

result of which the petitioners current basic pay have gone down from Rs.5,250/- per month to that of Rs.5,125/- per month (Annexure-A-1) to the Compilation No.'I' of this petition.

- ii. To issue a writ, order or direction in the nature of mandamus directing the respondents to continue to pay the petitioners same basic pay with usual allowances as was being paid before the impugned order was passed till the date of their retirement i.e. and respectively.
- iii. To issue a writ, order or direction in nature of mandamus directing the respondents not to effect the recovery of the alleged over payments as a result of above refixation of their pay.

2. This OA was accompanied by an application under Rule 4(5) of the C.A.T. (Procedure) Rules, 1987 to permit joint application by the applicants. This was allowed through order dated 23.2.2006.

3. The undisputed facts of the case are that the applicants ^{were} ~~was~~ promoted to the post of Civilian Motor Driver Grade-I w.e.f. 7.10.2003 in the pay scale of Rs.4500/- to Rs.7000/- and were drawing salary in this scale with increment from time to time. They had reached ~~on~~ the basic pay of Rs.5,250/- per month in October, 2005 but suddenly the basic pay was revised, refixed and reduced without giving any opportunity or showing cause, ^{as on 1.11.2005} on account of which the applicants' basic pay ^{has} been reduced from Rs.5,250/- per month to Rs.5,125/- per month. The basic pay of the applicants have also been reduced as on 1.11.2004 from Rs.5,125/- per month to Rs.5000/- per month. No reasons for this reduction ~~has~~ been given in the impugned order (Annexure-1). It ^{has} ~~is~~ further been submitted by the applicants that the respondents have also ordered recovery of an amount of Rs.25,413/- and Rs.31,309/- respectively from the two applicants, ^{as} ~~As~~ a result of over payment in the past. The applicants had made an interim prayer for a direction to the respondents not to effect any recovery on account of the alleged over payment and this prayer was accepted by the Tribunal vide order dated

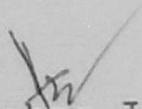
23.2.2006, whereby the respondents were restrained from effecting any recovery on account of alleged over payment.

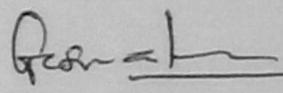
4. In their reply, the respondents clarified that the consequent upon the implementation of the ACP scheme, the applicants were up-graded to the pay scale of Rs.4000-6000/- w.e.f. 9.8.1999. After that in February, 2003, the applicants were redesignated as CMD Grade-II in the pay scale of Rs.4000-6000/- retrospectively w.e.f. 8.11.1997. Thereafter, the applicants were wrongly up-graded to the scale of Rs.4500-7000/- under ACP scheme, ~~wrongly~~ as having earned one promotion to the scale of Rs.4000-6000/-, they would have been eligible to get up-gradation under ACP scheme only after completing 24 years of regular service from the date of reclassification ^{as} SCMD. This mistake was discovered when a representation was submitted by another CMD, Shri P.N. Prasad, who had not been given this benefit. Accordingly, the pay fixation of the applicant was reviewed from 1996 onwards and was correctly fixed w.e.f. 1.11.2004. Gn

5. In their rejoinder, the applicants averred that they were rightly given the benefit of financial up-gradation under the second ACP in the pay scale of Rs.4500-7000/- as they had completed regular service of 24 years on 23.11.2004. During the arguments, however, this point was not very much pressed and the emphasis was only regarding recovery of past over payments. The learned counsel for the applicant cited the Apex Court Ruling in Shyam Babu Verma and others Vs. Union of India and others (1994) SCC (L&S) 683. ^{laying} ~~Laying~~ down the principles that if any over payment has resulted because of no fault of the employees, "it shall only be just and proper not to recover any excess amount already paid to them." On the other hand, the learned counsel for the respondents cited the case of C.A.G. and others Vs. Fareed Sattar (2000) SCC (L&S) 440, wherein it was held that pay can always ^{be re-} ~~very~~ fixed if wrongly done earlier. Gn

6. In the instant case, we find that there is nothing wrong with the re-fixed ^{ation} of the pay which has been done as Gn

per rules and it was not necessary for the respondents to issue any notices before re-fixation^{of} the pay of the applicant. However, so far as recovery of past over-payment is concerned, admittedly, over payment has been done because of mistake committed by the respondents and not because of any mis-representation on the part of the applicants. Therefore, in accordance with the ratio laid down by the Apex Court in Shyam Babu Verma's case it will not be just to recover this amount from the applicants. Accordingly, the respondents are directed not to recover any amount from the applicants on account of over payment made to them in the past. The revision of pay as done by the impugned order (Annexure-1) will be effected from 1.11.2005 and no recovery on account of over payment made because of earlier wrong fixation will be made. If any recovery has already been made it will be refunded ~~from the~~ applicant within one month from the date of receipt of copy of this order. With these directions, the OA is disposed of. No costs.


Member-J


Vice-Chairman

RKM/