

50/100

X

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

M.P-58/99 ordersheet pg-1 to 2

INDEX

Disposed Date 22/3/98

M.P-125/99 ordersheet pg-1 to 2

Disposed Date-07/6/99

O.A/T.A No. 109/96...

R.A/C.P No.

E.P/M.A No. 58/99...

1. Orders Sheet. OA-109/96.....Pg.....1.....to.....5.....
2. Judgment/Order dtd. 24/6/98.....Pg.....1.....to.....2..... Disposed
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A.....109/96.....Pg.....1.....to.....42.....
5. E.P/M.P.....58/99.....Pg.....1.....to.....7.....
6. R.A/C.P. M.P-125/99.....Pg.....1.....to.....6.....
7. W.S.....Pg.....1.....to.....3.....
8. Rejeinder.....Pg.....1.....to.....16.....
9. Reply.....M.P-302/98 ordersheet.....Pg.....1.....to.....2.....
10. Any other Papers.....Disposed Date-05/01/99.....Pg.....to.....
11. Memo of Appearance.....petition copy pg-1 to-4.....
12. Additional Affidavit.....M.P-126/99 ordersheet pg-1 to 2.....
13. Written Arguments.....Disposed Date-7/6/99.....
14. Amendment Reply by Respondents.....petition copy pg-1 to-6.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

M.P-217/98 ordersheet pg-1 to 4

Disposed Date-17/9/98

petition copy pg-1 to-4

SECTION OFFICER (Judl.)

RA No.
CP No.

No. 109/96

Shri Bala Krishna Sarma cons. APPLICANT(S)

Union of India or RESPONDENT(S)

Mr. J. L. Sarkar, M. Chandu Advocate for the applicant.

B. Baruah

Mr. G. S. Sarma, Sr. C.S.C. Advocate for the Respondents.

Mr. S. Ali, Sr. C.S.C.

Office Notes

Date

Court's Orders

27.6.96

Mr J.L.Sarkar for the applicant. Mr S.Ali, Sr.C.G.S.C for the respondents.

The applicants have prayed for to allow them to join in this single application under Rule 4(5) (a) of the C.A.T (Procedure) Rules 1987. Considered their prayer and they are allowed to join together in this single application under the aforesaid rule.

Heard Mr Sarkar for admission. Perused the contents of the application and the reliefs sought. Application is admitted subject to consideration of limitation at the time of final hearing of this O.A. Written statement within six weeks.

List on 6.8.96 for written statement and further orders.

Member

pg

None for the applicant.

Sr.C.G.S.C. Mr. S. Ali for the respondents, and seeks time for submission of written statement. List for written statement and further order on 3-9-96.

Member

This application is in form and within time C. F. of Rs. 50/- deposited vide IPO No 3463/9 Dated 29.6.96.

~~Registered~~

This OA was defective & now removed.

24/6

27/6/96
SR (1/2)

2-7-96

Memo of appearance filed by Mr: S. Ali, Sr. C.S.C.

14-8-96

Notice issued to the concerned parties on 8.8.96.

Bar

lm

26/8

12/Statement - has not been
filed.

56
49 ✓

Service Reports are still awaited.
12/Statement - has not been filed.

23/9

3.9.96

Mr M.Chanda for the applicant.
Written statement has not been submitted.

List for written statement and
further orders on 24.9.96.

ba
Member

pg
or
3/9

Service Reports are still awaited.

12/Statement - has not been
filed.

11

37) written statement
has not been filed.

76.11
6.12.96

10-1-97

written statement
has not been filed.

76.11

nkm
or
21/9

11.11.96

Learned Sr. C.G.S.C. Mr S. Ali submits
for adjournment to file written statement.

List for written statement and further
orders on 11.11.96.

ba
Member

None for the applicant.
Learned Sr. C.G.S.C Mr. S.Ali for
the respondents.

Mr. Ali prays time for submission of
written statement.

List for written statement and
further orders on 9.12.1996.

ba
Member

trd
or
11/11

9.12.96

Mr M.Chanda for the applicant.
Written statement has not been submitted.
Mr R.B.Raghavaiah, AE for the respon-
dents prays for 3 months time for filing
written statement. Such longer adjourn-
ment cannot be granted in a case which
has already been adjourned several times.
However, list for written statement and
further orders on 15.1.1997.

pg
or
4/12

ba
Member

1x5x97x

MxxxxxxSarkerxxlearnedcounselxxappearingxx

1.5.97

Mr. J.L.Sarker, learned counsel, who is in-charge of the case is reported to be indisposed. Let this case be adjourned till 11.6.97.

List on 11.6.97 for hearing.

11-6-97 was Nagah
Buch.

Member

Vice-Chairman

trd

F₉₅

16.6.97

Adjourned to
20.6.97.

By order

16/6/97.

16.6.97 Adjourned. List
on 20.6.97.

By order

16/6

20.6.97

The case is otherwise ready for hearing as submitted by the learned counsel for the parties.

Let this case be listed for hearing on 22.8.97.

Vice-Chairman

nkM

F_{24/6}

15.9.97

Left over. List on 12.1.98.

By order

Bon

The case is ready
for hearing as
regards W/S.

11/8

W/S. has been filed

2/8

15.1.97

Mr. M.Chanda for the applicants.

Mr. S.Ali, Sr. C.G.S.C. with Mr. N.D. Kohli, Asstt. Garrison Engineer for the respondents.

Mr. Ali prays for two months time to file written statement and a letter dated 13.1.97 from Garrison Engineer has also been submitted to the Registry.

Heard - counsels for both sides. The respondents are allowed 2 months time to file written statement as a final opportunity.

List for written statement and further orders on 17.3.1997.

Mr. Chanda submits that the O.A. should have been listed before the Division Bench. Mr. Ali has no objection. Seen the relief prayer No. 1. The matter is to be listed before the Division Bench.

Member

12-2-97

Notice duly served on Respondant No-3,

List before Two Division Bench on 17-3-97.

15/1

trd
15/1

17-3-97

18.3.97

One week time allowed to the applicant to file rejoinder. List it on 1.5.97.

Member

Vice-Chairman

12-1-98

Division Bench is not available. Case is ready for hearing. List on 19-3-98 for hearing.

Member

19.3.98

Let the case be listed for hearing on 23.6.98.

Member

Vice-Chairman

Notice duly served on Respondant No. 3.

The rest are still awaited.

W/statement - has been filed. 1m

Rejoinder has not been filed.

W/S has been filed on R. No. 1-3 But Rejoinder has not been filed. pg 20/3

23-6-98

Passover in day.

15

3 and

CA. 109/76

Notes of the Registry

Date

Order of the Tribunal

23-6-98

24.6.98

Rejoinder Submitted
by the applicant
at P. 46-61.

nb
23/6

Heard the learned counsel for the parties. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is disposed of. No order as to costs.

ba
Member


Vice-Chairman

nkm

16.7.98

Copies of the
Judgment have been
sent to the D/Sec.
for security the same
to the parties through
Regd. with A/D.

KL.

Notes of the Registry

Date

Order of the Tribunal

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
GUWAHATI

An Application under Section 19 of the Administrative
Tribunals Act, 1985

O.A. No. 109 /96
Shri Bala Krishna Sharma & Ors.

..... Applicants

-versus-

Union of India & Ors.

..... Respondents

INDEX

Sl. No.	Annexure	Particulars	Page No.
1.	-	Application	1-15
2	-	Verification	15
3	1	Promotion Order dt. 8.9.83	16-17
4	2	"	18-19
5	3	"	20-21
6	4	Reversion Order dated 30.7.87	22
7	5	Lawyer Notice dt. 12.8.91	23-26
8	6	Judgement and Order dt. 24.4.89	27-35
9	7	Letter dt. May 1990	36
10	8	Letter dt. 17.9.90	37
11	9	Representation dt. 27.11.95	38 - 42.
			43-47.

Date : 20-6-96.

Filed By :

Advocate

Copy is handed
over to Shri
C. Sharma
Adl. C.A.
Dhule
Adv.

Filed by the applicant
through Mr. Ch. d.
20-6-96

9

1. Particulars of applicants.

1. Shri Bala Krishna Sharma,
Motor Pump Attendant,
(now redesignated as House Pump Operator),
working under Garrison Engineer,
MES, Ministry of Defence, Shillong.
2. Shri Lila Ram Sharma,
Motor Pump Attendant,
(now redesignated as House Pump Operator),
working under Garrison Engineer,
MES, Ministry of Defence, Shillong.
3. Shri Jong Bahadur Gurung,
Motor Pump Attendant,
(now redesignated as House Pump Operator),
working under Garrison Engineer,
MES, Ministry of Defence, Shillong.

2. Particulars of respondents.

1. Union of India,
Through Secretary, Govt. of India,
Ministry of Defence,
New Delhi.
2. The Commander, Works Engineer,
Military Engineering Service,
Shillong Zone, S. E. Falls,
Shillong.
3. The Garrison Engineer,
Military Engineering Service,
Shillong - 793002.

Lila Ram Sharma

3. Particulars for which this application is made.

This application is made for fixation, after stepping up of pay in the scale of Rs. 260-400/- (pre-revised) in terms of promotion order issued under Garrison Engineer, order dated 8.9.93 of Shillong under Authority letter No. SL. No. 1301/3935/ETA dated 26.8.83 of the Commander Works Engineer, relating to applicant's junior's pay who were allowed higher pay-scale, in the grade of Motor Pump attendant and the general order of reversion passed under letter No. 1301/714/ETA dated 30.7.1987 were not given in the cases of some juniors, as a result juniors are now receiving higher pay-scale, therefore, stepping up of pay of the applicants are required, hence the instant application.

4. Jurisdiction.

The applicants declares that the subject of the case against which they want redressal is within the jurisdiction of the Hon'ble Tribunal.

5. Limitation.

further
The applicants/declares that the application is within the limitation prescribed in section 21 of the Central Administrative Act, 1985.

6.....

Hilaram Sharma

6. Facts of the case.

1. That the applicants are a citizen of India and as such they are entitled to all the rights and privileges guaranteed under the Constitution of India. The applicants are presently serving as Motor Pump Attendant (now resigned as H.P.O.) and attached to the office of the Garrison Engineer, MES, Shillong. *The Hon'ble Tribunal be pleased to grant Permission to name this application jointly as the reliefs are common.*
2. That the applicants initially appointed as Chowkidar/Majdhor. The applicants thereafter promoted as Motor Pump Attendants (in short MPA) vide order dated 8.9.83, in the pay-scale of Rs. 260-400/- under order of the Garrison Engineer No. 1002/7/1213/EI dated 8.7.83, and 1002/7/1217/EI dated 8.9.83 of the Garrison Engineer, Shillong under Authority letter No. Sl. No. 1301/3935/EIA dated 26.8.1983 of the Commander Works Engineer. The promotion order dated 8.9.83 clearly states that the applicant was placed for probation for 2 years, the relevant portion of the order dated 8.9.83 is quoted below:-

"2. You will be on 2 (two) years probation from the date you will assume your duty in your new assignment. This probation will not be treated as mere formality. In case where you are not found coming up to the expected standard ~~and~~ you will

be warned.....

Lila Rampham

be warned in writing, of your failings from time to time, so that if you fail to make up your grade within 2 years time, you will be reverted to the lower grade".

The applicants after promotion to the A cadre of M.P.A. successfully completed the 2 years probation period and worked in the grade of MPA continuously, more than 4 years.

Copies of the order dated 8.9.83 is enclosed as Annexure -s, 1, 2 and 3.

3. That most surprisingly, when the applicants are working in the cadre of MPA., the applicants were reverted in the cadre of Mate (M.P.A.) from the post of M.P.A. vide impugned order issued under letter No. 1301/714/EIA dated 30.7.87 wherein it is stated that amendment are hereby made with reference to letter No. 1301/3935/EIA dated 26.8.83. The relevant portion of the amendment letter dated 30.7.87 is quoted below :-

"PROMOTION/POSTING: INDUSTRIAL PERSONNEL.

~~PROMOTION~~.....

1. Reference this office letter No. 1301/3935/EIA dated Aug. 83.

2.....

Hilaram Sharma

2. The following Amendments are hereby made in our letter under reference :-

Against MPA No.1 to 27 in Col. No. 4.

FOR "MPA"

Read : Mate (M.P.A.)

Auth : HQ CEEC Letter NO. 131950/55/237/

Engrs/FIR(C) dt. 10 Nov. 86.

2. The following promotion are hereby further ordered :-

Sr. No.1 to 13 -x-x-x-x-x-x-x-x

Sr. No. 15 to 26 -x-x-x-x-x-x-x-x

Auth: HQ CEEC letter No. 131950/55/278

Engrs/EIR/EIR(C) dated

4. Date of seniority in the promoted grade will count from the date of issue of this letter without financial effect and promotees will be placed in position in situ.

5. The excess payment made to the individuals should be recovered as directed vide HQ. CEEC letter No. 131950/55/237/Engrs/AIR(C) dated 10 Nov. 86".

This above amendment which was issued vide letter dated 30.7.87 is in fact the reversion order from the

cadre.....

Lila Ram Sharma

cadre of M.P.A. to the lower cadre of Mate M.P.A. as the pay-scale of Mate M.P.A. is Rs. 210-290/- whereas, the pay scale of M.P.A. is Rs. 260-400/-. Therefore, this arbitrary decision of reversion to the cadre of M.P.A. mate, without any show cause notice or without following principles of natural justice is highly illegal and arbitrary, and especially, when the applicants had worked in the cadre of M.P.A. for more than 4 years, therefore order of reversion is highly illegal and the same is liable to be set aside and quashed.

A copy of the letter No. 1301/714/EIA dated 30 July, 87 is ~~xx~~ annexed as Annexure - 4.

4. That the applicants, being highly aggrieved by the cancellation of their promotion order dated 8.9.83 approached on number of occasions to the concerned authorities and finally for restoration of their promotion of MPA. The applicants also submitted a legal notice through his lawyer on 12.8.91 but the respondents remained silent over the legal notice.

A copy of the legal notice dated 12.8.91 is annex ed as Annexure - 5.

5. That the similarly situated employees of MES who were also reverted in the Region and also in the

North.....

Hilaram Sharma

North Eastern Region approached the Hon'ble Central Administrative Benches namely - Calcutta and Guwahati. The Calcutta Bench in OA 796 of 1987 (Saktipada Bhattacharjee & Ors. -Vs- U.O.I. & Ors) decided the question of illegal reversion and the question of illegal recovery on 24.4.89 where the Hon'ble Tribunal was pleased to quash the impugned order of reversion and order of recovery and further directed to treat the applicants, in continuous service to the Gr. of MPA. in the pay scale of Rs. 260/- to 400/- the relevant portion of the judgement dated 24.4.89 passed in O.A. 796/87 is reproduced below :-

"9. In view of the above, we quash the two impugned letters dated 12.3.1987 and 4.7.1987 (Annexure - "E" to the application). The result will be that the applicants will continue to the same scale, i.e. Rs. 260-400/- without break till 31.12.1985 and will be entitled to the corresponding revised scale after the recommendations of the Fourth Pay Commission.

10. The application is disposed of with the above terms leaving the parties to bear their own costs "

Therefore.....

Hile Ran Ghana

Therefore in view of the order passed by the Hon'ble Tribunal, Calcutta Bench, the Garrison Engineer, Shillong have also implemented the judgement and order dated 24.4.89 in respect of some of the similarly situated employees of the MES Department. This would be evident from the correspondences of Garrison Engineer, Shillong letter of May, 1990, wherein G. E. Shillong requested for immediate implementation of Judgement and order dated 24.4.89. However the Chief Engineer vide his letter No. 70203/2/MON/E/I(2) dated 17.9.90 whereby the Chief Engineer informed Commander Works Engineer, Shillong that it has been intimated CEC that the judgement against OA. 796/87 has been ordered to be implemented to the petitioners only. The said order cannot be implemented to the non petitioners, it is further stated that an SLP. has been filed in the Supreme Court against the judgement of OA. 796/87. As such the application forwarded under our letter No. 70203/2/11378/EIC(2) dated 13.7.90 and letter No. 70203/2/1409/EIC(2) dated 27.8.90 cannot be entertained. Therefore, individuals may be informed accordingly. The applicants after noted the contents of the letter dated 17.9.90 started working and watching of the result of the special leave petition submitted before the Supreme Court against of

OA.....

Wilaram Sharma

OA 796/87. However the judgement were implemented in respect of petitioner's OA No. 796/87 and as a result the applicants of OA. 796/87 had been placed in higher pay scale of Rs. 260-400/- whereas the present applicants remained in lower scale of Rs. 210-290. This illegal treatment of the respondents is highly discriminatory and violative of Article 14 and 16 of the Constitution of India and as a result applicants started suffering financial loss due to illegal reversion following the impugned order dated 30.7.87. Therefore the present applicants are entitled to restore their promotion to the scale of MPA with retrospective effect with all consequential monetary benefits and the Hon'ble Tribunal be pleased to direct the respondents to fix the pay of the applicant treating him in continuous service to cadre of MPA in terms of promotion order dated 8.9.83. The applicants represented to the respondents through lawyer Notice dated 12.8.91 but the respondents are silent.

* Copies of the judgement and order dated 24.4.89 passed in OA. 796/87 and letter of May, 1990 and letter dated 17.9.90 are annexed as Annexures - 6, 7 and 8 respectively.

6. That the applicants thereafter came to know from a reliable source that the Hon'ble Supreme Court had

upheld.....

He Lalaram Sharma

upheld the judgement and order dated 24.4.89 passed by the CAT. Calcutta Bench in OA No. 796/87 sometime in 1994 although the specific date and order could not be collected in spite of their best efforts. However the respondents be directed to produce judgement and order of the Hon'ble Supreme Court passed in connection with Special Leave Petition filed against O.A. 796/87.

7. That your applicant further begs to state that in the Review application No. 12 of 1990, and M.P. of 66 of 1990 in O.A. No. 144(G)/89, i.e. Union of India & others -vs- Shri Parsuram Deka & others, paragraph 4 of the said review Judgement, dated 20.11.90, it is observed as follows :

"4. We have heard Mr. G.Sama and Mr. J.L. Sarkar, the learned counsel for the petitioners in the original applications and opposite parties in this Review Application at some length. Before we express our opinion on the merits of the contentions of Mr. G.Sama, it is worthwhile to state that in the later portion of paragraph 6 of the judgement, it has been categorically mentioned as follows :

"The clarification or direction given by the Headquarters, Eastern Command in its letter dated 10.11.1986 cannot be sustained".

By the above quoted observations it was meant by the Bench that the clarification contained in

letter.....

Atty Gen
Cmde
Adv

19

letter dated 10.11.1986 is against all cannons of justice, equity and fair play and, therefore, it was held to be not sustainable and accordingly it was held in paragraph 7 of the judgement that the petitioners in the original application would be entitled to their emoluments on a pay of Rs. 950- to Rs. 1500/- from the year 1984. From the entire tenor of the judgement it would be crystal clear that the order was quashed and it was held that the letter on the basis of which the order of reversion was passed is not sustainable and the petitioners were entitled to the scale of pay in the promotional post since 1984".

Therefore it is clear from above observation that the terms and condition of appointment to the promotional post could not be changed arbitrarily, and the same is discriminatory and therefore, the illegal order cannot be sustained in law, and the applicant is entitled to same relief passed in the original judgement in O.A. 144(G)/89, and also in the light of judgement and order dated 24.4.89, in the light of the Calcutta judgement. The applicant also beg to refer the judgement and order dated 21.8.1995 which is decided by the Hon'ble Supreme Court in the matter of Pay Fixation in Civil Appeal No. 7510 of 1995, reported in 1995(5) SCC 628 where it is held that the pay fixation is a continuous wrong. The relevant portion is quoted below :-

"6.....

Att-ly
@
Adv

"6. The Tribunal misdirected itself when it treated the applicant's claim as "one time action" meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a government servant to be paid the correct salary through his tenure according to computation made in accordance with the rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao v. Mattapalli Raju). *

7

"8. For the aforesaid reasons, this appeal has to be allowed. We make it clear that the merits of the appellant's claim have to be examined and the only point concluded by this decision is the one decided above. The question of limitation with regard to the consequential and other reliefs including the arrears, if any, has to be considered and decided in accordance with law in due course by the Tribunal. The matter is remitted to the Tribunal for consideration of the application and its decision afresh on merits in accordance with law. No costs".

Therefore case of the applicant is correct, as the Pay Fixation of the applicant has not yet been rectified in accordance with the law laid down by the Calcutta Bench and Guwahati of the Central Administrative Tribunal.

8.....

Attended
@hls
Adv

8. That the applicants are very low paid employees of MES Deptt. Therefore although they did not file an application before the Hon'ble Tribunal but started waiting and watching the proceedings pending before the Hon'ble Tribunal and Hon'ble Supreme Court of other similarly situated employees. Therefore they cannot be denied justice and also cannot be made to suffer only on the ground that they did not approach the Tribunal. The applicants also submitted representation before the Secretary to the Govt. of India, Ministry of Defence CWE, Shillong and G.E. Shillong vide their representation dated 27.11.95 but the respondents are still silent over the representation of the applicants.

A copy of the representation dated 27.11.95 enclosed as Annexure - 9.

9. That this application is made bona fide and for the cause of justice.

7. Relief sought for.

Under the facts and circumstances the applicant prays for the following reliefs :

1. That the respondents be directed to treat the applicants in continuous service to the

post of.....

Lilaram Sharma

post of MPA in terms of order dated 8.9.83 with retrospective effect with all consequential service and monetary benefits by refixing the pay of the applicants.

2. To pass any other order orders as deemed fit and proper under the facts and circumstances as stated above.
3. Costs of the case.

The above reliefs are prayed on the following amongst -

- G R O U N D S -

1. For that the applicant was duly promoted to the post of MPA. in terms of promotion order dated 8.9.83.
2. For that the applicants successfully completed two years of probationary period & in the cadre of MPA. and they had rendered more than 4 years of service in the post of MPA.
3. For that order of reversion to the post of Mate MPA. with retrospective effect is not permissible under the law.

4.....

Lilaram Sharma

4. For that cancellation of promotion order to the post of SBA without following principle of natural justice is bad in law.
5. For that denial of pay and allowances and promotion is a continuous wrong.
6. For that juniors of the applicants were retained in the higher pay scale following judgement and order of the CAT of Calcutta and Guwahati Benches.
7. For that applicants are entitled to the refixation of the pay to the post of MPA. in the light of the judgement and decision of the CAT and Hon'ble Supreme Court.
8. For that the applicants constantly pursued the departmental authorities for redressal of their grievances.
9. For that the judgement and order of the Review Application of the CAT, Guwahati Bench were recently implemented by the Respondents in the year 1995.
10. For that the respondents are silent over the representation of the applicant for refixation of their pay to the cadre of MPA.

8.....

Lilaram Sharma

8. Interim relief prayed for.

The applicant does not pray for any interim relief in this case but prays for expeditious hearing of the case.

9. Details of remedy exhausted.

There is no scope of any other remedy except the application before this Tribunal.

10. Matter not pending in any other Court/Tribunal.

11. Particulars of the postal order.

Postal Order N o. - 3463 14
Date - 20-6-96
Issued from - G. P. O. Guwahati.
Payable at - Guwahati.

12. Details of Index.

An Index showing the particulars of documents is enclosed.

13. List of enclosures.

As per Index.

V E R I F I C A T I O N .

I, ~~Sri Jong Bahadur & Gurung~~ ^{Lila Ram Sharma} son of late Lila Ram Sharma resident of Shillong, applicant in the above case, do hereby solemnly affirm and declare that I have been authorised by other applicants to swear this Verification and state that the statements made in para 1 to 13 of this application are true to my knowledge and belief and I have not suppressed any material facts.

I sign this Verification on this the 5th day of February 1996.

Place - Guwahati.

Date - 5-2-96.

Lilaram Sharma
Signature.

Annexure - 1.

No. AF/242.

CE(Vayu Sene) Karyalaya, Shillong
Office of the GE(AF) Shillong.
Elephant Falls Camp,
Nonglyer post, Shillong-793009.

1002/7/1215/El.

08 Sep.87.

MES-228609 Shri Jong Bahadur Gurung,
Chowkidar (Opt)
(Through BSO(AF) Shillong).

PROMOTION/POSTING: INDUSTRIAL PERSONNEL.

1. You are hereby permanently transferred to CE Shillong in the interest of state to take the appointment of MPA on promotion.
2. You will be on 2 (two) years probation from the date you will assume your duty in your new assignment. This probation will not be treated as mere formality. In case where you are not found coming up to the expected standard you will be warned in writing of your failings from time to time, so that if you fail to make up your grade within 2 years time, you will be reverted to the lower grade.
2. The seniority in your grade will count from the date of issue of CWE's letter quoted as authority without any financial effect (i.e. 26 Aug. 83).

Authority :- CWE Shillong Letter No. 1301/

3935/EIA dated 26 Aug. 83.

*Atul
Q. S.*

4.....

Annex. 1.

4. You will be relieved from your duties from this office on 10 Sep. 83 (AN) and you will report to your new formation on the next working day.
5. You will submit the following before leaving this office :-
 - (a) Clearance Certificate (b) Departure Report.
 - (c) Ration Card. (d) Identity card.
6. It may be noted that your pay and allowances for month of Sep. 83 and onwards will be claimed by your new office only after you have reported there for duty.
7. It is certified that the above named individual is not involved in any disciplinary case/court of inquiry and there is nothing also against the individual to warrant withholding of the above promotion.
8. No. TA/DA/Joining Time/Journey period is admissible.

Sd/- Illegible.

(B. Sridharan).

E. E.

Garrison Engineer (AF).

Copy to :

1. CWE Shillong.
2. CDA Patna.
3. AAO Shillong.
4. GE Shillong.
5. BSO (AF) Shillong.

Details of pay and Allowances.

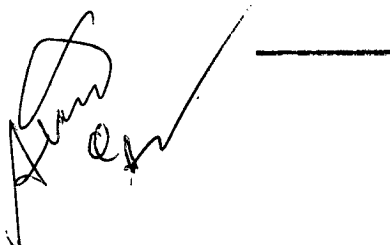
<u>BP/DP.</u>	<u>ADA.</u>	<u>HR.</u>
226.00 /	171.70	53.45
134.30	<u>HA.</u>	<u>IR.</u>
	15.00.	50.00.

Deductions.

GIF A/C. No. 921116 @ Rs.15/-

Internal.

6. El(Records), El(Con), GPF Advance Rs. @ 30/- Pm. Balance Rs. 480/- out of Rs. 600/-
Cashier, Ration Stand, NGIS Rs. 10/-
CSD(I) Canteen.
Date of Birth - 01. Mar 1950
Date of next increment : On fixation of pay
Balance C/L. - 10 days and R/H - 2 days.



Annexure- 2.

No. AF/242. CE (Vayu Sene) Karyalaya, Shillong.
Office of the GE(AF) Shillong.
Elephant Falls Camp.
Nonglyer post, Shillong- 893009.
1002/7/1213/El. 08 Sep 83.

MES-228920 Shri
Balakrishna Shama , Cow (Qpt),
(Through AGE E/M. No. I Shillong).

PROMOTION /POSTING : INDUSTRIAL PERSONNEL.

1. You are hereby permanently transferred to CE Shillong in the interest of state to take the appointment of MPA on promotion.
2. You will be on 2 (two) years probation from the date you will assume your duty in your new assignment. This probation will not be treated as mere formality. In case where you are not found coming up to the expected standard you will be warned in writing of your failings from time to time, so that if you fail to make up your grade within 2 years time, you will be reverted to the lower grade.
3. The seniority in your grade will count from the date of issue of CWE's letter quoted as authority without any financial effect (i.e. 26 Aug. 83).

Authority :- CWE Shillong Letter No. 1301/
3935/EIA dated 26 Aug. 83.

4. You will be relieved from your duties from this office on 10 Sep. 83 (AN) and you will report to your new formation on the next working day.
5. You will submit the following before leaving this office :-

- (a) Clearance Certificate (b) Departure Report.
- (c) Ration Card, (d) Identity Card.

[Handwritten signature]

6. It may be noted thatx your pay and allowances for mon df Sep. 83 and onwards will be claimed by your new office only after you have reported there for duty.

7. It is certified that the above named individual isx not involved in any disciplinary case/court of inquiry and there is nothing also against the individual to warrant withholding of the above promotion.

8. No TA/DA/Joining Time/Journey period is admissible.

Sd/- Illegible.
(B. Seidharan).

E. E.
Garrison Engineer (AF).

Details of Pay & Allowances.

<u>BP/DP</u>	<u>IR.</u>	<u>ADA.</u>	<u>HR.</u>
226/-	50/-	171.70	15/-
130/-			

GPF Subs @ Rs. 20/- A/C. NO. 926235.

GPF Arrs: 73 Instt @ Rs. 1270/-

Bal Rs. 175/- to be recovered.

NGIS = 10/- .

Copy to :-

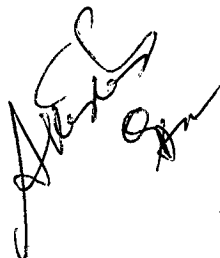
1. CWE Shillong.
2. ~~MAA~~ CDA Patna.
3. AAO Shillong.
4. GE Shillong.
5. AGE. E/M N_O.I. Shg.

Internal.

EI(EI) & EI(Con), Cashier, Ration
Stand, CSD(I) Canteen.

Date of Birth : 9.10.1946.

Date of next increment : On fixation
of pay. Balance C/L. 12 Days,
R/H. 2 days.



Annexure - 3.

No. AF/242. CE(Vayu Sene) Karyalaya, Shillong.
Office of the GE(AF) Shillong.
Elephant Falls Camp.
Nonglyer Post, Shillong - 793009.

1002/7/1217./El.

08 Sep 83.

MES-228878 Shri Lila Ram Sharma,
Mazdoor (Opt),
(Through AGE B/R No. II).

PROMOTION/POSTING : INDUSTRIAL PERSONNEL.

1. You are hereby permanently transferred to CE Shillong in the interest of state to take the appointment of MPA on promotion.
 2. You will be on 2 (two) years probation from the date you will assume your duty in your new assignment. This probation will not be treated as mere formality. In case where you are not found coming up to the expected standard you will be warned in writing of your failings from time to time, so that if you fail to make up your grade within 2 years time, you will be reverted to the lower grade.
 3. The seniority in your grade will count from the date of issue of CWE's letter quoted as authority without any financial effect (i.e. 26 Aug. 83).
- Authority :- CWE Shillong Letter No. 1301/
3935/EIA dated 26 Aug. 83.
4. You will be relieved from your duties from this office on 10 Sep. 83 (AN) and you will report to your new formation on the next working day.
 5. You will submit the following before leaving this office :-
 - (a) Clearance Certificate , (b) Departure Report,
 - (c) Ration Card. (d) Identity card.

6.....



Annx. 3.

6. It may be noted that your pay and allowances for month of Sep. 83 and onwards will be claimed by your new office only after you have reported there for duty.

7. It is certified that the above named individual is not involved in any disciplinary case/court of inquiry and there is nothing also against the individual to warrant withholding of the above promotion.

8. No TA/DA/Joining Time/Journey period is admissible.

Sd/- Illegible.

(B. Sridharan)

E. E.

Garrison Engineer (AF).

Details of ~~xx~~ pay and Allowances.

<u>BP/DP.</u>	<u>ADA.</u>	<u>HR.</u>
226/-	171.70	53.45
130.30.	<u>HA.</u>	<u>IR.</u>
	15/-	50/-

Description.

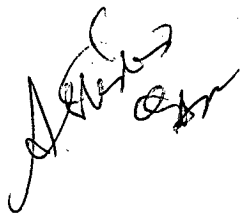
GPF. A/C. No. 926162 @ Rs. 20/-
NGIS 1 10/-.

Copy to :

1. CWE Shillong.
2. CDA Patna.
3. AAO Shillong.
4. GE Shillong.
5. BSO (AF) Shillong.

Interiml.

6. El(Records), El(Con),
Cashier, Ration Stand
CSD() Canteen.
Date of Birth - ~~01/01/1950~~ 15 Jan 1950.
~~Date of Birth -~~
Date of next increment : On fixation of pay.
Balance C/L 6 days , R/H 2 days.



Annexure - 4.

Telephone No 1 : 293. Commander Nirman Engineers
Commander Works Engineer.
Spread Eagle Falls,
Shillong - 793001.

1301/714/EIA.

30 Jul 87.

GE Shillong.
GE (AF) Shillong.
GE(P) Umroi.

PROMOTION/POSTING : INDUSTRIAL PERSONNEL.

1. Reference this office letter No. 1301/3955/EIA dated Aug 83.
2. The following Amendments are hereby made in our letter under reference :-

Against MPA Sr. No. 1 to 27 in Col. No. 4.

For "MPA"

Read : Mate (M. P. A.)

Auth : HQ CEEC letter No. 131950/55/237/Engrs/EIR(C)
dt. 10 Nov. 86.

3. The following promotion are hereby further ordered :-

Sr. No. 1 to 13 -x-x-x-x-x-x-x

Sr No. 14 R.K. Paul Mate MPA to MPA.

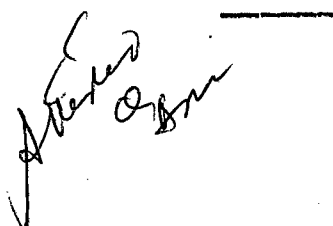
Sr. No. 15 to 26 -x-x-x-x-x-x-x

Auth : HQ CEEC letter No. 131950/55/278/Engrs/EIR(C)
dated

4. Date of seniority in the promoted grade will count from the date of issue of this letter without financial effect and promotees will be placed in position in situ.

5. The excess payment made to the individuals should be recovered as directed vide HQ CEEC letter No. 131950/55/237/Engrs/AIR(C) dated 10 Nov. 86.

Sd/- -x-x-x-x-



Annexure - 5.

S.K. Das Choudhury,
Advocate.

"PURBA"
Upper Lachumiere
Shillong - 793001.

Notice under Section 80(1) Civil Procedure Code.

To

- (i) The Commander, Works Engineering, MES, Shilong Zone, Spread Eagle Falls, Shillong - 793001.
- (ii) The Garrison Engineer, Shillong - 793002.
- (iii) The Garrison Engineer (P) Umroi, Shillong-793011.
- (iv) The Secretary to the Govt. of India, Ministry of Defence, New Delhi - 110001.

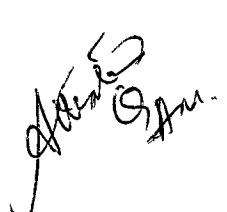
Sir,

Under instructions from my clients (names in the Annexure) who are working as M.P.A. (Mates) I serve this notice under Section 80(1) Civil Procedure Code upon you and state as under :-

(i) That my clients were promoted from the post of Chowkidars/mazdoors on various dates during 1983 to the post of M.P.A. in the scale of Rs. 260-400/- under orders of the Garrison Engineers (Part II of order No. 36 dated 5.9.83 of the Garrison Engineer, Shilong -2, issued under authority of letter Sl. No. 1401/3935/EIA dated 26.8.83 of the Commander Works Engineer, etc.).

(ii) That the appointments were on probation for 2 years with effect from the date of promotion.

(iii).....



Annx. 5.

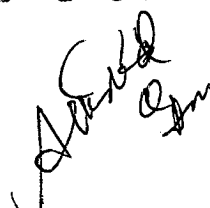
(iii) That on expiry of the aforesaid period of probation, some of my clients (viz. Shri Rishikesh Paul D-No. 229110, etc.) were allowed further promotion to the still higher post of S.B.A. (i.e. Switch Board Attendant) w.e.f. 9.1.87 under CE, Shillong P.T.O. No. 2 dated 12.1.87 (issued under approval of the Commandar, Works Engineer in his letter No. 1301/4655/EIA dated 1.1.87.

(iv) (a) That after my clients had rendered service in promoted post(s) for more than 4 years, the Commander, Works Engineer in his letter No. 1301/714/AIA dated the 30th '87 informed of an amendment in his letter No. 1301/3935/EIA dated 26.8.83 whereby the word "MPA" occurring in the letter dated 26.8.83 was submitted by the word "Mate MPA" .

The scale of pay for the post of "Mate MPA" being Rs. 210- Rs. 290/- p.m. this order in fact was an order of reversion of my client from the higher post of M.P.A. in the scale of Rs. 260-Rs. 400/- to the lower post of Mate MPA in the scale of Rs. 210-Rs. 290/- p.m.

(b) That reversion was irregular and illegal having been enforced without offering reasonable opportunity to my clients to represent/make submissions against such acts of reversion.

(c) That giving the order of such camouflaged reversion retrospective effect was still more illegal and violative of constitutional provision against behar as in Article 23 of the Constitution of India.



(v)

(v) That following the above illegal order of reversion, the Deptt. went further and recovered from pay, etc. of my clients the difference between the pay etc. of my clients the difference between the pay etc. allowed to them as M.P.A. for the period when they actually performed the duties of the post of M.P.A. and the pay etc. which they would have been entitled to had they served as Mate MPA. during the same period.

This action was taken without offering any reasonable opportunity to my clients to make submissions/represent against such illegal and arbitrary recoveries.

The recovery is arbitrary and illegal on the basis of provision of Article 23 of the Constitution of India as also on the basis of law on the subject as already decided by the Law Courts in India including the Supreme Court of India.

(vi) That the issue of reversion from the post of M.P.A. to Mate MPA involved in case of some similarly situated employees have been decided by the Central Admn. Tribunal, Calcutta by their order dated 24.4.89 in O.A. No. 796 of 1987 (S.Bhattacharjee & others -Vs- Union of India and others). The Tribunal has held the reversion illegal.

And that.....



And that my clients also prayed on various dated during April-May, 1990 for application of the decision in their case. But they have not yet received any order from the Commander, Works Engineer on their representation.

In the above premises, I serve this notice under Sec. 80(1) CPC. on you on behalf of my clients and request you to :-

(i) issue necessary orders in line with the decision of Central Admn. Tribunal, Calcutta and treat my clients as continuing in the post of M.P.A. from the dates of their original order(s) of promotion.

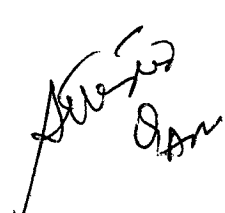
(ii) to repay the entire amount recovered from them as stated above and also to pay all arrears due to them as M.P.A. for this entire period.

Unless these claims are settled to the satisfaction of my clients within two months from the date of receipt of this notice, I am under instruction to institute legal proceedings to secure these claims and in that event you will be responsible for all the cost and consequences of such action.

Yours faithfully,

Sd/- Illegable. 12.8.91.

(S.K. Das Choudhury).



Annexure - 6.

CENTRAL ADMINISTRATIVE TRIBUNAL.

CALCUTTA BENCH.

O.A. No. 796 of 1987.

Present : Hon'ble Justice Mrs. Pratibha Banerjee,
Vice-Chairman.

Hon'ble Mr. P. Srinivasan, Administrative Member.

SAKTI PADA BHATTACHARJEE & ORS.

-Vs-

UNION OF INDIA & OTHERS.

For applicants :- Mr. N.L. Pal, Counsel,
Mrs. S. Banerjee, Counsel.

For respondents :- Mr. D.K. Das, Sr. Standing Counsel.
Ms. Uma Bhattacharya, Addl. SC.

Heard on 24.4.1989. Judgement on : 24.4.1989.

~~JUDGEMENT DICTATED IN COURT.~~

JUDGEMENT DICTATED IN COURT.

Per P. Srinivasan, Member.

All the applicants before us - ten of them - were initially recruited as Chowkidars and Mazdors under the Garrison Engineer, Central and Port William in the Military Engineering Service (MES), in the grade of Rs. 196-232/- on various dates between the years 1960 to 1978. In 1984 on different dates, they were appointed as Motor Pump Attendants (MPA) which carried a pay scale of Rs. 260-400/- at the time. Their pay was duly fixed

at the.....

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at the minimum of the scale on such promotion and they continued to draw pay in that scale earning increments from time to time. However, by two letters dated 4.7.87 and 12.8.87, the Assistant Garrison Engineer conveyed the decision of the authorities to bring down the scale of the applicants and a few others from Rs. 260-400/- to Rs. 210-290/- retrospectively from the dates they were appointed as M.P.A's and to redesignate them as MPA (Mate) from that date. As a result, amounts paid to them as pay and allowances in the past in excess of the pay scale of Rs. 210-290/- were sought to be recovered from them. The applicants are aggrieved with the aforesaid two letters dt. 4.7.87 & 13.6.87.

2. Shri N.L.Pal assisted by Ms. S.Benerjee for the applicants and Shri D.N.Das with Ms. Uma Bhattacharya for the respondents have been heard.

3. In order to appreciate the nature of the controversy between the parties, it is necessary to set out the facts giving rise to it. It is common ground that the posts to which the applicants were initially recruited were categorised as unskilled and carried a pay scale of Rs. 196-232/-. The post of MPA was categorised as semi-skilled and carried a pay scale of Rs. 210-290/- with effect from 1.6.1973 after the report of the Third Pay Commission. However, it appears that the Pay Commission suggested the appointment of an Expert



Classification.....

Classification Committee (ECC) to classify posts in the Defence Department into different categories and to recommend the pay scale to be attached to each such category. After considering the recommendations of the ECC., Government took a decision conveyed in Ministry of Defence letter dated 16.10.1981. Annexure - A to the application, to classify industrial workers in MES into five categories each with a separate scale of pay. One such category - with which we are concerned here - was the skilled category for which the scale of prescribed was Rs. 260-400/-. More specifically the scale of pay of MPA which was higher to Rs. 210-290/-, was revised as per Annexure - I to the letter to Rs. 260/- - 400/- thereby treating it as falling under the skilled category instead of under the semi-skilled category. Para 2 of the letter narrated "as a result of the fitments, a number of jobs carrying the semi-skilled scales will stand upgraded to the skilled grade of Rs. 260-400/- creating a vacuum in the grade structure at the semi-skilled level. In such cases viable feeder grades should be identified at the semi-skilled level in the same or allied trade or the posts of these jobs should be apportioned between the scales of Rs. 260-400/- and Rs. 210-290/-. However, the fitment of the existing staff in the higher grade of Rs. 26 - 400/- should not be held till the completion of the exercise ... The higher

scale.....

[Handwritten signature]
Gm

scales laid down in these cases will be given to the workers after appointment" (obviously a mistake for appointment). "of posts in these jobs in these two scales". The respondents say in their reply that the revised scale was made applicable only to 10% of the posts of MPA., the rest continuing in the former scale of Rs. 210-290/-. These orders were to be effective from 10.10.1981.

4. Superseding the letter referred to above, the Ministry of Defence issued another letter to Chief of Army Staff on the same subject on 11.5.83 again "after careful consideration of the recommendations of the Expert Classification Committee". The categories of posts and the corresponding pay scales were the same as in the letter of 16.10.1981. The post of MPA was again placed in the pay scale of Rs. 260-400/- instead of the earlier scale of Rs. 210-290/- , with the difference that this time all posts of MPA. were brought over to the revised scale. "In respect of jobs which carried semi-skilled grade before the present fitment but have been allotted skilled grade of Rs. 260-400/- on the basis of the evaluation", the letter went on to say, "feeder grades/trades in the semi-skilled grade of Rs. 210-290/- may be identified by you, if this has not already been done under the present Recruitment Rules". Where such identification was not feasible direct recruitment to the jobs at the skilled

level.....

*Amr
Open*

level could be resorted to. "The qualifications for these jobs should be analogous to the qualifications laid down for skilled jobs".

5. The applicants say that it was only after the issue of the abovementioned letter on 11.5.1983 that they were subjected to the trade test for the post of MPA held between 29th May and 27th May, 1983 and on having been declared passed, promoted to that post between February and June, 19.... The respondents in their reply say that the applicants passed the Trade Test of MPA. earlier when this was a semi-skilled post and so they could be promoted only a semi-skilled post and that therefore, their promotion to the skilled grade in 1984 was irregularly made. When this mistake was discovered, the office of the Engineer-in-Chief, army Headquarters (ENC) issued a letter dated 22.10.86 to the Eastern Command, Calcutta pointing out that on revision of the scale of pay of the post of MPA. to Rs. 260-400/- treating it as a skilled post in accordance with the earlier letter of 11.5.1983, the feeder category for promotion to the post of MPA was identified as Mate (MPA) in the scale of Rs. 210-290/- . Therefore, Mazdoors, Chowkidars and Safaiwallas could after 11.5.83, be promoted only to the post of Mate (MPA) in the scale of Rs. 210-290/- and not in the scale of Rs. 260-400/.

"In view.....

Atul K. Singh

"In view of the position explained above", the NEC's office wrote, "the pay fixation cases of such of the Mazdoors/Chowkidars and Safaiwalas who have been promoted to the post of MPA. w.e.f. 11.5.83 be fitted in the pay scale of Rs. 210-290". Following upon this letter, the Chief Engineer, Headquarters Eastern Command wrote in 10.11.1986 to all the concerned officers in that Command to bring down Mazdoors/Chowkidars and Safaiwalas promoted as MPAs. in the skilled grade of Rs. 260-400/- after 11.5.83 to the scale of Rs. 210-290/- and redesignate them as Mate (MPA) retrospectively from the date of such promotion : excess payments made to them on such "wrong" promotion were to be recovered from them. It was as a result of this decision that the two letters dated 4.7.1987 and 12.8.1987 impugned in this application came to be issued.

6. Mr. N.L. Pal, Counsel leading Ms. S. Benerjee for the applicants submits that the applicants were rightly promoted to the grade of Rs. 260/- - 400/- in 1983 and having worked in that grade for nearly three years, it cannot lie in the mouth of the respondents to say that their promotion was a mistake and that they should be refitted in the lower scale of Rs. 210-290/-. It was a promotion given to them after due consideration and after they took a trade test for the purpose and as such it was not right to say that it was a mistake.

7. Mr. D.N.Das, the ld. counsel for the respondents leading Ms. Uma Bhattachayra, Addl. Standing Counsel submits that due to the mistake of the lower officials, the applicants had been fitted in the grade of Rs. 260-400/- in 1983 and the Government had a right to rectify what was an obvious mistake. Mr. Das, therefore urges that this application be dismissed as devoid of merit.

8. We have considered the matter carefully. It is common ground~~x~~ that the applicants were promoted in 1984 from their former posts of Mazdoors/Chowkidars to the post of MPA in the scale of Rs. 260-400/- after passing a Trade Test - the dispute between the parties is only as to whether it was a test for a semi-skilled post or for a skilled post. The categorisation of all posts of AMPAS. as skilled posts was announced in the Defence Ministry's letter dated 11.5.1983 and so when the applicants ~~were~~ were appointed to that post, it was in the skilled category. The respondents say that after the Defence Ministry's letter of 11.5.1983, the ENC, Army Head quarters had identified the post of Mate (MPS) in the scale of Rs. 210-290/- as a Feeder post for promotion as MPA in their letter dated 20.12.1983 and had issued further clarifications on 11.7.1984 and 13.11.1984⁴. In spite of this, the applicants continued to work as MPA till 1987. There is nothing to show that they were not performing their.....

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their duties adequately or that they did not fulfil the qualifications prescribed for that post after it was placed in the ~~six~~ skilled category by the letter of 11.5.1983. In these circumstances, to say that their promotion to the post of MPA. in the skilled grade in 1984 and their continuance in that grade till 1987 - long after the creation of the feeder grade of Mate(MPA) - was a mistake is too far fetched. Even after the so-called "Mistake" was pointed out by the office of the ENC Army Headquarters as late as on 22.10.1986 and reiterated by Chief Engineer, Eastern Command on 10.11.1986, the applicants continued to work as MPA's till July, 1987 till the first of the impugned letter was issued. Even if the assertion of the respondents that the applicants had not passed the Trade test for the skilled category is accepted, their continuance in that grade for three years through all the vicissitudes of restructuring of cadres narrated above indicates that the authorities waived this requirement in the case of the applicants. We are, therefore, not inclined to accept the contention of the respondents that they were merely rectifying a mistake.

9. In view of the above, we quash the two impugned letters dated 12.3.1987 and 4.7.1987 (Annexure - "E" to the application). The result will be that the applicants

will.....

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Annx. 6.

will continue to the same scale, i.e. Rs. 260-400/- without break till 31.12.1985 and will be entitled to the corresponding revised scale after the recommendations of the Fourth Pay Commission.

10. The application ^s is disposed of with the above terms leaving the parties to bear their own costs.

Sd/- Illegible.
(PRATIBHA BENERJEA)
Vice -Chairman,
24.4.89.

Sd/- Illegible.
(P. SHRINIVASAN)
Administrative Member,
24.4.89.

Seal.

Seal.



Annexure - 7.

To
The Commander Works Engineers,
Spread Eagle Falls Camp,
Shillong - 793002.

(Through Proper Channel).

Sub:- REQUEST FOR IMPLEMENTATION OF JUDGEMENT OF CAT.
CALCUTTA BRANCH NO. C. A. 796 OF 1987.

Sir,

A photostat copy of CAT judgement dated 24.4.1989 of Calcutta branch directed authorities concerned to continue the pay scale of Rs. 260-400 and thereafter corresponding revised scale as per Fourth CPC. of MPAs. those who have promoted from Chowkidars, Mazdoor, Safaiwala etc. Prior to fitment is enclosed herewith for your immediate implementation.

2. In this connection it is also requested that amount recovery affected by you by bringing down my pay scale from Rs. 260-400 to 210-290 may also be refunded to me immediately as I am facing financial hardships.

3. Thanking you.

Yours faithfully,

Sd/- Illegible.

Sd/- Illegible.

PHO. 4334399.

Station : Shillong.

C/O. GE Shillong.

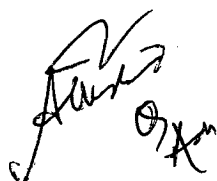
Dated - May 1990.

Shillong- 793002.

Copy to -

The General Secretary,
Meghalaya MES Civilian
Workers Union.

- for information and necessary
action.



Annexure - 8.

COPY.

Tele : 476.

Headquarters
Chief Engineer
Shillong Zone
Spread Eagle Falls
Shillong-11.

70203/2/MON/ETC(2).

17 Sep '90.

CWE Shillong.

IMPLEMENTATION OF JUDGEMENT OF CAT CALCUTTA
BENCH NO. C 796 OF 1928.

1. Reference your letter No. 1046/1186/EIA dated and 1046/1219/A EIA dt. 23 Aug '90.
2. It has been intimated by CE EC that since the Judgement against OA 796/87 has been ordered to be implemented to the petitioners only, the said order has been filed in the Supreme Court against the judgement on OA OS/796/87. As such the application forwarded under our letter Nos. 70203/2/1378/ETC(2) dated 13 Jul '90 ~~xxxxxxx~~ and 70203/2/1409/ETC(2) dt. 27 Aug '90 cannot be entertained by them. The individuals may be informed accordingly.

Sd/- x x x x

(KC Agarwal)
AO I
Chief Engineer.

[Handwritten signature]

Annexure - 9.

To :

1. The Secretary to the Govt. of India,
Ministry of Defence,
New Delhi.
2. The Commander Works Engineer
Military Engineering Service
Shillong Zone, S. E. Falls,
Shillong.
3. The Garrison Engineer &
Shillong.

Sub:- Fixation and stepping up of pay in the cadre of Motor Pump Attendant in the pay scale of Rs. 260-400/- in terms of promotion order issued under Garrison Engineer (Part-II) order No. 36 dt. 5.9.83 of Shillong under authority letter No. Sl. No. 1301/3935/EIA dt. 26.8.83 Commander Works Engineer and for stepping up of pay as juniors are getting more pay.

Respected Sir,

I have the honour to draw your kind attention on the subject cited above and further beg to state that I have been promoted from the post of Chowkidar/ Mazdoor in the year 1983 to the post of Motor Pump Attendant in the pay scale of Rs. 260-400/- under orders of the Garrison Engineer (Part-II) of order No. 36 dt. 5.9.83 of the Garrison Engineer Shillong under authority letter No. 1301/3935/EIA dt. 26.8.83 of the Commander and the above appointment is made on probation for a period of two years with effect from the date of promotion. That after rendering service in the promotional post as Motor Pump Attendant for more than 4 years the Commander Works Engineer under his letter No. 1301/714/EIA dated 30.7.87 unilaterally made an amendment in his letter No. 1301/3935/ETAX dt. 8.83 whereby the word "MPA" occurring in the letter

dated.....

Amal

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dated 26.8.83 was substituted by the word "Mate MPA" and thereby in fact reverted me in the lower post in the pay scale of Rs. 210-290 from the higher post Motor Pump Attendant without affording any opportunity to me. The aforesaid reversion was irregular, illegal having envorded without affording reasonable opportunity to me and this illegal order of reversion through amendment giving retrospective effect from the date of my promotion to the post of Motor Pump Attendant and thereby caused an irreparable loss to me both financially as well as in my service career and I have been adversely affected as the difference of pay following the illegal order of reversion was recovered from my salary although I had performed my duties to the post of Motor Pump Attendant.

Thereafter I made several representation and also approached before the competent authorities for withdrawal and for cancellation of such illegal order and also prayed to grant me all consequential benefits in terms of the promotion order dated 5.9.83 but to no result.

In this connection I like to draw your attention on the fact that some of the similarly situated employees under similar circumstances approached the Hon'ble Central Administrative Tribunal Calcutta Bench through O.A. No. 796/87 (S. Bhattacharjee vs. U.O.I. & Ors.) and Hon'ble Tribunal was pleased to decide the case in favour of the similarly situated applicants on 24.4.89 and the reversion

held.....

[Handwritten signature]

held illegal and accordingly I have also prayed for application of the said judgement and order dt. 24.4.89 passed by the Calcutta Bench of the Hon'ble Tribunal in O.A. N o. 796/87 in my case during the period of April-May 1990. I also served a Lawyer Notice on 12.8.91 for extending the benefit to me of Calcutta Bench Judgement, but to no result. I remain silent thereafter as I have come to know from a reliable source that the Department of MES under Ministry of Defence preferred a SLP before the Hon'ble Supreme Court against the judgement and Order dt. 24.4.89 passed in O.A. 796/87 (S. Bhattacharjee vs. U.O.I & Ors.). Recently I have come to know from a reliable source that the said SLP was preferred by the departmental authorities was dismissed by the Hon'ble Supreme Court in the year 1994. Therefore the benefit of the judgement and order dt. 24.4.89 passed in O.A. 796/87 now deserves to be extended to me under the facts and circumstances stated above. I have also come to know from a reliable source that one Sri Farshu Ram Deka, Motor Pump Attendant posted under Garrison Engineer, Tezpur who was also promoted at the relevant time to the post of Motor Pump Attendant and subsequently reverted following the amendment of Commander of Works Engineer did not give the effect of amendment/reversion order which is made through amendment and as a result he is now drawing more salary than me although he is junior to me. Therefore my case is deserves to

be.....

Antony

Annex. 9.

be considered in the line of stepping up of pay formula under relevant rule of F.R.S.R. Be it stated that I have also come to know some other juniors posted under different Garrison Engineers also enjoyed the benefit of promotion order of Motor Pump Attendant and the amendment order of reversion which was not effected in their cases. Therefore I am also similarly circumstanced and therefore entitled to get similar benefit and the amount which was recovered from my salary should be repaid and further re-fixstion should be made in terms of promotion order to the post of Motor Pump Attendant made under Part II Order dated 5.9.83 as the Hon'ble Supreme Court also decided the issue in the year 1994 in favour of the similarly situated applicants by confirming the judgement of the Tribunal of Calcutta Bench.

I would like to draw your kind attention further on the fact that if a judgement is pronounced as regard a particular issue in respect of any employees thereafter the similarly circustanced employees need not approach the Hon'ble Tribunal for similar benefit and this was confirmed by the Central Administrative Tribunal Full Bench Judgement and Order dt. 29.12.92 (C.S. Elies Ahmed & Ors. Vs. U.O.I. & Ors.) passed in O.A. NO. 548/91 & M.P. Nos. 571 and 572/92. The relevant portion of the judgement and order is quoted below :-

"9. When we examine the averments in the petition it becomes clear that the petitioners
are.....

*Sube
Gan*

are claiming enforcement of the judgement of the Madras Bench. Instead of invoking the proper provisions of the Contempt of Courts Act for enforcing the decision of the Madras Bench they have wrongly invoked the original jurisdiction of the Tribunal by invoking Section 19 of the Act. The petitioners should not suffer on account of the bona fide mistake committed in not invoking the right provisions for relief which they have claimed in these proceedings. Hence we allow the application - MPs No. 571 and 572/92 filed by the petitioners in these two cases seeking permission to convert these original applications into applications under Contempt of Courts Act for enforcing the judgement of the Madras Bench. Copies of the amended applications have also been furnished.

10. In these circumstances this reference stands disposed of consequent upon our allowing the applications for conversion as aforesaid into contempt of Court petitions. The Contempt of Court petition shall be registered with law".

Therefore judgement and order of the Hon'ble Calcutta Bench is binding upon the departmental authorities and thus the same is liable to be extended to me.

It is therefore earnestly requested to extend the benefit of the judgement and order passed by the Calcutta Bench in O.A. No. 796/87 (S. Bhattacharjee vs. U.O.I. & Ors.) which is now confirmed by the Hon'ble Supreme Court in the year 1994 and therefore the same is liable to be extended to me.

An early action is solicited.

Dt. 4.12.95.

Yours faithfully,
Sd/- Illegible.
((Lila Ram Sharma)).



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :

GAUHATI BENHC : GUWAHATI .

O.A. NO. 109/96

Sri Balakrishna Sarma & ors.

-Versus-

The Union of India & Ors.

- AND -

IN THE MATTER OF :

A written Statement/ submitted by
the Respondents No. 1, 2 & 3 .

(WRITTEN STATEMENT)

The humble Respondents beg to submit
their Written Statement as follows:

1) That, with regard to the statements
made in paragraphs 1 , 2, 3, 4 & 5 of the application,
the respondents have no comments.

2) That, with regard to the statements
made in paragraph 6.1 of the application the Respon-
dents beg to state that they were initially appointed
as Chowkidar/Mazdoor thereafter, they were promoted
as Motor Pump Attendant(M.P.A.) and attached in the
office of the Garrison Engineer, M.E.S. ,Shillong.

(Contd.)

Filed by

113
17/3/97
MD. SHAUKAT ALI
Sr. Central Govt Standing Counsel
Central Administrative Tribunal
Guwahati Bench.

Received
Order
17.3.97

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3) That, with regard to the statements made in paragraphs/ 6.2 of the application the Respondents have no comments the same being matters of record .

4) That, with regard to the statements made in paragraph 6.3 of the application the respondents have no comments, the same being matters of record.

5) That with regard to the statements made in para 6.4 of the application the respondents beg to state that they have no comments the same being matters of record. *But the legal notice has been replied by the CWC, Shillong on 15.1.92.*

6) That, with regard to the statements made in paragraph 6.5 of the application the respondents have no comments the same being matters of record.

7) That, with regard to the statements made in paragraph 6.6 of the application the respondents beg to state that they have no comments as they have no information about the judgment referred to in this para. If the Respondents were aware of the judgment it would be placed for the perusal and of the Hon'ble Tribunal .

8) That, with regard to the statements made in para 6.7 of the application the respondents have no comments the same being matters of record.

9) That, with regard to the statements made in paras 6.8 & 6.9 of the application the respondents beg to state that they have no comments the same being matters of record.

(Contd.)

54/65

10) That, with regard to the statements made in para 7 of the application regarding the reliefs sought for the Respondents beg to submit that the applicants are not entitled any of the reliefs sought for and ~~as~~ as such, the application is liable to be dismissed .

11) That, with regard to the statements made regarding the grounds sought for reliefs ~~they~~ none of the grounds is maintainable in law as well as in facts and as such the application is liable to be dismissed .

12) That , with regard to the statements made in paras 8 , 9, 19, 11, 12 & 13 of the application the Respondents have no comments.

13) That , the application has not merit and as such , the same is liable to be dismissed .

V e r i f i c a t i o n .

I, Sri Ashok Madan , Major, Garrison Engineer, Shillong do hereby solemnly declare that the statements made in the above paras 1 to 13 are true to my knowledge those made in paras 1 to 13 are true to my information and those made in the rest are my humble submission before this Hon'ble Tribunal.

And, I sign this verification today
on 16 day of March, 1997. at Shillong.



(Ashok Madan)
Major
Garrison Engineer
Shillong

Ashok Madan
Declarant.

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543

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Filed by:
Pratik Chandra
Advocate
23-6-98

28
23/6/98

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. NO. 109/96

Shri Bala Krishna Sarma & Others

-Versus -

Union of India & Others

-And-

In the matter of :

Rejoinder submitted by the applicant.

The applicant most humbly and respectfully beg to state
as under -

That the applicant categorically denies the
statements made in paragraph 10, 11 & 12 of the written
statement and further beg to state that the recognised
union of the applicant/i.e. Meghalaya MES Civilian Workers
Union submitted a memorandum bearing No. MW/09/CORR/96
dated 26.6.96 addressed to the Commander Works Engineer,
Shillong, demanding for regularisation of promotion of MPA's
promoted from Mazdoor, Chankidars and Safaiwalas and also
requested for extension of benefit of the payscale of
Rs.260 - 400/- now (950 - 1500/-) from the date of original
promotion to the cadre of Motor Pump Attendant and also
prayed for the benefit of the judgement passed by the
Hon'ble Tribunal, in response to the representation
dated 26.6.96, the Garrison Engineer, Shillong requested

the Commander Works Engineer for regularisation of promotion of the Motor Pump Attendants vide his letter No. 1046/359/EIA

dated 23.8.96 and the Chief Engineer (Head Quarters) Shilling, vide his letter No. 70811/1-A/3371/ERC (2) dated 9.12.96, addressed to the Head Quarter Chief Engineer Eastern Command Calcutta very strongly supported the case of the applicants and also strongly recommended for regularisation of promotion of the Motor Pump Attendants now Fitter General Mechanic/s for consideration of extension of benefits of Hon'ble Tribunal's judgement and order dated 29.6.90 passed in O.A. No. 144/89 and also in O.A. No. 196/89 to all effected Motor Pump Attendants who are similiary situated like the ~~pay~~ present applicant, and working under Commander Works Engineer Shillong whereby the Chief Engineer catagorically stated that the payscale of Rs. 260 - 400/- were granted to the Motor Pump Attendant following recommendation of Expert Classification Committee Report Govt. of India, Ministry of Defence vide letter No. 1(2)/80/D/ECC/IC dated 11.5.83 .

However at a later dated, vide Head Quarter letter No. 131950/55/237/ENGRS/EIR(C) dated 10.11.86 had held that fitment in the revised payscale of MPAS i.e. in the scale of Rs. 260 - 400/- those who have been promoted from Mazdoor Chaukidars/ Safaiwalas after 16.10.81 is irregular and they are required to be reverted to the scale of Rs. 210-290/- and their promotion would be treated as Mate MPA, however they can be considered for promotion only after they have completed 3 years service in the grade of Mate MPA. In terms of the

above order all MPA's including the applicant, was *was* reverted but physically they were retained in the post of MPA, and finally the Chief Engineer held that all the MPA's should be given the benefit of the ~~payabk~~ payscale of Rs. 950 - 1500/- from their 1st promotion and should draw all allowances and increments accordingly and also suggested for a expeditious decision for extension of the benefit of the judgement in favour of the similarly situated affected MPA's.

It is quite clear from the recommendation letter of the Chief Engineer dated 9.12.96 that the respondent is aware and admitted about the irregularities and in-justustices done upon the applicant as well as as other similarly situated Motor Pump Attendants.

In the facts and circumstances, the application deserve to be allowed with cost.

This case is squarly covered following the judgement and order passed in O.A. No. 70/97 (P.K. Dey & Others - Vs- Union of India & Others).

Copy of the letter dated 10.11.86, 23.8.96 & 9.12.96 are enclosed as enclosed as Annexure - 12, 13, 14.

And the copy of the judgement & order dated 7.4.97 passed in O.A. No. 70/97 is enclosed as Annexure -15.

Verification

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V E R I F I C A T I O N

I, Shri Jong Bahadur Gurung, resident of Shillong,
applicant in the above case do hereby verify and declare
that the statements made in paragraph 1 are true to my
knowledge & belief and I have not suppressed any material
facts.

Jong Bahadur Gurung

Place & Date

Signature.

26.8.78
Shillong

Headquarters Eastern Command
Fort William, Calcutta- 700 021

No. 131950/55/237/Engra/EIR(C)

10 NOV'86

Chief Engineer
Shillong Zone,
Calcutta Zone
Siliguri Zone,
Civil Engg. Cell, OPB Calcutta

FITMENT OF INDUSTRIAL WORKERS OF MES IN THE PAY
SCALES RECOMMENDED AT THE THIRD PAY COMMISSION
OF ^{MPA} ~~MCA~~ TO SKILLED PAY SCALES.

1. In accordance with Govt. of India, the Min. of Def letter No. 1(3)/SO/D/ECC/IC Dt. 11.5.83, the post of MPA has been assigned the scale of pay of Rs. 260-400/- in the category of skilled worker. It followed that the feeder category to the post of category of MPA is to be semi-skilled in the scale of pay of Rs. 210-290/- . As per the then recruitment rules the Mazdoors/Chowkidars and Safaiwalas, unskilled categories were eligible for promotion to the post of MPA after issue of Govt. letter dt 11 May '83 without proper identification of feeder category or seeking clarification due to changed position. However, the E-in-C's Sr. identified the feeder category to MPA as note, vide their letter No. 90270/89/EIC dt. 20 Dec '83 which was further clarified in their letters No. 90270/89/EIC dt. 11 July '84 and 13 Nov '84 . But some of the formations in out Command probably not taking the instructions/clarifications issued by E-in-C's Sr./ this Hqrs on the subject in its right perspective continued to promote Mazdoors/Chowkidars and Safaiw - was to the post of MPA.

Attended
@
D.V.

2. The matter having been brought to our notice whether the Mazdoors/Chowkidars and Safawwalas promoted to the post of MPA before the issue of E-in-C's Br. instructions dt. 11 July '84 should also be brought down to the post of Mate (MPA) in the pay scale of Rs. 210-290/-, was further taken up with E-in-C Br. It has now been clarified by E-in-C Br letter (copy enclosed) that the promotions of Mazdoor/Chowkidar and Safaiwala to the post of MPA in the scale of pay of Rs. 260-400/- after the issue of Govt. letter dt. 11 May '83 is highly irregular and they should be brought down to the scale of Mate (MPA) in the pay scale of Rs. 210-290/- .

3. In view of the position explained, the Mazdoor/Chowkidar/Safaiwala who have been promoted to the post of MPA in the scale of pay of Rs. 260-400/- after the issue of Min. of Defence letter dated 11 May '83, should be promoted to the post of Mate(MPA) in the pay scale of Rs. 210-290/- . The excess payment made to them on account of wrong promotion should be recovered.

4 . The completion report be given to this Hqrs. by 10th Dec '86 positively.

Please ack receipt.

Sd/- N. S. Dhillon
SAD
SO2
for Chief Engineer

Copy to :

ALL

All GEs/AGEs (Indep), Engr Perk

Handwritten:
Hester
m
f

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MOST IMMEDIATE

Annexure- 13

Tele : Mily 6040
Civ 225583

Commander Works Engineers
Spread Eagle Falls
Shillong-793011

1046/359/EIA

23 Aug 96

GE Shillong
GE (AF) Shillong
GE Umroi

REQUEST FOR EXTENSION OF THE BENEFIT OF JUDGEMENT
TO THE AFFECTED MPAS (NOW FGMS) UNDER CWE SHILLONG
AREA.

1. Reference Meghalaya MES Civilian Works Union Shillong letter No. MWU/09/Corr/96 dated 26 Jun 96.
2. A delegation of representatives on behalf of Meghalaya MES Civilian Workers' Union, Shillong met CWE on 12 Jul 96 requested him for extension of the benefit of CAT Guwahati Bench Judgement dated 26 Jun 90 (O.A. No. 144/89 and O.A. No. 196/89) to the affected MPAs (Now FGM) under CWE Shillong area also. Although a case for regularisation of promotion of MPAs (Now FGM) has already been taken up by this HQ and is engaging the attention of higher HQs at this stage however in the course of discussion CWE has agreed to prepare another statement of case highlighting the contents of the judgement wherever necessary and refer the matter to higher HQs for their advice and action to be taken by this HQ.
3. In view of above, please submit the following details immediately so as to reach this HQ by 10 Sep 96 to include the same in the proposed statement of case :-
 - (a) Names of Mazdoors/Chowkidars/Safaiwalas promoted and placed in position as MPA in between the year 1982 to 1984 alongwith copies of PTOs.
 - (b) Total amount recovered from them in each case separately as a result of order of reversion to Mate (MPA) subsequently.
4. This may please be treated as MOST URGENT as trade test for FGM (HS.II) is held up for want of regularisation of MPA cases.

Sd/- xxxxxxxxxxxxx

(G.Kharkonger)

AO II

for Commander Works Engineers.

Copy to :

Chief Engineer - With reference to above for information
Shillong Zone please.

*Attested
@
AdW*

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-8-

Annexure 14
Headquarters
Chief Engineer
Shillong Zone
Spread Eagle Falls
Shillong - 793 011

70811/1-A/2371/ERC(2)

09 Dec '96

Headquarters
Chief Engineer
Western Command
Port William
Calcutta-21

REGULARISATION OF PROMOTION OF MPAs (NOW FGMs) VIS -
a-VIS CONSIDERATION OF EXTENSION OF BENEFIT OF CAT
GUWAHATI BENCH JUDGMENT DATED 29JUN 90 (O.A. No.
144/89 AND O.A. No. 196/80 TO ALL AFFECTED MPAs
(NOW FGMs) UNDER CME SHILLONG AREA.

1. Reference Meghalaya MES Civilian Workers' Union memorandum bearing No. MWU/09/Corr/96 dated 26 Nov '96 addressed to CME Shillong copy endorsed to this HQ amongst other. (Photostat copy enclosed).
2. Following comments are offered as ~~xxx~~ above referred memorandum :-
3. Background of the case
 - (a) About 40 members of Mazdoors/Chowkidars/Safaiwalas of Shillong area were promoted to the grade of MPA (Now FGM) re-designated as (FGM) if in between the year 1982 to 1984 in accordance with old recruitment rules published in E-in-C ' Standing Order (1971 print) and after they have duly qualified in trade test as per syllabous. In accordance with said recruitment rules, Mazdoor/Chowkidar/Safaiwala whose pay scale was 196-232/- (pre-revised) (750-940 revised)

Attested
One
BHW

Annexure-214

were the leader categories for promotion to MPA (Now FGN) and pay scale of MPA at that time was 210-290/- pre-revised (800-1150 revised).

- b) Based on the recommendations of Expert Classification Committee report, Government of India, Ministry of Defence vide their letter No. 1(2)/80/D(ECC/IC) dated 11 May '83, In this connection please refer Govt. of India Min of Def letter cited above revised the pay scale of MPA Now (FGN) from 210-195/- to 260-400/- wef ~~16 Oct '81~~ 16 Oct '81 . As a result of this fitment, all the MPAs (Now FGNs) who have since been promoted from Mazdoor/Chowkidar/Safaiwals upto the year 1984, in their area were fitted in the revised scale 260-400/- by the respective GEs in their area.
- c) However, at a later dated vide your HQ letter No. 131950/55/237/Engrs/AIR(C) dated 10 Nov '86 ^{had} held that a fitment in the revised pay scale of MPAs (now FGNs) those who have been promoted from Mazdoor/Chowkidars/Safaiwalas after 16 Oct '81 is irregular and they are required to be reverted to the scale of 210-290/- and their promotions would be treated as Mate (MPA) and further they can be considered for promotion only after they have completed 3 years service in the grade of Mate (MPA).
- d) Accordingly, CWF Shillong issued instructions to all GEs and based on directive of your HQ as mentioned in (c) above, had issued reversion order by placing all MPAs as Mate (MPA) wef their original date of promotion and after calculating their completion of 3 years service in the grade of Mate/MPA promoted them as MPA (Skilled) in the pay scale of Rs. 260-400/- by amending our earlier promotion orders.

Contd....

- d) The above direction of your HQ has been further modified vide para 3 of E-in-C's Branch, AMQ, New Delhi letter No. 90270/29/EIC dated 17 Jun '85 with the direction that promotion from Mate (MPA) to skilled grade of MPA in the pay scale 260-400/- would be subject to passing of trade test and selection by a DPC.
- e) This has resulted a gap in technical formalities and as such CWE Shillong amended promotion order from Mate (MPA) to MPA (SK) has also been held as irregular by higher HQs and obviously a case for regularisation of their promotion has been taken up with E-in-C's Branch AHQ, New Delhi vide your HQ letter No. 131506/2/1417/Engrs/EIC dated 27 May '96.

4. CAT Judgements

- a) Being aggrieved with aforesaid direction of the department, some MPA's (Now FGMs) had approached the jurisdiction of various tribunals and similarly for MPAs of Narangi and AGE(I) Rangiya also approached the jurisdiction of CAT Guwahati Bench, wherein the Judgment of CAT Guwahati Bench has gone in favour of petitioners. In this connection kindly refer copies of Judgements of CAT of Guwahati Bench enclosed with the memorandum of the Workers' Union. The list of the Judgment is appended below :

facts: Shri Upen Chandra Kakati and three others as well as Shri Parasuram Sharma and other of CE Narangi and AGE(I) Rangiya respectively were initially appointed as unskilled group 'D' workers like Mazdoors, Safaiwala etc. All of them are qualified in the trade

*Added
B/W*

test for promotion and were promoted to the scale of Motor Pump Attendant by orders dated 27.8.1984 and 08.07.1984 respectively. The scale of pay of Motor Pump Attendant as shown in the orders was 260-400/- . In 1987, however the terms and conditions of their appointment to the promotional post of Motor Pump attendant bearing the scale of pay of 210-290/- from July and August, 1984 have been changed. Being aggrieved by this order the petitioners invoked the jurisdiction of Tribunal by filing applications under section 19 of the Administrative Tribunal Act, 1985, and after hearing counsel for both the application CAT Judgement held as stated in succeeding paragraph :-

c) HELD:- In our opinion none of the various orders of Army Headquarters on which the respondents rely can have retrospective effect. None of them explicitly even says that they will take effect from a retrospective date, the clarification or direction given by your HQ in the letter dated 10.11.1985 cannot be sustained. All the applicants shall be given the benefit of the scale of Motor Pump Attendant's scale of pay 950-1500/- from the date of their first promotion in 1984 and shall be allowed to draw all allowances and increments in that scale.

CWE Shillong further directs the opposite parties that no recovery on account of overpayment of pay and allowances of the applicants due to re-fixation of pay from 1984 onwards shall be made. If any recovers on this account has already been made the amount shall be refunded to the applicants.

(d) E-I-O's Directive

As a result of this CAT Guwahati Bench, Judgement, department

Contd

Handwritten signature and initials: AH, signed, with a circular stamp and other marks.

has already instructed to CNE Guwahati vide E-I-C's Branch AHQ New Delhi letter No. 90237/3180/EIC(3) dated 22 Mar' 91 in favour of the petitioners. However, other similar cases have now requested that the benefit of this Judgement be extended to them.

5. Present state of the case.

A case for regularisation of promotions of MPAs (Now EGMs) has already been taken up with higher HQs vide your HQ letter No. 131506/2/1417/Engrs/EIC(2) dated 27 May'96 . It however, appears that affected workers who have approached through their Workers' Union for early implementation of CAT Guwahati Bench Judgement dated 29 Jun'90 are likely to approach the jurisdiction of the said CAT citing this Judgement as reference in case redressal is not given by the department.

6. Recommendations

To avoid litigation, it is recommended that benefit of CAT Guwahati Bench Judgement dated 29 Jun'90 may be extended to all affected MPAs under CNE hillong area as requested by them through their Workers Union. Also the decision of E-I-C's Branch on the subject (ref para 5 above) may please be expedited.

Sd/- Jaster Synn
SO I

for Chief Engineer.

Encl^o (23 sheets)

Copy to :- CNE-11-for information with ref to your letter No. 1046/377/ETA dated 10 Oct'96.

*Attested
@ hillong
pdr*

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Annexure 15

- 13 -

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.70 of 1997

Date of decision: This the 7th day of April 1997
(AT ADMISSION STAGE)

The Hon'ble Justice Shri D.N. Baruah, Vice-Chairman
The Hon'ble Shri G.L. Sanglyine, Administrative Member

1. Shri Pradip, Kumar Dey
2. Shri Hemlal Joshi
3. Shri Nanda Kishore Ram
4. Shri Dhan Bahadur Lama
5. Md Islam Mian
6. Shri Ram Bahadur Thapa
7. Md Yasin
8. Shri Padam Bahadur Limbu

.....Applicants

Applicant No.1 is working as Electrician, and
applicant Nos.2 to 8 are working as Fitter General Mechanic
in the office of the Garrison Engineer, Airforce, Shillong,
under the control of Commandar Works Engineer, Shillong.

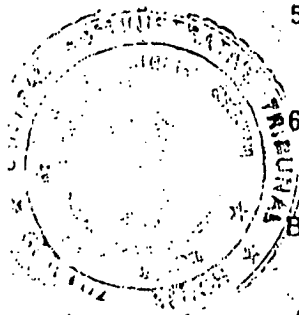
By Advocate Shri J.L. Sarkar and Shri M. Chanda.

- versus -

1. Union of India
Through the Secretary, Government of India,
Ministry of Defence,
New Delhi.
2. Commandar Works Engineer,
Military Engineering Service,
Shillong.
3. Chief Engineer, Shillong Zone,
Military Engineering Service,
Shillong.
4. Headquarter Chief Engineer,
Eastern Command,
Fort William, Calcutta.
5. Army Headquarters Engineer,
In Chief's Branch, Kashmir House,
DHQ, New Delhi.
6. Garrison Engineer, Air Force,
Military Engineering Service,
Shillong.

.....Respondents

By Advocate Shri G. Sarma, Addl. C.G.S.C.



Attended
One
Adv

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- 185 -

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ORDER

BARUAH.J. (V.C.)

In this application the applicants have prayed for a direction to the respondents to treat the promotion of the applicants as regular promotion without taking into consideration Annexure-7 letter dated 10.11.1986 issued by the Chief Engineer, Headquarters Eastern Command, Calcutta, to the Chief Engineer, Shillong and other zones.

2. The facts, as narrated by the applicants, are:

All the applicants had been appointed Chowkidar/Mazdoor/Safaiwala on various dates from 1968 to 1973. They were also promoted to the post of Motor Pump Attendant (MPA for short) during the period from 1982 to 1983 on regular basis in the pay scale of Rs.210-290, and all the applicants had been placed on two years probation. Accordingly all the applicants, thereafter, completed their probation period successfully. Based on the recommendation of the Expert Classification Committee Report, Government of India, Ministry of Defence, the respondents gave the applicants higher revised pay scale of Rs.260-400 instead of Rs.210-290 by order dated 11.5.1983. Thereafter all the applicants were placed in the scale of pay of Rs.260-400 by the Garrison Engineer, However, by Annexure-7 letter dated 10.11.1986 it was ordered that the fitment placing of the applicants in the pay scale of Rs.260-400 was irregular. Therefore, they were sought to be reverted to the post of Mate MPA in the pay scale of Rs.210-290. It was further directed that they could be considered for promotion only after completion of three years of service in the grade of Mate MPA. Accordingly, the applicants were reverted to the post of Mate MPA. This was done, without giving any.....



any opportunity of hearing. After reversion, the authorities also gave direction for recovery of the excess amount thus paid in pursuance of the letter dated 10.11.1986. The applicants, however, state that notwithstanding the directions given by letter dated 10.11.1986, no recovery had been made till the date of filing of the application from applicant Nos.1, 4, 6 and 7 and the recovery was made from the other applicants, namely, applicant Nos.2, 3, 5 and 8. Hence the present application.

3. Heard Mr J.L. Sarkar, learned counsel for the applicants, and Mr G. Sarma, learned Addl. C.G.S.C. Mr Sarkar has informed this Tribunal that the point of controversy is squarely covered by a decision of this Tribunal in O.A.No.144(G) of 1989, disposed of on 29.6.1990. The order has been annexed to the application as Annexure-17. We have perused the order. In the said order this Tribunal held that the clarification or direction given by the Headquarter, Eastern Command in its letter dated 10.11.1986 can not be sustained. We quote the relevant portion of the order.

".....The clarification or direction given by the Headquarter, Eastern Command in its letter dated 10.11.1986 can not be sustained. Even if there were compelling circumstances why the order should have retrospective effect, the affected person should at least have been given an opportunity of explaining his case. Since this opportunity was not given the applicants were denied natural justice."

In the present case also no opportunity was given. In our opinion the said order squarely covers the controversy of the present case. It may be mentioned here that the finding of the Tribunal in the aforesaid judgment was sought to be reviewed in R.A.No.12 of 1990. The review application was rejected, confirming the earlier decision. We, therefore, following the said decision, direct the respondents to give all the benefits to the applicants of the

scale.....



Attested
AW

scale of pay of Motor Pump Attendants of Rs.260-400 (now revised to Rs.950-1500). The money recovered from some of the applicants shall be refunded to those applicants as early as possible, at any rate within a period of three months from the date of receipt of this order.

4. The application is accordingly disposed of. However, in the facts and circumstances of the case we make no order as to costs.

Sd/-VICE CHAIRMAN

Sd/-MEMBER (A)



TRUE COPY

प्रतिलिपि

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29.6.17

Section Officer (A)

माननीय, उपाध्यक्ष (अ) केन्द्रिय प्रशासनिक न्यायालय
Central Administrative Tribunal

केन्द्रीय प्रशासनिक न्यायालय
Government of India, New Delhi-5
मुद्रांकित - 11/11/17, 11/11/17-5

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Baw