

73

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH AT JODHPUR**

**Original Application No.472/2012  
&  
Original Application No.473/2012**

Jodhpur, this the 29<sup>th</sup> May, 2013

**CORAM**

**HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, MEMBER (J)**

**(1) OA No.472/2012**

1. Anant Ram Sharma S/o Sh. Balu Ram, aged 54 years,
2. Madan Lal S/o Sh. Raji Ram, aged 45 years,
3. Chenna Ram S/o Sh. Mani Ram, aged 47 years,
4. Shankar lal S/o Sh. Gurhu, aged 59 years
5. Tara Chand S/o Sh. Jagdish Prasad, aged 47 years,
6. Ishar Ram S/o Sh. Koorda Ram, aged 50 years,
7. Jagdish Prasad S/o Sh. Kalu Ram, aged 54 years,
8. Manoj Kumar S/o Sh. Jagdish Prasad, aged 46 years,
9. Bajrang Lal S/o Sh. Makhan Lal, aged 49 years,
10. Shyopat Ram S/o Sh. Nathu Ram aged 46 years
11. Mani Ram S/o Sh. Kashi Ram aged 58 years
12. Jasvir Singh S/o Sh. Guljar Singh aged 44 years
13. Lal Singh S/o Sh. Inder Singh aged 60 years
14. Om Prakash S/o Sh. Ram Kumar aged 58 years
15. Rajendra Kumar S/o Sh. Nihal Singh aged 56 years
16. Raghu Nath S/o Sh. Mali Ram aged 57 years
17. Ram Phal S/o Sh. Booga Ram aged 54 years
18. Ajam Ali Khan S/o Sh. Nure Khan aged 60 years
19. Teeja Devi W/o Late Sh. Gashi Ram aged 44 years
20. Om Prakash S/o Sh. Hardwari lal aged 63 years
21. Mani Ram S/o Sh. Dhanpat Ram aged 54 years
22. Jai Singh S/o Sh. Surjan Singh aged 50 years
23. Hira Ram S/o Sh. Kalu Ram aged 55 years

All applicants are working under the Garrison Engineer MES (Engineer Park) Suratgarh, District Sri Ganganagar.

.....Applicants

**(2) OA No.473/2012**

1. Jai Narayan Meena S/o Sh. Mohar Singh aged 43 years
  2. Kailash Chand S/o Sh. Balu Ram aged 54 years
  3. Karnail Singh S/o Sh. Sarban Singh aged 58 years
  4. Devi Lal S/o Sh. Manphul Ram aged 44 years
- 2

15

5. Vishnu Naik S/o Sh. Kumbha Ram aged 42 years
6. Bhaira Ram S/o Sh. Mula Ram aged 44 years
7. Roopa Ram S/o Sh. Mansha Ram aged 43 years
8. Rajendra Prasad S/o Sh. Manphul Ram aged 43 years
9. Jagjeet Singh S/o Sh. Jangeer Singh aged 44 years
10. Jumber Singh S/o Sh. Inder Singh aged 42 years
11. Balvinder Singh S/o Sh. Santwant Singh aged 42 years
12. Lalit Kumar S/o Sh. Laxmi Narayan aged 46 years
13. Jaichand S/o Sh. Mani Ram aged 59 years
14. Babu Lal S/o Sh. Mangtu Ram aged 40 years
15. Mani Ram S/o Sh. Gerdari Ram aged 58 years
16. Satyapal Yadav S/o Sh. Parbat Ram aged 46 years
17. Lakh Ram S/o Sh. Chann Ram aged 40 years
18. Jassu Singh S/o Sh. Mali Ram aged 58 years
19. Deepa Ram S/o Sh. Mani Ram aged 44 years
20. Sumer Singh S/o Sh. Deep Singh aged 54 years
21. Moda Ram S/o Sh. Dhuda Ram aged 43 years
22. Narayan Ram S/o Sh. Govind Ram aged 45 years
23. Het Ram S/o Sh. Dungar Ram aged 46 years.

All applicants are working under the Garrison Engineer MES (Engineer Park) Suratgarh, District Sri Ganganagar.

.....Applicants

(Through Advocate Mr. S.K. Malik)

Versus

1. Union of India through Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Commander Works Engineer, M.E.S (P), Bathinda (Punjab)
3. Garrison Engineer, MES (Engineer Park), Suratgarh, District Sri Ganganagar (Rajasthan).

...Respondents

(Through Advocate Smt. K. Parveen)

### **ORDER (ORAL)**

This order will govern the disposal of two OAs bearing OA No.472/2012 (Anant Ram Sharma & Ors.) and OA No.473/2012 (Jai Narayan Meena & Ors). These two OAs are being decided by the common order because the matter relates to allowance paid to the employees of the defence on account of hardship suffered in 'Operation Prakaram', and further the order of recovery passed by

2

15

the competent authority in view of the audit conducted by the concerned authorities in the Department of Defence.

2. The short facts of the case are that the applicants of both the OAs were working in the respondent department and they took part in Operation Prakram, and the Government of India had passed the order dated 06.03.2003 by which the certain field service concession to the defence civilians who were deployed in 'Operation Prakram' from 14.12.2001 to 18.03.2003 has been made. The letter dated 06.03.2003 has been annexed with both the OAs as Annexure-A/2. Subsequently, on the basis of audit objection and after obtaining the due clearance, the competent authority has passed the impugned recovery order dated 10.10.2012 (Annexure-A/1). The petitioners by way of these OAs have challenged the legality of the order at Annexure-A/1.

2. Notices were served to the respondents and vide dated 10.12.2012, 23.01.2013, 20.03.2013, and 26.04.2013 opportunities were provided to the respondents to file the reply. But they could not file the reply and in view of the fact that the several cases have been decided by this Tribunal and the same have attained the finality, therefore, the right to file the reply is closed and the matters have been heard without there being any reply on the part of the respondents.

3. Heard both the parties. Counsel for the applicant contended that in the similar matter bearing OA No.249/2011, decided on 26.11.2011, the similar recovery order passed by the competent authority have already been quashed by the Division Bench of this

Tribunal, and a detailed discussion was made regarding each and every aspect of the recovery order including the powers of Audit. Counsel for the applicant further contended that this order has attained the finality in similar matters, in which orders have been quashed by this Tribunal.

4. Per contra, counsel for the respondents vehemently defended the impugned order and contended that on the basis of audit objection, this order has been passed and any excess payment made to the applicants comes within the definition of public property and can be recovered at any movement on the basis of the audit objections. Therefore, the impugned order at Annexure-A/1 cannot be said to be illegal or suffer from any infirmity or illegality. Counsel for the respondents further contended that the order at Annexure-A/1 bears the sanction of the competent authority.

5. I have considered the rival contentions raised by both the parties. In OA No.249/2011, it has been discussed in detail that the office of the Comptroller and Auditor General of India, and the officers functioning under him, cannot make any suggestion to the Executive, as to policy choices or policy decisions to be adopted by the Union, or the State concerned, in performance of its Constitutional functions and legal duties. Secondly, whatever may be the weight of the Constitutional authority which the comments or observations of the C&AG may carry, they can flow only out of the final reports of the Audit conducted by the officers working under Comptroller and Auditor General of India relating to the accounts of the Union, or the State concerned, after the final report

X  
17

of the Comptroller and Auditor General of India has been sent to the President, and he has caused it to be laid before each House of the Parliament, in respect of the accounts of the Union of India, and in respect of the accounts of the State, after the report of the Comptroller and Auditor General, after completion of the audit of the accounts of the State, has been sent to the Governor of the State concerned, and he has caused it to be laid before the legislature of the State. Draft Audit paragraphs of the proposed audit report can have no entity or existence in law, and can carry no meaning or weightage of legal authority whatsoever, and any such draft audit paragraphs certainly cannot and do not carry the weight of Article 151 of the Constitution of India behind them.

6. It has been further held in the aforesaid OA and other similar petition that since the respondents have first taken a conscious policy decision after deliberating upon it for seven years, and have then actually disbursed the amounts more than seven years after the 'Operation Parakram' was over, they cannot now however allow to go back on that conscious decision, merely because, in the interim, they were handed over a draft audit para of the proposed Audit report of the office of the Comptroller and Auditor General of India, which draft Audit paragraph had never acquired the force or weight of the constitutional force of duties, functions and responsibilities, under Articles 149, 150 and 151 of the Constitution of India.

7. Looking to the entire facts and circumstances of the case, there is no reason to disagree with the view taken by the Division Bench of this Tribunal in OA No.249/2011, and therefore, the order

2

at Annexure-A/1, withdrawing, at the behest of the C&AG, a monetary concession already given to the applicants, and disbursed, is not only illegal, but totally unconstitutional as well. Therefore, the impugned order at Annexure-A/1 is quashed and the respondents are directed, if any, amount recovered from the applicants shall be paid back to them within a period of 6 months from the date of receipt of a copy of this order, and in case the same were not paid within the stipulated time, then the respondents have to pay the interest at the rate of 18% per annum.

8. Accordingly, both the OAs are allowed with no order as to costs.

  
**[Justice K.C. Joshi]**  
**Judicial Member**

RSS