

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR
Original Application No. 427 of 2002

Jabalpur, this the 31st day of July, 2003.

Hon'ble Mr. J.K. Kaushik, Judicial Member
Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

- (1) Shri R.K. Shukla,
R/Mech., Military Engineering
Service (M.E.S.), Jabalpur.
- (2) Shri Anand Kumar,
R/Mech., Military Engineering
Service, (M.E.S.) Jabalpur.
- (3) Shri A. Alloysious,
Sr. R./Mech. (M.E.S.), Jabalpur.
Military Engineering Service,
Jabalpur (M.P.).
- (4) Shri R. Giri,
R/Mech., Military Engineering
Service (M.E.S.) Jabalpur.
- (5) Shri Nathoo Lal,
R/Mech., Military Engineering
Service (M.E.S.) Jabalpur.
- (6) Shri V.K. Mehta,
R/Mech. (Now MCM)
Military Engineering Service,
(M.E.S.) Jabalpur (M.P.).
- (7) Shri Manohar Yadav,
R/Mech., Military Engineering
Service (M.E.S.), Jabalpur.
- (8) Shri V.P. Singh,
R/Mech., Military Engineering
Service, (M.E.S.) Jabalpur.
- (9) Shri A.K. Sarkar,
R/Mech., Military Engineering
Service (MES), Jabalpur.

- (10) Shri Sudhakar,
R/Mech., Military Engineering
Service, Jabalpur (M.P.).
- (11) Shri Abdul Mazeed,
R/Mech., Military Engineering
Service, (MES), Jabalpur.
- (12) Shri Rajjeet Singh,
R/Mech., Military Engineering
Service, Jabalpur (M.P.).
- (13) Shri Mohan Lal,
R/Mech., Military Engineering
Service, (MES), Jabalpur.
- (14) Shri Dilraj Singh,
R/Mech., Military Engineering
Service, (MES), Jabalpur.
- (15) Shri Mitai Lal,
R/Mech. Military Engineering
Service, (MES), Jabalpur.
- (16) Shri Norber Joseph,
R/Mech. Military Engineering
Service, (MES), Jabalpur.
- (17) Shri Vinal Kumar,
Mate, Military Engineering Service(MES)
Jabalpur.
- (18) Shri Basant,
Mate, Military Engineering Service(MES),
Jabalpur.
- (19) Shri Ramashankar Giri,
Mazdoor, Military Engineering Service(MES)
Jabalpur.
- (20) Shri A.P. Tiwari,
R/Mech. Military Engineering Service(MES),
Jabalpur.
- (21) Shri L.M. Saxena,
R/Mech. Military Engineering Service(MES)
Jabalpur.
- (22) Shri K.M. Vishwakarma,
R/Mech., Military Engineering,
Service, (MES), Jabalpur.
- (23) Shri Sunil Joseph.
R/Mech. Military Engineering,
Service, (MES), Jabalpur.
- (24) Shri Dal Chand, Mate (Now F.G.M.) Jabalpur
- (25) Shri Anandi Lal, Ref. Mech. Jabalpur
- (26) Shri Harihar Swamy, Mate (Now F.G.M.) Jabalpur
- (27) Shri K.P. Yadav, Ref. Mech. Jabalpur

APPLICANT

(By Advocate - Mr. Rajnesh Gupta holding brief of Mr. R.K. Gupta)

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Versus

- (1) Union Of India,
Through- The Secretary, Ministry of Defence,
Government of India, NEW DELHI.
- (2) Engineer in Chief,
Army Head Quarter, New Delhi.
NEW DELHI.
- (3) Chief Engineer,
Central Command, Lucknow,
LUCKNOW (U.P.).
- (4) Chief Engineer,
Jabalpur Zone, Jabalpur,
JABALPUR (M.P.).
- (5) Commander Works Engineer,
Jabalpur, Zone, JABALPUR.
(Madhya Pradesh).
- (6) Garrison Engineer,
East Jabalpur, JABALPUR.
(Madhya Pradesh).

- Respondents

(By Advocate - Shri P, Shankaran)

O R D E R

By J.K.Kaushik, Judicial Member -

Shri R.K.Shukla and 26 others have filed this Original Application with the following prayer-

"(i) It is, therefore, prayed that this Hon'ble Tribunal may kindly be pleased to quash the impugned circular ANNEXURE A-1 issued by the respondent No.6, and the Hon'ble Tribunal further be pleased to hold that the said circular ANNEXURE A-1 is against the principle of natural justice, in the interest of justice.

(ii) Any other order/direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case, including cost of the litigation may kindly be passed in favour of the applicants".

2. A short recital of facts would suffice for resolving the controversy involved in the present case. All the applicants are working on various posts e.g. Refrigerator Mechanic, Mate, Mazdoor in the Office of Garrison Engineer, East, Jabalpur. A circular was issued on 24th November, 1997 wherein the provision has been made for grant of night duty allowance (for short 'NDA') to the civilian working in various Defence establishments and it was decided that all categories of workers would be entitled for

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the NDA with effect from 1.1.1986. Another circular was issued on 8.11.1995 in the same matter and all the applicants were sanctioned the amount of NDA and were also paid arrears with effect from 1.1.1986 up to November, 1995. The said amounts were paid on the basis of the records maintained by the respondents themselves, but the respondents have issued the impugned order Annexure A-1 by which recoveries have been ordered in respect of the NDA which is said to have been paid in excess. The recovery is ordered to be made in 12 monthly instalments from the workers/applicants. It has been further averred that once the amount has already been paid to the applicants after verifying the records and through audit, there was no question of effecting any deduction from their pay and allowances. None of the applicants was informed regarding the decision for making recovery and had there been any opportunity to explain their position, they would have demonstrated that no excess payment was made to them. The action of the respondents is against the principles of natural justice, since no opportunity of hearing of any nature has been extended to them. They have not been informed any details of the recovery.

3. A detailed reply has been filed on behalf of the respondents and it has been averred that the NDA has been paid in excess to them. A Board of officers was constituted and have conducted the enquiry in the matter and then only the excess has been determined. The Original Application deserves to be dismissed since they were paid in excess of their correct entitlement.

4. We have heard the learned counsel for the parties and have carefully perused the records of this case. The learned counsel for the parties have reiterated the facts and grounds mentioned in their pleadings.

5. The learned counsel of the applicants has laid great emphasis on the following of the principles of natural

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justice and has submitted that the respondents never issued any show cause notice to the applicants and straight away took the decision to make recovery from them. There has been clear breach of principle of natural justice.

6. On the other hand, the learned counsel of the respondents has drawn our attention to Annexure-R-30 and has submitted that due notice was given to the applicants and, therefore, there is no breach of the principle of natural justice. However, perusal of letter dated 20.5.2002 (Annexure-R-30) goes to show that besides the decision has been taken to recover the excess payment relating to NDA from the applicant and it was only an information. Even it has been mentioned in that letter that the recovery should start from 1st June onwards. The same does ~~not~~ indicate that it is ^{not} a notice or even the applicants were ^{not call on} to make any representation against the same.

7. As far as the law relating to following the principles of natural justice is concerned, by now it is well settled up to the level of the Hon'ble Supreme Court and it has been laid down that whenever any order is passed which is going to affect the individual adversely, a pre-decisional hearing is to be given in the matter and until the principle of natural justice is followed, such order cannot be sustained. In support of this statement of law we refer to a very celebrated judgment of the Hon'ble Supreme Court in the case of H.L.Trehan and others Vs. Union of India and others, (1989) 9 ATC 650=AIR 1989 SC 568 wherein their Lordships have observed as under-


"11.It is now a well established principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a Government servant without complying with the rules of natural justice by giving the Government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a Government servant will offend against the provision of Art.14 of the Constitution.....


12.In our opinion, the post-decisional opportunity of hearing does not subserve the rules

of natural justice. The authority who embarks upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity".

Applying the aforesaid statement of law to the present case, the action of the respondents in ordering recovery for the excess payment of NDA cannot be said to be in conformity with the law laid down by the Hon'ble Supreme Court inasmuch as in the present case no predecisional hearing in the matter has been given. Thus, the impugned order offends Article 14 of the Constitution of India and in our considered view there has been clear breach of the principle of natural justice.

8. The upshot of the aforesaid discussion is that the OA merits acceptance and the same is hereby allowed. The impugned order (Annexure-A-1) stands quashed. It shall scarcely be necessary to mention here that this order shall not preclude the respondents to pass any fresh order in the matter after following the procedure established by law. However, in the facts and circumstances of the case, we direct the parties to bear their own costs.


(Anand Kumar Bhatt)
Administrative Member


(J.K. Kaushik)
Judicial Member


rkv.

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(2)
(3)
(4)

सूचना

मल R.K. Gupta - Ad
मल P. Shankam Ad


उप सचिव

Issued
on 5.8.03
