

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 806/2000

MONDAY the 2nd day of JULY 2001

CORAM: Hon'ble Shri Justice B. Dikshit, Vice Chairman

Hon'ble Smt. Shanta Shastry, Member(A)

Mrs. Supriya Suhas Dhairwan  
Residing at B -15, 4th floor  
Triputi State Bank Society  
Seasor Road, Amboli, Andheri(W)  
Bombay.

...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
2. The Deputy Director (T)  
Directorate General of Works  
C.P.W.D. Nirman Bhavan,  
New Delhi.
3. Superintending Engineer (Elect.)  
Mumbai Central Electrical Circle  
C.P.W.D. New Marine Lines  
Mumbai.
4. The Executive Engineer(Elect.)  
Mumbai Central Division V.  
C.P.W.D. Mumbai.

...Respondents.

By Advocate Shri V.S. Masurkar

ORDER (ORAL)

{Per Smt. Shanta Shastry, Member(A)}

The applicant who was initially appointed as LDC in the office of the Regional Settlement Commissioner, Bombay, in 1965 was declared surplus in 1971 and thereafter was posted and transferred to C.P.W.D. Bombay in the same capacity with effect from 8.11.1971. The applicant was granted in situ promotion with

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effect from 1.4.1992 and was placed in the scale of Rs. 1200 2040 in terms of O.M. dated 13.9.1991 of the Ministry of Finance. The applicant was put in the higher scale of pay of Rs. 1200 - 2040 fixing her pay at Rs. 1540/- p.m. Thereafter all of a sudden the respondents found that the applicant had wrongly been given in situ promotion as applicant's senior had not been promoted. Therefore the respondents by letter dated 13.9.2000 ordered recovery of the excess amount paid to the applicant from the date of the in situ promotion by fixing suitable instalments. Her in situ promotion from 1.4.1992 was cancelled. The applicant made a representation for waiving the recovery of excess amount paid. The same was rejected on 6.9.2000. The applicant has therefore sought the quashing and setting aside of the impugned orders. The applicant also has prayed to declare that she is entitled to grant of in situ promotion.

2. The learned counsel for the applicant while arguing states that the applicant is now limiting her relief to only waiver of the recovery of excess amount. The learned counsel for the applicant relies upon the judgement in Shyam Babu Verma and others V/s Union of India and others (1994) 2 SCC 521 and prays that the ratio applies in this case also and therefore no recovery should be ordered in the matter. The learned counsel for the applicant has also relied on the judgement in Sahib Ram V/s State of Haryana and others 1995 Supp (1) SCC 18 in this connection.

3. The respondents have tried to justify their action on the ground that the applicant was not due for in situ promotion as on 1.4.1992 but was due only from the date the last senior person to her was promoted i.e. on 28.7.1997 only. The error needs to be corrected. Hence recovery is proper.

4. It is thus clear that it was no fault of the applicant that she was granted in situ promotion earlier than to her senior. She cannot therefore be held responsible for the mistake of the respondents. Further the respondents have discovered this mistake after a lapse of eight long years. In our considered view the action of the respondents in ordering recovery<sup>h</sup> of excess amount paid after a lapse of so many years is not acceptable. In view of the ratio laid down in the case of Shyam Bahu (Supra) we quash and set aside the impugned orders dated 13.9.2000 and 6.9.2000. The respondents shall not recover the excess payment made to the applicant. The interim relief granted is made absolute.

5. The OA is allowed to this extent. No costs.

*Shanta Shastri*  
(Shanta Shastri)  
Member(A)

*B. Dikshit*  
(B. Dikshit)  
Vice Chairman

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