

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

CIRCUIT SITTING AT NAINITAL

THIS THE 23RD DAY OF OCTOBER, 2002

Original Application No.1331 of 2000

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI, V.C.

HON.MAJ.GEN.K.K.SRIVASTAVA, MEMBER (A)

Hira Ballabh Joshi, son of  
Shri Brahmanand Joshi, resident of  
village Bairti (Sunderkhol), P.O. Chitraishar  
Tehsil Ranikhet, district Almora  
at present working as FA (Tailor)  
Director General of Security, office of the  
Deputy Inspector General, Frontier Academy,  
P.O. Gwadham, via Almora.

.... Applicant

(By Adv: Shri M.C.Khandpal)

Versus

1. Union of India through the Cabinet Secretary, Cabinet Secretariat, Rashtrapati Bhawan, New Delhi.
2. Director General of Security, Office of the Director SSB, Cabinet Secretariat, R.K.Puram New Delhi.
3. Director of Accounts, Govt. of India, Ministry of External Affairs New Delhi.
4. Divisional Organiser, Office of the Divisional Organiser, SSB, UP Division Ghasia Deoli, Ranikhet, District Almora
5. Director General of Security, Office of the Deputy Inspector General, Frontier Academy, P.O. Gwadham via Almora.

.... Respondents

(By Adv: Shri Ganga Ram Gupta)

O R D E R (Oral)

JUSTICE R.R.K.TRIVEDI, V.C.

By this OA u/s 19 of A.T.Act, 1985 applicant has prayed for a direction to the respondents to fix applicant's pay in accordance with the Govt. Notification dated 13.9.1991 in SITU plan. He has also prayed that the respondents may be directed to take back the orders passed which have been annexed as (Annexures 6 to 11). The applicant has further prayed that the respondents may be directed to pay salary to t



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the petitioner in the existing pay scale of Rs 2750 to 4400/- and they should not act upon the order dated 29.8.2000 and they may not recover any amount from the applicant.

The facts giving rise to this application are that the applicant was appointed as Constable(Tailor) in the pay scale of Rs 85-110+DA and other allowances on 12.2.1965. On the basis of IVth Pay Commission Report the constables who were matriculate were given pay scale of Rs 225-308 and the non-matriculates were given the pay scale of Rs 210-270. The applicant was non-matriculate hence he was given pay scale of Rs 210-270. It is the case of the applicant that by order dated 27.10.1989 the department gave relief to non-matriculate constables who had completed 15 years of service and they were also allowed higher pay scale of Rs 225-308 equivalent to matriculate constables. It is claimed that the applicant was also granted the pay scale of Rs 225-308 from 4.10.1983. On the basis of the Vth Pay Commission report applicant was placed in the pay scale of Rs 2750-4400 and his pay was fixed at Rs 4100/- on 1.1.1999. This order fixing pay scale of Rs 2750-4400 has been revised by order dated 28.8.2000 with the direction that he should be placed in the pay scale of Rs 2750-4000. Respondents have also directed to recover the amount which has been paid to the applicant on the basis of the wrong fixation of his pay. The impugned order is dated 28.8.00 (Annexure 11).

The respondents have filed counter affidavit. There is no much dispute on the facts. In para 5 respondents have explained the mistake which occurred in fixing the pay of the applicant. It has been stated that applicant was serving as Field Assistant. The higher pay scale of Rs 225-308 was granted to non matriculate constables ~~and~~ /Field Assistants with 15 years of service. The applicant was posted as Field

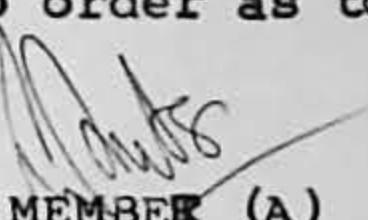


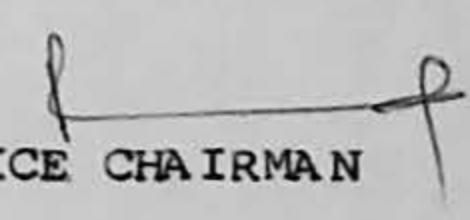
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Assistant(Tailor) which was an isolated cadre post but he could not be equated with the non-matriculate constables and field assistants and the pay scale of Rs 225-308 was wrongly given to him on the basis of the misinterpretation of the order dated 29.8.1983. After close scrutiny of the documents on record we find that the explanation given by the respondents is justified and the pay of the applicant was wrongly fixed at that stage. By the impugned orders the pay fixation has been correctly done now.

However, the next question ~~important~~ is about recovery of the amount over paid to the applicant on account of wrong fixation. The legal position in this regard has been settled by the judgments of Hon'ble Supreme court that if the concerned employee is not responsible in any manner for wrong fixation of the salary the recovery of the amount already paid cannot be done. In the present case also, it is not the case of the respondents that applicant was responsible in any manner for fixation of his pay in the pay scale of Rs 225-308 in 1983. If there was a mistake, <sup>which</sup> was on account of the office of the respondents. Thus, the impugned order ~~also~~ so far it directs recovery of the amount is liable to be quashed.

For the reasons stated above, this OA is allowed, in part. The respondents are directed not to recover any amount from the applicant which according to respondents has been ~~made as~~ <sup>over paid</sup> <sup>on account of</sup> on wrong fixation by them. The impugned orders to this extent shall stand quashed. There will be no order as to costs.

  
MEMBER (A)

  
VICE CHAIRMAN

Dated: 23.10.2002

Uv/