench after considering the decision of Chandigarh Bench of C.A.T. in **Ram Parkash Bhatti Vs. Union of India & others**, 2002 (3) ATJ, 430, held that department is entitled to refix the pay if the same is erroneously fixed earlier but no recovery can be made from the employee concerned. Thus, it was held that there is no question of any recovery on account of over payment as a result of wrong pay fixation up to 27.08.2004 which was the date taken in the case of Nathu Ram & Others (supra) in which applicants were given notice dated 27.8.2004. However, in this case no notices appears to have been given to the applicants. However, since the issue stands settled, we taken the date in this case also as 27.8.2004. Thus, it is held that no recovery is to be made on account of over payment as a result of wrong pay fixation up to 27.8.2004 as there was no mis-representation on the part of the applicants in the wrong pay fixation.

This O.A. is partly allowed. While upholding the impugned orders of re-fixation of pay, the recovery part is quashed and set aside for the period w.e.f. 1.1.2000 to 26.8.2004. If any amount has been recovered for the said period the same shall be refunded to the applicants and the impugned orders would stand modified accordingly to that extent. No costs.


(R R BHANDARI)
Administrative Member


(KULDIP SINGH)
Vice Chairman

HC*

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D. W. H. J.

2/13/14

Part II and III destroyed
in my presence 2-6-14
under the supervision of
section 26-9-14
order of
Section officer (Record)