

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Dated:- 23 JUN 1994

APPLICATION NUMBER: 503 of 1993.

APPLICANTS:

Sri.R.Natesan
1.

RESPONDENTS:

v/s. Commanding Works Engineer, Military Engineering,
Hebbal, Bangalore and Other.

1. Sri.S.G.Bhat, Advocate,
Srigiri 166 Post Office Road,
M.C.R.Extension, Vijayanagar,
Bangalore-560 040.
2. The Executive Engineer,
Garrison Engineer Air Force,
Military Engineering Service,
Bangalore.
3. Sri.G.Shanthappa, Addl.CGSC,
High Court Bldg, Bangalore-1.

Subject:- Forwarding of copies of the Orders passed by the
Central administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/, passed by this Tribunal in the above
mentioned application(s) on 08-06-1994.

gm*

Se Shanthappa
22/6
for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

By
Issued
On

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A. No.503/93

WEDNESDAY THIS THE EIGHTH DAY OF JUNE 1994

Shri V. Ramakrishnan ... Member [A]

Shri A.N. Vujjanaradhya ... Member [J]

R. Nateshan,
S/o late A.S. Ramaswami Shastri,
Aged 49 years,
Electrician [SK],
Office of Garrison Engineer,
Headquarters,
Training Campus,
Military Engineering Service,
Air Force, Hebbal,
Bangalore-560 006.

... Applicant

[By Advocate Shri S.G. Bhat]

v.

1. Commanding Works Engineer,
Military Engineering,
Air Force Training Command,
Hebbal, Bangalore-40 56
2. Garrison Engineer,
Military Engineering Service,
Indian Air Force,
Bangalore.

... Respondents

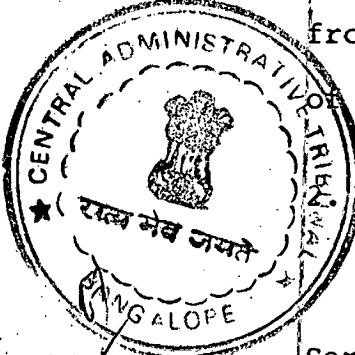
[By Advocate Shri G.Shanthappa, Standing Counsel]

O R D E R

Shri V. Ramakrishnan, Member [A]:

1. The applicant in this case is aggrieved by the fact that the department has by its order dated 16.3.93 brought him down to a lower pay scale for the period from 16.10.81 to 31.7.1985 which may lead to recovery of a substantial amount from his pay.
2. The brief facts of the case are as follows:

The applicant was appointed in Military Engineering Service ['MES' for short] of Air Force ['AF' for short]



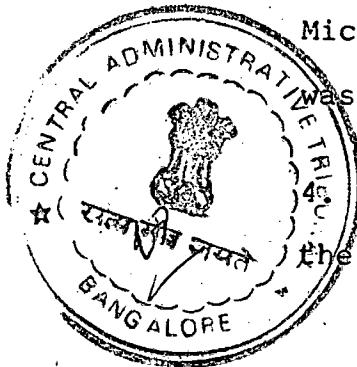
as Switch Board Attendant ['SBA' for short] by a order dated 19.10.1967. The department had been going into the question of upgradation of the posts of Wireman and SBA in the MES and has issued an order dated 11.5.1983 and certain clarifications thereon by their letter dated 5.5.1987. These letters are attached to reply statement as Annexure R-1 and R-2 respectively. The effect of these orders is that in order to remove stagnation at these levels, the pay scale of certain categories like Skilled, Highly Skilled Grade II [HS II] and Highly Skilled Grade I [HS I] had been upgraded fixing a certain percentage of the number of posts which would qualify for such upgradation with effect from 16.10.1981. On account of these orders some persons who were getting the scale of Rs.260-400 [as the applicant was then getting] were given the upgraded scale of Rs.330-480. The department after following the normal procedure found the applicant fit for being given the higher scale with effect from 16.10.1981. A copy of the order to this effect dated 13.8.1987 is at Annexure A-3. On 22.5.1992 the applicant was given a show cause notice stating that there was a mistake committed earlier and one Michael who is admittedly senior to the applicant at the level of SBA had to be accommodated in the upgraded scale and consequently the applicant should be reverted to the lower scale of pay as SBA. The applicant gave a representation but the department by its order dated 16.3.1993 [Annexure A-5] informed the applicant that he would be entitled to the higher

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scale only with effect from 1.8.1985 and that the same would not be available to him for the period from 16.10.1981 to 31.7.1985. This was for the reason that Michael who is senior to him at the level of SBA ^{has} was to be given the upgraded scale for the period from 16.10.1981 to 31.7.1985 as Shri Michael retired only on 31.7.1985 and was in service for the period from 16.10.1981 to 31.7.1985. The applicant is aggrieved by this order and he is before us seeking to quash the letter dated 16.3.1993 as at Annexure A-5 as also the communication dated 29.3.1993 as at Annexure A-6 as his representation dated 1.4.1993 as at Annexure A-7 did not bear any fruit. The applicant has also prayed that the respondents should be asked to forbear from recovering any amount paid to him as a result of his being given the upgraded scale as per the earlier order ~~not to reduce his salary~~.

3. In his application the applicant has urged that the initial upgradation given to him was in conformity with the directions of the Ministry and that the review of the earlier decision was based on an erroneous assumption that if Michael had to be given upgradation the applicant has to be reverted. He does not dispute the fact that Michael is senior to him and that Shri Michael would be entitled to the upgradation if he was fit till the date he retired.

In their reply statement the department had taken the view that it had committed a mistake in 1986.



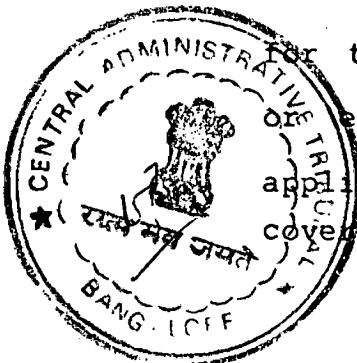
67 The Departmental Promotion Committee ['DPC' for short] which had met ~~on 13.8.1986~~ had omitted to consider the case of Michael because Shri Michael had retired on 31.7.1985. As the Ministry's orders had to be operated retrospectively with effect from 16.10.1981 Shri Michael was entitled to be considered for upgradation for the period from 16.10.1981 to 31.7.1985 when he actually retired. Accordingly a review DPC was held which found Shri Michael fit. In order to accommodate Shri Michael the department was left with no alternative but to revert the applicant for the period from 16.10.1981 to 31.7.1985. The department further contends that their action in 1993 to recover from the applicant what was alleged to have been paid in excess for the period from 16.10.1981 to 31.7.1985 is in order and it does not suffer from any infirmity.

5. We have heard Shri S.G. Bhat for the applicant and Shri G. Shanthappa for the department. As there was some controversy regarding the number of posts available for upgradation, we had asked the department to indicate clearly to us as to how many posts could have been upgraded on the basis of the Ministry's letter as at Annexures R-1 and R-2 which had laid down certain per centage. We also had enquired whether for the purpose of calculating the posts to be upgraded on the basis of per centage, the SBA had to be taken as a separate category or this has to be clubbed together with other categories. This position was not clear from the reply statement. Also the Ministry's clarification as at Annexures R-2 particularly para 5 of

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the note on fitment of industrial personnel and the statement relating to anomalies arising out of fitment [S.No.1 of the statement relating to Wiremen and SBA] could give an impression that there had to be a combined seniority list for SBA and Wireman. We further enquired of the department that in case there has to be a combined seniority list whether the applicant was the juniormost among the persons given the upgradation.

6. While we took up the matter again today the department has not been able to state categorically the factual position in this regard. At one time we were informed that there is a common seniority list for SBA and Wiremen. But if such is the position the department has not been able to tell us whether the applicant was the juniormost among the persons given the upgraded scale in the category of SBA and Wiremen. After hearing this application we are of the view that not much purpose would be served by giving further time to the department to clarify the matter as the department had not been able to do so despite several opportunities and they seem to be quite vague. Besides, we are also not convinced that the action of the department in issuing an order in 1993 seeking to recover certain amounts which were paid in 1986 for the period from 16.10.1981 to 31.7.1985 is just & equitable. Shri Shanthappa contended that the applicant had not produced any document ordering recovery of excess payment. When we enquired of the



learned Standing Counsel whether the department's decision is only for bringing down the applicant to the lower scale for the period from 16.10.1981 to 31.7.1985 and not for recovering the excess payment, he was not able to throw much light. But, however, he submitted that the applicant is liable for refund of what has been paid to him in excess for the relevant period.

7. In the facts and circumstances of the case we hold that the action of the department to bring down the scale of the applicant and to recover the alleged excess payment for the period from 16.10.1981 to 31.7.1985 at this belated stage is unjustified. We accordingly quash the order at Annexures A-5 and A-6 in so far as the applicant is concerned and also issued a direction that the department should not make any such recovery. So far as Shri Michael is concerned as he was admittedly senior to the applicant and he has been found fit by the authorities, it would not be just to deny what is due to him and as such Shri Michael will be entitled to get the upgraded scale and consequential benefits. If necessary this should be done by creating a supernumerary post for the period from 16.10.1981 to 31.7.1985. With the above direction the matter is finally disposed of with no order as to costs.

S. Shashank
SECTION OFFICER 28/6
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

bsv

A.N. 28/6/85
S/6/94
MEMBER [J]

Sd.
V.R. 28/6/85
MEMBER [A]