

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 12th day of July, 2004.

Original Application No. 960 of 2003.

Hon'ble Mr. Justice S.R. Singh, Vice-Chairman.
Hon'ble Mr. D.R. Tiwari, Member-A.

Mangal Sah a/a 48 years
S/o Late Sri Shiv Shankar Sah,
R/o Vill. Chakarana Tiwari, Ram Sagar,
Chaka, Naini, Allahabad.

.....Applicant

Counsel for the applicant :- Sri Rakesh Verma

V E R S U S

1. Union of India through the Secretary,
M/o Defence, New Delhi.
2. The Director General of Ordnance Services
(Master General of Ordnance Branch), Army
Headquarters, DHQ PQ, New Delhi-110011.
3. The Commandant, Central Ordnance Depot,
Chheoki, Allahabad.
4. The Principal Comptroller of Defence Accounts,
Central Command, Lucknow.

.....Respondents

Counsel for the respondents :- Sri S.K. Anwar

O R D E R

By Hon'ble Mr. Justice S.R. Singh, Vice-Chairman.

The applicant herein is aggrieved by Daily Order Part II No. 106 dated 18.07.2003 by which his pay has been fixed at Rs. 4875/- per month in the pay scale of Rs. 4500-125-7000 (RPS) w.e.f 01.01.1996 in terms of Govt. of India, M/o Defence letter No. 1(i)/94/D(Civ-I) dated 05.12.1996 after giving him annual increments in that scale as on 01.02.1996. Earlier, consequent upon promotion from Civilian Motor Driver Gr. II to Civilian

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Motor Driver Gr. I, the pay of the applicant was fixed by AAO, Lucknow at Rs. 320 w.e.f 07.02.1985. The next increment to the applicant was due on 01.02.1986. The applicant was given annual increments at the rate of Rs. 25/- per month on 01.02.1988 and his pay was raised to Rs. 1225/- per month vide CHD DO II No. 26/88 as would be evident from the service record of the applicant produced by Sri S.K. Anwar, counsel for the respondents during the course of arguments. On the basis of IV Central Pay Commission, the applicant's pay was revised and was provisionally fixed at Rs. 1150/- in the scale of Rs. 1150-1500 as on 01.01.1986 in the pay scale as it stood revised consequent upon the acceptance of the report submitted by the IV Central Pay Commission. The applicant was given increment w.e.f 01.02.1986 and after the increment his pay raised to Rs. 1375/- per month. The provisional fixation of pay aforesaid was approved by the Chief Defence Accountant, Central Command, Lucknow vide CHD DO II No. 193/86 as would be evident from the service record of the applicant. The applicant was granted annual increments from time to time. His pay was raised to Rs. 1400/- w.e.f 01.02.1995 in the pay scale of Rs. 1150-1500. The case of the applicant that he was being paid salary in the pay scale of Rs. 1350-2200 is not supported by the entries made in his service book.

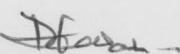
2. The post of Civilian Driver Gr. I was re-designated as post of Civilian Motor Driver Gr. I and upgraded to the scale of Rs. 4500-125-7000 w.e.f 01.01.1996 in terms of Govt. of India, M/o Defence letter No. 1(i)/94/D(civ-I) dated 05.12.1996 and the pay of the applicant, therefore, ought to have been fixed in that scale at Rs. 4500/- but it was wrongly fixed due to the mistake of department at Rs. 4875/- which mistake has been corrected by means of the impugned order. In view of the facts stated above

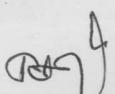
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we find no error in the impugned order which apparent
much lesser error on the face of the record.

3. Sri Rakesh Verma, learned counsel for the applicant has then urged that the payment already made to the applicant on account of wrong fixation ought not to be recovered from the applicant since the mistake in fixation of pay was not attributable to the applicant. He has placed reliance on a decision in Saheb Singh Verma Vs. State of Punjab & Haryana, 1995 SCC (L&S) 248 wherein recovery of excess payment made on account of mistake on the part of the authorities in fixation of pay without any mis-representation by the employee was interfered with by the Hon'ble Supreme Court. Similar view has been taken by the Apex Court in Shyam Babu Varma Vs. U.O.I and Ors., 1994(1)SLR 827. Sris.K Anwar, learned counsel for the respondents has however, placed reliance on Comptroller and Auditor General of India and Ors. Vs. Farid Sattar, 2000 SCC(L&S)440 in support of his contention that the respondents would be justified in making recovery of the excess payment made to the applicant due to wrong fixation of his pay in the up-graded post. Having given our anxious consideration to the submissions made across the Bar, we are of the view that the decisions relied on by Sri R. Verma are directly on the point while the one relied by the learned counsel for the respondents has no application to the facts of the case.

4. Accordingly the O.A succeeds and is allowed in part. While sustaining the impugned order of re-fixation of pay, we direct that the respondents shall not recover the excess payment already made to the applicant. No costs.


Member-A.


Vice-Chairman.

/Anand/