

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

ORIGINAL APPLICATION NO. 1154 OF 2005

ALLAHABAD, THIS THE 22nd DAY OF FEBRUARY, 2006

C O R A M :

**HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MR. P.K. CHATTERJI, ADMINISTRATIVE MEMBER**

Alexander Moses, Aged about 54 years,
S/O Late Shri J.H. Moses, R/O E-A/275,
A.D.A. Colony, Naini, Allahabad.

.....Applicant

By Advocate : Shri R. Verma

Versus

1. Union of India through the Secretary,
Ministry of Defence, South Block,
New Delhi.
2. The Army Officer Core (Records),
Army Ordnance Core,
Secunderabad Trimulgherry, A. P.
3. The Principal Controller of Defence Accounts,
Central Command, Lucknow.
4. The Commandant,
Central Ordnance Depot, Chheoki,
Allahabad.

.....Respondents

By Advocate : Shri S. M. Mishra, Shri R.C.Shukla

**ORDER
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

The applicant was initially appointed as Telephone Operator Gr. II in November, 1980 in the then pay scale of Rs 260-400. However, it seems that

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by mistake, ⁱⁿ the DO part II dated 02-12-1980, the pay scale had been reflected as Rs 260 - 480/- the result of which was that the applicant was being paid his pay and allowances in the above scale of Rs 260 - 480/- which carried annual increment of Rs 8/- beyond Rs 300/- as against Rs 6/- applicable to the scale of pay of Rs 260 - 400/-. As the applicant was an ex serviceman, his pay was fixed, as per rules, at Rs 284/- vide order dated 04-05-1989. The pay scale was revised w.e.f. 01-01-1986 and the revised ~~scale~~ was Rs 975 - 1,500/- and the applicant was fixed his pay accordingly and w.e.f. 01.11-1996 he was promoted as Telephone Operator Grade I in the scale of pay of Rs. 4,000 - 6,000, fixing his basic pay at Rs. 4,700/- as on 01-12-1996. With annual increments, his pay as of Sep. 2005 was Rs 5,500/-. Sometimes in 2000 the audit authorities had located the error and advised the Commandant, Central Ordnance Depot Chheoki to amend the Part II order and also take up the matter with the Area Accounts Officer, Allahabad for approval and to regularize the over payments. (Annexure CA-III refers). The applicant was informed of the alleged overpayment to which he had replied that his pay must have been fixed in the scale of Rs 260 - 480 rightly in view of the fact that he was an ex service man and he had enjoyed certain fixation of pay at a higher stage. He had also expressed his inability to refund the alleged excess amount paid to him. The respondents, have, by the Impugned order dated 11-08-2005 refixed the pay of the applicant in the scale of Rs 4000 - 6000 and fixed his pay at Rs. 4,500/- w.e.f. 01-12-1996 and as on 01-12-2004 his pay was fixed at Rs 5,300/- (i.e. Rs 200/- p.m. less than the pay hitherto fore paid to the applicant.) The applicant has preferred this OA challenging the legality in the respondent's act

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of recovering the alleged excess payment on account of erroneous fixation.

2. Respondents have contested the O.A. In view of discovery of the error, they have stated that a sum of Rs. 45,908.90 was to be recovered, being excess payment.

3. By an interim order, stay was granted restraining the respondents from effecting the recovery as proposed by the respondents, ^{vide} Order dated 04.10.2005 and as such, no recovery has so far been effected.

4. Counsel for the applicant submitted that the erroneous fixation of pay was thoroughly attributable to the respondents, as such a fixation was neither on any representation or misrepresentation of the applicant. Thus, recovery of excess should not be made. He had relied upon the decisions of the Apex Court and this Bench of the Tribunal as detailed below:-

(a) **Sahib Ram v. State of Haryana, 1995 Supp (1) SCC 18**, wherein it has been held:

5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs.

- (b) **Bihar SEB vs. Bijay Bhadur, (2000) 10 SCC 99**, whereby the aforesaid decision had been concurred in in the following words:

10. The High Court also relied on the unreported decision of the learned Single Judge in the case of *Saheed Kumar Banerjee v. Bihar SEB*. We do record our concurrence with the observations of this Court in *Sahib Ram case*¹ and come to a conclusion that since payments have been made without any representation or a misrepresentation, the appellant Board could not possibly be granted any liberty to deduct or recover the excess amount paid by way of increments at an earlier point of time.

- (c) **Shyam Babu Verma v. Union of India, (1994) 2 SCC 521**, wherein the Apex Court has held as under:-

11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same. (The Apex Court has reiterated the same principles in *Union of India Vs. K.B. Khare and others* {reported in 1994 Supp (3) SCC 502 as well as in 1994 (3) SLJ 102 SC}).

- (d) Order dated 12-07-2004 in OA No. 960/03 of this Tribunal in the case of **Mangal Sah vs Union of India and others**.
- (e) Order dated 20-10-2006 in OA No. 170/06 - **Bhim Singh and Anr. vs. Union of India and others**.

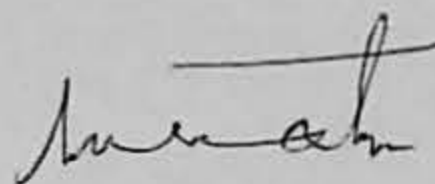
5. Arguments were heard and documents perused. The above decisions go in full support of the applicant so far as recovery of the excess payment is concerned. In a very recent case of *Purushottam Lal Das & Others vs The State of Bihar & Others* (Civil Appeal No 4386/2006, decided on 10-10-2006, the Apex Court has once again referred and followed the decision in the case of

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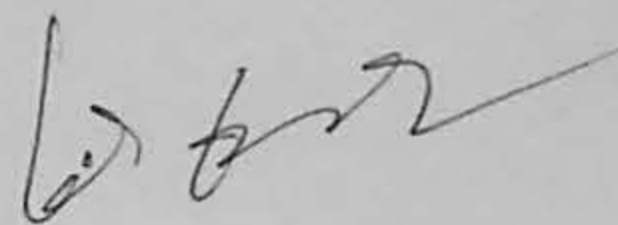
Sahib Ram vs State of Haryana. In fact the audit recommendation as could be seen from CA III was also for regularization of excess payment. Keeping in view the above, the OA is allowed. Respondents are restrained from making any recovery on account of the over payment of pay and allowances to the applicant. Fixation of pay after rectification is, however, not interfered with.

6. No costs.



P.K. CHATTERJI

ADMINISTRATIVE MEMBER



Dr. K B S RAJAN

JUDICIAL MEMBER