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**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

09.07.2013

OA No. 671/2012

Mr. Amit Mathur, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents.

Heard learned counsel for the parties.

The OA is disposed of by a separate order.

(S.K. Kaushik)
Member (J)

Anil Kumar
(Anil Kumar)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 814/2012
WITH
MISC. APPLICATION NO. 428/2012
&
ORIGINAL APPLICATION NOS. 669/2012, 670/2012 & 671/2012

DATE OF ORDER: 09.07.2013

CORAM

**HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MR. S.K. KAUSHIK, JUDICIAL MEMBER**

(1). OA No. 814/2012 with MA No. 428/2012

1. Panna Lal S/o late Shri Lakha Ram, aged around 58 years, R/o MES Colony, Nasirabad, Ajmer C/o H.No. 3678, Nagar Mahla.
2. Nand Kishore S/o Shri Jethmal Ji, aged around 52 years, R/o MES Colony, Nasirabad, Ajmer.
3. Prem Narain S/o Shri Ram Lal, aged around 55 years, R/o MES Colony, Nasirabad, Ajmer, H.No. 912/B, Sivdi Bagar, Dudiya Mohla.
4. Norat Mal S/o Shri Ram Ji Lal, aged around 54 years, R/o Nandla Ki Dhani, Nasirabad, Ajmer.

(All the applicants are working as SK at Garrison Engineer, Beawar).

...Applicants

Mr. Amit Mathur, counsel for applicants.

VERSUS

1. The Union of India through its Secretary, Ministry of Defence, South Block, New Delhi.
2. The Commander Works Engineer, Military Engineer Services, Kayan Marg, Jaipur.
3. Garrison Engineering, Nasirabad, Ajmer.

...Respondents

Mr. Mukesh Agarwal, counsel for respondents.

(2). OA No. 669/2012

Surendra Kumar S/o Shri Puran Mal Kalawat, aged around 33 years, R/o 95/2 MES Colony, Nasirabad, Ajmer (Rajasthan), presently working in M.E.S. Nasirabad.

...Applicant

Mr. Amit Mathur, counsel for applicant.

VERSUS

1. The Union of India through its Secretary, Ministry of Defence, South Block, New Delhi.
2. The Commander Works Engineer, Military Engineer Services, Kayan Marg, Jaipur.
3. Garrison Engineering, Nasirabad, Ajmer.

...Respondents

Mr. Mukesh Agarwal, counsel for respondents.

(3). OA No. 670/2012

Trilok Kumar S/o late Shri Bahnwar Lal, aged around 49 years, R/o MES Colony, Nasirabad, Ajmer (Rajasthan, presently working at MES, Nasirabad, Ajmer.

...Applicant

Mr. Amit Mathur, counsel for applicant.

VERSUS

1. The Union of India through its Secretary, Ministry of Defence, South Block, New Delhi.
2. The Commander Works Engineer, Military Engineer Services, Kayan Marg, Jaipur.
3. Garrison Engineering, Nasirabad, Ajmer.

...Respondents

Mr. Mukesh Agarwal, counsel for respondents.

(4). OA No. 671/2012

Puran Mal S/o late Shri Asha Ram, aged around 57 years, R/o MES Colony, Nasirabad, Ajmer, presently working at M.E.S. Nasirabad.

...Applicant

Mr. Amit Mathur, counsel for applicant.

VERSUS

1. The Union of India through its Secretary, Ministry of Defence, South Block, New Delhi.
2. The Commander Works Engineer, Military Engineer Services, Kayan Marg, Jaipur.
3. Garrison Engineering, Nasirabad, Ajmer.

...Respondents

Mr. Mukesh Agarwal, counsel for respondents.

ORDER (ORAL)

The commonness of the grounds and the question law

involved in all the four petitions allow us to be heard and disposed

of these petitions by a common order. The facts here and there will not make difference as the question of law involved in these petitions is common. Therefore, all the Original Applications are heard together and disposed of by the common order. For the convenience, the facts of Original Application No. 814 of 2012 (Panna Lal & Ors. vs. Union of India & Ors.) are taken.

2. By means of the present Original Application filed under Section 19 of the Administrative Tribunals Act 1985, the applicants have impugned the order dated 21st of November, 2011 vide which they have been reverted and the respondents have also directed to initiate recovery from the salary of the applicants.
3. The facts are not in dispute; therefore, brief note thereupon is sufficient.
4. The applicants who initially appointed as Mazdoor/Chowkidar were subsequently promoted to the post of Mate. Thereafter, they were promoted as FGM (SK) in the pay-scale of Rs. 3050-4590. Again on 20th of May, 2003, the applicants were promoted from FGM (SK) to FGM (HS) in the pay-scale of Rs. 4000-6000. The details of their joining and promotion have been

given in para 3 of the Original Application. It is by the impugned order, the respondents have decided to revert the applicants as SK from HS due to restructuring and ratio revision and relaxation of condition of TT etc. as one time measure. Hence, the present Original Applications.

5. Pursuant to notice, the respondents resisted the claim of the applicants by filing detailed written statement wherein they have submitted that vide letter dated 20th of May, 2003 issued by the Ministry of Defence, the grade structure in the industrial as well as in the non-industrial trades, wherever, already available and the pay scales of the defence artisan staff was modified with effect from 01.01.1996. As per para (d) of letter dated 20th of May, 2003, the placement of the individuals in the posts resulting from the restructuring and ratio revision shall be made effective from 01.01.1996. In terms of letter dated 20th of May, 2003, the applicants were promoted from SK to FGM (HS) with effect from 20th of May, 2003 vide order dated 16.4.2005. Subsequently, as per the order dated 17th of May, 2005 passed by Ernakulam Bench of the Tribunal in O.A. No. 882/2003, the condition stipulated in para 3 (d) of letter dated 20th of May, 2003 has been set aside. Thus, in pursuance of order dated 17.5.2005

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passed by the Ernakulam Bench, the respondents issued a corrigendum on 22nd of March, 2006 substituting earlier clause in para 3 (d). Accordingly, the persons who got promotion by way of passing trade test between 01.01.1996 to 19.05.2003 are required to be reviewed. Pursuant to corrigendum dated 22.3.2006, a review DPC was convened on 12.01.2009 and since the applicants did not come within the zone of consideration, therefore, they were reverted back to their lower post with effect from 20th of May, 2003 vide order dated 9.3.2009 and pursuant to which the respondent no. 3 issued an order on 21.11.2011 reverting the applicants and have also revised the pay of the applicants vide order dated 10th of September, 2012 and also ordered recovery of excess payment made to the applicants.

6. We have heard Shri Amit Mathur, learned counsel appearing for the applicants and Shri Mukesh Agarwal, learned counsel appearing for the respondents.

7. Shri Mathur, learned counsel appearing for the applicants did not dispute the reversion order of the applicants. He only argued that the impugned recovery of the excess payment made in pursuance to the valid order dated 10th of September, 2012 is totally illegal, arbitrary and liable to be set

aside. He submitted that nowhere it is pleaded by the respondents that for getting the financial benefit of higher pay-scale, the applicants either misled or manipulated the things to get the said benefits.

8. Per contra, Shri Agarwal, learned counsel appearing for the respondents very fairly submitted that the impugned order of reversion and consequential order of recovery have been passed pursuant to the decision taken by the respondents in terms of the order passed by the Ernakulam Bench in OA No. 882/2003 vide order dated 17th of May, 2005 setting aside para 3 (d) of the letter dated 20th of May, 2003. He submitted that the recovery is consequential and as per the judgment of the Hon'ble Supreme Court in Civil Appeal No. 5899/2012 (Chandi Prasad Uniyal and Ors. vs. State of Uttra Khand and Ors.) decided on 17th of August, 2012, the order of recovery is valid.

9. We have considered the rival submissions of the respective parties and have gone through the pleadings and documents available on record.

10. The only question is to be decided whether the order of recovery of excess payment is valid. Undisputedly, nowhere in

the written statement or during the arguments, the respondents suggested that the excess payment received by the applicants is due to malafide intention of the applicants. Rather, it has been accepted by the respondents that the benefits were granted to the applicants under a circular dated 20th of May, 2003, which was subsequently the subject matter before Ernakulam Bench of the Tribunal, who quashed the said clause under which the benefit was extended to the applicants and similarly situated persons. Resultantly, the respondents issued a corrigendum dated 27th of March, 2006. Acting upon the same, a review DPC was constituted and the applicants did not come in the zone of consideration and accordingly they were reverted. The respondents also passed the order of recovery of excess payment which the applicants got when they were promoted vide OM dated 20.5.2003, which was set aside by the Ernakulam Bench of the Tribunal vide order dated 17.5.2005. Since there is no bad intention of the applicants in getting the benefits which was legally admissible to them at that time, therefore, the respondents cannot pass the order of recovery, which was admissible to an employee at a particular time under a policy / instructions, which was subsequently quashed by the Court of law.

11. The case of Chandi Prasad Uniyal (supra) does not apply to the facts of the present case, because in the case in hand, the applicants were legally entitled to the benefit which was given vide circular dated 20.5.2003 but subsequently the same was set aside by the Court of law, so there is no mistake on the part of the applicants in getting the payment.

12. Therefore, all these Original Applications are partly allowed to the extent that the respondents are restrained from effecting recovery from the applicants pursuant to the impugned orders. No order as to costs.

13. In view of the order passed in Original Applications, the Misc. Application No. 428/2012 (in OA No. 814/2012) for condonation of delay is disposed of.

(S.K. KAUSHIK)
JUDICIAL MEMBER

(ANIL KUMAR)
ADMINISTRATIVE MEMBER

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