

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No.1085/2000.

Jabalpur, this the 5th day of February, 2003.

Hon'ble Mr.R.K.Upadhyaya- Member (Admnv.)

Mahesh Kumar Shrivastava S/o R.D.
Shrivastava, aged about 47 years,
Occup: Service posted as Sr.
Electrician H.S.Gr.I, GE(East) Jabalpur.

-APPLICANT

(By Advocate- Mr.Sanjay Tamrakar)

versus

1. Union of India through
Ministry of Defence, New Delhi.
2. Commanding Works Engineer (CWE),
Military Engineering Service,
Jabalpur.
3. Engineer-in-Chief,
MES Army Headquarters, New Delhi.
4. Suptd. Engineer (S.E.)
Selection Grade (S.G.), 501, Engrs.
Pers, for Engineer-in-Chief, MES
Army Head Quarters, New Delhi.

-RESPONDENTS

(By Advocate- Mr.B.da.silva for
Mr.S.C.Sharma)

O R D E R

By R.K.Upadhyaya, Member (Admnv.):

By this application, the applicant has assailed the order dated 11.2.1998 (Annexure A/3) as being discriminatory and violative of Article 14 of the Constitution of India. This impugned order states as under:-

"2. MES/419873 Sh.MK Shrivastava, Elect. of your sub-division was promoted to Elect.HS-II wef 15 Jul 85 with notional seniority vide our part I order No.12 of 23 Jan 96. Clarification for grant of financial benefit retrospectively from date of notional seniority to instrument repairer at, which was clubbed under Min of Defence letter 24 Jan 87 and the above named individual became eligible to be granted one time relaxation of passing trade test was taken up with E-in-C's branch, now E-in-C's Branch has clarified vide their letter No.91026/E10 (3) dt.16 Dec 97 that financial benefit not admissible retrospectively from date of notional seniority."

Contd...P/2.

Sanjay

(2)

Therefore, by the impugned order amount paid w.e.f. 15.7.1985 to 9.2.1995 has been directed to be recovered from the applicant. The applicant has further requested that order of recovery dated 24.10.2000 (Annexure A/8) be also quashed.

2. It is stated by the applicant that by order dated 23.1.1996 the applicant was re-classified and designated in the higher pay scale of Sr.Electrician, H.S.Grade-II w.e.f. 15.7.1985. The applicant was also paid arrears of salary on account of fixation in higher pay scale w.e.f. 15.7.1985. He was further promoted to the next higher grade of Sr.Electrician H.S.Gr.I. It is claimed that an order dated 11.2.1998 has suddenly been issued by which recovery of arrears of pay earlier granted in 1997 was ordered on the ground that the classification and upgradation in Electrician H.S.Gr.2 w.e.f.15.7.1985 was without payment of any arrears and the payment has been made wrongly. According to the applicant, other persons granted similar benefits have not been ordered such recovery. Aggrieved by the order of the recovery, the applicant filed OA No.204/2000, which was disposed of by order dated 7.4.2000 with a direction to the respondent No.3 to decide the representation of the applicant. In pursuance to the Tribunal's order, impugned order dated 24.10.2000 (Annexure A/8) has been issued rejecting the claim of the applicant. The learned counsel of the applicant stated that payment of arrears was made in 1997 as per the then existing order. However, the impugned order dated 11.2.1998 (Annexure A/3) has been issued by which it has now been clarified that financial benefit was not admissible retrospectively. The learned counsel placed reliance on the decision of Hon'ble

11/3/98

Supreme Court in the case of P.Mahendran & others Vs. The State of Karnataka & others, 1989(2) SCALE 1274 stating that any direction can be only ~~from~~ prospective in nature. He also placed reliance on the decision of Hon'ble Supreme Court in the case of State of Rajasthan Vs.R.Dayal and others, 1997(2) SLR 68 wherein the Hon'ble Supreme Court held that vacancies were required to be filled in accordance with the law existing as on the date when the vacancies arose. He also placed reliance on the decision of Hon'ble Supreme Court in the case of Sh.Govind Prasad Vs. Sh.R.G. parsad and others, 1994(1) SLR 30 for the proposition that the impugned order dated 11.2.1998 (Annexure A/3) could ^{in respect of a date} be implemented/subsequent to its issue and not from a retrospective date. The learned counsel also stated that an order against the applicant has been issued without affording an opportunity of hearing to the applicant. Therefore, the same deserves to be quashed.

3. The learned counsel for the respondents stated that the impugned order dated 11.2.1998 (Annexure A/3) is only clarificatory in nature. He made a reference to the ^{decision} of Hon'ble Supreme Court in the case of V.Gangaram Vs. Regional Joint Director and others, (1997)6 SCC 139. The Hon'ble Supreme Court had held that recovery of additional increments paid by mistake could be recovered.

4. The arguments of the learned counsel of both the parties have been heard and material available on record have been perused.

5. Apparently, the applicant has been paid arrears on promotion as Electrician H.S. Grade-II with retrospective effect from 13.7.1985 as per order dated 23.1.1996

U.S. Mahendran

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(Annexure A/1). This order of promotion no where mentions that the applicant was not entitled to arrears. Consequential promotion order dated 15.10.1997 (Annexure A/2) was issued and this also does not contain any stipulation that the promotion was only for the purpose of notional seniority. The impugned order dated 11.2.1998 (Annexure A/3) has been issued giving a clarification that earlier order of promotion and upgradation was for the purpose of notional seniority and not for financial benefit with retrospective date. The Hon'ble Supreme Court in the case of Shyam Babu Verma & others Vs. Union of India and others, (1994) 27 ATC 121, have held that if the petitioner received the higher scale due to no fault of theirs, it shall only be just and proper not to recover any excess amount already paid to them. In the case before this Tribunal, the decision of Hon'ble Supreme Court is squarely covers the issue, and any amount already paid to the applicant in pursuance to the valid order need not be recovered. In this view of the matter, this O.A. is allowed without any order as to costs. It is also ordered that if any recovery has already been made, the same should be refunded to the applicant within two months.

(Signature)

(R.K. Upadhyaya)
Member (Admnv.)

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पूरांकन सं ओ/व्य..... दि.....

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(2) सचिव, न्यायिक सेवा, दिल्ली

(3) सचिव, न्यायिक सेवा, दिल्ली

(4) सचिव, न्यायिक सेवा, दिल्ली

सूचना एवं आचार्य, न्यायिक सेवा

S. Ramdas
S. Sharma

(Signature)
1.1.8

5.2.03
BS