

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

NO.OA 881 of 97

Present : Hon'ble Mr.S.Biswas, Administrative Member

Hon'ble Mr.A.Sathath Khan, Judicial Member

SUVRA BOSE

W/O Late Birendra Kumar Bose,  
working for gain as Lower Division  
Clerk, Calcutta Central Division - V,  
CPWD Calcutta and residing at Vill. &  
P.O. Paikparahat, P.S. Basirhat,  
Dist.- 24 Parganas(S).

...APPLICANT

VERSUS

1. Union of India, service throughs  
the Secretary, Ministry of Urban  
Affairs and Employment, Nirman Bhavan,  
New Delhi.
2. The Chief Engineer (EZ-I),  
CPWD Calcutta, Nizam Palace (5th  
Floor), Calcutta - 20.
3. The Supdt.Engineer,  
Calcutta Central Circle No.III,  
CPWD, Calcutta, Nizam Palace,  
Calcutta - 20.
4. The Executive Engineer,  
Calcutta Central Division No.V, CPWD  
Calcutta, Nizam Palace (3rd Floor),  
Calcutta - 20.
5. The Director General of Works,  
Central CPWD, Nirman Bhavan, New Delhi

...RESPONDENTS

For the applicant : Mr.C.S.Bag, counsel

For the respondents: Mr.M.S.Banerjee, counsel

Heard on : 25.4.03

Date of order : 01.05.2003

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O R D E R

A.Sathath Khan, J.M.

Aggrieved by the order of the respondents dated 22.8.95 withdrawing the exemption from passing Typing Test and directing recovery of excess payment from the applicant, the applicant has approached this Tribunal to quash the said order dated 22.8.95 and to direct the respondents to implement the order dated 9.12.93 of the fourth respondent granting exemption from Typing Test and granting the consequent increment and pay fixation.

2. The case of the applicant is that she was appointed as LDC on compassionate ground on 30.10.84, that the fourth respondent granted exemption from passing Typing Test and released annual increment w.e.f. 1.10.85 and allowed the consequent pay fixation w.e.f. 1.1.86 by order dated 9.12.93 in terms of the DGP&T instruction No.3, that the financial benefit is admissible w.e.f. 18.6.87 i.e. after the applicant completed 35 years of age, that by the impugned order dated 22.8.95, the Director General (Works) CPWD, New Delhi withdrew exemption granted to the applicant and directed recovery of excess financial benefits from the applicant on the ground that P&T circular is not applicable to CPWD, that the Executive Engineer by order dated 11.10.95 reduced the pay of the applicant and directed recovery of excess payment, that the applicant made a representation dated 16.8.96 to exempt her from the Typing Test and condone the recovery of excess payment, that her request was rejected by the respondents by O.M. dated 19.11.96, that the respondents should not have cancelled the exemption granted to the applicant in passing the Typing Test and should have followed the P&T circular <sup>and that</sup> ~~under~~ the impugned order for recovery of excess financial benefits is arbitrary and illegal. Under these circumstances, the applicant prays for the reliefs stated above.

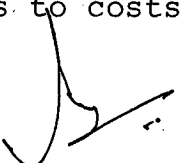
3. The respondents contended that the Executive Engineer has no authority to grant increment and the consequent fixation of pay to the applicant before the passing of the Typing Test on the basis of P&T circular dated 10.6.80 as the same is not applicable to CPWD, that the Director General (Works), CPWD, New Delhi rightly passed the order dated 22.8.95 withdrawing the exemption from passing the Typing Test and directing recovery of excess payment, that the representation of the applicant was duly considered and rejected and that there are no merits in this OA. Hence the respondents pray for dismissal of the above OA.

4. Heard the ld. counsel for the applicant and the respondents and considered all the pleadings and the relevant records of the case.

5. The short point for consideration in this case is whether the impugned order dated 22.8.95 withdrawing exemption from passing Typing Test and directing the recovery of the excess payment is valid. Admittedly the Executive Engineer passed the order dated 9.12.93 granting increment and pay fixation on the basis of the P&T circular which is not applicable to the CPWD. In this connection the ld. counsel for the applicant submitted that the Ministry of Home Affairs (DOPT) by O.M. No.14020/2/80 Est.(D) dated 15.1.81 has granted similar exemption to LDCs appointed on compassionate ground on completion of 8 years of service provided they made two genuine attempts to pass the test. However, in the present case, it is not the case of the applicant that she made two genuine attempts to pass the test. Hence we hold that the order dated 22.8.95 of the Director General(Works), CPWD, New Delhi is in order. However, it is settled law that if excess payment is wrongly made by the Department without any misrepresentation by the employee, the recovery of the excess amount cannot be made. In the present case, there is nothing to show that the applicant made any representation much less any misrepresentation claiming the increment and pay fixation but the same was

granted by the department by mistake for which the applicant cannot be blamed. Under these circumstances we hold that the respondents are not entitled to recover the excess payment from the applicant and if any amount has already been recovered from the applicant, the same shall be refunded to her forthwith.

6. In the result, the OA is partly allowed with no order as to costs.

  
MEMBER(J)

in

11/5/03

  
MEMBER(A)