

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**

ORDERS OF THE TRIBUNAL

15.04.2009

OA No. 450/2008

Mr. Brij Sharma, Counsel for applicant.

Mr. Kunal Rawat, Sr. Standing Counsel for respondents.

Learned counsel for the applicant prays for adjournment. Prayer granted.

Let the matter be listed on 19.05.2009. IR to continue till the next date.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ

19.05.2009

OA No. 449/2008 & 450/2008

Mr. Brij Sharma, Counsel for applicant.

Mr. Kunal Rawat, Sr. Standing Counsel for respondents.

Heard learned counsel for the parties.

For the reasons dictated separately, the cases are disposed of.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 19th May, 2009

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

1. ORIGINAL APPLICATION NO. 449/2008

Mansingh son of Shri Sardar Singh, aged around 57 years, resident of Itarna Alwar. Presently working as MCM, Itarna Alwar (Rajasthan).

.....APPLICANT

(By Advocate: Mr. Brij Sharma)

VERSUS

1. Union of India through its Secretary, Ministry of Defence, South Block, New Delhi.
2. Commander Works Engineer (Head Quarter), Military Engineer Services, Kalyan marg, Bani Park, Jaipur.
3. Garrison Engineer, Itarna, Alwar.

.....RESPONDENTS

(By Advocate : Mr. Kunal Rawat, Sr. Standing Counsel)

2. ORIGINAL APPLICATION NO. 450/2008

Mahendra Kumar son of Shri Ravindra Kumar, aged around 56 years, resident of Itarna, Alwar. Presently working as MCM, Itarna Alwar (Rajasthan).

.....APPLICANT

(By Advocate: Mr. Brij Sharma)

VERSUS

1. Union of India through its Secretary, Ministry of Defence, South Block, New Delhi.
2. Commander Works Engineer (Head Quarter), Military Engineer Services, Kalyan marg, Bani Park, Jaipur.
3. Garrison Engineer, Itarna, Alwar.

.....RESPONDENTS

(By Advocate : Mr. Kunal Rawat, Sr. Standing Counsel)

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ORDER (ORAL)

By this common order, we propose to dispose of these OA as common question of facts & law is involved.

2. In these cases, the grievance of the applicant is regarding the order dated 18.10.2008 (Annexure A/1), which was passed pursuant to the direction given by this Tribunal in the earlier OA. As can be seen from the impugned order, the applicant who was promoted as MCM w.e.f. 01.01.1996. However, pursuant to the judgement rendered by the Ernakulam Bench of the Tribunal in OA No. 882/2003 dated 17.05.2005, the seniority of entire HSG was refixed and thereafter Review DPC was held. Pursuant to the direction given by the Ernakulam Bench, respondents have redrawn the entire seniority of HSG cadre and on account of such seniority, the applicant though fulfilled eligibility criteria but could not be granted promotion w.e.f. 01.01.1996 due to limited number of vacancies. However the applicant in OA No. 449/2008 has been granted promotion w.e.f. 01.04.2000 and applicant in OA No. 450/2008 has been granted promotion w.e.f. 20.05.2003 pursuant to impugned order dated 18.10.2008 (Annexure A/1). The respondents have effected recovery for the period when the applicants have worked on the higher post when they were initially promoted as MCM w.e.f. 01.01.1996 till the date when they were again promoted from prospective date pursuant to the Review DPC. It is these orders which are challenged in these OAs.

3. Notice of these applications was given to the respondents. The respondents have filed their reply thereby justifying their action. In the reply, the respondents have taken the stand that recovery is being effected pursuant to the direction given by the Ernakulam Bench of the Tribunal.

3. When the matter was listed on 06.03.2009, this Tribunal directed the respondents to produce the judgement of the Ernakulam Bench of the Tribunal whereby it was stipulated that recovery for the

period for which the applicants have worked on the post of MCM could be recovered. Now the respondents have filed MA No. 148/2009 and 149/2008 for taking order dated 28.04.2008 on record in which the respondents have categorically stated that competent authority has passed the order dated 28.04.2009 whereby direction has been given to the subordinate authority not to recover any amount before 26.02.2008. The order dated 28.04.2009 is taken on record. The MAs are disposed of accordingly.

4. In view of what has been stated above, learned counsel for the applicant submits that he does not want to press this OA at this stage. In case the applicant is aggrieved, he can agitate the matter before the appropriate forum.
5. With these observations both the OAs are disposed of with no order as to costs.

(B.L.KHATRI)
MEMBER (A)

(M.L. CHAUHAN)
MEMBER (J)

AHQ