

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 962 of 1997.

Dated this _____ the 21st day of November, 2000.

P. K. Arvindakshan & 11 Others, Applicant.

Shri S. P. Saxena, Advocate for the
applicants.

VERSUS

Union of India & Others, Respondents.

Shri R. K. Shetty, Advocate for
Respondents.

CORAM : Hon'ble Shri S. L. Jain, Member (J).

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

(i) To be referred to the Reporter or not ?

(ii) Whether it needs to be circulated to other Benches
of the Tribunal ?

(iii) Library. yes

NO

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(Smt. SHANTA SHAstry)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 962 of 1997.

Dated this 22nd the day of November, 2000.

CORAM : Hon'ble Shri S. L. Jain, Member (J).

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

1. P. K. Arvindakshan.
2. J. N. Mhaske.
3. R. K. Madhave.
4. B. S. Bhamdhere.
5. B. V. Jangam.
6. V. S. Adhav.
7. B. C. Gaikwad.
8. D. H. Gadekar.
9. N. S. Errum.
10. R. J. Rathod.
11. V. M. Bodhak.
12. S. N. Jadhav.

... Applicants.

(All the applicants are employed as Electrician Highly Skilled Grade-II in the office of Garrison Engineer, Khadakwasla, PUNE - 411 023.)

(By Advocate Shri S. P. Saxena)

VERSUS

1. The Union of India,
Through the Secretary,
Ministry of Defence,
D.H.Q., P.O.,
New Delhi - 110 011.
2. The Chief Engineer,
Souther Command,
Pune - 411 001.
3. The Chief Engineer,
Pune Zone,
Pune - 411 001.
4. The Commander Works Engineer,
Gen. Carriappa Marg,
PUNE - 411 001.

5. *The Garrison Engineer,
Khadakwasla,
PUNE - 411 023.*

... *Respondents.*

(By Advocate Shri R. K. Shetty)

O R D E R

PER : Smt. Shanta Shastry, Member (A).

The applicants are industrial workers working as Electricians Highly Skilled Grade-II under the Garrison Engineer, Khadakwasla, Pune. They are civilian employees appointed between 1967-1982. They were promoted to the posts of Electricians (Skilled) on different dates. They were further promoted to the post of Electricians (Highly Skilled) Grade-II w.e.f. 17.09.1991. Thereafter, orders were issued by the Government of India, Ministry of Defence on 24.06.1987 directing that the promotion to the post of Electrician (Highly Skilled) Grade-II was to be pre-dated and made effective from 24.06.1987. Accordingly, the promotion of the applicants was ante-dated from 24.06.1987. Their pay was fixed afresh and they were paid arrears of pay. Suddenly, the respondents have ordered recovery of the arrears paid to the applicants. Fresh orders were issued by Respondent No. 5 on 23.07.1997. By this order, the date of giving financial benefit was varied to the disadvantage of the applicants without any prior notice. Respondent No. 5 ordered Respondent No. 4 to effect recoveries of the arrears. When the applicant no. 12 went to collect his salary for September, 1997, he noticed a deduction of Rs. 1,000/- from his salary. The other applicants apprehending similar recovery have approached this Tribunal. Interim stay of recovery was granted.

2. The respondents submit that in the order of 24.06.1987 by which the promotion of the applicants was ante-dated, there was

no provision to give arrears of refixation of pay. It was only a notional promotion. Therefore, the arrears of pay were wrongly given to the applicants. Moneys paid wrongly are liable to be recovered. It is stated that the promotions of the applicants were ante-dated w.e.f. 24.06.1987 instead of from 17.09.1991 vide letter dated 17.10.1994 in accordance with E-in-C's Br. Army Head Quarters letters dated 13.12.1991 circulated under C.E. Pune Zone letter dated 15.01.1992 wherein it is mentioned that the individual is granted benefit of notional seniority as admissible under provision of C.P.R.O. 73/73. The G.E.(N) Pune correctly published the PTO in respect of two persons belonging to that office by mentioning the word 'notionally' but the GE (S) Pune, failed to mention the same in the PTO dated 07.11.1994. So also the G.E. (Khadakwasla) did not mention the word 'notionally' in respect of the P.T.Os. of the affected individuals.

3. It is the contention of the respondents that the applicants were not entitled to the arrears. While paying the arrears, an undertaking was obtained from the concerned individuals that they would refund the overpayment, if any, noticed at a later stage by the office, which is kept on record of the concerned authority. The error came to light when persons belonging to G.E. (North) Pune, represented on 09.03.1996 claiming arrears as given to others. The matter was taken up with C.E., Pune Zone, for clarification on 27.03.1996. It was clarified by the C.E.(South) Pune Zone on 18.04.1996 that financial effect is given where the orders specify and not otherwise. On receipt of the clarification, the concerned G.Es.

were instructed to amend the PTOS. and recover the excess amount paid as arrears from the affected individuals. Accordingly, the first instalment of Rs. 500/- from each of the affected applicants has been recovered from their pay and allowances after giving them advance information. The interim relief order was received only on 08.11.1997.

4. The applicants urge that the orders of 24.06.1987 did not envisage notional promotion. They were not informed that payment of arrears was made subject to recovery of excess payment, if any. Natural justice demands that proper prior notice is given before ordering such recovery. It is stated by the applicants that they have not received any communication from the respondents intimating the exact amount contemplated to be recovered from them individually. They have further contended that the fitment of grade in three grade structure was issued on 11.05.1983. The Ministry of Defence took more than four years to identify the trades and only on the basis of codification letter dated 24.06.1987 the applicants were identified as Electrician with effect from 1994. Due to this delay, they were deprived of the benefits accrued to them from 11.05.1983. Instead they were fitted in the three grade structure only from 24.06.1987. The benefit was given to some individuals without passing the trade test as a one time relaxation from 15.10.1984. They got the arrears of pay also. It is not fair to deny the applicants the arrears of pay. It is also argued that the concept of 'notional' has been introduced by subordinate authorities and not by the orders of the Ministry of Defence.

5. It is further contended that the principle of 'no work no pay' is not applicable to redesignated/codified trade as the applicants continue and are deployed on the original trades vide letter dated 21.07.1994. This applies to Electrical category also.

The applicants, therefore, are entitled to retain the arrears of salary already drawn by them.

6.. The respondents, however, are opposing the relief. Accordingly to them, it was by mistake that the word 'notionally' was not mentioned in the P.T.Os. of the applicants. It was not the intention to give any arrears. It was a mistake to have omitted the word 'notionally' in the P.T.Os. of the applicants. It has to be rectified. According to the respondents, the applicants have not performed the duties in the upgraded post. The Government has specially delegated to E-in-C. Br. Army H.Q. that the duties of the post will be laid down by him. Therefore, the applicants are not entitled to any arrears and the overpayment needs to be recovered. Also, the applicants have given undertaking/certificate dated March 1995 that if any excess payments are made to them on account of pay fixation/arrears, the same may please be recovered from their pay and allowances (Pages 17 to 26 of the O.A.). They were also informed in advance before recovering first instalment of Rs. 500/-.

7. We have heard the Learned Counsel for both sides and have given careful consideration to the pleadings. It is apparent that the respondents had no intention of giving any arrears but

the same were paid wrongly and on detection of the mistake, the same is being corrected. It is a policy decision of the respondents that the pay should be refixed only notionally. This cannot be interfered with. The applicants have not produced any material to show that the Ministry of Defence had advised payment of arrears. It is true that some undertaking has been given by the applicants. It only says that if there is any excess payment made on account of pay fixation/arrears, the same could be recovered. It, therefore, presumes that there may be arrears also. However, what has actually transpired is that the respondents are questioning the very payment of the arrears and not excess payment of arrears. In such a situation it was necessary to give atleast a notice to the applicants as to why the recovery is being made all of a sudden after two years. While the respondents cannot be faulted for correcting the mistake, all the same, a proper notice should have been given to the applicants.

8. We, therefore, dispose of the O.A. with a direction to the respondents to issue a proper notice within fifteen days to each of the applicants spelling out the details for recovery of the arrears and the individual amount involved. The applicants may make a representation within fifteen days thereafter. The respondents may then pass appropriate orders after considering the representations within a period of three months from the date of receipt of a copy of this order.

9. The O.A. is disposed of accordingly. No order as to costs.

Shanta Shastri
(Smt. SHANTA SHASTRY)
MEMBER (A).

S. L. Jain
(S. L. JAIN)
MEMBER (J).