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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH**

**ORIGINAL APPLICATION NO. 312/2007  
JODHPUR THIS IS THE 27th DAY OF JULY, 2009**

**CORAM :**

**HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER  
HON'BLE MR. S.P. SINGH, ADMINISTRATIVE MEMBER**

Kashmiri Lal S/o Sh. Peda Ram aged 47 years, Electrician HS in the office of Garrison Engineer, MES, Abohar, R/o Gali No. 3, Varyam Nagar, Abohar District Firozpur.

**.....Applicant**

**For Applicant : Mr. Vijay Mehta, Advocate.**

**VERSUS**

- 1- The Union of India through Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
- 2- Commander Works Engineer, Air Force, Bikaner.
- 3- E-in-C's Branch, Army Headquarters, Kashmir House, Delhi.
- 4- Chief Engineer, Air Force, WAC, Palam, Delhi Cantt.
- 5- Garrison Engineer (Army), MES, Abohar.
- 6- Commander Works Engineer, MES, Sriganganagar.

**.....Respondents.**

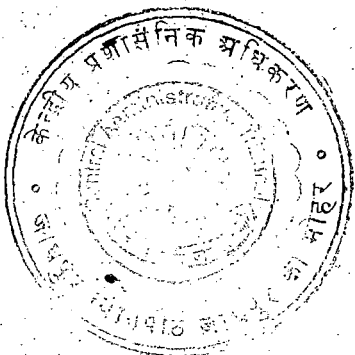
**For the Respondents : Mr. Kuldeep Mathur, Advocate.**

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**ORDER**

**[PER S.P. SINGH, ADMINISTRATIVE MEMBER]**

The applicant has filed this OA aggrieved by the Annex. A/1 dated 15.11.2007, Annex. A/2 dated 25.08.2007 and Annex. A/3 dated 14.08.2007 by which, consequent upon the review DPC, the existing promotions already granted to the applicant to the post of Electrician HS-II (Annex.A/4) have been reviewed and a fresh list of promotees as per Appendix 'A', has been issued. It has also been stated



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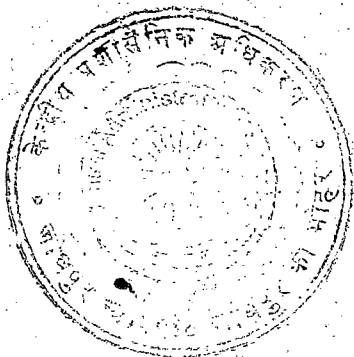
in the Annex. A/1 that the individual whose names have not been reflected in the Appendix 'A' will remain in the grades lower than Electrician HS-II. The applicant's name does not appear in it.

2- The brief facts of the case are that the applicant was promoted from the post of Electrician (SK) to that of Electrician HS- II, vide Annex. A/4 order No. 10240/1953/EIC(2) dated 15.7.2004 w.e.f. 15.10.1984 by which the grade structure in the industrial as well as non-industrial trades was ordered. Since the pay of the applicant was not fixed the applicant moved to this Tribunal by filing OA No. 106/2005 which was allowed on 24.4.2007 wherein, this Bench of the Tribunal directed as under :-

**"3. These may not be sufficient excuses, since we find that the fixation is not complete even now. We do not think any further observation is required to be passed by us in view of the submission of the respondents that it would be ensured that within the time frame agreed by them viz. three months, the fixation will be completed and appropriate benefits granted. This is recorded. The application is disposed of accordingly."**

Respondents thereafter issued Annex. A/1 order dated 15.11.2007 down grading the applicant from the post of HS-II to Skilled Grade and accordingly shown his date of seniority as Skilled on 15.10.1984 and while passing these orders no reasons were given for holding review DPC.

3- The respondents in their reply submitted that the action of the respondents was well within their jurisdiction as the applicant was not intimated the reasons for his promotion when the impugned order was issued. However, the applicant was communicated about his demotion from the post of Electrician HS-II to Electrician Skilled category vide order dated 15.11.2007 (Annex.A/1) with a direction to effect



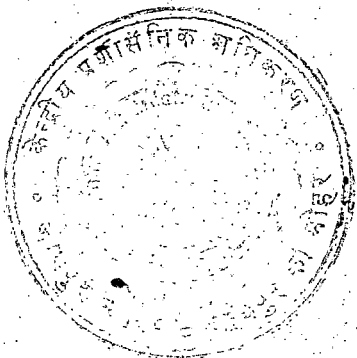
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recovery on this account in the instant case. The respondents have also contended that it was on the basis of the order of the Ernakulam Bench of this Tribunal passed in OA No. 882/2003 dated 17.05.2005, policy of the Government of India, Ministry of Defence in this regard was amended vide letter dated 27.03.2006 through the review DPC and the applicant was demoted and accordingly the promotion order dated 15.07.2004 (Annex.A/4) was issued and recovery was affected vide Government of India, Ministry of Defence letter dated 26.03.2006. Our attention has also been drawn to Annex. R/2 dated 5.11.2007 whereby an undertaking has been given by the applicant stating that he has received Rs. 1,35,260/- as provisional payment subject to the final outcome of the SLP pending on the issue.

4- We have heard Mr. Vijay Mehta, learned counsel for the applicant as well as Mr. Kuldeep Mathur, learned counsel for the respondents and perused the pleadings carefully.

5- According to the learned counsel for the applicant, the aforesaid order dated 15.07.2004 was the subject matter of OA No. 313/2007 - **Satya Pal Vs. Union of India & Ors.**, which has been decided by this Bench of the Tribunal vide order dated 24.10.2008. He has further submitted that the decision in the said O.A. squarely applicable in the present case also. 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 Electrician was issued. Therefore, the dates of promotion of the applicant in the grade of HS II was changed**



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from 15.10.1984 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 25.4.2007 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 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 1967 SC 1269] in para 12 has observed as under :

"12. ....even an 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



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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."

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 ?

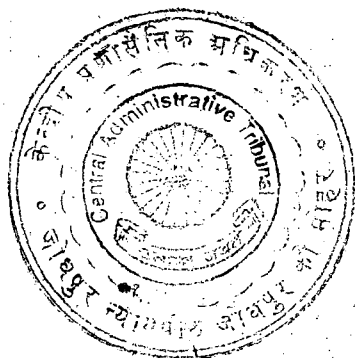
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The Full Bench answered the questions in the following terms :

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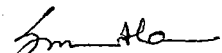
21. In view of the above, the impugned orders dated 15.11.2007 (Annex.A/1); dated 25.08.2007 (Annex.A/2) and 14.08.2007 (Annex.A/3) are hereby quashed and set aside in respect of the applicant only.

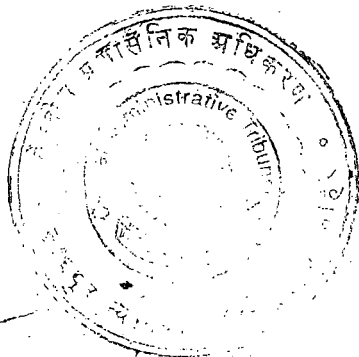
22. In view of the above discussion, the respondents are restrained from making any recovery of the excess amount already paid to the applicant.

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

6- We agree with the learned counsel for the applicant and hold that the aforesaid order of the Tribunal dated 24.10.2008 in OA No. 313/2007 (supra) squarely applies in the instant case also. Accordingly, this O.A. is allowed. The impugned orders at Annex. A/1 dated 15.11.2007, Annex. A/2 dated 25.08.2007 and Annex. A/3 dated 14.08.2007 are hereby quashed and set aside qua the applicant and pursuant to the same, the respondents are restrained from making any recovery from the applicant's pay. There shall be no order as to costs.

  
(S.P. Singh)  
Member (A)

  
(S.M.M. Alam)  
Member (J)



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Part II and III destroyed  
in my presence on 8/27/15  
under the supervision of  
section officer ( ) as per  
order dated 07/07/15

Section officer (Record)