

Open Court

Central Administrative Tribunal,
Allahabad Bench, Allahabad.

Dated: Allahabad, This The 16th Day of October, 2000.

Coram: Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Mr. S. Dayal, A.M.

Original Application No. 808/2000

Bhagwati Prasad Vikram
son of Nokhey Lal
aged about 50 years,
r/o 32/1 Harbinder Nagar II
Kanpur.

. . . Applicant.

Counsel for the Applicant: Sri K.P. Singh, Adv.

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
- 1.A- Engineer-in-Chief, Army Head Quarters, New Delhi.
2. Chief Engineer, Central Command, Lucknow.
3. Garrison Engineer, Military Engineering Services Kanpur.

. . . Respondents.

Counsel for the Respondents: Sri M.B. Singh, Adv.
Sri R.C. Joshi, Adv.

Order (Open Court)

(By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.)

In this case by order dated 16.8.2000
learned counsel for the respondents was allowed



four weeks further time to file C.A. with the clear observation that it is last opportunity and no more opportunity shall be granted. Inspite of the aforesaid stop order, counter affidavit has not been filed.

2. We have heard Sri K.P. Singh, learned counsel for the applicant and perused the impugned order dated 20.1.2000.

3. The facts in brief giving rise to this application are that applicant was serving under the respondents as Pump House Operator. He was promoted to the post of Switch Board Attendant by order dated 11.11.1989. In the order of promotion there was a clear stipulation for pay fixation and responsibilities. However on complaints made by certain persons respondents ordered that pay fixation of the applicant on promotion as Switch Board Attendant was illegal and he has been paid excess salary which may be recovered from him. Challenging this order, applicant filed O.A. 280/2000 in this Tribunal which was disposed of by order dated 15.3.2000 directing respondent No.1 to dispose of the representation of the applicant within thirty days and till then no recovery was to be made from him. In pursuance of the aforesaid order respondent No.1 has passed the impugned order dated 20.1.2000 justifying the recovery of the amount allegedly paid to him in excess which has been challenged in the present application.



4. The learned counsel for the applicant has submitted that the posts of Pump House Attendant and Switch Board Attendant were distinct and separate from the very beginning and that distinction continued in existence till 1991. He has placed before us the Recruitment Rules of Switch Board Attendant (Annexure-21) to the application, which shows that the educational qualification for this post was Metric or equivalent and the scale of pay prescribed was Rs. 85-2-95-3-110-E.B.-3-125, whereas the recruitment rules for Motor Pump Attendant (Annexure-22) shows that educational qualification prescribed is Middle standard and the pay scale was Rs.75-1-85-E.B.-2-95. The applicant was granted promotion from the post of M.P.A. (Now known as Pump House Operator) on 11.11.89 and he joined the promoted post as S.B.A. on 5.1.90 (Now known as Electrician Skilled Grade). On the objection being raised against higher pay scale to the applicant, this position was well explained by Commander Works Engineer in his letter dated 1.8.98. The relevant paragraph dealing with the matter is being reproduced below:-

"(b) The category of MPA (Re-designated as PHO) held by Shri B.P. Vikram was in direct line of promotion to Refg Mech, SBA (Re-designated as Elect (SK) as per Recruitment Rules, 1969 which were in force inspite of re-designation



of both the posts i.e. MPA and SBA till issue of revised Recruitment Rules for promotion to Elect (SK) etc. including the re-designated posts vide Govt. of India, Min. of Def. Notification No. 85606/Gen/Ind/RR/CSOC dated 10 Jan-91. Therefore, promotion order No. 11221/756/ELC (2) dated 11 Nov.89 in this respect is valid as clarified here-in-before."

5. The new recruitment rules of Group 'C' came into force with effect from 8.10.1991 under which Pump House Operator and Electrician Skilled with many other cadres were brought under one service head. The learned counsel for the applicant has submitted that promotion of the applicant was granted in 1989 and he joined promoted post on 5.1.1990. Pay fixation was done accordingly prior to enforcement of new recruitment rules and there was no illegality in pay fixation and the impugned order passed by the respondent No. 1-A (Engineer-in- Chief, Army Head Quarters) is illegal and can not be sustained.

6. We have considered the submissions of the learned counsel for the applicant and we find sufficient force. It is clear from the recruitment rules that Pump House Attendant and Switch Board Attendant were distinct posts and there is nothing ^{which} could be said common in the two services. The qualifications prescribed for recruitment and the pay scales were different from the very beginning. The pay of the applicant



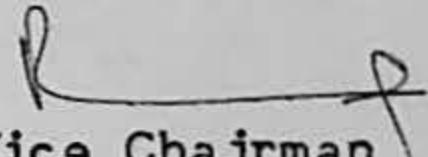
after promotion was fixed on the basis of promotion order and as required under rules. The opinion given by the Commander Works Engineer also corroborates the case of the applicant. However, all these facts have not been considered by respondent no. 1-A (Engineer-in-Chief, Army Head Quarters) which were very essential for correct decision in the matter.

7. For the reasons stated above, the application is allowed. The order dated 20.1.2000 is quashed. It is further provided that if any amount has been recovered from the applicant, it shall be paid back to him within three months from the date a copy of this order is filed
(With appropriate authority)
before him.

No order as to costs.



Member (A.)



Vice Chairman

Nafees.