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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 304/2007

Date of Order: 20.11.2008

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER**

1. Kunj Behari S/o Shri C.M. Sharma, aged about 51 years.
2. Nathu Ram S/o Shri Surja Ram, aged about 52 years.
3. Purakhchand S/o Shri Ramu Ram, aged about 56 years.

All the applicants are resident of C/o Kunj Behari, B-171, Kanta Khaturia Colony, Shiv Bari, Bikaner (Raj.) and presently working in the office of GE (North), Bikaner on the post of HS-1.

...Applicants.

Mr. S.K. Malik, counsel for the applicants.

VERSUS

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

...Respondents.

Smt. K. Parveen, counsel for respondents.

ORDER

[Per Mr. George Paracken, Judicial Member]

The applicants have filed this Original Application aggrieved by the Annexure A/1 order dated 25.08.2007,

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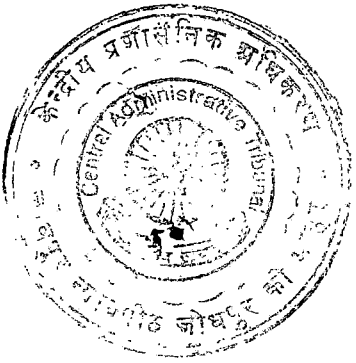


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Annexure A/2 PTO dated 27.08.2007 and Annexure A/3 order dated 15.11.2007.

2. According to the said Annexure A/1 order, by the review DPC convened vide order No. 10240/2439/EIC-II dated 22.06.2007 the existing promotions already granted to the 66 officials including applicants listed in appendix 'A' attached with the said order to the post of Electrician HS-II and Electrician HS-I have reviewed. The list also contained the revised dates of promotion as HS-II and HS-I of all those officials. The names of the Applicants appear at Sl. No. 10, 15 and 18. By the Annexure A/2 PTO No.35/2007 dated 27.08.2007, applicant No. 1, Kunj Bihari, has been promoted from Elect. (SK) to Elect. HS-II w.e.f. 28.03.1988 with notional seniority w.e.f. 15.10.1984 and further from Elect. HS-II to Elect. HS-I w.e.f. 29.12.1993, Applicant No. 2, Nathu Ram, he has been promoted from Wireman (SK) to Wireman HS-II w.e.f. 30.01.1986 with notional seniority we.f. 15.10.1984 and re-designated as Elect. HS-II w.e.f. 24.06.1987 and further promoted from Elect. HS-II to Elect. HS-I w.e.f. 01.01.1997 and the Applicant No. 3, Purakhchand, he has been promoted from SBA (SK) to SBA (HS-II) w.e.f. 11.05.1983 and re-designated as Elect. HS-II w.e.f. 24.06.1987 and further promoted from Elect. HS-II to Elect HS-I we.f. 26.03.1998. By the Annexure A/3 letter dated 15.11.2007, the respondents have ordered recovery



(3)

of excess pay and allowances already paid to the applicants on the basis of earlier promotions which have now been superseded by Annex. A/1 order dated 25th August, 2007.

3. We have heard Mr. S.K. Malik, learned counsel for the applicants as well as Mrs. K. Parveen, learned counsel for the respondents and perused the pleadings carefully.

4. The learned counsel for the applicants submitted that this case is squarely covered in all respect by the earlier order of this Bench of the Tribunal dated 24.10.2008 in the case of **Satya Pal vs. Union of India & Ors.** (OA No. 313/2007). Shri Satya Pal's name appears at Sl. No. 11 in the very same impugned Annexure A/1 order dated 25.08.2007. Learned counsel for the respondents also do not dispute the aforesaid submissions. The relevant paras of the aforesaid order of the Tribunal dated 24.10.2008 are as under:

12. 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 from 15.10.84 to 12.01.89 and HS I from 15.10.85 to 29.12.93. 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 25.04.2007 passed in O.A. No. 105/2005.

13. 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



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(A)

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 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.

14. 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.

15. 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."

16. 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"

17. 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



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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."

18. 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....."

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

20. Admittedly, the respondents themselves gave the applicant promotion. He has not made any misrepresentation with regard to his dates of promotion.



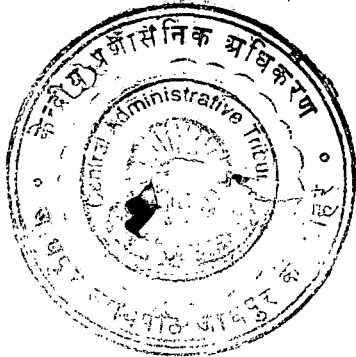
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21. In view of the above the impugned orders dated 15.11.2007 (Annex. A/1); dated 25.08.2007 (Annex A/2; 14.08.2007 (Annex. A/3) are hereby quashed and set aside in respect of the applicant only.

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

23. The O.A. is allowed in the above terms."

5. In our considered opinion, the aforesaid order of the Tribunal dated 24.10.2008 squarely applies to the instant case also. Accordingly, this O.A. is allowed. The impugned Annexure A/1 order dated 25.08.2007, Annexure A/2 PTO dated 27.08.2007 and Annexure A/3 letter dated 15.11.2007 are quashed and set aside qua the applicants. The Respondents are directed to restore the promotion of the Applicants on the post of Electrician HS-II and Electrician HS-I w.e.f. 15.10.1984 and 15.10.1985, respectively with consequential seniority and other attendant benefits. They shall also refund the amount recovered, if any, on the basis of Annex. A/3 letter dated 15.11.2007. The aforesaid directions shall be complied with within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.



Tarsem Lal
[TARSEM LAL]
ADMINISTRATIVE MEMBER

George Parackken
[GEORGE PARACKEN]
JUDICIAL MEMBER

Age
[Signature]
S. K. Mallick
Adv
5/12/08

Part II and III destroyed
in my presence on 19/12/08
under the supervision of
section officer () as per
order dated 19/12/08
[Signature]
Section officer (Record)

Ramnik
15/12/08