

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-2901/2011

Reserved on : 14.12.2015.

Pronounced on : 23.12.2015.

Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Shri Surendra Kumar,
S/o Sh. Kali Ram,
R/o P-44/16, CVD Lines,
Sadar Bazar,
Delhi Cantt-110010.

.... Applicant

(through Sh. D.S. Mahendru, Advocate)

Versus

Union of India & Others

1. The Secretary,
Ministry of Defence,
South Block, New Delhi.
2. The Chief Record Officer,
Sena Police Corps Abhilek Karyalya
Corps of Military Police Record,
Banglore, Pin-900493.
3. Provost Marshal's Office,
Adjutant Generals Branch,
IHQ of MOD (Army),
DHQ PO,
New Delhi-110011.

..... Respondents

(through Sh. H.K. Gangwani, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicant has submitted that he was initially appointed as Boot Maker in the pay scale of Rs.200-250/- on 18.02.1980 in the Jat Regimental Centre Bareilly. This scale was subsequently revised to Rs.260-400/- by the 3rd CPC. In 4th

CPC, this scale was further revised to Rs.950-1500/- and further to Rs.3050-4590/- by 5th CPC. The 1st ACP scale was consequently Rs.4000-6000/- and the 2nd ACP scale was Rs.5000-8000/-. The 3rd financial upgradation under the MACP Scheme on completion of 30 years of service was to be in the grade pay of Rs.4600/- in PB-II. Against that the applicant has been granted grade pay of Rs.2400/-. The applicant sent a detailed representation dated 15.10.2010 requesting for grant of afore-mentioned benefits. He even approached this Tribunal by filing OA-1491/2011. The aforesaid O.A. was decided on 25.04.2011. This Tribunal directed the respondents to decide his representation by means of a speaking order. In compliance thereof, the respondents have passed the impugned order dated 07.07.2011 (Annexure-A-1) by which the claim of the applicant has been rejected. Hence, he has filed the present O.A. seeking the following relief:-

- “(i) To quash and set aside the order dated 7.5.2010 and 7.7.2011;
- (ii) To direct the respondents to grant the benefits of 1st ACP in the pay Scale of 4000-6000/-, w.e.f. 9.08.1999, 2nd ACP in the pay scale of 5000-8000/- w.e.f. 18.02.2004 & the 3rd MACP in PB-2, grade pay 4600/- w.e.f. 18.02.2010 to the petitioner.
- (iii) To direct the respondent to grant all the arrears on account of fixation of pay on grant of benefits of ACP Scheme with effect from the dates when the same were due to the applicant.
- (iv) To grant interest @ 18% p.a. on the arrears of pay on account of grant of the ACP benefits;
- (v) To grant such other and further order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case in favour of the applicant.”

2. The respondents have filed their reply on 09.12.2011 and have also filed an additional affidavit on 22.07.2013. In their reply, they have stated that the applicant was initially appointed on 18.02.1980 as Bootmaker/Equipment & Boot Repairer on temporary basis in the pay scale of Rs.200-250. He was, however,

transferred on 26.06.1981 as EBR Type-'D' and was also confirmed in that grade on 18.08.1986. Due to wrong interpretation of Government of India's Letter No. 3822/DS(O&M)(Civ-I)/84 dated 15.10.1984 and 17(5)/89-D(Civ.I) dated 19.03.1993 the applicant was upgraded to the pay scale of Rs.260-400 w.e.f. 16.10.1981 whereas his correct pay scale in EBR category should have been Rs.210-290. Later on, this pay scale was revised to Rs.2610-3540 vide SRO -37 dated 17.01.2002 as per 5th CPC. No order regarding admissibility of pay scale of Rs.260-400 to EBR category has been issued. However, as mentioned above, this pay scale had been wrongly granted to the applicant and subsequently he was also fixed in the pay scale of Rs.950-1500 w.e.f. 01.01.1986 and Rs.3050-4590 w.e.f. 01.01.1996 as per 5th CPC whereas the correct pay scale applicable to EBR category was Rs.2610-3540 as per SRO-37 dated 17.01.2002. The case for treating EBR at par with Boot Maker was rejected by the Ministry of Defence on 15.06.2010.

3. In terms of ACP Scheme the applicant was entitled to 1st ACP in the pay scale of Rs.2750-4400 w.e.f. 09.08.1999 i.e. date on which he had completed 12 years of service and the Scheme had become effective. His entitlement for 2nd ACP was in the pay scale of Rs.3050-4590 w.e.f. 18.02.2004 on completion of 24 years of service. Thereafter, when MACP Scheme came into existence after implementation of 6th CPC scales, the applicant was entitled to grade pay of Rs.2400 on completion of 30 years of service. The same have been accordingly granted to the applicant.

4. We have heard both sides and have perused the material on record. We have also seen the service record of the applicant. From the above narrated facts, it is clear that confusion arose because of wrong fixation of applicant's pay in the pay scale of Boot Maker whereas the applicant had been transferred

on 26.06.1981 to 53 Coy.ASC (Supply) as EBR. The applicant claimed that he had never accepted transfer to a lower scale. The respondents, however, disputed that and stated that when he had become surplus in the Jat Regimental Centre where he was initially appointed, he had given a certificate that he was ready to serve on transfer to any station and had agreed to work in the pay scale of EBR. They have produced the aforesaid certificate at page-291 of the paper-book. It reads as follows:-

"It is certified that I am ready to serve in case of transfer to any other Station transfer to any event of closing down or reduction in establishment or similar caused which make me surplus to establishment of my present unit."

4.1 The applicant has, however, disputed that he ever gave his consent for working in a lower scale. In our opinion page-43 of the paper-book, which contains the confirmation order of the applicant makes it clear that he was confirmed as EBR w.e.f. 01.10.1994. In any case, it is now too late for the applicant to agitate this claim. If he was aggrieved by being placed in the lower scale, he shall have raised his claim when he was so placed.

4.2 Once it is accepted that the applicant was transferred to a lower scale of EBR, the further contention of the respondents is that he was wrongly given the pay scale of Boot Maker. They have submitted that a mistake made in pay fixation can be corrected at any stage. In this regard, they have relied on judgment of Hon'ble Supreme Court in the case of **UOI Vs. S.R. Dhingra and Others**, (2008) 2 SCC 229 in which it has been held that a clerical mistake can be corrected any time and such a mistake does not confer any right on any party. The respondents have also relied on the judgment of Hon'ble Supreme Court in the case of **Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others**, (2012) 8 SCC 417 in which it has been held that excess payment of public money can be recovered if such a payment has been made due to a

bona fide mistake. For affecting such recovery, it is not necessary that over payment should have been result of fraud or misinterpretation committed by the person from whom such recovery is being made.

5. We have considered the aforesaid submissions of the respondents and have also seen the service record of the applicant. We find that the applicant had initially joined as Boot Maker but having rendered surplus on that post he was transferred to the grade of EBR, which was one stage lower than that of Boot Maker. The Government had also rejected providing parity to EBR with Boot Makers. However, unfortunately the applicant was wrongly given the pay scale of Boot Maker and continued to draw the same till this mistake was discovered. The relief sought by the applicant could have been granted only if the applicant had been working in the pay scale of Boot Maker. Since the applicant had agreed to work in lower pay scale of EBR, the respondents have rightly given him 1st ACP in the pay scale of Rs.2750-4400 and 2nd ACP in the pay scale of Rs.3050-4590. Consequently, the 3rd MACP would also have been in the grade pay of Rs.2400, which has been granted to the applicant.

6. Under these circumstances, no relief can be granted to the applicant. The O.A. is dismissed. No costs.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

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