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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

3

(DESTRUCTION OF RECORD RULES,1990)

M.P-169/2001 ordersheet pg-1 allowed date-17/7/01
M.P-261/2001 ordersheet pg-1 allowed date-22/11/2001

INDEX

O.A/T.A No. 77/2000
R.A/C.P No.
E.P/M.A No. 169/2001

1. Orders Sheet. OA-77/2000 ..... Pg. 1 ..... to. 2 .....
2. Judgment/Order dtd. 02/02/2001 ..... Pg. 1 ..... to. 3 allowed
3. Judgment & Order dtd. ..... Received from H.C/Supreme Court
4. O.A. 77/2000 ..... Pg. 1 ..... to. 65 .....
5. E.P/M.P. 169/2001 ..... Pg. 1 ..... to. 8 .....
6. R.A/C.P. M.P-261/2001 ..... Pg. 1 ..... to. 14 .....
7. W.S. ..... Pg. 1 ..... to. 6 .....
8. Rejoinder ..... Pg. ..... to. .....
9. Reply ..... Pg. ..... to. .....
10. Any other Papers ..... Pg. ..... to. .....
11. Memo of Appearance .....
12. Additional Affidavit .....
13. Written Arguments .....
14. Amendement Reply by Respondents .....
15. Amendment Reply filed by the Applicant .....
16. Counter Reply .....

SECTION OFFICER (Judl.)

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 77/2000 **OF** 199

Applicant(s) Badal Deb Nath and ors.

Respondent(s) Union of India and ors.

Advocate for Applicant(s) Mr. M. Chanda, Mrs. N.D. Goswami
Mr. G.N. Chakrabarty.

Advocate for Respondent(s) C.G.S.C.

Notes of the Registry	Date	Order of the Tribunal
	24.2.2000	There is no representation. Passed over till tomorrow. Member Vice-Chairman
491888 dated 23.2.2000 23/2/2000	mk 25.2.00	Application is admitted. Issue usual notices. Returnable by 27.3.00. Pendency of this application shall not be a bar to grant the relief as prayed for. List on 27.3.00 for further orders. Member Vice-Chairman
Registered 3 copies filed. 6-3-2000 Steps Recieved today and notice prepared and sent to D.Section for issuing of the same to the respondents through Regd. post with A/D. vide D.Nos. 684 to 687 Dtd. 7.3.2000.	mk VS 1/3/2000	

O.A. 77/2000

Notes of the Registry	Date	Order of the Tribunal
Notice duly served on R. No. 1, 3 & 4, 5. 3/4.4.2000 5-4-2000 Written Statement has been filed by the respondents. Bsr	27.3.00	On the prayer of Mr. B.S. Basumatary, learned Addl. C.G.S.C. two weeks further time is allowed for filing of written statement. List on 24.4.2000 for written statement and further orders. Member
	trd 24.4.00	**Written Statement has been submitted. List for hearing on 19.6.00.** Member
10-7-2000 W/S has been filed. By	mk 19-6-00	None of the Bench today. Adjourned to 11-7-00. BO Mr
W/S has been filed. By 29-7-2001	11.7.00 nkm	Present: Hon'ble Mr S. Biswas, Administrative Member Learned counsel Mr M. Chanda for the applicant and Mr B.S. Basumatary, learned Addl. C.G.S.C. for the respondents. Written statement has been filed. Post on 28.8.00 for hearing. S. Biswas Member(A)
	28-8-00	None of the Bench. Adj to 21.12.00. BO Mr.
Received Advocate 7/3	21.12.00	F/O. List on 7-3-01. BO Mr.

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./RXX. No. . 77 . . . . of 2000

DATE OF DECISION 1.2.2001.....
(AT SHILLONG)

1. Shri Badal Ch. Debnath and
2. Shri Chhiring Wangdi Lama

PETITIONER(S)

Mr M. Chanda

ADVOCATE FOR THE PETITIONER(S)

- VERSUS -

The Union of India and others

RESPONDENT(S)

Mr A. Deb Roy, Sr. C.G.S.C.

ADVOCATE FOR THE RESPONDENTS

THE HON'BLE MR JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

THE HON'BLE MR K.K. SHARMA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH.

Original Application No. 77 of 2000.

Date of Order : This the 1st Day of February,2001.

The Hon'ble Mr Justice D.N.Chowdhury,Vice-Chairman.

The Hon'ble Mr K.K.Sharma, Administrative Member.

1. Shri Badal Ch. Debnath &
2. Shri Chhiring Wangdi Lama
Both the applicants are working in
F.G.M. E/M Section,
Sub Division,
Garrison Engineer,
Shillong. . . . Applicants

By Advocate Shri M.Chanda.

- Versus -

1. The Union of India,
represented by the Secretaty to the
Govermment of India,
Ministry of Defence,
New Delhi.
2. Headquarter Chief Engineer,
Eastern Command,
Fort William,
Calcutta.
3. The Controller of Defence Accounts,
Narengi, Guwahati-26.
4. The Army Headquarter,
Engineer-in-Chief's Branch,
Kashmir House,
DHQ, New Delhi.
5. The Garrison Engineer,
Shillong. . . . Respondents.

By Shri A.Deb Roy, Sr.C.G.S.C.

O R D E R

CHOWDHURY J.(V.C)

The 2 applicants moved this Tribunal for a direction to extend the benefit of the judgment and order passed by the Tribunal in O.A.Nos.70 of 1997, 109/96, 110/96, [illegible], 102/98 as well as 313/98 and also prayed for extension of the benefit of the order issued under letter No.90237/3180/EIC(Legal-D) 243/CC/X. AP dated 26.12.1997 and also prayed for regularisation of the promotion of the applicant to the grade of Motor Pump Attendant, now redesignated as

contd..2

Fitter General Mechanic from their respective date of original promotion order of the applicants to the post of Motor Pump Attendant in terms of the recommendation of Headquarter Chief Engineer, Shillong Zone, S.E.Falls, Shillong, dated 9.12.96 addressed to Headquarter Chief Engineer, Eastern Command, Calcutta.

2. The applicants were initially appointed as Mazdoor in the year 1977 under the Commander Works Engineer, MES, Shillong. They were promoted to the post of Motor Pump Attendant against regular vacancy on 5.9.1983. The applicants were placed on probation for a period of 2 years and they completed the period of probation and allowed to work as such. By letter dated 10.11.86 a decision was taken for their reversion and to treat their promotion as Mate MPA. Though such order was passed, in fact, physically the applicants are still now working as MPA now redesignated as Fitter General Mechanic. The aggrieved parties approached the Tribunal by filing O.A.Nos. 144(G) of 1989, 196/89, 83/98 and 102/98. The Tribunal on adjudication held that the clarification or direction given by the Headquarter, Eastern Command in its letter dated 10.11.1986 cannot be sustained. This decision was consistently followed in the decisions mentioned above.

3. We have heard the learned counsel for the parties. After hearing the learned counsel for the parties, we allow the application and direct the respondents to give all the benefits to the applicants of the scale of pay of MPA of Rs.260-400/-, now revised to Rs.950-1500/-. If any recovery has been made from the applicants that shall be refunded to the applicants at the earliest.

contd.. 3

4. The application is allowed. There shall however, be no order as to costs.

(K.K.SHARMA)
ADMINISTRATIVE MEMBER

(D.N.CHOWDHURY)
VICE CHAIRMAN

nkm

In the Central Administrative Tribunal

Guwahati Bench ::: Guwahati.

(An application under Section 19 of the Administrative Tribunals Act, 1985).

Title of the Suit : O.A. NO. 77/2000

Shri Badal Debnath & Ors. : Applicants.

-Vs-

Union of India & Ors. : Respondents.

I N D E X

Filed by

N.D. Goswami

Advocate.

In the Central Administrative Tribunal

Guwahati Bench ::: Guwahati.

(An application under Section 19 of the Administrative Tribunal Act, 1985).

O.A. No. 77/2000 /2000.

BETWEEN

1. Shri Badal Ch. Debnath
Son of late Lalit Ch. Debnath,
MES NO. 238551
F.G.M. E/M Section,
Garrison Engineer,
Shillong.

2. Shri Chhiring Wangdi Lama
Son of Late P. Lama,
MES No. 229148
F.G.M. E/M Section,
Sub Division,
Garrison Engineer,
Shillong. ..... Applicants.

- VERSUS -

1. The Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Defence,
New Delhi.

Sri Badal Debnath

2. Headquarter Chief Engineer,
Eastern Command,
Port Williams,
Calcutta.

3. The Controller of Defence Accounts,
Basistha, Guwahati.

4. The Army Headquarter -
Engineer-in-Chief's Branch,
Kashmir House,
DHQ , New Delhi.

5. The Garrison Engineer
Shillong. ..... Respondents.

DETAILS OF THE APPLICATION.

1. Particulars of orders against which this application is made.

This application is made praying for a direction to the respondents to extend the benefit of the Judgement and order passed in O.A. Nos. 70 of 1997, dated 7.4.1997, O.A. No. 109/96, O.A. No.110/96 and O.A. No. 102/98 and also praying for extension of benefit of the order issued under letter No. 90237/3180/EIC (Legal-D) 243/CC/X.AP dated 26.12.97, as the applicants are similarly situated like those applicants in O.A. Nos. 70 of 1997, 109/96, 110/96, 102/98 and praying for regularisation of promotion of the applicants to the Grade of Motor Pump Attendant (now redesignated as Fitter General Mechanic) from their respective date of original promotion order of the applicants to the post of

Sri Bachel Debnath

of Motor Pump Attendant in terms of recommendation of Headquarter Chief Engineer, Shillong Zone, S.E. Falls, Shillong- 793011 letter No. 70811/2 1-A/3371/EIC(2) dated 9.12.96 addressed to Headquarter Chief Engineer, Eastern-Command, Fort William, Calcutta-21 as the applicants are still working in the cadre of Motor Pump Attendant (in short MPA) in the pay scale of Rs. 260-400 (revised Rs. 950-1500 on the recommendation of the IVth Central - Pay Commission) and also praying for a direction upon the respondents not to make any recovery from their salary in terms of Headquarter, Eastern Command, Fort-William, Calcutta letter No. 131950/55/237/Engrs/EIR(C) dated 10.11.1986 and also praying for a direction to the respondents to refund the recovered amount already made by the respondents from the pay of the applicants.

2. Jurisdiction of the Tribunal.

The applicants declare that the subject matter of the application is within the jurisdiction of this Hon'ble Tribunal.

3. Limitation.

The applicants further declare that this application is filed within the limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the case.

4.1. That all the applicants are citizens of India and as such they are entitled to all the rights and privileges guaranteed under the Constitution of India. All the applicants are presently serving as Motor Pump Attendant

Sri Badal Debnath

(in short MPA) now redesignated as Fitter General Mechanic (in short FGM) in the pay scale of Rs. 260-400 (revised Rs.950-1500 on the recommendation of the IVth Central Pay Commission) under the Garrison Engineer, Military Engineering Service (in short MES), Shillong, Meghalaya.

4.2. That the cause of action and reliefs sought for in this application are common and therefore the applicants pray that the Hon'ble Tribunal be pleased to grant permission under Rule 4(5) (a) of the Central Administrative (Procedure) Rules, 1987.

4.3. That both the applicants were initially appointed as Mazdoor in the year 1977 under the control of Commander Works Engineer, MES, Shillong. Thereafter both the applicants were promoted to the post of Motor Pump Attendant against regular vacancies on 5.9.1983. The references of promotion orders are furnished here under.

The applicant No.1 was promoted to the post of MPA with effect from 5.9.1983 vide Part Order No.36 dated 5.9.1983 and the applicant No.2 was also promoted to the post of MPA with effect from 5.9.1983 vide PTO No.36 dated 5.9.1983 after being duly qualified in the Trade Test and also after observing all formalities both the applicants had been promoted to the post of Motor Pump Attendant (now redesignated as Fitter General Machanic). In this connection it is stated that the applicants were placed on probation for a period of 2 years and accordingly both the applicants had successfully completed their probationary period of 2 years and they were allowed to work continuously in the

Sri Badal Debnath

promotional post of MPA.

Reference of promotion orders of the applicants are annexed hereto and the same are marked as Annexure-1 series.

4.4. That the respondents based on the recommendation of Expert Classification Committee Report, Government of India, Ministry of Defence, revised the pay scale of Rs. 210-290 to Rs. 260-400 with effect from 16.10.1981 vide order dated 11.5.1983 and as a result of this fitment, both the applicants who have since been promoted from Mazdoor after the year 1984 to the post of MPAs noe redesignated as FGM were fitted in the pay scale of Rs.260-400 by the Garrison Engineer. But most surprisingly at a later date vide Headquarter letter No. 131950/55/237/ENGRS/EIR(C) dated 10.11.1986 had held that fitment in the revised pay scale of MPAs those who have been promoted from Mazdoor/ Chowkidar/Safaiwala after 16.10.1981 was irregular and they required to be reverted to the scale of Rs.210-290 and their promotions would be treated as Mate MPA and further they can be considered for promotion only after they have completed 3 years of service, in the grade of Mat M.P.A. Accordingly Commander Works Engineer, Shillong issued instructions to all Garrison Engineers based on directive of Headquarters as mentioned in the Headquarter Eastern Command letter dated 10.11.1986 had issued reversion order by placing the applicants from MPAs to Mate MPAs, with effect from their original date of promotion to the post of MPA. The revision orders were issued by PTO No.47

Sri. Badal Debnath

dated 24.11.1986. But the applicants even after the reversion orders were allowed to discharge the same work of MPA and they were retained in the post of MPA in the pay scale of Rs. 260-400, therefore no reversion took place physically although in papers the order of reversion was passed and till date they are working in the post of MPAs with the revised scale of pay of Rs. 950-1500 and therefore both the applicants who are working for a long time since 1983 are entitled to be regularised in the post of MPA (Now FGM) in the pay scale of Rs. 260-400 (Revised Rs. 950-1500 on the recommendation of the IVth Central Pay Commission) with retrospective effect from the date of initial promotion with all consequential service benefits including monetary benefits.

4.5. That your applicants further beg to state that the Headquarter Eastern Command, Calcutta vide their letter No. 131950/55/237/Engrs/EIA(C) dated 10.11.1986 (Annexure- and Army Headquarter, Engineer-in-Chief's Branch, New Delhi vide their letter No. 90270/89/EIC(3) dated 22.10.86 (Annexure-) wherein it is held that the promotions of Mazdoor/Chowkidar/Safaiwala to the post of MPA in the scale of pay of Rs. 260-400 after issuance of Government of India's letter No. 1(2)/80/ECC/EIC dated 11.5.1983 is highly irregular and they should be brought down to the scale of Mate MPA from the pay scale of Rs. 260-400 to the scale of Mate MPA i.e. in the pay scale of Rs.210-290 and it is further directed that the excess payment made to the applicants on account of wrong pfomotion should be recovered, the relevant portion of the letter dated 10.11.1986

Sri Badal Debnath

is quoted below :

> "3. In view of the position explained, the Mazdoor/Chowkidar/Safaiwala who have been promoted to the post of MPA in the scale of pay of Rs.260-400 after the issue of Min. of Defence letter dated 11 May'83, should be promoted to the post of Mate (MPA) in the pay scale of Rs. 210-230. The excess payment made to them on account of wrong promotion should be recovered".

As regards recovery, it may be stated that recovery has already been made till date from both the applicants in terms of the above impugned order which is highly illegal, arbitrary, unfair and discriminatory expecially when the services of the applicants were utilised to the post of MPA rightly or wrongly, therefore the amount already recovered in terms of the above mentioned impugned order by the respondents are liable to be refunded to the present applicants and the applicants further apprehending that as the applicants are still retained in the pay scale of Rs. 260-400 (revised Rs.950-1500 on the recommendation of the IVth Central Pay Commission) enjoing the revised pay scale and the Army Headquarter and Engineering in Chief's Branch as well as Eastern Command Calcutta not approving the regularisation of their services which is evident from the Headquarter Chief Engineer Shillong zone letter dated ø 9.12.96 that the respondents may again start recovery

Sri Badal Debnath

as the applicants are now enjoying the pay scale of Rs. 260-400 (Revised 950-1500 on the Recommendation of the IVth Central Pay Commission). The respondents also made efforts for recovery of over payment vide letter No. 1003/C/MPA/1986/505/EIR dated 21.4.92 and also under letter No. 1003/C/MPA/1986/504/EIR dated 2.4.92. Therefore the Hon'ble Tribunal be pleased to direct the respondents to refund the amount already recovered from the pay of the applicant Nos. 1 and 2 and further be pleased to direct the respondents not to make any recovery from the applicants till final disposal of this application.

Copies of the letters dated 10.11.86, 22.10.96, 9.12.96, 7.8.91, 2.4.92 and 21.4.92 are annexed hereto and the same are marked as Annexures- 2, 3, 4, 5, 6 and 7 respectively.

4.6. That your applicants further beg to state that due to issuance of contrary orders from time to time regarding promotion in respect of Mazdoor/Chowkidar/Safaiwala serving under Commander Works Engineering, Shillong has led to a very anomolous situation and therefore the applicants are suffering at this state in the matter of promotion and although in fact they have continuously serving in the post of MPA in the scale of Rs. 260-400 (Revised 950-1500) since 1983 although reversion order shows with retrospective effect following amendment of the earlier promotion order subsequently after a long period only in the years 1991-92. But in fact all these years they are serving in the grade of Motor Pump Attendant (Now Fitter General Mechanic) without any lapse

Sri Badal Bhuyan

on the part of the applicants due to the adoption of a wrong policy by the respondents. The applicants are suffering again and again in the matter of their promotion to the post of MPA on regular basis as well as the applicants are also suffering following the order of recovery of pay and allowances which was granted to the applicants following their promotion to the post of MPA. As a result, also the applicant are facing financial hardships and their service career as regard their promotion to the post of MPA, as the Eastern Command, Calcutta as well as Army Headquarter, New Delhi did not approve till date the proposal of regularisation issued by the Chief Engineer, Shillong zone under letter No. 70811/1-A/371/EIC(2) dated 9.12.1996 wherein the Chief Engineer in detail explained the peculiar situation arises due to issuance of contradictory orders from time to time and further requested to regularise the promotion of the applicants in the grade of MPA (Now FGM) since 1983 for about 17 years, therefore their services in the grade of MPA (Now FGM) required to be regularised with retrospective effect from the date of their initial promotion to the post of MPA, now redesignated as Fitter General Mechanic. In this connection, it may also be stated that the Commander Works Engineer vide his letter No.1046/359/EIA dated 23.8.96 addressed to the Garrison Engineer, Shillong wherein it is requested for extension of the benefits of the Judgement and Order passed in O.A. No.144/89 and

Sri Badal Dubuth

O.A. No.196 of 1989 to the affected MPAs (Now FGM) under CWE Shillong area. It is also stated in the said letter that although the case for regularisation of promotion of Motor Pump Attendant has already been taken up by the Headquarter and also engaging the attention of higher headquarter at this stage. From the aforesaid letter dated 23.8.96 it is evident that the authorities also aware regarding the sufferings of the present applicants for non-regularisation of their promotion to the post of Motor Pump Attendant (Now redesignated as Fitter General Mechanic) therefore the applicants are entitled to be regularised to the post of Motor Pump Attendant with effect from their respective initial date of promotion and also entitled to consequential service benefit and the Hon'ble Tribunal also be pleased to direct the respondents to refund the amount which has already beem recovered from the pay of the applicants on the ground that the promotion to the post of Motor Pump Attendant were irregular. However, in spite of their best efforts applicants could not collect the letter dated 23.8.1996.

4.7. That your applicants beg to state that they have submitted representations before the competent authorities for regularisation of their promotion to the post of MPA on 3.7.98 and with prayer for extension of the benefit of the Judgement and Order passed by the Hon'ble Tribunal, Calcutta Bench and Guwahati Bench in the case of similarly situation Motor Pump Attendants like the applicants but the respondents have not taken any

Sri Badal Baruah

initiative on their representations.

A copy of the representations dated 3.7.98 submitted by both applicants are enclosed as Annexure-8 (series).

4.8. That your applicants beg to state that the Members of the Meghalaya MES Civilian Workers' Union, Shillong which is registered and affliated with All India Defence Employees Federation and the said Union has taken up the matter of promotion of the applicants and other similarly situated employees serving under MES, Meghalaya, Shillong and the said Union vide their letter No. MNU/09/Corr/96 dated 26.6.96 addressed to the Commander Works Engineers prayed for regularisation of promotion of MPAs promoted from the post of Mazdoor, Chowkidar, Safaiwala and also prayed interalia to extend the benefit of Judgement and order dated 29.6.90 passed in O.A. No.144(G)/1989 (Shri Parasuram Deka & Another Vs. U.O.I & Ors.) and O.A. No. 196(G)/1989 (Shri Upen Chandra Kakoti & Others Vs. U.O.I. & Ors) and also the decision of the Review Application No. 12 of 1990 and 66 of 1990 in O.A. Nos. 144/89 and 196/89 dated 20.11.90. But the respondents have not taken any initiative for regularisation of the promotion of the applicants as well as for consideration of their promotion to the post of HS Grade II and HS Grade I. In the circumstances stated above finding no other alternative the applicants approaching this Hon'ble Tribunal for redressal of their grievances by filing this original application praying for a direction upon

Sri Badal Debnath

the respondents to regularise their initial promotion to the post of Fitter General Mechanic with retrospective effect i.e. with effect from the date of their promotion to the posted MPA (now redesignated as Fitter General Mechanic) and for immediate consideration of their further promotion to the post of HS Grade II and HS Grade I in the light of the instructions contained in the Ministry of Defence under letter 6.7.94 and Army Headquarter letter dated 21.7.94 with retrospective effect.

A copy of the letter dated 26.6.96 and copy of the Judgement & Order dated 29.6.90 passed in O.A. Nos. 144(G)/89 & 196(G)/89 and copy of the Judgement and Order passed in the Review Application Nos. 12/90 & 66/90 (O.A. Nos. 144/89 & 196/89) dated 20.11.90 are annexed hereto and the same are marked as Annexures- 9, 10, and 11 respectively.

4.9. That your applicants beg to state that some of the similarly situated employees of the MES Department approached this Hon'ble Tribunal through an Original Application No. 70 of 1997 praying for similar benefits and the Hon'ble Tribunal by its Judgement and Order dated 7.4.94 passed in O.A. No. 70 of 1997 was pleased to allow the Original Application with a direction to the respondents to give all the benefits to the applicants of the scale of pay of Motor Pump Attendants of Rs. 260-400 (now revised to Rs.950-1500 on the recommendation of the IVth Pay Commission). The recovered amount from those applicants shall be refunded to them at any rate within

Sri Badal Debnath

a period of three months from the date of receipt of that order.

TheArmy Headquarter have decided to implement the Judgement & Order dated 7.4.97 passed in O.A. No. 70 of 1997 vide their Order bearing No. 90237/3180/EIC (Legal-D)/243/GC/K.Ap dated 26.12.97 but the same benefit has been restricted to the applicants of O.A. No. 70 of 1997 although the Judgement and Order passed in O.A. No.70 of 1997 dated 7.4.97 is the Judgement in rem and as the present applicants are also similarly situated they are also entitled to the benefit of the Judgement and Order dated 7.4.97 passed in O.A. No. 70 of 1997 and also the benefit of the order dated 26.12.97 issued in pursuance of the order dated 7.4.97 passed by the Hon'ble Tribunal in O.A. No.70 of 1997. Further a group of similarly situated MPAs of MES depaftment approached this Hon'ble Tribunal through O.A. No.102/98 (Shri Ramesh Prasad Ram & Ors Vs. U.O.I. & Ors) and O.A. No. 313/98 decided on 7.9.99 and the Hon'ble Tribunal was pleased to allow the Ofiginal Application in favour of the applicants by its Judgement & Order dated 7.9.99.

Copy of the Judgement & Order dated 7.4.97 passed in O.A. No. 70/97 and Judgement & Order dt.7.9.99 passed in O.A. No. 313/98 and letter dt.26.12.97 are annexed hereto and marked as Annexures-12,13 & 14.

4.10. That your applicants beg to state that the respondents while implementing the recommendation of the Vth - Central Pay Commission the applicants have been paid arrear

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Sri Badal Debnath

pay and allowances in the corresponding scale of Rs.950-1500. However after payment of the arrears the respondents have again started recovery of the amount which was paid to the applicants and said recoveries are still continuing on the plea that the applicants are not entitled to the corresponding revised pay scale. In the instant application the applicants pray before the Hon'ble Tribunal for an interim order directing the respondents not to make any recovery till final disposal of this application.

4.11. That your applicants beg to state that the Govt. of India, Ministry of Defence have decided to implement the Judgement & Order dated 7.4.97 passed in O.A. No.70 of 1997 in favour of those applicants of O.A. 70/97. It is stated that in the letter dated 26.12.97 issued by the Under Secretary to the Government of India wherein it is stated that the applicants be given benefit of scale of pay of Rs. 260-400 (revised 950-1500) with effect from their respective date of promotion to the post of MPA and also stated that the applicants of 70 of 1997 are entitled for refund of amount if recovered.

Therefore, further cause of action has arisen when the similarly situated applicants have been granted the benefit of the scale of Rs. 260-400 (Revised Rs.950-1500) with effect from their respective date of promotion to the post of MPA vide order dated 26.12.97 therefore that applicants are also legally entitled for extension

Sri. Badal Baruth

of the benefit of the order of Govt. of India, Ministry of Defence as the present applicants are similarly situated like that of the applicants of O.A. 70 of 1997 and ~~Ors~~. O.A. No. 102/98 and O.A. No.313/98.

4.12. That this application is made bonafide and for the cause of justice.

5. Grounds for relief with legal provisions :

5.1. For that the applicants in fact working in the post of Motor Pump Attendant are redesignated as Fitter General Mechanic since last 17 years therefore they are entitled to be regularised in the post of MPA with all consequential service benefits including monetary benefits.

5.2. For that the applicants were duly promoted to the post of MPA (now redesignated as Fitter - General Mechanic) following the due procedure of law and Trade Test.

5.3. For that the applicants are not responsible for issuance of contradictory orders in the matter of promotion issued by the authorities to the post of Motor Pump Attendant as well as in the matter of fitment in the scale of Rs.260-400 (Revised Rs.950-1500).

5.4. For that the applicants are still being utilised in the post of Motor Pump Attendant which are not being accepted by the higher.

Sri Badal Debnath

5.5. Authority, Eastern Command, Calcutta as reflected in the letter dated 9.12.96 for no fault of the applicants.

5.6. For that the applicants are eligible to hold the post of MPA (Now redesignated as PGM) in all respects and also entitled to be regularised from the date of their respective initial promotion i.e. with effect from 5.9.1983.

5.7. For that the applicants are entitled to retrospective promotion in pursuance of the order and instructions made in Government of India, Ministry of Defence letter dated 26.12.97 issued by the Under Secretary, Govt. of India, Ministry of Defence, New Delhi in the light of Judgement and order passed by the Hon'ble Tribunal, in O.A. No. 70 of 1997 dated 7.4.1997.

5.8. For that the applicants are low paid employees of the Government of India, Ministry of Defence and are entitled to at least one or two promotions in their service career in terms of the recruitment policy.

5.9. For that the decision of recovery of pay and allowances due to contrary orders issued by the respondents are highly illegal, arbitrary and unfair.

5.19. For that the causes and sufferings of the applicants has rightly been reflected in the recommendation letter dated 9.12.96 of the Chief Engineer, Shillong Zone, Shillong.

Sri Badal Debnath

5.11. For that no action has yet been taken after a lapse of 17 years for regularisation of promotion to the post of MPA (now redesignatre as FGM) in respect of the applicants by the respondents.

5.12. For that the applicants are entitled to get back the amount already recovered from their pay and allowances as they were in fact worked to the post of MPA (Now redesignated as FGM).

5.13. For that any further recovery, if any will be irreparable caused ~~irreparable~~ loss to the applicants.

5.14. For that non-consideration of promotion following the Judgement and decision of the Hon'ble Central Administrative Tribunal, Guwahati Bench in O.A. Nos. 70 of 1997, 109/96, 110/96 and102/98 and 313/98 to the applicants who are similarly situated MPAs under the respondents.

5.15. For that the action of the respondents are violative of Articles 14 and 16 of the Constitution of India.

6. Details of remedies exhausted :

That the applicants state they have no other alternative and other efficacious remedy than to file this application. Representation through proper channel were submitted by the applicants to the competent authority but beither any relief has been granted to the applicants nor any reply to their representation has been received.

Sri Badal Debnath

7. Matters not previously filed or pending with any other Court.

That the applicants further declare that they had filed an O.A. before the Hon'ble Tribunal but the same was dismissed for default due to the negligence of their counsel before admission but there was no fault on the part of the applicants but no Original Application/Suit or Writ petition is pending before any of the Bench of the Tribunal or any other Court.

8. Reliefs Sought

In view of the facts and circumstances stated in paragraph 4 above, the applicants pray for the following reliefs :

8.1. That the respondents be directed to regularise the promotion of the present applicants to the post of MPA (Now redesignated as Fitter General Mechanic) in the pay scale of Rs. 260-400 (Revised Rs.950-1500) on the recommendation of the IVth Central Pay Commission and further corresponding revised scale following the recommendation of the Vth Central Pay Commission from the date of their initial promotion in the light of the recommendation made by Chief Engineer, Shillong Zone, MES, ~~Shillong~~ Shillong bearing letter No. 70111/1/A/3371/ERC(2) dated 9.12.96 (Annexure-4) and also in the light of the Judgement and Order dated 7.4.97 passed in O.A. No.70/97 (Annexure-12) and Judgement and Order dated 7.9.99 passed in O.A. No.313/98

Sri Badal Dibyuth

(Annexure-I3) and also in terms of Govt. of India, Ministry of Defence letter bearing No. 90237/3180/ EIC (Legal-D)/243/CC/X.AP dated 26.12.1997 issued by the Under Secretary to the Govt. of India, New-Delhi, with retrospective effect with all consequential service benefits including monetary benefits.

8.2. That the respondents be directed not to make any recovery from the pay of the applicants so far as the promotion to the post of MPA is concerned.

8.3. That the respondents be directed to refund the amount already recovered from the pay of the applicants in connection with their promotion to the post of MPA.

8.4. Costs of the application.

8.5. Any other relief or reliefs to which the applicants are entitled to, as the Hon'ble Tribunal may deem fit and proper.

9. Interim relief prayed for :

During pendency of this application, the applicants pray for the following interim reliefs :

9.1. That the respondents be directed not to make any recovery from the pay and allowances of the applicants so far as the promotion to the post of MPA is concerned till final disposal of this application.

The above reliefs are prayed on the grounds explained in paragraph 5 of this application.

Sri Badal Debnath

10. .....

This application is filed through Advocate.

11. Particulars of I.P.O.

i) Postal Order No. : 0G 492888

ii) Date of Issue : 23/2/2000

iii) Issued from : G.P.O., Guwahati.

iv) Payable at : G.P.O., Guwahati.

12. List of enclosures.

As stated in the Index.

..... Verification.

Sri Badal Debnath

VERIFICATION

I, Shri Badal Debnath, son of Late B. Deb Nath aged about 26 years working as Motor Pump Attendant/F.G.M. In the office of the Garrision Engineer, Military Engineering Service, Shillong, one of the applicants in this application and duly authorised by the other applicant to verify the statements made in the application and to sign this verification, therefore I do hereby declare after going through the statements made in this application that the statements made in paragraphs 1 to 4 and 6 to 12 are true to my knowledge and the statements made in paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 23rd day of February, 2000.

Sri Badal Debnath

Signature.

Annexure - 1 (series)

GE Shillong P.T.O. No.47 dated 24.11.86 Page 9 of 14

1	2	3	4	5	6

Part IV(b) (Contd.)

30. MES 228920
Shri Bala Krishna Sharma

MPA(TY)

Ref.GE Shillong PTO No.17/6/86.

For — " Promotion as MPA"
read — " Promotion as Mate MPA"

For — " Promoted to MPA on probation for 2 years.
read — " Promoted to mate (MPA) on probation for 2 years.

For — " in the scale of pay of Rs.260-6-290-EB-6-326-8-365-EB-8-390-10-400/-P.M.
read — " in the scale of pay of Rs.210-4-226-EB-4-350-EB-[illegible] 290/- p.m.

All other entries remain unchanged.

31. MES 229167
Shri Sahab Md. Ali

MPA(TY)

Ref. G. Shillong PTO 36/31/83

For — " Promoted to MPA"
read — " Pfomoted to Mate (MPA)"

All other entries remain unchanged.

32. MES 229-229148
Shri C.W.Lama

MPA(TY)

Ref. G.Shillong PTO No. 36/26/83.

For — " Promoted to MPA
read — " Promoted to Mate MPA"

All other entries remain unchanged.

33. MES 229010
Shri Pherbok Diengdoh

MPA(TY)

Ref. GE Shillong PTO No. 36/27/83

For — " Promoted to MPA"
read — " Promoted to Mate MPA"

All other entries remain unchanged.

Sd/- Illegible
AGE 'T'
for GE Shillong.

91

Annexure 1 (series)

GE Shillong P.T.O. NO. 47 dated 24.11.86 Page 10 of 14

Part IV (b) (Contd.)

Fixation of pay

34. MES 229063 Shri Nikhil Ch. Paul. — MPA (TY) — Ref. GE Shillong PTO No. 36/6/83
For " Promoted to MPA"
read " Promoted to Mate (MPA)"
All other entries remain unchanged.

35. MES 238551 Shri Badal Deb-Nath. — MPA (TY) — Ref. GE Shillong PTO No. 36/32/83
For " Promoted to MPA"
read " Promoted to Mate (MPA)"
All other entries remain unchanged.

36. MES 228527 Shri Nipendra - Paul — MPA (TY) — Ref. GE Shillong PTO No. 36/29/83.
For " Promoted to MPA"
read " Promoted to Mate (MPA)"
All other entries remain unchanged.

37. MES 229110 Shri Rishikesh-Paul — MPA (TY) — Ref. GE Shillong PTO No. 36/30/83
For " Promoted to MPA"
read " Promoted to Mate (MPA)
All other entries remain unchanged.

Sd/- Illegible
AGE (T)
for GE Shillong.

Annexure - 1 (series)

GE Shillong PTO No. 50 dated 12.12.83 Page 4 & last

1	2	3	4	5	6

Part IV (b) (Contd)

Fixation of pay

12.	MES 229063 Sri Nikhil Ch. Paul.	MPA (Prob)	29.8.83 (F/N)	Pay fixed provisionsily at Rs.260/- p.m. being minimum in the scale of Rs.260-6-290-EB-6-326-8-366-EB-8-390-10-400/- P.M. interms of Army Hq-E-In-C's br, letter No. 90270/89/EIC dated 2 May83 and CODA No. 2296/ATP dt.17/18.10.83.
13.	MES 223501 SriMuktar-Singh.	MPA (Prob)	29.8.83 (F/N)	-do-
14.	MES 229010 Sri Pherbok Diengdoh	MPA (Prob)	29.8.83 (F/N)	-do-
15.	MES 229148 Sri C.W. Lama	MPA (Prob)	29.8.83 (F/N)	-do-
16.	MES-228527 Sri Nipendra Ch. Paul.	MPA (Prob)	29.8.83 (F/N)	-do-
17.	MES-229110 Sri Rishikesh Paul.	MPA (Prob)	29.8.83 (F/N)	-do-
18.	MES Shri Saheb Md. Ali	MPA (Prob)	29.8.83 (F/N)	-do-
19.	MES-238551 Sri Badal Deb Nath.	MPA (Prob)	Service verified upto 31.3.83 from paid pay bills.	

Sd/- Illegible.

for Garrison Eng.

Annexure - 1(Series)

Part II Order No. 36 dated 5.9.83 Page 7

1	2	3	4	5	6

Promotion **Part IV(b) (Contd.)**

29.	MES/228527 Sri Nripendra Ch. Paul	Mazdoor Q/Pt	29.8.83	Promoted to MPA on probation for 2 years placed in position wef the same date.
			26.8.83	Seniority in the gde.
30.	MES/229110 Sri Rishikesh Paul	Mazdoor	29.8.83	Promoted to MPA on probation for 2 years placed in position wef the same date.
			26.8.83	Seniority in the gde.
31.	MES/NYA Sri Saheb Md. Ali	Mazdoor	29.8.83	Promoted to MPA on probation for 2 years. placed in position wef the same date.
			26.8.83	Seniority in the gde.
32.	MES 238551 Sri Badal Deb Nath.	Mazdoor	29.8.83	Promoted to MPA on probation for 2 years. placed in position wef the same date.
			26.8.83	Seniority in the gde.

Authority : CWE Shillong letter No. (Sl.No. /3935/EIA dt. 26.8.83 to 29.8.83.

Increment

33.	MES/229065 Sri Kataki Ranjan Deb	L/Man Q P/t	1.7.1980	Earned annual increment of Rs.4/-p.m. in gde of L/Man raising pay from Rs.242/- to 246/- p.m.

Sd/- Illegible
AGE (T)
for GE, Shillong.

34

Annexure- 1(Series)

Part II Order No. 36 dated 5.9.83 Page 6

Part IV(b) (Contd).

Promotion.

23. MES/226971	Mazdoor (TY)	29.8.83	Promoted to Mate on probation for 2 years and placed in position wef the same date.
		26.8.83	Seniority in Gde.
24. MES/NYA Sri Padam Sdr.	Mazdoor Q/Pt.	29.8.83	Promoted to Mate on probation for 2 years & placed in position wef the same date.
		26.8.83	Seniority in gds.
25. MES/228976 Sri Jagat Singh	Mazdoor (Q/Pt)	29.8.83	Promoted to Mate on probation for 2 years and placed in position wef the same date.
		26.8.83	Seniority in gds .
26. MES/228759 Sri Ranjit Lal Rai	Mazdoor (T/Y)	29.8.83	Promoted to Mate on probation for 2 years and placed in position wef the same date.
		26.8.83	Seniority in the gds.
27. MES/229010 Sri Perbok Diengdoh	Mazdoor (Q/Pt)	29.8.83	Promoted to MPA on probation for 2 years & placed in position wef the same date.
		26.8.83	Seniority in the gds.
28. MES/NYA Sri C.w. Lama	Mazdoor (Q/Pt)	29.8.83	Promoted to MPA on probation for 2 years & placed in position wef the same date.
		26.8.83	Seniority in the gde.

Authy : CWS Shillong letter No.

(Sl. No.1301/3935/EIA dt. 26.8.83 ✓ 23 to 28)

Sd/- Illegible
AGE(T)
For Garrison Engineer.

05

Annexure -2

Headquarters Eastern Command
Fort William, Calcutta-700021

No. 131950/55/237/Engrs/EIR(C) 10 Nov'86

Chief Engineer
Shillong Zone,
Calcutta Zone,
Siliguri Zone,
Civil Engg Cell, OPB Calcutta.
OC EST Mankindra
GTE EC Patna.

FITMENT OF INDUSTRIAL WORKERS OF MES IN THE PAY SCALES RECOMMENDED BY THE THIRD PAY COMMISSION OF MPA TO SKILLED PAY SCALES.

1. In accordance with Govt. of India, the Min. of Def. letter No. 1(2)/SC/D(ECC)IC dt. 11.5.83, the post of MPA has been assigned the scale of pay of Rs.260-400 in the category of skilled worker. It followed that the feeder category to the post of category of MPA is to be semi-skilled in the scale of pay of Rs.210-250. As per the then recruitment rules the Mazdoor/Chowkidars and Safaiwalas, an unskilled categories were eligible for promotion to the post of MPA after issue of Govt. letter dt. 11 May 83 without proper identification of feeder category or seeking clarification due to changed position. Moreover, the E-InC's Br. identified the feeder category to MPA as mate, vide their letter No.90270/89/210 dt.20 Dec'83 which was further clarified in their letters No.90270/89/EIC dt.11 July 84 and 13 Nov'84. But some of the formations in out Command probably not taking the instructions/clarifications issued by E-in-C's Br/this Hqrs. on the subject in its right perspective continued to promote Mazdoors/Chowkidars and Safaiwalas to the post of MPA.

2. The matter having been brought to our notice whether the Mazdoors/Chowkidars and Safaiwalas promoted to the post

36

Annexure- 2 (Contd.)

of MPA before the issue of E-in-C's Br. instructions dt.11 July, 1994 should also be brought down to the post of Mate (MPA) in the pay scale of Rs.210-290, was further taken up with E-in-C's Br. It has now been clarified by E-in-C Br. letter (Copy enclosed) that the promotions of Mazdoor/Chowkidar and Safaiwala to the post of MPA in the scale of pay of Rs.260-400 after the issue of Govt. letter dt. 11 May, 83 is highly irregular and they should be brought down to the scale of Mate(MPA) in the pay scale of Rs. 210-290.

3. In view of the position explained, the Mazdoor/ Chowkidar/Safaiwala who have been promoted to the post of MPA in the scale of pay of Rs. 260-400 after the issue of Min. of Defence letter dt. 11 May'83, should be promoted to the post of Mate (MPA) in the pay scale of Rs. 210-290. The excess payment made to them on account of wrong promotion should be recovered.

4. The complete report be given to this Hqrs. by 10th Dec'86 positively .

Please ack receipt.

Sd/- N.S. Dhillion
SO2 (R)
for Chief Engineer.

Copy to

All CWE

All CEs/AGEs (Indep), Engr Park.

37

Annexure -3

ARMY HEADQUARTERS
Engineer-in-Chief's Branch
DHQ P.O. New Delhi 110011.

90270/89/EIC(3) 22 Oct 86

Chief Engineer
HQ Eastern Command
Calcutta-21

FITMENT OF INDUSTRIAL WORKERS OF MES IN THE PAY SCALE RECOMMENDED BY THE THIRD PAY COMMISSION OF MPA TO SKILLED PAY SCALES.

1. Reference your letter No.131950/55/218/Engrs/EIR(C) dated Sep'86.

2. The category of MPA was semi-skilled trade and hence placed in the pay scale of Rs.210-290 on the recommendation of the Third Pay Commission w.e.f. 01 June 73. As a result of fitment of Industrial workers of MES in the pay scales recommended by the ECC issued vide Ministry of Defence letter No.1(2)/80/D(ECC/IC) dated 16 Oct'81 this category was fitted in the pay scale of Rs. 210-290. However in the subsequent orders issued by Ministry of Defence vide letter No. 1(2)/80/D(ECC/IC) dated 11 May'83 the post of MPA was fitted in the pay scale of Rs.260-400 for which the feeder categories were to be identified from the apy scale of Rs.210-290. Therefore, Mazdoors/Showkidars and Safaiwalas were to be promoted in the pay scale of Rs.210-290 upto 11 Mat83 when the Government issued order for upgrading the post of MPA to Rs.260-400. After issue of the Govt. orders dated 11 May 83 when the Government issued order for upgrading the post of MPA to Rs. 260-400. After issue of the Govt. orders dated 11 May'83 the fedder category to the post of MPA in the pay scale of Rs. 210-290 was identified as Mate (MPA). Therefore the promotion orders of Mazdoors/Chowkidars/Safaiwala to the pay scale of Rs.260-400 are considered highly irregular.

3. In view of the posititon explained above, the ap pay fixation cases of such of the Mazdoors/Chowkidars and Safaiwalas who have been promoted to the post of MPA w.e.f. 11.5.83 be fitted in the pay scale of Rs. 210-290. Suitable instructions be issued to the concerned units to amend the promotion orders immediately and place them in semi-skilled pay scale of Rs. 210-290 as Mate (MPA).

Sd/-xxxxxxx
(K.B. SETHI)
Col.
Dir. Pers(MES)
for Engineer-in-Chief.

38

Annexure- 4

Headquarters
Chief Engineer
Shillong Zone
Spread Eagle Falls
Shillong

70811/1-A/3371/19ERC(2)

Headquarters
Chief Engineer
Eastern Command
Fort William
Calcutta-21.

Regularisation of promotion of MPAs (Now FGMs) vis-a-vis consideration of extension of benefit of CAT Guwahati Bench Judgement dated 29.6.90 (O.A. No. 144/89 and O.A. No.196/89 to all affected MPAs(Now FGMs) under CWE, Shillong area.

1. Reference Meghalaya MES Civilian Workers' Union Memorandum hearing No. MNU/09/Corr/96 dated 26 Jun96 addressed to CWE Shillong copy endorsed to this HQ amongst other (Photostat copy enclosed).

2. Following comments are offered as above referred memorandum :-

3. Background of the case

(a) About 40 members of Mazdoors/Chowkidars/Safaiwalas of Shillong area were promoted to the grade of MPA (Now FGM) re-designated as (FGM) in between the year 1982 to 1984 in accordance with old recruitment rules published in E-in-C's standing order (1971) print and after they have duly qualified in trade test as as per syllabous. In accordance with said recruitment rules Mazdoor/Chowkidar/Safaiwala whose pay scale was 196-232 (Pre-revised) (750-940 revised) were the feeder categories for promotion to MPA (Now FGM) and pay scale of MPA at that time was 210-290 pre-revised (200-1150 revised).

Contd.....

Attested
Advocate

39

Annexure-4(Contd.)

(b) Based on the recommendations of Expert Classification Committee report, Government of India, Ministry of Defence vide their letter No.1(2)/80/D(ECC/IC) dated 11 May'83 . In this connection please refer Govt. ov India Min of Def. letter cited above revised the pay ~~thexpax~~ scale of MPA Now (FGM) from 210-290 to 260-400 wef 16 Oct'81. As a result of this fitment, all the MPAs (Now FGMs) who have since been promoted from Mazdoor/Chowkidar/Safaiwalas upto the year 1984, in their area were fitted in the revised scale 200-400 by the respective GEs in their area.

(c) However, at a later date vice your HQ letter No.131950/55/237/Engrs/EIR(C) dated 10 Nov 86 had held that fitment in the revised pay scale of MPAs (Now FGMs) those who have been promoted from Mazdoor/Chowkidars/Safaiwala after 16 Oct 81 is irregular and they are required to be reverted to the scale of 210-290 and their promotions would be treated as Mate (MPA) and further they can be considered for promotion only after they have completed 3 yrs service in the grade of Mate (MPA).

(d) Accordingly, CWE Shillong issued instructions to all GEs and based on directive of your HQ as mentioned in (c), above, had issued reversion order by placing all MPAs as Mate (MPA) wef their original date of promotion and after calculating their completion of 3 years service in the grade of Mate/MPA promoted them as MPA (Skilled) in the pay scale of Rs. 260-400 by amending our earlier promotion order.

Contd.....

Annexure-4 (Contd.)

(d) The above direction of your HQ has been further modified vide para 3 of E-in-C's Branch, AHQ. New Delhi letter No. 90270/29/EIC dated 17 Jun85 with the direction that promotion from Mate (MPA) to skilled grade of MPA in the pay scale 260-400 would be subject to passing of trade test and selection by a DPC.

(e) This has resulted a gap in technical formalities and as such CWE Shillong amended promotion order from Mate (MPA) to MPA (SK) has also been held as irregular by higher HQs and obviously a case for regularisation of their promotion has been taken up with E-in-C's Branch, AHQ, New Delhi vide your HQ letter No. 131506/2/1417/ Engrs/EIC(P) dated 27 May96.

4. CAT Judgements

(a) Being aggrieved with aforesaid direction of the department, some MPA's (Now FGMs) had approached the jurisdiction of various Tribunals and similarly few MPAs of Narangi and AGE(I) Rangiya also approached the jurisdiction of CAT Guwahati Bench wherein the Judgement of CAT Guwahati Bench has gone in favour of the petitioners. In this connection kindly refer copies of judgements of CAT Guwahati Bench enclosed with the memorandum of the Workers' Union. The gist of the judgement is appended below :

FACTS : Shri Upon Chandra Kakoti and three others as well as Shri Parasuram Sharma and others of GE

41

Annexure-4 (Contd.)

Narangi and AGE(I) Rangiya respectively were initially appointed as unskilled Group 'D' Workers like Mazdoors, Safaiwala etc. All of them qualified in the trade test for promotion and were promoted to the scale of Motor Pump Attendant by orders dated 27.8.1984 and 08.07.1984 respectively. The scale of pay of Motor Pump Attendant as shown in the orders was 260-400. In 1987, however, the terms and conditions of their appointment to the promotional post of Motor Pump Attendant bearing the scale of pay of Rs.210-290 from July and August, 1984, have been changed. Beigg aggrieved by this order the petitioners invoked the jurisdiction of Tribunal by filing applications under Section 19 of the Administrative Tribunals Act, 1985, and after hearing the counsel for both the application CAT Judgement held as stated in succeding paragraph :-

(c) HELD:In our opinion none of the various orders of Army Headquarters on which the respondents rely can have retrospective effect. None of the explicity even says that they will take effect from a retrospective date, the clarification or direction given by your HQ in the letter dated 10.11.86 cannot be sustained. All the applicants shall be given the benefit of the scale of Motor Pump Attendant's scale of pay 950-1500 from the date of their first promotion in 1984 and shall be allowed to draw all allowances and increments in that scale.

CWE Shillong further directs the opposite parties that no recovery on account of over payment of pay and allowances of the applicants due to re-fixation of

Annexure-4 (Contd)

pay from 1984 onwards shall be made. If any recovery on this account has already been made the amount shall be refunded to the applicants.

(d). E-In-C's Directive

As a result of this CAT Guwahati Bench, Judgement, department has already instructed to CWE Guwahati vide E-I-C's Branch AHQ New Delhi letter No. 90237/3180/EIC(3) dt.22 Mar'91 in favour of the petitioners. However, other similar cases have now requested that the benefit of this Judgement be extended to them.

5. Present state of the case.

A case for regularisation of promotions of MPAs (Now FGMs) has already been taken up with higher HQs vide your HQ letter No. 131506/2/1417/Engrs/EIC(2) dt.27 May'96. It however, appears that affected workers who have approached through their workers' Union for early implementation of CAT Guwahati Bench Judgement dt. 29 Jun'90 are likely to approach the jurisdiction of the said CAT citing this Judgement as reference in case redressal is not given by the department.

6. Recommendations.

To avoid litigation, it is recommended that benefit of CAT Guwahati Bench Judgement dt. 29 Jun90 may be extended to all affected MPA s under CAT Shillong area as requested by them through their Workers' Union. Also the decision of E-I-C's Branch on the subject (ref para 5 above) may please be expedited.

Sd/- Jaster Synrem
AO I
For Chief Engineer

Copy to :
CWE-II-for information with ref to your letter No. 1846/377/EIA Dated Oct.'96.

Attested
Advocate

43

Annexure -5
REGISTERED WITH A/D
GE (Vayu Sena) Maryalaya Shillong
Office of the GE(AP) Shillong
Elephant Falls Camp
Nonglyer Post
Shillong - 793009.

1003/C/BPR/1986/490/EIR 07 Aug 91.

Chief Engineer
HQ Eastern Command
Fort William
Calcutta- 700 021.

FITMENT OF INDUSTRIAL WORKERS OF MES IN THE PAY SCALES RECOMMENDED BY THE THIRD PAY COMMISSION OF MPA TO SKILLED PAY SCALES.

1. Reference your HQ letter No.131950/2927/Engrs/EIR(C) dated 21 Jun'91.

2. Clarification regarding rule position of the case as explained vide your HQ letter No.131950/7/2667/Engrs/EIR(C) dated 23 Aug'89 has been explained to the individual as desired. Now both Shri Dhan Bahadur Lama and Shri Ram Bahadur Thapa desires that they may now please be fitted in the higher scale of Rs.260-400 i.e. in the grade of MPA (SK) at least after completion of three years of service in the semi-skilled grade (i.e. Mate (MPA) wef 19 Aug'85 in accordance with your HQ letter No.131950/7/1981/Engrs/EIR(C) dated 08 Apr'86 and CWE Shillong letter No.1046/441/EIA dt.21 Apr'86 (Copy enclosed).

3. In view of above this office PTO 51 Nos. 20,21,22 and 26 of1991 notifying all the relevant casualities and pay fixation proforma in respect of Shri Dhan Bahadur Lama and Shri Ram Bahadur Thapa are forearded herewith for your further necessary action towards fixation of their pay under RPR 1986 under revised scale i.e. 950-1500 at your earliest.

Enclo : As above

Sd/- D.K. Guha
AGE (Plg)
For Garrison Engineer

NOTYON ORIGINAL
Copy to :
AGE E/H(AF) Shillong :

This office PTO Sl.Nos. 20,21,22 and 26 duly amending/ notifying casualities regarding pay fixation/fitment of four MPAs are forwarded herewith for your immediate action for claiming arrears bill in respect of Shri D.B. Lama and Shri B.B. Thapa as well as preparation of recovery statement and deduction accordingly in respect of Shri P.K. Dey and Shri Md. Tasin.

Annexture-6

Reminder No.1
Office of the GE(AP) Shillong
Elephant Falls Camp
Nogglyer Post
Shillong-9

1003/C/AFA/1986/504/EIR

AGE E/M (F) Shillong.

FITMENT OF INDUSTRIAL WORKERS OF MES IN THE PAY SCALES RECOMMENDED BY THE THIRD PAY COMMISSION OF MAP TO SKILLED PAY SCALES.

1. Reference this office letter No.1003/C/RTA/1986/490/EIR dated 07 Aug'91.

2. Please intimate the voucher No. and date under - which over payment was recovered from affected individuals.

Sd/- D.K. Sen

(D.K. SEN)
AGE 'T'
for GE (AF) Shillong.

Annexure -7

Reminder No.2

Office of the GE(AF) Shillong
Elephant Polls Camp
Nonglyer Post
Shillong - 793009

1003/C/MPA/1986/505/EIR

AGE/E/H (AF) Shillong.

FITMENT OF INDUSTRIAL WORKERS OF THE MES PAY SCALES RECOMMENDED BY THE THIRD PAY COMMISSION OF MPA TO SKILLED PAY SCALES.

1. Reference this office letter No.1003/C/MPA/1986/490/EIR dated 7.8.91 and 1003/C/MPA/1986/504/EIR dated 2.4.92.

2. Please intimate the present position of the case as the higher authorities is pressing hard of the same.

Sd/- D.K. Sen

(D.K. SEN)
AGE (Tech)
for GE (AF) Shillong.

46

Annexture-8

To

The Engineer-in-Chief,
Army HQ,
Dh 8, New Delhi.

Subject: Implementation of the judgement of Central-Administrative Tribunal passed by Hon'ble Central Administrative Tribunal Calcutta in Original Application No. 796 of 1987 Hon'ble Central Administrative Tribunal. Gauhati in O.A. No.144/89. 156/89 and O.A. No. 70 of 1997.

(Through proper channel).

Sir,

With due respect and humble submission I have the honour to bring to your kind notice the following facts for favour of your sympathetice consideration and favourable orders :-

(1) That Sir, I was enrolled in G.E. Shillong (M.E.S) sometime in the year 1971.

(2) That I was promoted to the post of M.P. A vide P.T.O. No. 36 dated 5.9.83.

(3) That my pay was fixed at Rs. 260/- P.M. in the pay scale of Rs. 260-400 vide PTO No. 50 dated 12.12.83 and I was paid in the scale till June 1988.

(4) That unfortunately my promotion to the post of M.P.A. was Trmed as a promotion of Mate (MPA) under PTO No. 47 dated 24.11.86 and my pay was fixed in the pay scale of Rs. 210-290/- vide PTO No. 47 dated 24.11.86.

(5) That thereafter a sum of Rs. 4346/- was recovered/ from my pay bill.

(6) That by order and judgements passed by the Hon'ble Central Administrative Tribunal, Calcutta and Gauhati as cited above under reference, the Hon'ble Tribunal has directed the Govt. to give all the benefits to the applicants, who had approached the Hon'ble Tribunal for

Annexture-8(contd-)

refessal of their grievances when their promotion was terminate as Mate (MPA) and their pay was refixed in the lower scale of Rs. 210/- to 290/- . The Hon'ble Tribunal even want to the extreme of directing the Government to refund the recoveries made from some of the applicant.

8. That as I am one of the victim whose promotion was designated as Mate (MPA), pay fixed in scale of Rs. 210/- to Rs.290/- and recoveries made. I pray that in persuance of the order of the Hon'ble Tribunal my case be considered and all the benefits due to me be given to me and the recoveries already made be refunded to me.

9. That I am filing this instant petition most bonafidly and in the interest of justice as the law of the land does not encourage discrimination.

In view of the above it is most humbly prayed that your honour would be graciously pleased to consider my prayer most sympathetically and for this act of kindness shall ever pray.

Thanking you.

Yours faithfully,

MES No. 229128 C.W. Lama
F.G.M E/M Section
Sub/Division
G.E. Shillong.

48

Annexture - 8 (contd...)

To

The Engineer-in-Chief,
Army Hq.,
Dh 8, New Delhi.

Subject : Implementation of the judgement of Central Administrative Tribunal passed by Hon'ble Central Administrative Tribunal Calcutta in Original Application No. 796 of 1987 Hon'ble Central Administrative Tribunal Gauhati in O.A. No. 144/89. 156/89 and O.A. No.70 of 1997.

(Through proper channel).

Sir,

With due respect and humble submission I have the honour to bring to your kind notice the following facts for favour of your sympathetice consideration and favourable orders :-

(1) That Sir, I was enrolled in A/F sometime in the year 1977.

(2) That I was promoted to the post of M.P.A. vide P.T.O. No. 36 dated 5.9.83.

(3) That my pay was fixed at Rs. 260/- P.M. in the pay scale Rs. 260-400 vide PTO No.50 dated 12.12.83 and I was paid in the scale till June 1988.

(4) That unfortunately my promotion to the post of M.P.A. was termed as a promotion of Mate (MPA) under PTO No. 47 dated 24.11.86 and my pay was fixed in the pay scale of Rs. 210-290/- vide PTO No. 47 dated 24.11.86.

(5) That thereafter a sum of Rs. 6620/- was recovered from my pay bills.

(6) That by order and judgements passed by the Hon'ble Central Administrative Tribunal, Calcutta and Gauhati as cited above under reference, the Hon'ble Tribunal has directed the Govt. to give all the benefits to the

Annexture-8(Contd-)

applicants, who had approached the Hon'ble Tribunal for ~~redressal~~ refressal of their grievances when their promotion was termed as Mate(MPA) and their pay was refixed in the lower scale of Rs. 210/- to 290/- . The Hon'ble - Tribunal even want to the extreme of directing the Government to refund the recoveries made from some of the applicant.

8. That as I am one of the victim whose promotion was designated as Mate (MPA), pay fixed in Scale of Rs. 210/- to Rs. 290/- and recoveries made. I pray that in persuance of the order of the Hon'ble Tribunal my case be considered and all the benefits due to me be given to me and the recoveries already made be refunded to me.

9. That I am filing this instant petition most bonafidly and in the interest of justice as the law of the land does not encourage discrimination.

In view of the above it is most humbly prayed that your honour would be graciously pleased to consider my prayer most sympathetically and for this act of kindness shall ever pray.

Thanking you.

Yours faithfully,

MES NO.238551 B.C. Debnath
F.G.M. E/M Section
G.E. Shillong.

Annexure -9

MEGHALAYA MES CIVILIAN WORKERS' UNION SHILLONG
(REGISTERED AND AFFILLIATED WITH ADEP)
C/O Garrison Engineer Shillong Division, Shillong- 793002

Registration No.42
Affiliation No.121

Ref No. MHU/09/Corr/96 Date 26th June 1996.

To
The Commander Works Engineers,
Spread Eagle Falls Camp
Shillong - 793011.

Subject : REGULARISATION OF PROMOTION OF MPAs PROMOTED FROM MAZDOOR, CHOWKIDARS AND SAFAIWALAS.

Dear Sir,

1. The following documents in connection with regularisation of promotion of MPAs promoted from Mazdoors, Chowkidars and Safaiwalas are forwarded herewith for favour of your perusal and immediate implementation please.

(a) Photostat copy of CAT Guwahati Bench judgement dated 29.6.90-

(b) Review petiton filed by department dated 10.9.90(Photostat).

(c) Judgement on reviww petition of CAT Guwahati Bench dated 20.11.90 (Photostat).

(d) Photostat copy of E-in-C's branch letter No.902370/3180/ EIC(3) dated 22 Mar.'91.

(e) Photostat copy of CWE Guwahati letter No.1016/Court/122/ EINB dated 01 Apr. 91.

(f) Copy of CAT Ernakulam Bench judgement dt.15 Jan 1992.

2. It would be seen from above judgements that MPAs promoted from Mazdoors, Chowkidars and Safaiwalas are entitled benefit of pay scale of Rs.260-400 (Now950-1500) from the date of their original promotion as MPAs. Further applicability of Tribunals judgement to be extended to all similarly placed individuals by the department.

3. I would, therefore, request you to kindly implement the judgement within one month of receipt of this letter and further a discussion between you and reps of this Union may please be arranged immediately to sort out the matter amicably.

4. Thanking you and with regards,

Yours faithfully,
Sd/- (K.K. MUKHERJEE)
General Secretary

Copy to :
1. GE, EC Calcutta, 2. CE KE
3. All GEs 4. All Joint Secy.

Annexure-10

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI

Original Application No.144(C)/1989 & 196 (G)/1989

Date of decision : The day of 29 th June 1990

1. Shri Parasuram Deka & Another
M.E.S. No. 225415 working as Pump House Operator
Under Asstt. Garrison Engineer, Rangiya, Posted
at Changsari.
-Vs- ..... Petitioner

i) Union of India (Through Headquarters Chief Engineer,
Eastern Command, Fort Williams, Calcutta-21, West-
Bengal).

ii) Commander, Works Engineer (Indeep)
M.E.S., Rangiya, Assam.

..... Respondents.

For the Applicant : Mr. J.L. Sarkar, Advocate.

For the Respondents : Mr. S. Ali, Sr. C.G.S.C.
Mr. G. Sharma, Addl. C.G.S.C .

-AND-

2. Shri Upen Chandra Kakoti, & Others
Son of Sri Kandra Chandra Kakoti
C/O. GE, Narengi, P.O. Satgaon,
Guwahati-27. ..... Petitioners

-Vs-

i) Commanders Works Engineer, G.E., Nareggi,
P.O. Satgaon, Guwahati-27.

ii) Chief Engineer, H.Q. Eastern Command, Fort William,
Calcutta- 27.

iii) Engineer in Chief, Army Headquarters, Engineer-in-Chief's
Branch DHQ, P.O. New Delhi.

iv) Garrison Engineer, Narengi Division, Post- Satgaon,
Guwahati- 781 027.

v) Assistant Garrison Engineer, Narengi Division, P.O.
Satgaon, Guwahati-27.

vi) Union of India, Represented by Engineer-in-Chief,
Army Headquarters, DHQ, New Delhi - 110011.

..... Respondents.

Annexure - 10 (Contd).

For the Applicant : Mr. B. Banerjee, Advocate
Mr. A. Dasgupta, Advocate

For the Respondent : Mr. G. Sharma, Addl. C.G.S.C.

C O R A M :

THE HON'BLE SHRI K.P. ACHARYYA, VICE-CHAIRMAN,

AND

THE HON'BLE SHRIJ.C. ROY, ADMINISTRATIVE MEMBER.

1. Whether reporters of local papers may be allowed to see the judgement ?

2. To be referred to the Reporters or not ? Yes

3. Whether ~~g~~ Their Lordships wish to see the fair copy of the judgement ?

Annexure- 10 (Contd.)

_J_U_D_G_E_M_E_N_T_

J.C. ROY Since the facts and law involved in the two cases are similar, we are disposing of both the cases by the following common order.

2. In O.A. No.144/89 the applicants are Shri Parasuram Deka & another, in O.A. 196/89 the applicants are Shri Upen Chandra Kakoti and three others. The applicants were initially unskilled Group 'D' workers like Mazdoor, Safaiwala etc. of MES working in the Establishment of Assistant Garrison Engineer Rangiya, in the case of the first group of applicants and under Garrison Engineer Narangi in the case of second Group of applicants. All of them qualified in trade test for promotion and were promoted to the skilled grade of Motor Pump Attendant (MPA for short) by orders dated 27.8.1984 and 8.7.1984 respectively. The scale of pay of MPA in the promotion orders are shown as Rs. 240/- to 400/- in the case of both the group of the applicants. Although they were working at Rangiya and Narangi, both of these establishments of MES is under the control of Commander Works Engineer, Guwahati (CWE for short). In 1987, however, the terms and conditions of their appointment to the promotional post were changed with retrospective effect. All the applicants were downgraded to the posts of Mate (MPA) bearing the pay scale of Rs. 210-290/- from the date of their first promotion in July and August, 1984. They were however promoted to MPA on the scale of Rs. 260-400/- after they completed three years as Mate (MPA) in the lower scale. These orders were issued in 1987 and in 1989. By this time the scale of pay of Mate (MPA) and MPA

Annexure -10 (Contd.)

were altered to Rs. 800-1150/- and Rs. 950-1500/- respectively. The MES authorities not only downgraded the applicants from MPA to Mate (MPA) with retrospective effect but also ordered recovery of the amounts of pay & allowances drawn by them in excess of the lower scale of pay beginning from 1984. The order of recovery, however, was stayed by an interim order of this Tribunal at the admission stage.

3. On behalf of the respondents Col. K.P. Singh, CWE filed the written reply. None of the facts outlined in the previous paragraph were disputed in this written statement. It was stated that the category of MPA was placed in the skilled grade with the pay scale of Rs. 260-400/- by an order of Army Headquarters dt. 20.5.1983. But by the subsequent order dt. 20.12.1983 the Army Headquarter ordered that unskilled Group 'D' employees who passed the trade test for MPA were not eligible for promotion to the skilled grade directly. An intermediate stage in sema-skilled grade called Mate (MPA was created which served as the feeder grade for the skilled categories. In October 1985 further clarifications were issued regarding promotion to MPA cadre. In consequence of these, the respondents submits, there was some room for do about now Group 'D' employees were to be promoted to the MPA grade. Consequently the orders issued in July and August 1984 when the applicants were first promoted, erroneously showed them promoted to the skilled grade of MPA directly. Clear instructions were issued on 10.11.1986 by the Headquarters, Eastern Command (Annexure-6) wherein the higher MES authorities ordered

Annexure-10 (Contd)

that wherever this error was made it was to be rectified by taking the following measures (a) that trade tested group 'D' employees were to be brought first on the semi-skilled grade of Mate (MPA) in the scale of Rs.210-290/- and (b) that the excess among paid to such promoted employees on account of wrong promotion should be recovered. The respondents argued that since the error was administrative in nature it was rectified. There was no need to issue wither a show cause notice or giving any opportunity for explaining their case to the applicants. It is further stated that the recovery of excess payment @Rs.100/- p.m. is a very small amount and within the means of the affected parties.

4. We heard Mr. J.L. Sarkar the learned counsel for the petitioners in O.A. No.144/89 and Mr. S. Ali, Sr. Standing Counsel for the Central Government assisted by Mr. G. Sharma the learned standing counsel, in O.A. No.196/89, we hear Mr. A. Dasgupta the learned counsel for the petitioners and Mr. G. Sharma the impugned orders of the unilateral down-gradation of the rank and fixation in the lower scale on the ground of natural justice. They also challenged the order of recovery from the pay of the applicants after the lapse of three or even four years on the ground that this is against the provisions of law. The pointed out that this Tribunal has consistently disallowed such recoveries even when the excess payment was made due to 'nonafide mistake on the part of the authorities. In these cases, the learned counsels contended, that the pay was correctly fixed on

promotion and the question of downgraded petitioners status and giving them lower emoluments after the lapse of three or four years were unwarranted and unlawful. The learned standing counsels on the other hand maintained at the time of bearing first promotion to the applicants, the rules of promotion from unskilled grade of the MES to the various higher grades of semi-skilled and skilled grades were at the stage of formulation at the policy level. The applicants were directly promoted from unskilled workers to skilled workers without passing through the feeder grade of semi-skilled worker as a result of mistake on the part of the local controlling authority. Such mistake, the learned standing counsels contended, can be rectified. The standing counsels' case was that the fluid situation obtaining between 1983 to 1986 was finally settled by the Engineer-in-Chief. Headquarters Eastern Command's letter dated 10.11.1986 (Annexure R-6 in O.A. No.144/89). The opposite parties' case, therefore, is that no illegally was committed by the subsequent order as the applicants were required to pass through the feeder grade of Mate (MPA) before promotion to the grade of MPA.

5. We are not convinced by the argument of the learned standing counsels that on order passed erroneously due to administrative mistake can be rectified unilaterally in pursuance of public policy. This is particularly so because in this case the applicants were not even given an opportunity to state their case. In the case of K.I.Sephard V. Union of

India, 1988(I) SLJ 105, the Hon'ble Supreme Court considered and expressed their views on the circumstances where the principle of natural justice must be applied . The Court conclused that these principles may not have universal application when Government exercises it legislative power, but at the same time held that for all administrative section of the Government the principles of natural justice have to be fully observed. My Lord Ranganath Mishra, J speaking for the Bench in paragraph 13 of the judgement stated as follows :

> "Fair play is a part of the public policy and is a guarantee for justice to citizens. In our system of Rule of law every social agency conferred with power is required to set fairly so that social section would be ~~required~~ just and there would be furtherness of the well-being of citizens. The rules of natural justice have developed with the growth of civilisation and the content thereof is often considered as a proper measure of the level of civilisation and Rule of law prevailing in the community. Man within the social frame has struggled for centuries to bring into the community the concept of fairness and it has taken scores of years for the rules of natural justice to conceptually enter into the field of social activities."

6. Even in the case of an undisputed administrative error like wrong fixation of pay giving higher benefits to an employee, when this is sought to be rectified after the lapse of years, such action of the employer was not allowed consistantly by this Tribunal. For example, in the case of Nilkantha Shah V. Union of India & Ors., 1987(3) SLJ (CAT) 306, the Calcutta Bench of the Tribunal held that over payment on account of pay & allowances wrongly fixed by the employer and not caused by the employees mistake cannot be recovered after long years. Again in the case of C.S. Bedi V. Union of India reported in AIR 1989(2) 510 the

Principal Bench of the Tribunal held that rectification of an order resulting in adverse civil consequence to an employee cannot be done without issuing him a show cause notice. We are in full agreement with this whole some principle laid down by this Tribunal and find that the impugned orders of subsequently down grading the applicants from MPA to Mate (MPA) are reducing their pay scale cannot be sustained. This is particularly so because the consequential excess payment was ordered to be recovered after 3 years or more. We quote below a portion of para 7 of the Judgement in the case of Nilkantha - Shah, V. Union of India delivered by the Division Bench of the Calcutta Bench on 11.2.1987.

> "When the applicant was given the benefit of revised pay, he was not aware that he would have to pay back the excess amount drawn and be spent the amount according to the pay scale that he enjoyed. Any deduction at this late stage definitely causes hardship to the applicant. It is also quite clear that the applicant was not responsible or for the non-detection of the mistake of the Department for a long seven years.

In that case recovery of the amount of over payment of more than Rs. 13,000 due to wrong fixation of pay gave rise to the cause of action. The government ordered recovery of 50% of the amount after waiving the remaining amount on compensionate ground. But this recovery was not allowed by this judgement. The facts in so far as the recovery in these cases are concerned, are not dissimilar from Shah's case. The only difference is that the opposite parties ~~portion~~ has not been able to establish that the higher grade and pay scale given to the applicants on their promotion in 1984 was given only due to mistake only. In

Annexure-10 (Contd.)

our opinion none of the various orders of Army Headquarters on which the respondents rely can have retrospective effect. None of them explicitly even says that they will take effect from a retrospective date. The clarification or direction given by the Headquarter, Eastern Command in its letter dated 10.11.1986 cannot be sustained. Even if there were compelling circumstances why the ~~ir~~ order should have retrospective effect, the affected person should at least have been given opportunity of explaining his case. Since this opportunity was not given the applicants were denied natural justice.

7. In the result both the applicants suceed. We direct that all the applicants shall be given the benefit of the scale of pay Motor Pump Attendant's scale of pay Rs.950-1500 from the date of their first promotion in 1984 and shall be allowed to draw all allowances and increments in that scale. We further direct the opposite parties that no recovery on account of over payment of pay and allowances of the applicants due to re-fixation of pay from 1984 onwards shall be made. If any recovery on this account has already been made the among shall be refunded to the applicants. The above orders shall be implemented by the opposite parties as early as possible and in no case with a ~~gr~~ period exceeding 90 days from the date of the receipt of this order. There will be no order as to costs.

I agree

Sd/- J.C. Roy,
29.6.90
Member

Sd/- K.P. Acharya
29.6.90
Vice Chairman.

Annexure -11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Review Application No.12 of 1990

Misc. Application No.66 of 1990

(O.A. No.144(G)/89)

Date of decision : The 30th day of November, 1990

1. The Union of India represented by the Chief Engineer, Eastern Command, Fort-William, Calcutta.

2. Commander Works Engineers, AT Road, Santipur, Guwahati-781009.

3. Commander Work Engineers, GE, Narengi, P.O. Satgaon, Guwahati-27.

4. Garrison Engineer, Narengi.

5. Assistant Garrison Engineer, Narengi Division, P.O. Satgaon, Guwahati-27.

6. Assistant Garrison Engineer, (Indeep), MES, Rangiya Assam. .... Applicants.

-Versus-

1. Shri Parasuram Deka and Another
MES No.225415 working in Pump House
Operator under Applicant No.6

2. Shri Upen Chandra Kakoti and others,
Son of Shri K Kandra Chandra Kakoti
working in the office of the applicant No.4
.... Respondents.

For the Applicants : Mr. G. Sarma, Addl. C.G.S.C.

For the Respondents : Mr. J.L. Sarkar, Advocate.

C O R A M

THE HON'BLE SHRI K.P. ACHARYA, VICE-CHAIRMAN.

THE HON'BLE MISS USHA SAVARA, ADMINISTRATIVE MEMBER.

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1. Whether reporters of local newspapers may be allowed to see the judgement ?
2. To be referred to the reporters or not ? No
3. Whether Their Lordships wish to see the fair copy of the judgement ?

JUDGEMENT

ACHARYA J.

This common judgement will govern both the cases mentioned above, Review Application No.12/90 arises out of the judgement passed by this Bench in O.A. No.144/89 and O.A. No.196/89 disposed of on 29.6.90.

2. Shortly state, the case of the petitioners in both the original applications was that the petitioners were initially unskilled Group 'D' Workers like Mazdoors, Safaiwalas, etc. of MES, working in the Establishment of Assistant Garrison Engineer, Rangiya. All of them qualified in the Trade Test for promotion and were promoted to the scale of Motor Pump Attendant by orders dated 27.8.1984 and 8.7.1984 respectively. The scale of pay of Motor Pump Attendant in the promotional post as shown in the orders was Rs.260 to 400/-. In 1987, however, the terms and conditions of their appointment to the promotional post were changed with retrospective effect. All the petitioners were down graded to the post of Motor Pump Attendant bearing the scale of pay of Rs.210 to Rs.290/- from July and August, 1984. Being aggrieved by this order the petitioners invoked the jurisdiction of the Tribunal by filing applications under Section 19 of the Administrative Tribunals Act, 1985, and at hearing counsel for both sides in both the applications this Bench ordered as follows :

> "In the result both the applications succeed. We direct that all the applicants shall be given the benefit of the scale of pay of Motor Pump Attendant namely Rs.950 to Rs.1500/- from the date of the first promotion in1984 and shall be allowed to draw allowances and increments in that scale."

Contd.

3. While arguing on merits in regard to this Review Application, Mr. G. Sarma, the learned Addl. C.G.S.C. submitted that the opposite parties have no grievance regarding the operative portion of the judgement quoted above, but, the opposite parties in the Original Applications and petitioners in this Review Application pray for a clarification to the extent that it may be added after the words'increment in that scale till 1987.' According to Mr. G. Sarma, if the word 'till 1987' is added then the sentence would be complete ~~xhxxx~~ otherwise it would remain in an incomplete stage.

4. We have heard Mr. G. Sarma and Mr. J.L. Sarkar, the learned counsel for the petitioners in the Original Applications and opposite parties in this Review Application at some length. Before we express our opinion on the merits of the contentions of Mr. G. Sarma, it is worthwhile to state that in the later portion of paragraph 6 of the judgement, it has been categorically mentioned as follows :

> "The clarification or direction given by the Headquarters, Eastern Command in its letter dated 10.11.1986 cannot be sustained."

By the above quoted observations it was meant by the Bench that the clarification contained in letter dated 10.11.1986 is against all cannons of justice, equity and fair play and, therefore, it was held to be not sustainable and accordingly it was held in paragraph 7 of the judgement that the petitioners in the Original Application would be entitled to their emoluments on a pay of Rs.950 to Rs.1500/- from the year 1984. From the entire tenor of the judgement it would be crystal clear that the order was quashed and it was held that the letter on the basis of which the order of reversion was

passed is not sustainable and the petitioners were entitled to the scale of pay in the promotional post since 1984. If Mr. G. Sharma's submission is accepted then the degree passed in favour of the petitioners by virtue of this judgement would be completely nugatory or fruit which cannot be entertained in a review Application, because, admittedly, the jurisdiction to be exercised under Order 47 Rule 1 of the Code of Civil Procedure is extremelylimited. In the circumstances stated above we find no merit in the aforesaid contentions of Mr. G. Sarma. As a last strew on the camel's back it was contended on behalf of the petitioners in this Review Application that the view taken by this Bench in these original applications was contrary to the view expressed by the Cuttack Bench in O.A. 382/87 disposed of on 7.11.1988, in which one of us (namely Shri Acharya, Vice Chairman as Member (Judl) of the Cuttack Bench) was a party to the judgement. Hence this Bench should have taken the very same view in the above mentioned Original Application and not having done so, the judgement passed in these cases nees to be reviewed. No have also heard Mr. J.L. Sarkar on this point. In this connection we reel tempted to quoted the provisions contained under Order 47 Rule 1 of the Code of Civil Procedure, which runs thus ;

(1) Discovery of new important matter or evidence which, after the exercise of due diligence was not within the knowledge of the party or could not be produced by him at the time when the decree was passed, or order made or,

(2) Error apperent on the face of record, or

(3) For any other sufficient reason.

5. Mr. G. Sarma wants to bring this case within ingredient No.1 and suggested to take not of the judgement and accordingly Review the judgement passed in the aforesaid cases. Before such a prayer is accepted heavy on us lies on the petitioners to prove to the hilt that due diligence was exercised by the petitioners to unearth the document and despite due diligence the document could not be unearthed. In the Review Petition not a singly word has been uttered that due diligence had been exercised by the petitioner, for less of proving this fact to the hilt. On the contrary during course of argument it was revealed that copy of the judgement passed by the Cuttack Bench was obtained from the Headquarter office at Calcutta to which a copy of the judgement was sent by the Cuttack Bench. Therefore, there cannot be an iots of doubt that by the time the case was heard, the petitioners in this Review Application or their higher authorities at Calcutta were in possession of the Judgement of the Cuttack Bench. This fact completely disproves the case of due diligence having been exercised by the petitioners in the Review Application and in the peculiar facts and circumstances of the case there was no occasion for the peritioners in the Review Application to exercise due diligence because the document in Question was in the procession of the officers of Calcutta. Thus we find no merit in the aforesaid contention of Mr. G. Sarma which stands rejected.

8. In the circumstances stated above we find no merit in the Review Application.

Annexure - 11 (Contd.)

7. As regards Misc. Petition No. 66/90, prayer of the petitioners is to condone the delay of nineteen days having occured in the filing of the applications, Since we do not find merit in the Review Application and we are not satisfied that there was sufficient cause on the part of the petitioners to cause delay in filing of the Review Application by nineteen days, we find no sufficient ground to condone the delay and the Review Application is not only dismissed on merits, but on the question of being barred by limitation.

8. Thus the Review Application stands dismissed leaving the parties to bear their own costs.

9. The Misc. Petition No. 66/90 is also accordingly disposed of.

Sd/- U. SAVARA
MEMBER
20.11.90

Sd/- K.P. ACHARYA
VICE -CHAIRMAN
20.11.90

Annexure - 12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Original Application No. 70 of 1997.

Date of decision : This the 7th day of April, 1997.

(AT ADMISSION STAGE)

The Hon'ble Justice Shri D.N. Baruah, Vice-Chairman.

The Hon'ble Shri G.L. Sanglyine, Administrative Member.

1. Shri Pradip Kumar Dey
2. Shri Memlal Joshi
3. Shri Nanda Kishore Ram
4. Shri Dhan Bahadur Lama
5. Shri Md. Islam Mian
6. Shri Ram Bahadur Thapa
7. Md. Yasin
8. Shri Padam Bahadur Limbu ..... Applicants.

Applicant No.1 is working as Electrician, and applicant Nos. 2 to 6 are working as Fitter General Mechanic in the office of the Garrison Engineer, Air force, Shillong, under the control of Commander Works Engineer, Shillong.

By Advocate Shri J.L. Sarkar and Shri M. Chanda.

-Versus-

1. Union of India,
Through the Secretary, Government of India,
Ministry of Defence,
New Delhi.

2. Commandar Works Engineer,
Military Engineering Service,
Shillong.

3. Chief Engineer, Shillong Zone,
Military Engineering Service,
Shillong.

4. Headquarter Chief Engineer,
Eastern Command,
Fort William,
Calcutta.

5. Army Headquarters Engineer,
In Chief's Branch, Kashmir House,
DHQ, New Delhi.

6. Garrison Engineer, Air Force,
Military Engineering Service,
Shillong.

By Advocate Shri G. Sarma, Addl. C.G.S.C. .... Respondents.

Annexure - 12

O R D E R

BARUAH J. (V.C.)

In this application the applicants have prayed for a direction to the respondents to treat the promotion of the applicants as regular promotion without taking into consideration Annexure-7 letter dated 10.11.1986 issued by the Chief Engineer, Headquarters Eastern Command, Calcutta, to the Chief Engineer, Shillong and other zones.

2. The facts, as narrated by the applicants are :

All the applicants had been appointed Chowkidar/ Mazdoor/Safaiwala on various dates from 1968 to 1973. They were also promoted to the post of Motor Pump Attendant (MPA for short) during the period from 1982 to 1983 on regular basis in the pay scale of Rs. 210-290, and all the applicants had been placed on two years probation. Accordingly all the applicants, thereafter, completed their probation period successfully. Based on the recommendation of the Expert classification Committee Report, Government of India, Ministry of Defence, the respondents gave the applicant higher revised pay scale of Rs. 260-400 instead of Rs. 210-290 by order dated 11.5.1983. Thereafter all the applicants were placed in the scale of pay of Rs. 260-400 by the Garrison Engineer, However, by Annexure-7 letter dated 10.11.1986 it was ordered that the fitment placing of the applicants in the pay scale of Rs.200-400 was irregular. Therefore, they were sought to be reverted to the post of Mate MPA in the pay scale of Rs.210-290. It was further directed that they could be considered for promotion only after completion of three years of service in the grade of Mate MPA. Accordingly, the applicants were reverted to the post of Mate MPA. This was done, without giving

any opportunity of hearing. After reversion, the authorities also gave direction for recovery of the excess amount thus paid in pursuance of the letter dated 10.11.1986. The applicants, however, state that not withstanding the directions given by letter dated 10.11.1986, no recovery had been made till the date of filing of the application from applicant Nos. 1, 4,6 and 7 and the recovery was made from the other applicants, namely, applicant Nos. 2, 3, 5 and 8. Hence the present application.

3. Heard Mr. J.L. Sarkar, learned counsel for the applicants, and Mr. G. Sarma, learned Addl. C.G.S.C. Mr. Sarkar has informed this Tribunal that the point of controversy is squarely covered by a decision of this Tribunal in O.A. No. 144(G) of 1989, disposed of on 29.6.1990. The order has been annexed to the application as Annexure-17. We have perused the order. In the said order this Tribunal held that the clarification or direction given by the Headquarter, Eastern Command in its letter dated 10.11.1986 cannot be sustained. we quote the relevent portion of the order.

> "... The clarification or direction given by the Headquarter, Eastern Command in its letter dated 10.11.1986 cannot be sustained. Even if there were compelling circumstances why the order should have retrospective effect, the affected person should at least have been given an opportunity of explaining his case. Since this opportunity was not given the applicants were denied natural justice."

In the present case also no opportunity was given. In our opinion the said order squarrely covers the controversy of the present case. It may be mentioned here that the finding of the Tribunal in the aforesaid judgement was sought to be reviewed in R.A. No.12 of 1990. The review application was rejected, confirming the earlier decision. We therefore, following the

said decision, direct the respondents to give all the benefits to the applicants of the scale of pay of Motor Pump Attendant of Rs. 260-400 (now revised to Rs. 950-1500). The money recovered from some of the applicants shall be refunded to those applicants as early as possible, at any rate within a period of three months from the date of receipt of this order.

4. The application is accordingly disposed of. However, in the facts and circumstances of the case we make no order as to costs.

Sd/- VICE-CHAIRMAN

Sd/- MEMBER (A)

Annexture-13

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 313 of 1998.

Date of Order : This the 7th Day of September,1999.

The Hon'ble Mr Justice D.N.Baruah,Vice-Chairman.

The Hon'ble Mr G.L.Sanglyine,Administrative Member.

1. Sri Pherbok Diengdoh
Quinton Road,
Police Bazar,
Shillong-793001.

2. Sri Nripendra Chandra Paul,
MES Quarter No. MES/71/1,
D.M.Line (Near Military Hospital)
Shillong-793002. . . . Applicants

By Advocate Sri M.Chanda.

- Versus -

1. Union of India,
through the Secretary to the
Government of India,
Ministry of Defence,
New Delhi.

2. The Headquarter Chief Engineer,
Eastern Command,
Fort William,
Calcutta.

3. The Controller of Defence Accounts,
Udayan Bhawan,
Narengi, Guwahati.

4. The Army Headquarter Engineer-
in-Chief's Branch,
Kashmir House,
DHQ, P.O. New Delhi.

5. The Garrison Engineer,
Shillong. . . . Respondents.

By Advocate Sri A.Deb Roy, Sr.C.G.S.C

O R D E R

BARUAH J.(V.C)

In this O.A. the applicants are seeking directions from the Tribunal to the respondents to treat them as regular Motor Pump Attendant (MPA for short). Facts for the purpose of disposal of this case are :

The applicants were initially appointed as Casual Mazdoor in the year 1971 under the Commandar Works Engineer,

contd.. 2

71

MES, Shillong. Thereafter, they were promoted to the post of MPA on 5.9.1983. They were reverted from the cadre of MPA to the lower cadre. However, till now they are allowed to work in the same capacity. Some other MPAs had also been reverted to lower grade. They approached this Tribunal by filing O.A.No.144(G) of 1989 and 196(G) of 1989 and also O.A.No.83 of 1998 and O.A.102 of 1998. In those cases this Tribunal held that the clarification or direction given by the Headquarter, Eastern Command in its letter dated 10.11.1986 cannot be sustained.

2. We have heard Mr M.Chanda, learned counsel for the applicants and Mr A.Deb Roy, learned Sr.C.G.S.C for the respondents. Mr Chanda submits that the decision of the Tribunal in the above cases squarely covers the point of controversy in the present case. We quote the relevant portion of the order :

". . . . .The clarification or direction given by the Headquarter, Eastern Command in its letter dated 10.11.1986 can not be sustained. Even if there were compelling circumstances why the order should have retrospective effect, the affected person should at least have been given an opportunity of explaining his case. Since this opportunity was not given the applicants were denied natural justice."

Mr Deb Roy, learned Sr.C.G.S.C also confirms that the present case is squarely covered by the decision of this Tribunal. On perusal of the papers we are of the opinion that the earlier order of the Tribunal passed in O.A.No.83/98 and 102/98 is squarely covered the controversy of the present case. The aforesaid judgment of the Tribunal was sought to be reviewed by Review Application No.12 of 1990, which was ultimately rejected by this Tribunal. We therefore, following the said decision, direct the respondents to give all the benefits to the applicants of the scale of pay of Motor Pump Attendant of Rs.260-400/-(now revised to Rs.950-1500). The

contd.. 3

Annexture-13 (contd)

money recovered, if any, from the applicants shall be refunded to them as early as possible, at any rate within a period of three months from the date of receipt of this order.

Accordingly the application is disposed of. However, in the facts and circumstances of the case we make no order as to costs.

SD/- VICE-CHAIRMAN
SD/- MEMBER (A)

Certified to be true
प्रमाणित प्रतिलिपि

23/2/2000

Section Officer (J
अनुभाग अधिकारी (न्यायिक शा
Central Administrative Tribu
केन्द्रीय प्रशासनिक अधिकरण
Guwahati Bench, Guwaha
गुवाहाटी न्यायपीठ, गुवाहाटी-

23/2/2000

pg

Mate Pannya Ans

Cmg/w — Magdoor to MPA (Skilled

(MATE MPA)

~~52&53~~ ~~-57-~~ Annexur-14

No.90237/3180/EIC(Legal-D)/243/CC/X.AP
Government of India,
Ministry of Defence,
Room No.411, D-I Wing, Sena Bhawan,
New Delhi, the dated 26th Dec.'97

To
The Chief of the Army Staff,
New Delhi.

Subject : Implementation of Hon'ble CAT Guwahati Bench Order of 07th April,97 in O.A. No.70/97 filed by Shri P.K. Dey & Others.

Sir,

I am directed to refer the aforesaid judgement of Hon'ble Tribunal in O.A. No.70/97. In compliance with the said judgement of CAT, Guwahati, I am directed to convey the sanction of the President to give all the benefits to the applicants only of the scale of pay of Motor Pump Attendents of Rs.260-400 (now revised to Rs.950-1500) w.e.f. their respective date of promotion to MPA. They are also entitled for refund of amount if recovered.

2. The issues with the concurrence of Min of Finance (Def) vide their U.O. No. 2476/DFA(W)/97 of 1997.

Yours faithfully,
Sd/-
(RITA CHATTERJEE)
Under Secretary to the Govt. of India
Tele : 301 1449

Copy to :

1. All CDAs - Copy signed in ink
2. CDA&DC Calcutta - One copy signed in ink.
3. CE, Shillong Zone,
MES, Shillong.
4. MOD&D (Fin/M)
5. EIC (Legal Cell-10 copies)

Attested
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH, GUWAHATI

OA NO.....77/2000

Shri Badal Deb Nath and others

.....Applicant

- Versus -

Union of India and others

.....Respondents

- AND -

In the matter of

Written Statement submitted by

Respondents Nos. 1,2,3,4 and 5.

Contd.....P/2

Written Statements

The humble Respondents beg to submit their written statements as follows :-

1. That with regard to the statement made in paragraph 1 to 3 of the application the respondents have no comments.

2. That with regard to the statements made in paragraphs 4.1, 4.2, 4.3, 4.4 of the application the respondent beg to state that at the time of promotion of the applicant to the semi skilled grade, the notified recruitment rules for the post of Motor Pump Attendant (now Fitter General Mechanic (Skilled) only provided for semi skilled grade. Therefore they are entitled for the semi skilled grade, at the time of their promotion. In this connection it is stated that based on the recommendation of 3rd Central Pay Commission, an expert classification was set up in 1974 for proper classification of all industrial employees in Defence Establishment including Military Engineering Services. Based on the reports of Expert Classification committee, Min. of Defence issued a fitment order vide No. 1(2)/80/D (ECC/IC) dated 11 May 83, and the effective date of fitment was given w.e.f. 16 Oct 81, and the classification of Industrial employees in MES has been classified as under :-

Category	Scale of Pay
Unskilled	196-3-220-EB-232
Semi-Skilled	210-4-226-EB-4-250-EB-5-290
Skilled	260-6-296-EB-6-326-8-366-EB-8-390-10-400

Contd.....3/-

As a result of fitment the scale of Motor Pump Attendant which carried semi-skilled before fitment has now been upgraded to skilled pay scale of Rs. 260-400/- and as such feeder grade in the semi-skilled grade of Rs. 210-290 required to be identified which has been done as Mate (Motor Pump Attendant) vide E-in-C's Branch Army Headquarters, New Delhi, clarification No 80270/89/EIC dated 20 Dec 83. As per recruitment rules and further recommendation of Expert Classification Committee and as such their next line of promotion can be only semi skilled category and not directly to skilled grade as claimed by the applicant.

3. That with regard to statement made in para 4.5 of the application it is submitted that in accordance with Govt. of India, Min of Defence letter No. 1(2)/80/D(ECC)/IC dated 11.3.83, the post of MPA has been assigned the scale of pay of Rs. 260-400 in the category of skilled worker. It followed that the feeder category to the post of Category of MPA is to be semi skilled in the scale of pay of Rs. 210-290. However, the case was further taken up with E-in-C's Br. and it was clarified by E-in-C's Br that the promotion of Mazdoor/Chowkidar and safaiwala to the post of MPA in the scale of pay of Rs. 260-400 after the issue of Govt. letter dated 11 May 83 is highly irregular and they should be brought down to the scale of Mate (MPA) in the pay scale of Rs. 210-290, in this case individual was promoted to the post of MPA wef effect from 5.9.83.

4. That with regard to para 4.6, 4.7 and 4.8 of the application it is submitted that the applicants were promoted from Chowkidar/Mazdoor in terms of E-in-C's Br Policy letter No 90270/89/EIC dated 20 Dec 1983 and subsequently reverted as per E-in-C's Br letter No 90270/89/EIC dated 22 Oct 86.

Contd..... 4/-

In the instant case although the judgement was pronounced in favour of certain individuals who were applicant of the case only and for which Govt. Sanction was accorded to give the benefits to the applicants only and not to all. Thus the present cannot be given the benefit as claimed. The recovery was made in accordance with instruction issued by CE HQ EC Calcutta vide their letter No 131950/55/237/ Engrs/EIR(C) dated 10 Nov 86.

5. That with regard to para 4.9, 4.10, 4.11 of the application it is submitted that judgement of O.A. No. 70 of 97 was sent to Min of Defence for asking whether the judgement can be implemented or not. Min of Defence vide their letter dated 26 Dec 87 has directed to implement the judgement. But is the instant case the present applicant was not an applicant of O.A. No. 70/97 hence can not claim any benefit.

6. That with regard to para 4.12 of the application the respondents beg to offer no comments.

Contd.....5/-

7. That with regard to the para 5.1 to 5.14 the respondents beg to state that in view of the facts made in the written statement the applicant's grounds are baseless and thus the application is liable to be dismissed.

8. That with regard to para 6 and 7 of the application the respondents beg to offer no comments.

9. That with regard to the contents made in para 8 of the application, the respondents maintain that in view of the facts stated in this written statement the applicants have no merit and deserve no relief and as such the application is liable to be dismissed.

10. That with regard to the contents made in para 9 of the application, the respondents beg to state that in view of the facts stated in this written statement, the applicants have no merit to get interim order.

Verification.....6/-

VERIFICATION

I, Shri R.M. Rout, AEE, AGE (E/M) Shillong, do hereby dolemnly declare that the statements made in para 1, 2, 4 & 5 are true to my knowledge, those made in para 3, 6, 7, 8, 9 and 10 are true to my information and derived from records available and rests are my humble submission before this Hon'ble Tribunal.

And I sign this verification today 30th day of March 2000.

Declarent.