

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:803/2000
DATED THE 27TH DAY OF AUG,2001**

**CORAM:SHRI JUSTICE ASHOK C AGARWAL, CHAIRMAN
SMT. SHANTA SHASTRY, MEMBER(A)**

A.S.Ghole,
Cashier,
Office of Superintending Engineer,
(Coord Circle),
S.W.Zone, C.P.W.D.,
New C.G.O.Building,
M.K.Road, Bombay - 400 020.

... Applicant

By Advocate Shri S.P.Saxena

V/s.

1. The Union of India,
Through The Secretary,
Ministry of works & Housing,
C.P.W.D., Nirman Bhavan,
New Delhi - 110 011.

2. Superintending Engineer,
(Coord) W.R.,
Coordination Circle (W.R.),
C.P.W.D., Mumbai - 400 020.

... Respondents

By Advocate Shri V.S.Masurkar

(ORAL)(ORDER)

Per Smt.Shanta Shastri, Member(A)

The applicant in this case has challenged the impugned order dated 26/9/2000 whereby the in situ promotion to the applicant to the higher scale of Rs.1200-2030 w.e.f. 1/4/92 has been withdrawn and has now been granted w.e.f. 28/1/97. The pay of the applicant has been refixed.

2. The applicant was initially appointed as LDC in the Office of Regional Settlement Commissioner(s), Ballard Estate, was found surplus and was later on transferred/absorbed in the office of Superintending Engineer (Coord) Bombay Central Circle No.II, CPWD, Bombay as LDC w.e.f. 16/11/71. The applicant was

...2.

given the in situ promotion w.e.f. 1/4/92 in terms of OM dated 13/9/91 of Ministry of Finance, Department of Expenditure and the applicant was placed in the higher scale of pay of Rs.1200-2040 w.e.f. 1/4/92 and his basic pay was fixed at Rs.1525/-p.m. in the higher scale. The applicant also got annual increments. Thereafter, in the recommendation of the Vth Central Pay Commission, again the erst-while payscale of LDC of Rs.1200-2040 was changed to Rs.4000-100-6000 w.e.f. 1/1/96. The pay of the applicant was therefore refixed in the replacement scale. Now in the year 2000, the respondents have issued the impugned order withdrawing the in situ promotion granted earlier on the ground that the applicant was not entitled to in situ promotion as on 1/4/92 as seniors to the applicant had not been promoted. The respondents are trying to rectify the mistake committed earlier. The respondents had ordered recovery of the over payment made to the applicant on account of the in situ promotion from 1/4/92. The applicant has therefore prayed to quash and set aside the impugned orders dated 6/9/2000 and 13/9/2000 and to hold and declare that he is entitled to grant of in situ promotion from 1/4/92:

3. It is the contention of the applicant that he was regularly appointed as LDC and his pay was properly fixed as per the scale of Rs.950-1500 w.e.f. 1/1/86. Applicant was eligible for in situ promotion and was rightly given the same vide office order dated 22/6/94. It is not the fault of the applicant. There was no mis representation by the applicant. It was entirely done by the respondents themselves. Further, the applicant was never informed at any time when his pay was fixed

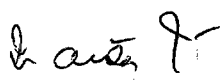
in the scale of 1200-2040 , that recovery would be made from him at a later date.

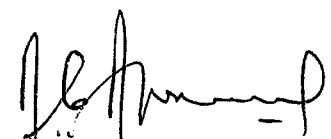
4. The respondents however have held that since the applicant was given in situ promotion w.e.f. 1/4/92 erroneously, the same needed to be rectified. It is not that the applicant is denied the in situ promotion, only the date has been postponed and therefore the respondents have a right to recover the over payment made in the higher scale of pay.

5. We have considered the pleadings and have heard the learned counsel for both sides. It is very clear that it was no fault of the applicant that he was granted in situ promotion earlier than his seniors. He is not responsible for the error on the part of the respondents. Further, this mistake has been discovered by the respondents after a lapse of 8 long years. In our considered view, the action of the respondents in ordering the recovery of excess amount paid after a lapse of so many years is not acceptable. In fact, another bench of this Tribunal has decided a similar case in OA No.806/2000. The facts are identical and the decision given therein was to waive the recovery of the excess amount made to the applicant therein. This judgement applies squarely to the present case also.

6. We therefore set aside the impugned orders dated 6/9/2000 abd 13/9/2000 and waive the recovery of the excess payments made to the applicant in the higher scale. The respondents shall not therefore recover the excess amount.

7. In the result, the OA is allowed. No costs.


(SMT. SHANTA SHASTRY)
MEMBER(A)


(ASHOK C AGARWAL)
CHAIRMAN