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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/00002/2014

Order Reserved on 9.10.2014
Pronounced on 16.10.2014

...
CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

...
MES NO.314800 Bhag Singh, FGM (SK), working in the office of Garrison
Engineer (NAMS) Amritsar.

... Applicant

Versus

1. Union of India through Engineer-in-Chief, Ministry of Defence, Army HQ, New Delhi.
2. The Chief Engineer, Western Command, Chandimandir.
3. The Chief Engineer, Jalandhar Zone, Jalandhar.
4. Commander Works Engineer, Amritsar.
5. Garrison Engineer (NAMS), Amritsar.
6. Principal Controller of Defence Accounts, Western Command, Sector 9, Chandigarh.

... Respondents

Present: Sh. Shailendra Sharma, counsel for the applicant.
Sh. Sanjiv Sharma, counsel for the respondents.

ORDER

BY HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This O.A. has been filed under Section 19 of the
Administrative Tribunals Act, 1985, seeking the following relief:

- "8 (i) That the impugned letter Annexure A-3 and A-5 be
quashed as the same is totally arbitrary and illegal.

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- (ii) That it be held that the applicant was entitled for placement in next higher scale on account of his promotion to the post of mate and hence his basic pay was correctly refixed as Rs.3580/- in the scale of Rs.2650-4000.
 - (iii) Respondents be directed not to effect recovery from the salary of the applicant."

2. Brief facts of case are that the applicant was appointed as Peon on 17.3.1988 in the office of GE (P) Amritsar and on completion of 12 years' service, he was granted first ACP w.e.f. 17.3.2000 and was placed in the scale of Rs.2610-4000 vide PTO dated 29.4.2002. Prior to 2004, the post of Peon was non industrial. However, Respondent No.1 vide letter No.P/23437/CD/EIC(V) dated 23.4.2004 permitted the non industrial persons like Peon, Chowkidars, Safaiwala to be promoted in the industrial category of mate subject to the passing of trade test. In view of letter dated 23.4.2004, the applicant appeared in the Trade Test for the post of Mate on 13.5.2005 and passed the same. Accordingly, the applicant was promoted as Mate (FGM) on 26.7.2005 vide letter No.1513/Mate/315/EIB(NB) dated 26.7.2005 and was placed in the scale of Rs.2650-4000 and basic pay of the applicant was fixed at Rs.3580/- on 26.7.2005. Copy of PTO is annexed as Annexure A-1. In the year 2012, Respondent No.6 in a query raised by Respondent No.4 regarding, the fixation of pay of applicant and one other employee, informed Respondent No.4 vide letter dated 4.6.2012 that the basic pay of

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Rs.3580/- of the applicant in the scale of Rs.2650-4000 has been correctly fixed (Annexure A-2).

3. Surprisingly on 3.9.2013, Respondent No.6 wrote a letter to Respondent No.5 to the effect that the pay fixation of the applicant on account of his promotion as Mate was done erroneously and directed that the pay fixation of the applicant be cancelled on his promotion as mate (Annexure A-3). On receipt of this letter, the applicant sent a detailed representation to Respondent No.6 highlighting the facts of his case and also gave reference of the letter at Annexure A-2 stating that his pay was correctly fixed on his promotion as mate because for the first 12 years of service he did not get any promotion, so the 1st ACP was rightly granted to him and the grant of ACP has no link with promotion which was made after the grant of ACP (Annexure A-4). Despite the letter at Annexure A-4, Respondent No.6 vide letter dated 22.11.2013 informed Respondent No.5 that the letter at Annexure A-4 is correct and thereby rejected the representation of the applicant (Annexure A-5).

4. In the written statement filed on behalf of the respondents it has been stated that the applicant completed 12 years of service on 16.3.2000 and was granted financial benefit of 1st ACP on 17 March 2000 in the pay scale of 2610-60-3150-65-3140/-. After that the

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applicant passed the Trade Test of Mate (FGM) on 03.7.2005 and he got the promotion as Mate (FGM) w.e.f. 26.07.2005. Accordingly to the rules the applicant had already been granted the benefit of 1st ACP and now he was only eligible for fitment on promotion and not for financial benefit on promotion but erroneously, the applicant's pay had been fixed at Rs.3850/- in the pay scale of Rs.2650-65-3300-70-4000/- in September 2008 when MACP was introduced. After 6th CPC, all pay scales had been merged in the scale of Rs.5200-20200+ 1800/-Grade Pay. After review of pay vide PCDA (WC) Chandigarh letter No. Pay/11/Tech/1028 dated 03.09.2013, it was found that pay has been wrongly fixed as the applicant had already been granted benefit under 1st ACP, so that on promotion, the case of applicant is applicable for fitment and not for financial benefit. On 26th July 2005, the applicant was eligible for fitment on promotion but not for benefit of promotion because he had already taken benefit of 1st ACP w.e.f. 17th March 2000.

5. Rejoinder on behalf of the applicant has been filed stating therein that increase in pay is the consequent effect of promotion and promotion without financial benefits cannot be termed as promotion and the same can only be considered as re-designation. The pay of the applicant was rightly fixed as Rs.3580/- in the pay scale of Rs.2650-4000 w.e.f. 26.7.2005.

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6. Arguments advanced by learned counsel for the parties were heard when learned counsel for both the parties reiterated facts and grounds taken in the OA, rejoinder and written statement respectively.

7. We have given our thoughtful consideration to the matter. It is evident that the applicant was allowed first ACP in the scale of Rs.2610—60-3150-65-3140. The scale of post of Mate in which he was promoted was Rs.2650-65-3300-70-4000 and as per order dated 26.7.2005, pay of the applicant was fixed in this scale @ Rs.3580/- vide order dated 2.1.2006 (Annexure A-1). The contention of the respondents that the applicant was not entitled to the benefit of promotion in the higher scale as he had already got this benefit while being allowed first ACP does not seem to be reasonable as scale allowed by way of first ACP is clearly lower than the scale of the promotional post of Mate. The applicant was earlier working as Peon and after passing Trade Test he was promoted as Mate. First ACP benefit had been granted much earlier and this cannot have any bearing on the fixation of pay of the applicant in the scale of Mate. Hence the present OA is allowed and the respondents are directed to ensure that no recovery is

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effected from the salary of the applicant on account of alleged over payment to him.

8. With the above directions, the OA is disposed of.

(RAJWANT SANDHU)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Place: Chandigarh.

Dated: 14.10.2014.

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