

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No.302/2007

Date of decision: 05.12.2008

Hon'ble Mr. N.D. Raghavan, Vice Chairman,

Hon'ble Mr. Tarsem Lal, Administrative Member.

Jugal Kishore/S/o Shri Ram Kishan aged 52 years, resident of Dhobion Ka mohalla, Ganga Sahar road, Bikaner, presently working on the post of Electrician HS -I in the office of Garrison Engineer (Air Force) Bikaner, NAL, Bikaner, Rajasthan

: applicant.

Mr. S.K. Malik :

Counsel for the applicant.

Versus

1. Union of India through Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. The Director, General, Engineer in Chief's Branch, Army Headquarters, Kashmir House, DHQ Post New Delhi.
3. Chief Engineer (Air Force) HQ, WAC, Palam, Delhi Cantt.
4. Commander Works Engineer,(CWE) Air Force, MES, Bikaner Rajasthan.
5. The Garrison Engineer, (Air Force),NAL, Bikaner,(Rajasthan)

: Respondents.

Rep. By Mr. M. Godara proxy counsel for

Mrs. K.Parveen:

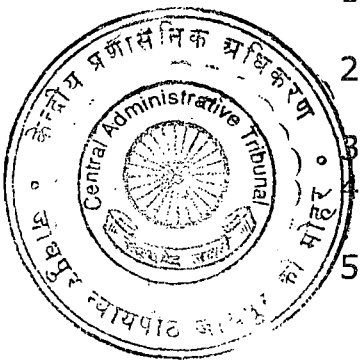
Counsel for the respondents.

ORDER

Per Mr. Tarsem Lal, Administrative Member.

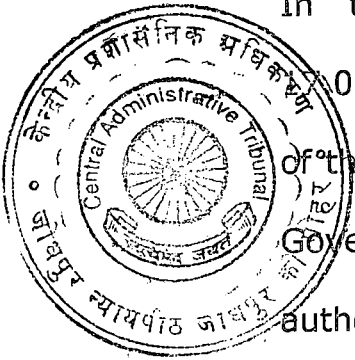
The facts of this case are that the applicant was appointed as Switch Board Attendant on 01.04.78 and was promoted as Electrician on 09.11.1982. He was granted further promotion as HS II with effect from 13.11.1986. He was further promoted as HS - I with effect from 29.12.93. Thereafter, the respondents held Review DPC and promotion of the applicant as Electrician HS II has been changed to 15.10.84 from 13.11.86 vide order dated 05.03.2004

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- 2 -

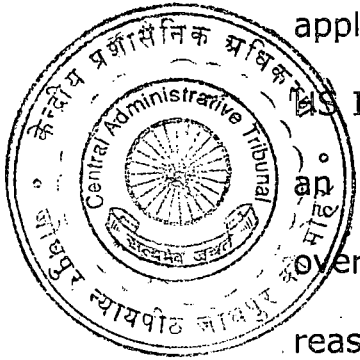
(A/5) and further promotion to Electrician HS I to 15. 10.85 instead of 29.12.93 vide order dated 12.08.2004 (A/6). As the respondents did not make payment of salary of the promoted posts, he filed O.A. No. 103/2005 before this Bench of the Tribunal. This Bench vide order dated 11.05.2007 (Annex. A/7), directed the respondents that the fixation of pay of the applicants be carried out in consonance with the rules, consequent to his promotion, within two months from 11.05.2007, and if the payment is delayed then interest at the rate of 10% per annum be paid with effect from 11.07.2007. As the respondents failed to make the payment, the applicant filed Contempt Petition No. 24/2007 before this Bench of the Tribunal. In the meanwhile, the respondents vide their letter dated 09.2007, informed the applicant that the delay in implementation of the order of this Tribunal is due to non-receipt of sanction of the Government and review of promotion ordered by competent authority. After notices in the contempt petition respondent No. 4 was called in Court personally to implement the judgment of the Tribunal before a cut off date. The respondents, in compliance thereof, made the payment to the applicant, vide their letter dated 30.10.2007 (A/10) subject to outcome of SLP pending before the Hon'ble Supreme Court. This Tribunal vide its order dated 16.11.2007 (A/11) disposed of the said Contempt Petition. The respondents challenged the orders of this Tribunal dated 11.05.2007, before the Hon'ble High Court of Rajasthan at Jodhpur in D.B. civil Writ Petition No.7163/2007. The respondents were



-3-

unable to get any relief from the Hon'ble High Court of Rajasthan in the above said Writ Petition.

2. The applicant also states, despite the order of this Tribunal, which attained finality, the respondent No. 4 reviewed the promotion order of the applicant of Electrician HS I and changed the date of promotion vide order dated 25.08.2007 (Annex. A/1). Thereafter the respondents issued part II order on 17.09.2007 (A/2) with regard to the same. Annoyed by the litigation and orders passed by this Bench of the Tribunal as well as by the Hon'ble High Court of Rajasthan at Jodhpur, the respondent No.2 has issued an order dated 15.11.2007, whereby the date of promotion of the applicant to the grade of HS II has been changed to 15.10.84 and HS I to 29.12.93 (Annex. A/3). Thereafter respondent No. 5 issued an order dated 21.11.2007 (A/4) ordering recovery of the overpayments. A perusal of Annex. A/1 and A/3 shows that no reason whatsoever has been mentioned for holding review DPC and for changing the dates of promotion of the applicant and others. The applicant further states that no notice whatsoever was given before passing the impugned orders and the respondents did not afford any opportunity before changing dates of promotion as well as reducing his pay and pay scale. By passing the impugned orders the applicant was visited with civil and evil consequences and the respondents are now bent upon to refix the salary of the applicant by placing him in the pay scale of promoted posts with effect from much later dates i.e. 15.10.84 and 29.12.93, whereas there was no



misrepresentation on the part of the applicant while granting promotion and making fixation of his pay in the higher pay scales.

3. Though no reasons have been mentioned in the impugned orders, it appears that the changes have been made to grant promotion to certain juniors mentioned in the seniority list (annex. A/8). Aggrieved by the above, the applicant has filed the present O.A and prayed for the following reliefs:

"I) By an appropriate writ, order or direction, the impugned order dated 25.08.2007, at Annex.1 PTO order dated 17.09.2007 (at Annex. A/2), the impugned order dated 15.11.2007 (at Annex. A/3) Order dated 21.11.2007 at Annex. A/4 and any other order passed by the respondents against the applicant, be declared illegal and be quashed and set aside.

ii) By an appropriate writ, order or direction, respondents may be directed to restore the promotion of applicant on the post of Electrician HS I W.E.F. 15.10.85 along with seniority and other consequential benefits.

iii) by an appropriate writ, order or direction respondents, may also be directed to refund the recovered amount, if any, along with interest at the rate of 12% per annum to the applicant.

iv) Exemplary cost be awarded on the respondents.

v) Any other relief, which is found just and proper in the facts and circumstances of the case, be passed in favour of the applicant in the interest of justice by this Hon'ble Tribunal.



4. The respondents have contested the O.A by filing a detailed reply, inter alia pleading that the earlier promotion of the applicant to the post of Electrician HS II had been changed to 15.10.84 from 15.11.86 vide order dated 05.08.2004 (A/5) and to the post of Electrician HS I had been changed to 15.10.85, from 29.12.93 vide order dated 12.08.2004 (A/6). The same were incorrect and illegal as it was done due to ambiguity in policies issued on the subject. The pay of the applicant could not be fixed in the absence of

10

sanction from the Government of India which was essential to fix the pay with retrospective effect.

5. When the case for fixation of pay was taken up with the higher authorities, the local Audit turned down the same on 22.03.2005 on the ground that neither CWE (AF) Bikaner is competent authority to order such promotion with ante dates nor there is any Government order to give such benefit to the applicant with retrospective dates. Accordingly the case was taken up with higher authorities by HQ CWE (AF) Bikaner vide letter No. C/10228/JK/6/E-I dated 25.06.2005 for obtaining sanction of the Government of India. But HQ CE(WC) Chandimandir vide order dated 03.08.2007 & Army HQ, E-in-C's Branch's letter dated 17.09.2007 returned the case for re-examination and accordingly revised promotion orders were issued.

6. The department was making all out efforts to fix the pay of the applicant and therefore took up the case with higher authorities for obtaining Government sanction. When the matter was pending consideration, the applicant had filed O.A. No. 103/2005, without waiting for the outcome from the higher authorities. This Tribunal heard the parties and decided the O.A vide its order dated 11.05.2007. The Hon'ble Tribunal directed the respondents to pay the arrears within a period of two months and if the payment is delayed, then interest @ 10% per annum be paid w.e.f. 11.07.2007 to the date of payment.



-6-

7. It is further stated in the reply that the respondents were well within their powers and there was no need to intimate the reasons for holding the review DPC to the applicant and there is no such rule to that effect. However, the reasons for holding the review DPC were conveyed to the higher authorities. It is also stated that the change of date of his seniority of HS I w.e.f. 29.12.93 instead of 15.10.85, as well as the reasons for non implementation of the order dated 11.05.2007, was communicated to the applicant.

8. It is averred in the reply that the applicant had filed C.P. No. 24/2007, without waiting for the outcome of the consideration by the higher authorities and therefore the applicant had approached this Bench not with the clean hands. He filed above said C.P. No. 24/2007 just to mislead the Tribunal. The respondents have also filed DB (C) writ Petition No. 7163/2007 challenging the order of CAT dated 11.05.2007. But the Writ Petition was dismissed. The respondents, however, made the provisional payment on 06.11.2007 subject to recovery/refund. After hearing both parties in the Contempt Petition, was disposed of.

9. It is averred that the department is fully empowered to hold review DPC at any time to rectify the shortcoming to implement the correct promotion policy in letter and spirit to avoid loss to the State and wrong financial benefit was given to the applicant on 06.11.2007 under pressure of the Contempt Petition. The order

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-7-
dated 25.08.2007 was issued after due deliberation considering all aspects in an objective manner.

10. It is submitted that the date of promotion and seniority of the applicant as Electrician HS -I W.E.F. 29.12.93 instead of 15.10.85 was recommended by the Review DPC and approved by the competent authority vide order dated 25.08.2007. In order to regularize the over payment and loss of exchequer based on the revised promotion, necessary recovery letter dated 21.11.2007 was issued in the interest of the Government.

11. The respondents have also stated that the department has every right to recover erroneous benefit extended to the applicant. In the instant case, the payment was made on 06.11.2007. As the respondents were not willing to pay wrong dues to the applicant but in order to honour the Tribunal's order dated 11.05.2007 passed in O.A. No. 103/2005, the payment was made to the applicant. But the respondents have every right to recover the undue benefit extended to the applicant and to safe guard the government's interest.

12. The respondents have stated that due to revised government policy the Review DPC was convened. In view of the above position the respondents have prayed for the dismissal of the O.A and the stay of recovery be vacated with costs.

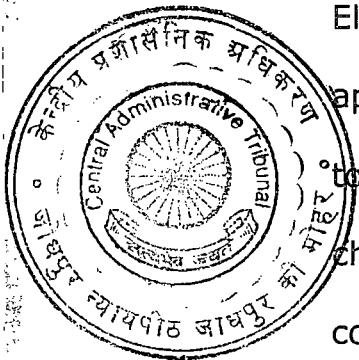


-8-

13. We have heard, Mr. S.K. Malik learned counsel for the applicant and Mr. M. Godara proxy counsel for Mrs. K Parveen, learned counsel for respondents who generally reiterated the arguments already taken in their pleadings. They also made us to travel through various documents and pleadings. They have graciously agreed that it is a covered case in O.A. No. 313/2007 decided on 24.10.2008 in case of Satyapal vs. UOI and ors.

14. We have given our thoughtful consideration to the case and perused various documents placed on record. It appears that consequent to certain representations made by some individuals through their G.Es and Trade Unions, a revised seniority of Electricians was issued. Therefore, the dates of promotion of the applicant in the grade of HS II was changed to 15.10.84 and HS I to 29.12.93. We are of the considered view that the above change of dates of promotion of the applicant will have considerable monetary effect on the applicant as he has already been paid the arrears due to him as per order dated 11.05.2007 passed in O.A. No. 103/2005.

15. However, the applicant has brought out in his O.A, that he was not given any notice before effecting the change of dates of promotion. Whereas the respondents have pleaded that the promotion given to the applicant earlier was erroneous on account of ambiguity in the policy. Therefore, the respondents have changed the dates of promotion of the applicant in the grades of HS



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II and HS I, by convening a review DPC to review the promotions made from the year 1986 onwards. The above exercise has been done by the respondents with the approval of competent authority in the Army Headquarters. The respondents have further ordered recovery of the payment already made to the individuals.

16. Considering the facts and circumstances of this case and taking into account that the change of dates of promotion would have civil consequences, the respondents are bound to follow the principles of natural justice,

17. In this regard Hon'ble Apex Court has held in case of **D.K. Yadav vs. J.M.A. Industries Ltd.** (1993 SCC (L&S) 723, as under:



"8. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the person concerned."

18. The Hon'ble Apex court in the case of **State of Orissa vs. Dr. (Miss.) Binapani Dei and others** [AIR 1967SC1269] in para 12 has observed as under:

"12.....even and administrative order which involves civil consequences, as already stated must be made consistently with the rules of natural justice"

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19. As regards the recovery of excess payment made to the applicant, the Hon'ble Supreme Court has held in the case of

Shyam Babu Verma and others vs. Union of India and others

[(1994) 2 SCC 521] at para 11 as under:

" 11. Although we have held that the petitioners were entitled only to the pay scale of Rs. 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs. 330-560 but as they have received the scale of Rs. 330-560 since 1973 due to no fault of others and that scale is being reduced in the year 1984 with effect from January 1, 1973., it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same. "

20. Similarly, in the case of **Union of India vs. K.B. Khare and others** [1994 Supp (3) SCC 502] was concerned with the same controversy. It was held as under:

" 20..... The question of law having been settled, we would only state that if any excess pension has been paid to the first respondent, than what he is legitimately entitled, that may not be recovered. However, this does not mean that if the payment of higher pension has not so far been made, the appellant is required to pay the same....."

21. It is further mentioned that in the case of **All India Postal Emp. Union, Postmen & Group D thro. Its General Secretary and ors. vs. Union of India and ors** [2005 (2) ATJ 193] the following reference was made to a Full Bench in the Principal Bench of this Tribunal:

- a. Whether the overpayment made to the applicants in pursuance of order whereby two advance increments had been granted, can recovery to that effect be made from the employees or not?
- b.

The Full Bench answered the questions in the following terms:

- (i) (a) In case the applicants have given an undertaking that on refixation of their pay and scale , if any excess amount is due and can be recovered, it can be recovered from them and
- (b) If the overpayment has been made as a result of no fraud or misrepresentation having been practiced by the applicants



- 11 -

but because of any act of the respondents, they are not entitled to recover the amount paid to the applicants.

22. Admittedly, the respondents themselves gave the applicant promotion. He has not made any mis-representation with regard to his dates of promotion.

23. In view of the above the impugned orders dated 25.08.2007 (Annex. A/1); PTO order dated 17.09.2007 (Annex A/2); 15.11.2007 (Annex. A/3) and order dated 21.11.2007 (A/4) are hereby quashed and set aside in respect of the applicant only.

24. In view of the above discussion, the respondents are restrained from making any recovery of the excess amount already paid to the applicant.

25. The O.A is allowed in the above terms.

26. No costs.

Tarsem Lal

[Tarsem Lal]
Administrative Member.
Jsv.

N D. Raghavan

[N D. Raghavan]
Vice Chairman.



Part II and III destroyed
in my presence on 19/1/12
under the supervision of
section officer () as per
order dated 19/8/2014
[Signature]
Section officer (Record)

Rec
[Signature]
S. K. Mallick
19/12
Kor
17/12