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OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 06th day of MAY 2002.

Original Application no. 626 of 1997.

Hon'ble Mr. Justice RRK Trivedi, Vice-Chairman
Hon'ble Mr. S. Dayal, Administrative Member

Naubhar Singh, S/o Sri Balbir Singh,
R/o Bashant Vihar Colony, Rawali Road,
Bijnor.

... Applicant

By Adv : Sri A. Tripathi & Sri B. Ram

Versus

1. Union of India through the Secretary (Posta)
Ministry of Communication, Dak Bhawan, Sansad Marg,
New Delhi.
2. Chief P.M.G., UP Circle, Lucknow.
3. Post Master General, Dehradun Region, Dehradun.
4. Superintendent of Post Offices,
Bijnor Division, Bijnor.

... Respondents

By Adv : Km Sadhna Srivastava

O R D E R

Hon'ble Mr. Justice RRK Trivedi, VC.

By this OA filed under section 19 of the A.T. Act, 1985, the applicant has challenged the order dated 1.5.1997 (Ann 1) by which direction was given to recover the excess amount paid to the applicant.

2. The facts, giving rise to this OA are that a Jeep



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was provided to the SSPO Bijnor in the month of June 1987, but the post of Jeep driver was not sanctioned. The applicant was engaged as casual Jeep Driver by SPO i.e respondent no. 4 by order dated 24.7.1987. The order reads as under :-

"Sanction of the Superintendent of post offices Bijnor Division is hereby a-c-corded for appointment of Jeep Driver No. DHD-3139 newly allotted at the minimum scale of Motor Driver ie 950.00 (Nine hundred fifty only) plus usual allowances wef 23.6.87R/N."

The expenditure is debitable under Head A-2(3)/ Wages (PF)."

From the aforesaid order it is clear that the applicant was engaged as casual Jeep Driver, but the pay sanctioned to him was a minimum ^{of the} scale of Motor Driver ie Rs. 950/-. However, the applicant was paid salary in the scale of Rs. 950-1500. The audit party during inspection noticed above facts and raised objection. Then the mistake was realized and orders were passed to recover the excess amount paid to the applicant. It appears that by order dated 3.8.1983 the applicant was granted temporary status in group 'D' cadre w.e.f. 29.11.1989. The impact of this order was that the applicant could be entitled the pay scale of group 'D' i.e. Rs. 750-940, but the applicant was already sanctioned the minimum of scale of Rs. 950-1500. He was entitled to continue to receive the same pay. Finally the post of Jeep Driver was sanctioned by Director General (Posts) by his order dated 19.8.1996 w.e.f. 19.2.1997. From this date the applicant became regular Jeep Driver and also became entitled to get the salary in the pay scale of Rs. 950-1500. The department, however, has recovered ^{from} the applicant the amount of Rs. 42090/- on the ground that the applicant was not entitled for the pay scale of Rs. 950-1500. There is no doubt that the applicant was paid salary in the above pay scale which was not proper and legal. The applicant's

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appointment was casual and it was in fixed pay scale of Rs. 950/- only plus allowances, which continued till 19.2.1997. However, it appears that the respondents have calculated the amount of excess payment on the basis of group 'D' scale, which does not appear to be proper. The applicant was entitled to get the salary at the minimum scale of Rs. 950/- plus allowances till 19.2.1996. The amount ought to have been worked out on the basis of the same.

3. Counter Affidavit has been filed by the respondents raising various pleas including that the brother of the applicant Sri Jawahar Singh was serving as accountant in Bijnor Head Post Office (HPO) during the period 20.11.1992 to 15.5.1997. The pay of the applicant was incorrectly fixed by Sri J. Singh as accountant in the pay ~~scale~~ of group 'C' cadre in the scale of Rs. 950-1500, instead of group 'D' cadre in the scale of Rs. 750-940. It has been stated that to give illegal benefit to his brother the above overpayment was made. It is also stated that as per distribution of work of accountant, Bijnor, Head Office, the service book of officials was maintained and kept with accountant. The service book of the applicant was accordingly prepared and maintained by Sri J. Singh and he made incorrect entries in the service book.

4. Be that ^{it} it may ~~be~~. It does not appear necessary to enter into this controversy. The one thing is clear that the department is also not fair in recovering the excess amount from the applicant. In our opinion the applicant is entitled for the relief.

5. Sri A. Tripathi, learned counsel for the applicant has relied upon the following cases :

a. Bhagwan Shukla Vs. U.O.I. & Ors 1994 SCC (L&S) 1320

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b. U.O.I. & Ors Vs. M. Bhaskar, & Ors 1996 SCC (L&S) 967


c. MS Sadanand Vs. Executive Engineer & Ors, (1997)
35 ATC 584 (FB).

We have considered the above cases. There is no quarrel about the legal position that opportunity of hearing ought to have been given to him before changing the pay scale. It is also clear that the role of Audit party is advisory. However, on the facts of the present case we are convinced that the applicant was paid salary in the scale which was not admissible to him and he has to pay it back. The department on the other hand has not correctly calculated the amount and the entire amount has been recovered from the applicant. He is entitled for the refund of the same. The observations in the case, ^{as}relied on by the learned counsel for the applicant are entirely different ^{set of facts}.

6. For the reasons stated above we allow this OA in part. The respondents are directed to recalculate the amount treating the applicant entitled for the salary of Rs. 950/- plus allowances from the date 23.6.1987. The applicant will be entitled for the said pay till 18.2.1997. The amount recovered, if found ^{an} excess, shall be refunded back within three months from the date copy of this order is filed.

7. There shall be no order as to costs.


Member (A)


Vice-Chairman

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