

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH**

Jaipur, this the 19th day of April, 2011

ORIGINAL APPLICATION NO. 235/2010

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

1. Bhanwar Singh son of Shri Jai Singh, resident of Plot No. 4, Rajendra Nagar, Sirsi Road, Near Ganpati Mandir, Vaishali Nagar, Jaipur and presently working as Fitter General Mechanic (High Skilled), under Garrison Engineer, South West Command, Jaipur.
2. Mool Chand Meena son of Shri Bhuwana Ram Meena, resident of AGE-E/M, Pratap Line, Cantt Area, Jaipur and presently working as Fitter General Mechanic (High Skilled), under Garrison Engineer, South West Command, Jaipur.
3. Om Prakash son of Shri Ram Singh, resident of Plot No. 49/6, Yadav Colony, Near Hotel Desert Inn, Pani Patch, Jhotwara Road, Jaipur and presently working as Fitter General Mechanic (High Skilled), under Garrison Engineer, South West Command, Jaipur.
4. Bhanwar Lal son of Shri Ganesha Ram, resident of A-10, Kumawat Badi, Khatipura, Jaipur and presently working as Fitter General Mechanic (High Skilled), under Garrison Engineer, South West Command, Jaipur.
5. Guman Singh son of Shri Ganpat Singh, resident of Plot No. 5, Arun Watika, Hari nagar, Khirani Phatak, Jhotwara and presently working as Fitter General Mechanic (High Skilled), under Garrison Engineer, South West Command, Jaipur.
6. Shiv Kumar son of Late Shri Chhakki Lal, resident of Quarter No. 47/1, Near Dadwara Pump House, MES Colony, Army Area, Dadwara Kota and presently working as Fitter General Mechanic (High Skilled), under Garrison Engineer, MES, Kota.
7. Kampta Prasad son of Late Shri Subh Dayal Singh, resident of Quarter No. 10/3, Maharaja Land, MES Colony, Near Nehru Garden, Station Road, Kota and presently working as Fitter General Mechanic (High Skilled), under Garrison Engineer, MES, Kota.
8. Mool Chand Verma son of Shri Mohan Lal, resident of AGE-E/M, Pratap Line, Cantt Area, Jaipur and presently working as Fitter General Mechanic (High Skilled), under Garrison Engineer, South West Command, Jaipur.
9. Ram Kumar Singh son of Shri Mala ram, resident of Quarter No. 72, Defence Colony, Khatipura, Jaipur and presently working as Fitter General Mechanic (High Skilled), under Garrison Engineer, South West Command, Jaipur.
10. J. Chakradhar Rao son of Late Shri J. Masenu, resident of Quarter No. 32/3, BCC Line, G.E., Office Campus and presently working as Fitter General Mechanic (High Skilled), under Garrison Engineer, MES, Kota.

11. Madan lal son of Late Shri Nathu Lal, resident of Gram Jal Kheda, Post Khera, Rasulpur, Tehsil Ladpura, Kota and presently working as Fitter General Mechanic (High Skilled), under Garrison Engineer, MES, Kota.
12. Shahid Hussain son of Late Shri Altaf Hussain, resident of Keshar Bagh, Police Line, Kota and presently working as Fitter General Mechanic (High Skilled), under Garrison Engineer, MES, Kota.
13. Gopal Meena son of Late Shri Chanda Lal, House No. 158, Keshar Bagh, Police Line, Kota and presently working as Fitter General Mechanic (High Skilled), under Garrison Engineer, MES, Kota.

.....Applicants

(By Advocate: Mr. C.B. Sharma)

VERSUS

1. Union of India through its Secretary, Ministry of Defense, New Delhi.
2. Commander Works Engineers, Military Engineering Services, Kalyan Marg, Bani Park, Jaipur.
3. Garrison Engineer (MES), South West Command, Khatipura Road, Jaipur.
4. Garrison Engineer (MES), Kota.

.....Respondents

(By Advocates: Mr. Mukesh Agarwal)

ORDER (ORAL)

Brief facts of the case are that this OA has been submitted by the applicants against the arbitrary, illegal and unjustified action of the respondents in connection with their reversion to the post of FGM(SK) from the post of FGM(HS) after a period of more than six years and further recovery of so called excess payment in the garb of review DPC inspite of fact that Scheme dated 20.5.2003 for the restructuring of cadres provide one time relaxation and applicants as per their seniority were the allowed benefits of promotion and such benefits cannot be taken back after six years. The action of the respondents is also against the principles of natural justice as the applicants were never



given any chance of hearing prior to passing of orders against the provisions of Articles 14, 16 and 21 of the Constitution of India.

2. The applicants were initially appointed as Mazdoor (Group D) and thereafter on passing the trade test were allowed the post of Motor Pump Attendant. The respondents Department issued orders dated 20.05.2003 for restructuring of cadre of Artisan Staff in Defense Establishment as per the recommendation of 5th Central Pay Commission under which it has been provided in Para 3(d):-

"The placement of the individuals in the post resulting from the restructuring and ratio revision, shall be made w.e.f. 01.01.1996, in relaxation of the conditions, if any, i.e. trade test etc. as one time measure."

3. In view of the order dated 20.05.2003 (Annexure A/3), the respondents promoted the officials from one post to another with the benefits w.e.f. 20.05.2003 and the names of the applicants shown in Appendix H to the order dated 14.10.2004 by which they were promoted from FGM(SK) to FGM (HS) and were allowed due fixation of pay in the scale of Rs.4000-6000/- w.e.f. 20.05.2003.

4. The respondent no. 1 issued corrigendum dated 27.03.2006 to the order dated 20.05.2003 and modified the para 3(d) of the order dated 20.05.2003 and the same was circulated by the respondent no. 5 vide letter dated 02.05.2006. In Pursuance to the corrigendum dated 27.03.2006 (Annexure A/6), the applicants have been reverted back to their lower post from FGM (HS) to FGM (SK) w.e.f. 20.05.2003 taking into consideration of the modification in Para 3(d), inspite of the fact that modified Para speaks regarding allowing seniority and no where

provide any reversion, but respondent no. 2 reverted the applicants from the date of promotion i.e. 20.05.2003. These orders were passed without affording chance of hearing to the applicant. Thus, to this effect, the applicants immediately represented before respondent no. 2 in the month of June/July, 2009. It is also not disputed that the representations so filed by the applicants are still under consideration and have not been decided and without disposing of the representations of the applications, the respondents have passed the order dated 21.03.2009, addressed to the applicants individually.

4. Learned counsel for the applicants has drawn our attention towards corrigendum dated 27.03.2006 (Annexure A/6). It appears that pursuant to the order passed by the CAT, Ernakulam Bench in its judgment dated 17.05.2005 delivered in OA No. 882/2003 set aside Para 3(d) of Ministry of Defence letter of even number dated 20.5.2003. In pursuance of CAT, Earnakulam directives, Para 3(d) of MOD letter of even number dated 20.05.2003 was substituted as under:-

"The placement of the individuals in the posts resulting from the restructuring and ratio revision shall be made w.e.f. 1.1.1996, in relaxation of the conditions, if any, i.e. trade test etc. as one time measure. However, the individuals who got promotion by way of passing trade test etc. between 1.1.1996 to 19.5.2003 would be enblock senior to those who got promotion as result of restructuring of cadre in relaxation of conditions of passing trade test etc. Cases of recovery/refixation of pay as a result of restructuring of cadre may be settled in the light of said clarifications."

5. This amendment was approved by the DOP&T vide order dated 22.03.2006 and concurrence of the Ministry of Defense vide letter



dated 22.03.2006 had also been accorded. Learned counsel for the applicant while referring to the substituted Para submitted that it is with regard to the seniority only and it does not speak about reversion of the applicants. It is also not disputed that seniority list has been published and admittedly, the same has not been challenged by the applicants.

6. Learned counsel for the respondents raised the preliminary objection regarding the maintainability of the OA and submitted that the applicants have filed the present OA against their reversion order dated 21.03.2009 (Annexure A/2) and order dated 19.03.2009 (Annexure A/8) and fixation order dated 09.01.2010 (Annexure A/1), which is the consequential order of their reversion order dated 21.03.2009 (Annexure A/2) and order dated 19.03.2009 (Annexure A/8). The applicants have filed this OA on 20.04.2010 i.e. beyond the period of limitation i.e. one year as prescribed under Section 21 of the Administrative Tribunal's Act, 1985. Thus the OA is time barred and deserves to be dismissed on the ground of limitation. Learned counsel further submitted that as per the corrigendum dated 27.03.2006 issued in pursuance of the order passed by the Hon'ble CAT Bench, Ernakulam dated 17.05.2005 in OA No. 882/2003 whereby Para 3(d) of the MOD letter of even number dated 20.05.2003 was set aside and revised seniority list was issued and circulated to all the officials prior to convening review DPC, and accordingly, as per the recommendation of the review DPC, the applicants were reverted vide order dated 19.03.2009. Thus as the applicants have not challenged the revised seniority list on the basis of review DPC, this OA is not maintainable and liable to be dismissed.



7. The CAT Earnakulam Bench vide its order dated 17.05.2005 in OA No. 882/2003 observed as under:-

"Accordingly, we set aside Para 3(d) of MOD letter no. 11(1) 2002/D(CIV-1) dated 20.5.2003 extract in Annexure A/3 and direct respondents to issue necessary procedural guidelines for uniform compliance by Defence establishment."

8. We have carefully examined the material available on record and also perused the judgment rendered by the Earnakulam Bench of the CAT. Earnakulam Bench while setting aside Para 3(d) of the MOD letter dated 20.05.2003 directed the respondents to issue necessary procedural guidelines for uniform compliance by Defense establishment. The placement of individual on the post resulting from restructuring and ratio shall be made w.e.f. 01.01.1996 on in relaxation of the condition, if any, i.e. trade test etc. as one time measure. However, the individuals who got promotion by way of passing trade test etc. between 01.01.1996 to 19.05.2003 would be enbloc senior to those who get promotion as result of restructuring of cadre in relaxation of condition of passing of trade test etc. It was further made clear that cases of recovery fixation of pay as a result of restructuring of cadre may be settled in the light of the said clarification. As submitted by the learned counsel for the respondents that in view of the direction given by the CAT, Earnakulam Bench, seniority was re-drawn and revised the seniority and review DPC was held. Thus the applicants have no case but surprisingly in Para No. 4.6 of the reply, the respondents submitted that the competent authority has passed the order dated 21.03.2009 (Annexure A/2) in respect of



the applicants and thus there was no need to provide chance of hearing to the applicants before passing the order dated 19.03.2009.

9. Be that as it may, since the applicants have not challenged the seniority list at the relevant point of time and it is also not disputed that the representation so filed by the applicants are still pending for consideration, we are not expressing any opinion on the seniority list and the reversion of the applicant and recovery. We have not agreed that the respondents need not to provide any chance of hearing to the applicants before passing the order in view of the direction given by the CAT Earnakulam Bench and they have rightly undertaken the exercise but before passing any reversion order or recovery order, as per settled proposition of law the respondents are duty bound to dispose of the representation of the applicants and thus we deemed it proper to direct the respondents to first decide the representation filed by the applicants on its merit and then undertake exercise pursuant to the order passed by the competent authority. Thereafter the respondents can take appropriate steps pursuant to the direction issued by the Earnakulam Bench of the Tribunal and in view of amendment in Para No. 3 of the MOD letter dated 20.05.2003.

10. With these observations, the OA is disposed of with no order as to costs.

Anil Kumar

(ANIL KUMAR)
MEMBER (A)

K.S. Rathore

(JUSTICE K.S. RATHORE)
MEMBER (J)

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