

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 157 OF 1999

SHRI JUSTICE ASHOK AGARWAL.
SMT. SHANTA SHASTRY.

... CHAIRMAN
... MEMBER (A)

Date of Decision: 24.07.2001

Shri Jeronimo J.V. Velho

Applicant(s)

Shri Ambekar

Advocate for Applicants

Versus

Union of India & another

.. Respondents

Shri R.K. Shetty..

Advocate for Respondents

CORAM: HON'BLE JUSTICE ASHOK AGARWAL
HON'BLE SMT. SHANTA SHASTRY.

CHAIRMAN
MEMBER (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library ✓

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(SHANTA SHASTRY)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI:

CIRCUIT SITTING AT GOA

ORIGINAL APPLICATION NO. 157/99.

TUESDAY, THE 24TH DAY OF JULY, 2001.

CORAM : HON'BLE JUSTICE SHRI ASHOK AGARWAL, CHAIRMAN.
HON'BLE SMT. SHANTA SHASTRY, MEMBER (A).

Shri Jeronimo J.V. Velho,
son of late Shri Francisco Velho,
aged 32 years, working as
Electrician (MV), in the Station
Workshop (EME), Bambolim Camp,
Goa 403201, resident of Numxint,
P.O. Caranzaalem, Taluka Ilhas,
District North Goa.

.. Applicant.

(By Advocate Mr. Ambekar).

Vs.

1. Union of India, through
the Director General of
Electrical, Mechanical Engineers,
Master General of Ordinance Branch,
Army Headquarters,
New Delhi - 110 011.
2. The Officer Commanding
Station Workshop (EME),
Bambolim Camp,
Goa - 403 201.

.. Respondents.

(By Advocate Shri R.K. Shetty).

O R D E R (ORAL)

Hon'ble Smt. Shanta Shastry,

.. Member (A).

The applicant is a Grade 'C' tradesman and was appointed as Electrician (MV) on 1.11.1988. He was given the pay scale of Rs.1200-1800. The appointment was temporary until further orders and subject to 2 years' probation period. After completion of the probation period, he was confirmed in due course. Thereafter, the appointing authority found out that the applicant has been

given the scale of Rs. 1200-1800 erroneously and therefore informed the applicant on 10th July, 1997 about reducing his pay scale to Rs. 950-1500 with effect from 1.1.1997, which is the pay scale of Skilled Grade and recovering the excess payment from 1.11.1988. The applicant gave a representation against ^{it} on 16.7.1997. Thereafter, based on a judgment of the Chandigarh Bench in OA No. 635/JK, 630/JK, 380/JK of 1987 in the case of Chuni Lal & Others Vs. UOI & Others reported in ATR 1988 (2) CAT 46 the respondents withdrew the order of reduction of pay scale of the applicant as well as reversion to the Skilled Grade. An order was issued again on 01.12.1998 stating that the pay scale of Rs. 1200-2000 has been granted erroneously to the applicant and therefore, once again they reduced the pay scale of the applicant and brought him down to the scale of Rs. 950-1500. By a further order dated 5.12.98 he was given ten days time. The applicant once again made a representation on 08.12.98 but the same was rejected. He, therefore, approached this Tribunal once again in OA No. 1072/98 and the Tribunal directed the respondents on 23.12.98 to pass a speaking order after considering the representation dated 08.12.1998 from the applicant. The reduction to the lower scale and recovery of the excess payment made since appointment of the applicant on 1.11.1988 were stayed by this Tribunal in the meantime. Thereafter the respondents passed a speaking order in compliance with the directions of this Tribunal on 15th January,

1999 rejecting the representation of the applicant. A further formal order was issued on 15.2.1999 reducing the applicant's pay to Rs.950-1500 from Rs.1200-1800 and stating that the excess payment made since 1.11.1988 will be recovered from his pay and allowances after making necessary calculations. Aggrieved by the same, the applicant has once again approached this Tribunal.

2. The contention of the applicant is that it is not correct to say that his pay scale was fixed erroneously. The Govt. had set up an Expert Classification Committee (ECC for short) in pursuance of the recommendations of the 3rd Pay Commission to classify the different trades. On receipt of the recommendation of the Expert Classification Committee as well as the anomalies committee, a Presidential sanction order was issued on 11.5.1983. As per this Presidential order, the applicant's trade Electrician (MV) was granted the revised pay scale of Rs.330-480 i.e. equivalent to Rs.1200-1800 (Annexure-I in the letter). Thereafter, a further circular was issued by the Govt. of India by letter dated 16.11.1984 providing that all future Tradesmen will be inducted in the skilled level i.e. Rs.950-1500 and not Rs.1200-2000 in the which is the scale of Electrician (MV) Grade-II, a promotional post. According to this, the skilled grade was shown in the pay scale of Rs.950-1500. Again, in keeping with this letter, recruitment rules for various posts of Tradesmen were changed and SRO.1 of 1988 was issued on 1.1.1988. According to the new recruitment rules no Tradesman can be inducted directly

in to the higher Grade-II. One had to be inducted first at the level of 'skilled grade' only.

3. The applicant's contention is that the recruitment rules have not been framed under Article 309 of the Constitution, they are only administrative instructions. The Presidential sanction issued vide letter dated 11.5.1983 stands and therefore, the applicant was rightly shown as having been appointed in the scale of Rs. 1200-1800. The learned counsel for the applicant submits that this Presidential sanction has been held valid and needs to be followed. The applicant has referred to ~~in~~ the case of 140 Tradesmen at the Kirkee Workshop, Pune. These people were also appointed directly in the scale of Rs. 1200-1800 and in their case, no reduction in the pay scale was effected though they were similarly placed to the applicant. These Tradesmen also had approached the Tribunal and in pursuance of the direction of the Tribunal, their pay scale was ratified by order dated 25.6.1996. Amongst 140 Tradesmen, 79 were Electricians (MV). According to the applicant, his case also should have been treated on par with those 140 Tradesmen.

4. The applicant also cited the case of 2 other Tradesmen similarly placed to the applicant, in whose case, the retention of the pay scale of Rs. 1200-1800 has been allowed. In their case, their appointment was subsequent to the recruitment rules of January, 1988. The learned counsel for the applicant, therefore, maintains that there was no infirmity in the order of the appointment of the

applicant dated 1.11.1988 and therefore, the impugned orders reducing the applicant's pay scale to Rs.950-1500 and directing the recovery of the excess payment made as a result of the higher scale from 1.11.1988 should be quashed and set aside.

5. The applicant is relying on the following judgments wherein it was held that a direct recruit to a post cannot be reverted to a post lower than that. This was in the context of a penalty order.

(1) Nyadar Singh Vs. UOI & Ors - 1988 SCC (L&S) 934

(2) Hussain Sasan Saheb Kaladgi Vs. State of Maharashtra - 1988 SCC (L&S) 932.

He is also drawing support from the judgments in Bhagwan Shukla Vs. UOI & Ors - 1994 SCC (L&S) 1320 and Sahibram Vs. State of Haryana & Others 1995 SCC (1) 18. The learned & counsel for the applicant further submits that the applicant has also passed the test even for Skilled Grade-I post.

6. The learned counsel for the respondents, however, submits that the action of the respondents is very much in order as they had received a complaint about the granting of the wrong pay scale to the applicant and they had to look into the matter and they found that the applicant had been granted the pay scale of Rs.1200-1800, which was against the recruitment rules. The applicant was appointed in November, 1988. The applicant's case has to be governed by these recruitment rules. ^{at 1.1.1988} The respondents also claim that these recruitment rules have the sanctity of the recruitment rules framed under Article 309 of the Constitution and therefore, they are binding. As far as

the case of 140 Tradesmen is concerned these people had been appointed prior to the coming into force of the recruitment rules from 1.1.1988 i.e. they were appointed between 1985 and 1987. Therefore, the applicant cannot be said to be on par with the 140 Tradesmen in whose case the pay scale of Rs.1200-1800 was allowed. In regard to two other Tradesmen referred to by the learned counsel for the applicant, the respondents are silent in the matter. The respondents maintained that they have acted strictly according to the recruitment rules, it was a sheer mistake on the part of the concerned authority who have granted the scale of Rs.1200-1800 that is a promotional scale and is to be granted only to skilled people who have put in three years of service as well as who have passed the trade test and therefore, the respondents are justified in rectifying their mistake, though at a belated stage.

7. We have given careful consideration¹ to the rival contentions and have noted the developments in the matter. In our considered view, it was not proper to reduce the pay scale of the applicant, who was specifically appointed to that scale that too after a long lapse of period^{of} about 9 years. That apart it is to be seen from the appointment order of the applicant that there was no description attached to the title of the post. There was only one category of Electrician (MV). No three grade structure i.e. Grade-II and Grade -I was mentioned in his appointment order. It might be a mistake according to the

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respondents, but all the same, the respondents have slept over the matter. In our considered view, therefore, so far as the excess payment made to the app applicant in the higher pay scale is concerned, they cannot recover the same at this belated stage after a lapse of 9½ to 10½ years. The recovery has to be waived. We are supported in this regard by various judgements of the Supreme Court as already cited by the applicant as follows:-

1. Bhagwan Shukla Vs. UOI & Ors - 1994 SCC (L&S) 1320
2. Sahib Ram Vs. State of Haryana & Ors - 1995 SCC (1) 18
3. Shambabu Vs. Union of India.

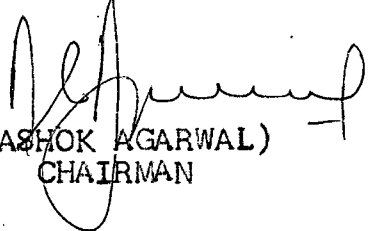
In all these judgments, it has been held that order of reduction passed without affording opportunity is held to be violative of principles of natural justice and recovery ordered after a lapse of a long period for no fault of the applicant is not sustainable. Following these judgments, we are of the considered view that the recovery order needs to be set aside and recovery deserves to be waived as the mistake was that of the respondents and not of the applicant. Accordingly ^{we set aside the same. b} we No recovery

of the excess amount paid in the higher scale from 01.11.1988 till date of receipt of a copy of this order shall be made by the respondents.

8. As regards reduction in the pay scale is concerned, in our considered view, the respondents should consider the entitlement of the applicant in view of his having passed the requisite trade test and orders granting him appropriate pay scale on that basis should be passed, under intimation to the applicant. We direct accordingly.

9. This exercise shall be carried out within a period of three months from the date of receipt of copy of this order. Appropriate pay scale may also be granted from the date of his entitlement depending upon the availability of vacancy. OA is, thus, partly allowed. We do not pass any order as to costs.


(SHANTA SHASTRY)
MEMBER (A)


(ASHOK AGARWAL)
CHAIRMAN

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