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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 2841/2002

New Delhi, this the 14th day of July 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri Govindan S. Tampi, Member (A)

Shri G.S. Tawarmalani
D-8, Jangpura Extension
New Delhi-14

..Applicant

(Applicant in person)

Versus

Union of India through Secretary
Ministry of Urban Development & PA
Nirman Bhawan, New Delhi-11

..Respondent

(By Advocate: Shri Madhav Panikar)

O R D E R

Shri Govindan S. Tampi:

Reliefs sought in this OA by the applicant (Shri G.S. Tawarmalani) are as below:-

"(i) Order that the date of 30.6.99 given in the impugned notification No. 28017/7/99-EC.I/EW.I dated 6th June, 2001 is arbitrary and ultra vires and deserves to be substituted by the date 1.1.96.

(ii) Direct the Respondents to place the applicant in the revised scale of the Rs.24050-26,000/- with effect from 1.1.96, with next date of increment on 1.2.96, as admissible and release the consequential payments including the consequential retirement benefits becoming due to the applicant in terms of para 4 (a) of the OM dated 30.6.99.

(iii) Direct the Respondents to fix the salary of the applicant at Rs.26,000/- per month for the period 1.11.96 AN to 30.11.96 in the scale admissible to the post of the Director General under FR 49, and release the consequential payments including the consequential retirement benefits becoming due to the applicant.

(iv) Direct the Respondents to allow to the applicant remuneration at the rate of 10% of the salary of the post of Additional Director General (Architecture) with effect from 3.1.95

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and/or the posts of Additional Director General (DR), (SR), (WR) with effect from 31.10.95 and release the consequential payments including the consequential retirement benefits becoming due to the applicant.

(v) Direct the Respondents to revise the pensionary benefits, namely revision of pension payable, leave encashment admissible to the applicant and arrears of pension/salary and other consequential retirement benefits, as a consequence to all reliefs, or any relief, that this Honourable Tribunal may find admissible, and make due payments to the applicant.

(vi) Direct the Respondents to allow any relief by way of interest, costs or other relief that this Honourable Tribunal may deem fit."

2. During the oral submissions, the applicant was personally present while the respondents were represented by Shri Madhav Panikar, Additional Central Govt. Standing Counsel.

3. To state the facts in brief, the applicant, who joined Central Public Works Department (CPWD), as an Assistant Executive Engineer in Central Engineering Service Group 'A' through UPSC, through successive promotions, rose to be the Director General of (Works) (DG (W)), CPWD in which post he retired on superannuation, on 30.11.1996. In CPWD, he had become Additional Director General (ADG) on 17.2.1994. The Organisation at that time had only three posts of ADG in the Engineering stream and one in Architectural stream. The applicant, who was the senior-most but one ADG, had held two of the posts for quite sometime. After the retirement of his lone senior (Shri O.D. Mohindra) on 31.12.1994, he was also entrusted with the additional duties of ADG (Arch.) which he held on additional charge from 3.1.1995, till his own date of



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superannuation on 30.11.1996. Besides, he held the additional charge of DG (W), during November, 1996 vide orders dated 29.10.1996 and 1.11.1996. This was the position when the recommendations of the 5th Central Pay Commission (CPC) became effective from 1.1.1996. Though the Commission had directed the placement of two posts of ADsG in the scale of Rs.24050-26000/- (retaining the other posts in Rs.22400-24500/-), implementation of the same took considerable time, leading to the applicant being placed only in the lower scale, with his retirement benefits being calculated accordingly. Govt. of India, Ministry of Finance (MoF), Department of Expenditure (DoE) OM No.6/1/98-ICI dated 30.6.1999, while adopting Pay Commission's recommendations for placement of certain posts at higher level in various Organisations mentioned across the board, mentioned in para 4 (a) thereof that when upgradation involved only placement of incumbents in the higher posts without any higher responsibilities, the new scales would be deemed to have become effective from 1.1.1996. If the same had been correctly followed up in the respondents' Organisation, the applicant would have been automatically entitled for the upgradation without any fresh assessment. However, vide letter dated 6.6.2001, of the Ministry of Urban Development and Poverty Alleviation (cadre controlling Ministry for CPWD) (Annexure-2 to the OA) made the upgradation ^{effective} _{only} from 30.6.1999 and not from 1.1.1996, as should have been correctly done. Thus, he was denied due upgradation, though he was the first man to have been granted the same. At the same time, the respondents extended the benefit of upgradation to three other officers vide their order No.2416/2001-EC -II dated 8.6.2001, all

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of whom were juniors to the applicant. This was clearly an arbitrary and discriminatory act. Applicant's representations of July, August and September, 2001 against the above decision having received no response, he filed OA-935/2002, which was disposed of on 5.4.2002 with directions to the respondents to consider them and take appropriate decision. Respondents' having passed an order on 18.10.2002, CP-357/2002 filed by the applicant was disposed of on 21.10.2002, giving him the liberty to file a fresh OA in accordance with law. The view indicated by the respondents that the upgradation of the posts in CPWD was covered under para 4 (b) of DoE OM dated 30.6.1999 was incorrect, as no restructuring of the cadre ^{of} _{of} re-distribution of the posts was involved. In fact the three individuals, who were given the benefit subsequently, were not 'assessed afresh'. Besides, no posts were also specifically identified for upgradation. One time relaxation indicated to have been obtained by the respondents is of no relevance whatsoever in the above scenario. Respondents' action rejecting the applicant's representations was illegal and unjustified. He deserved to be granted the benefit of the upgraded post of ADG in the scale of Rs.24050-26000/- w.e.f. 1.1.1996 with consequential benefits.

4. Further, the applicant had held regular additional charge of DG (W) during November, 1996, on the incumbent's vacating the position permanently. It was a regular charge held in terms of Ministry's orders dated 29.10.1996 and 31.10.1996 and the applicant was not, during this period, discharging current duties of DG, as he had done earlier in 1995. Therefore, in respect of the full

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additional charge of the post of DG (W) held by him, provisions of FR-49, came into play and he was entitled to get the higher salary of DG (W). His earlier representations on this aspect did not evoke any reply, but in the impugned letter dated 18.10.2002, this plea is also rejected stating that the relevant orders directing him to perform the duties of DG were issued with the approval only of Minister of State (UD) but that the approval of the ACC, the competent authority to make appointments to this post had ^{not} been taken. This was clearly malafide, according to the applicant, as he had never been informed of this alleged lacuna. In fact, he pleads that ACC's approval was required only for making regular appointments and not for ~~holding~~ ^{directing} anyone to hold additional charge. This could have been given by the Administrative Ministry itself. Thus, the respondents made the applicant to discharge the full duties and responsibilities of the post of DG (W), without any restriction, but have denied his rightful claims for the remuneration for holding the charge, on the rather specious plea that the approval of the competent authority was not received, when no such clearance was really necessary. This action of the respondents was harsh, irregular and illegal.

5. Besides, the applicant was directed to hold additional charges of three posts of ADG from October, 1995 to November, 1996, while working as ADG (SP) as well as ADG (Arch.). Thus, in effect, he held five charges of ADG. He was, therefore, entitled for additional remuneration, which has been denied. Respondents' averment in this regard is that competent authority's



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approval was not obtained, which was clearly incorrect as the failure, if any, to obtain the approval lay with the respondents. All the above additional arrangements were fully within the knowledge of the Ministry and had not been objected to by them even. They cannot, therefore, take a different plea now. In fact, the above arrangement helped the exchequer to a considerable extent and, therefore, just dues to the applicant should not have been denied. Revision of salary on the above grounds would add to his pensionary benefits and would be a just compensation for the extra efforts he had undertaken. He has been denied the same. Hence, this OA.

6. Grounds raised in this OA are that:-

- i) the expression 'w.e.f. 30.6.1999' in 'notification' of 6.6.2001 was contradictory to the contents of OM dated 30.6.1999, directing the upgradation from 1.1.1996 where fresh assessment was not necessary;
- ii) three junior officers have been given the benefit of upgradation without any fresh assessment;
- iii) reference to para 4 (b) of the OM dated 30.6.1999 in the impugned order was misplaced as it did not at all apply in his case;
- iv) respondents' action qua the applicant was capricious and malafide;

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v) as in terms of 5th CPC's recommendations to posts of ADsG were to be upgraded even before revision, the upgraded posts should have come into force along with the implementation of the recommendations w.e.f. 1.1.1996;

vi) applicant's case was squarely covered by FR-49(1)(o) for it related to ^{the} grant of the higher scale for discharging duties in the higher ^{post} scale;

vii) the plea that competent authority's sanction was not accorded for ^{ADG} _✓, the additional charge as Director General was a clever ruse used to deny him his rightful due;

viii) ^{when} ~~with~~ the respondents extracted work as DG from the applicant, he should have been adequately compensated; and

ix) when the applicant had been asked to hold additional charges of three posts, besides the two posts he was already holding, it was only just and fair that he was financially rewarded for the extra work.

OA should, in the above circumstances, be allowed with full benefits to him, pleads the applicant.

7. Respondents stoutly contest the pleas made by the applicant. It is stated that the applicant was ADG (W) in the scale of Rs.22400-24500/- at the time of his retirement on superannuation on 30.11.1996, when he was

also holding additional charge of the post of DG (W). The respondents concede that in addition to the above additional charge, he has also been holding additional charges of other posts in the CPWD along with that of ADG (Arch.) at the time of his retirement. Following the adoption of the recommendations of 5th CPC, MoF, DoE vide their OM dated 30.6.1999, upgraded two out of six posts of ADG (Works) in CPWD to the higher scale of Rs. 24050-26000/- . This necessitated the re-distribution of the posts in the lower pay scale and consequent restructuring of the cadre in terms of para 4 (b) of the above OM. The OM had directed that the recommended higher pay scales cannot be extended in situ to the present incumbents of the such posts without duly observing the prescribed selection processes and, therefore, the upgradation of posts involving the re-distribution of posts or cadre restructuring will be effective only prospectively. Eligible officers were also to be placed in the higher scales of pay only on completion of formalities prescribed by the DoP&T for appointments to the posts in the applicable higher replacements and on their fulfilling the prescribed residency requirements. Financial benefits were also to accrue to those appointed only from the date(s) that they are so appointed on fulfilling the prescribed selection processes. In view of the above and subsequent clarification of the DoE dated 4.6.2001, the upgraded scale of pay was to be given effect to prospectively and not from 1.1.1996, as claimed by the applicant. This came in the way of the applicant's getting the benefit of higher pay scale, which led him to file OA-935/2002 seeking that the upgradation be made effective from 1.1.1996, he be placed in the upgraded

scale w.e.f. 1.1.1996, his pay be fixed at Rs.26000/- during November, 1996 in the pay scale admissible to the post of DG (W); and he be adequately granted pay and allowances for holding additional charges in the rank of ADG held during 1995-96. The above OA was disposed of by the Tribunal on 5.4.2002 at the admission stage itself, directing the respondents to consider all his representations, whereupon the competent authority had considered all the representations and passed a detailed and speaking the order on 18.10.2002 (Annexure 1 of the OA), rejecting his requests.

8. The respondents aver that there was no truth in the allegation of the applicant that his representations had been rejected arbitrarily but the same in fact were dealt with in extenso and the impugned order was issued on 18.10.2002 after considering in depth all the points raised by the applicant and in strict compliance of the Tribunal's order dated 5.4.2002 issued while disposing of the earlier OA-935/2002. Fixing the effective date for upgradation of two posts of ADG (W) w.e.f. 30.6.1999, vide order dated 6.6.2001, was done by the Administrative Ministry correctly after obtaining the opinion of the DoE, which is the nodal Ministry in matters connected with the acceptance of the recommendations of the Pay Commission. DoE had, vide their UO note of 4.6.2001, ~~had~~ clarified that the upgraded scales for two posts of ADsG in CPWD would be effective only from that date of the OM dated 30.6.1999 and not from 1.1.1996. The upgradation of the two posts had in fact been conveyed by MoF OM dated 30.6.1999. While it is true that the applicant had been asked to hold the additional charge ^{of} the post of DG and

also three other posts. the same in fact had been done keeping public interest in mind, on account of the non-availability of regular incumbent. This does not, however, call for re-fixation of pay under FR-49 or grant of additional remuneration, as claimed by the applicant. The applicant had retired from Government service on 30.11.1996. While the cause of action in respect of applicant's claim for additional claim under FR-49, arose when he was still in Government service, he claimed the same only after his retirement. Besides, the notification for the upgradation of the post was issued by the MoF, DoE OM dated 30.6.1999 and the same did not give any cause of action to the applicant, who had retired much earlier on 30.11.1996 itself. While not contesting the averment of the applicant that at the time of his superannuation he was holding, in addition to his regular duties, certain additional charges, including that of the DG, respondents state that his representations for extra payment had been considered and having been found to be without any merit, had been accordingly, rejected.

9. Vide OM dated 12.7.1995 of the Ministry of Urban Development, four more posts of ADG (W) were created in CPWD but the filling of the said posts, after re-distribution took considerable time on account of pending litigations in the feeder cadres on seniority. The said seniority issue was finalised on 4.7.1997, whereafter only promotions could be ordered. That being the case, for the period between July, 1995 and October, 1997, ADAG, who were in position, including the applicant, were asked to hold the additional charges of the newly created posts. Administrative exigency called for the

above arrangement. Applicant also had to hold the charge accordingly. ~~If~~ DoE OM dated 30.6.1999 had indeed conveyed the upgradation of two posts of ADsG in CPWD (Works) from the pay scale of RS.22400-24500/- to that of Rs.24050-26000/-. The applicant, who had retired on superannuation on 30.11.1996, could not be placed in the upgraded scale and his pensionary benefits were rightly calculated in the scale of Rs.22400-24500/-. The same cannot be faulted. As only two out of six posts of ADsG have been upgraded, the same had to be processed further in terms of para 4 (b) of DoE OM dated 30.6.1999 after identification of the posts to be upgraded and the re-structuring of the cadre. Therefore, the post became effective only from the date of approval, i.e., 30.6.1999 and not from 1.1.1996, as incorrectly being claimed by the applicant. Respondents state that they have obtained clarification both from the DoP&T and DoE about the date from which the upgraded scale was to be given effect to. It was clarified by DoE on 4.6.2001 that the upgradation could be effective only from the date of approval of the same and not from 1.1.1996. However, it was pointed out that no fresh assessment of eligible candidates was called for. Keeping the advice of the DoE in mind, two posts were upgraded w.e.f. 30.6.1999 and the upgraded scales were granted to two of the senior-most ADsG in the Organisation by orders dated 6.6.2001. The upgraded posts were to be granted to eligible officers only from prospective dates on completion of necessary formalities as laid down in para 4 (b) of OM dated 30.6.1999 and the same could not have, therefore, been applied from 1.1.1996. The promotion orders issued on 8.6.2001 granting the benefit of higher scales to three officers

did not at all suffer from any infirmity and the applicant could not have questioned its validity having himself retired from service on 30.11.1996 much before the introduction of the upgradation of the pay scale. The respondents have acted strictly in accordance with the directions given by the Tribunal on 5.4.2002, which was evident from the fact that CP-357/2002 filed by the applicant was dismissed by the Tribunal holding that there was no wilful or contumacious disobedience of Tribunal's directions.

10. The respondents state that they had strictly adhered to the advice given by the nodal Ministry, i.e., DoE with regard to the date on which the upgradation was to be effective from. The advice given by the DoE was crucial in that the same related to the feeder cadre for the promotion to the newly created upgraded posts. It had also been advised that fresh recruitment rules had to be framed and one time relaxation, if need be, be taken from the UPSC to fill the upgraded posts pending the framing of the recruitment rules. Thereafter, inter-departmental meeting was held by Secretary, Urban Development with representatives of the DoP&T and DoE when it was decided that upgraded scale was to be given prospectively to two senior-most officers working as ADG (W), after following the proper procedure of holding the DPC and obtaining the approval of the competent authority, i.e., ACC. Respondents state that the necessary recruitment rules have been drafted and are with the Law Ministry for being vetted and that future promotions would follow after the rules are notified. In between two of the senior-most

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ADSsG have been granted the higher scale which was a proper action to be taken. There cannot be any quarrel with the above in law, according to the respondents.

11. The applicant had, in fact been directed to hold the additional charge of DG (W) w.e.f. 1.11.1996 consequent upon demitting the office by Shri K.K. Madan on his appointment as Member, UPSC. This direction for additional charge was issued by the Minister of State (Urban Affairs) but without the formal approval of the ACC, the competent authority, for making appointment to the post of DG (W). The applicant has thus been given only the additional charge and had not been formally appointed to the post of DG. The applicant was directed to discharge all the functions of the post of DG as happens when a person is given the current charge. He was, therefore, not entitled to the benefit of FR-49 (1) and no additional pay, as claimed, was admissible to him. Benefit of FR-49 (1) is available only if a person is appointed to officiate in the higher post, which was not the case with the applicant, as he was only asked to hold the additional charge and not to officiate. Officiating arrangement could not have been ordered in his case, as the approval of the competent authority had not been obtained. The payment of the pay of the higher post, therefore, did not arise. The applicant would have been entitled for the pay and allowances for the post of DG (W) only if he had been formally appointed to hold full charges of the post, which in fact he had not been directed to perform. The applicant could not have, therefore, asked for the higher pay.

12. The applicant's request that he should have been paid additional remuneration for holding three other charges of ADsG - ADG (SR), ADG (WR), ADG (DR) and ADG (Arch.) - all the same Department has no sanction in law, as the same had been ordered purely in public interest, and as an ad hoc arrangement. The posts the applicant was asked to look after were of the same rank he was holding in his own Organisation and were of the same cadre. He could not, therefore, have asked for any additional remuneration for holding charges.

13. The respondents point out that the applicant was making claims which have no basis at all and acceding to them would have ^{given} rise to serious administrative problems. The applicant, who had retired much before the upgradation of the posts, cannot claim that the ^{upgradation} post be made effective from 1.1.1996 and he be appointed to the same. His claims for additional remuneration for having held additional charges as DG (W) and ADsG also have no basis and deserves to be rejected. Thus, all the pleas made by him are without any merit.

14. In his rejoinder, the applicant contested the points raised by the respondents and reiterated the pleadings made by him in the application. He specifically mentioned that till date there has been no distribution of the posts placed in the higher scale, or re-structuring of the cadre had been undertaken. Besides, no fresh assessment of the incumbents also had been ordered before placing certain juniors on the higher scale.

15. During the oral submissions, the applicant, who appeared in person, forcefully reaffirmed his claims and stated that he has been wronged by the malafide action of the respondents in denying him his rightful dues. He was, according to him, entitled to be placed in the higher scale of ADG w.e.f. 1.1.1996, as his case was clearly covered by para 4 (a) of DoE OM dated 30.6.1999, as evident from the respondents' own action in granting the placement in higher scale to others without any fresh assessment. Besides, his having been directed to hold full additional charges of DG (W) and of three other ADsG, the respondents could not have denied him the remuneration for the additional work performed. On the other hand, Shri Madhav Panikar, Additional Central Govt. Standing Counsel, who appeared for the respondents, rebutted the above claims and stated that the upgradation of the post in CPWD fell within the parameters of para 4 (b) of the OM dated 30.6.1999 and, therefore, the question of making the post effective from 1.1.1996 did not at all arise. According to Shri Panikar, the stand taken by the respondents was also fortified by the advice/opinion given by MoF, DoE which was the nodal Ministry for dealing with matters regarding the acceptance and implementation of the recommendations of 5th CPC. The applicant, who had retired on 30.11.1996, had been placed in scale of pay of Rs. 24050-26000/- and he cannot claim anything further, pleads Shri Panikar. He also stated that the applicant's claims for the grant of pay of the DG (W) for November, 1996 and for additional remuneration for additional charges of ADsG were without any merit and deserved rejection.

16. We have given careful and anxious deliberations on the points brought out in the rival contentions and perused the documents brought on record. The undisputed facts are that the applicant, who has retired on superannuation while holding the post of ADG (W) in CPWD and performing the functions of the DG in addition, is seeking the grant of the higher scale of RA. 24050-26000/- in which two posts of ADAG have been placed, following the acceptance of the recommendations of 5th CPC, along with grant of additional remuneration for having worked as DG (W) during November, 1996 and as ADAG for four other charges in addition to his own. The respondents contest the claim, as according to them, the upgraded posts came into being only much after applicant's retirement on superannuation and the applicant had been directed to hold certain additional charges only as a matter of public policy and in public interest which did not give him any special right to claim ^{any} additional remuneration. Respondents' views are summarised in their office order dated 18.10.2002 issued in pursuance of Tribunal's directions of 5.4.2002, given while disposing of the earlier OA-935/2002 filed by the applicant.

17. The applicant was the senior-most ADG (W) in the CPWD from 1.1.1995 till 30.11.1996, when he retired on superannuation. It is his claim, therefore, that he was entitled for placement against one of the two posts of ADAG upgraded from the scale of RA. 22400-24500/- to that of RA. 24050-26000/-, in terms of the recommendations of 5th CPC. In this context, it would be relevant to refer to MoF, DoF (Implementation Cell) OM dated 30.6.1999. The relevant portion of the said OM reads as below:-

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"2. The FCPC recommendations relating to Group 'A' posts included in the Organized Group 'A' Services have now been carefully considered. The FCPC had recommended the upgradation of certain posts in different Services identified and specified by them and their placement in higher replacement scales of pay. These recommendations cover practically all the Organized Group 'A' Services with a few exceptions. In doing so, the Commission had, inter alia, taken into account the following factors :

(a) The acute stagnation in most of the Organized Group 'A' Services ;

(b) cadre structure of different Services ;

(c) non-availability of adequate number of posts in higher levels ;

(d) status of cadre reviews.

The intention of the Commission was to ensure the upgradation of limited number of posts at senior levels as an interim measure with the objective of improving the career prospects of the Members of these Services pending detailed cadre reviews.

3. Posts in these services covered by the FCPC recommendations may be broadly categorized as follows:-

(a) posts which are to be placed in higher replacement pay scales, without involving the assumption of higher functional responsibilities.

(b) those which are to be encadred in one of the Organized Services and placed in higher replacement pay scales:

(c) posts for which only the normal replacement pay scales will apply but which are to be encadred in one of the Organized Services;

(d) those which are to be upgraded and placed in higher pay scales, necessitating the restructuring of cadre or redistribution of posts;

(e) posts that are to be revived or created and placed in higher pay scales.

4. The President is now pleased to decide that the posts listed in column 1 of Annexure I to this Office Memorandum may be placed in the higher revised FCPC scales of pay indicated in column 3 thereof. Placement of the posts and their incumbents in the higher replacement scales of pay now approved will be subject to the following conditions :

(a) According to the instructions issued by the Department of Personnel & Training in their OM

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No. 22011/10/84-Fatt. (D) dated February 14, 1992, where the upgradation of posts involves only the placement of existing incumbents in higher replacement scales without the assumption of any higher responsibilities or changes in eligibility criteria, the suitability of the incumbents to occupy such posts in the higher pay scales is not required to be assessed afresh. They can therefore be appointed to the posts in the higher pay scales with effect from the date notified by the Government giving effect to the recommendations of the Pay Commission. Accordingly, the applicable higher replacement scales of pay will be extended retrospectively w.e.f. January 1, 1996 only in respect of those posts not involving the assumption of higher responsibilities or changes in the eligibility criteria. Some illustrative examples of such posts are those of Members in the Postal Service Board, Members/Additional Director General in the Ordnance Factories Board, General Managers of Zonal Railways, Metro Railway, Railway Production Units, etc. Officers on Special Duty in newly-established Railway Zones, Principal, Railway Staff College, Director General, Research & Development under the Ministry of Railways, etc.

(b) Implementation of the FCPC recommendations relating to posts which are to be upgraded and placed in higher pay scales will, however, necessitate the redistribution of posts presently in lower pay scales in the recommended higher scales, involving restructuring of the cadre. Besides, incumbents of posts in identical scales of pay being interchangeable, it is not unlikely that juniors may be presently occupying posts that are to be placed in higher scales of pay in terms of the FCPC recommendations. The recommended higher pay scales cannot therefore be extended *in situ* to the present incumbents of such posts without duly observing the prescribed selection processes. In the circumstances, upgradation of posts involving the redistribution of posts or cadre restructuring will be effective only prospectively. Eligible officers will also be placed in the higher scales of pay only on completion of the formalities prescribed by the Department of Personnel & Training for appointments to posts in the applicable higher replacement pay scales on their fulfilling the prescribed residency requirements. Financial benefits will consequently accrue to those appointed against these posts only from the date (a) that they are so appointed on observance of the prescribed selection process. ^{emphasis supplied}

(emphasis supplied)

18. Annexure A-1 to the OM refers to Central Engineering Service at Sl. No. 16 whereunder two posts of

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ADAG in the grade of RA.7000-7600/- (revised to RA.22400-24000/-) are sought to be raised to RA.24050-26000/-, in tune with the recommendations of the Commission in para 50.14 of their report.

19. Pursuant of para 4 of the aforesaid OM makes it clear that in terms of DoP&T OM of 14.7.1997, where the upgradation of posts involved only the placement of the incumbents in higher replacement scales which did not call for assumption of any higher responsibilities or changes in eligibility criteria and fresh assessment of the suitability of the incumbents to occupy such posts in the higher pay scales, the applicable higher replacement scales of pay will be extended retrospectively w.e.f. 1.1.1996. On the other hand, if the upgradation and placement in the higher pay scales necessitated the re-distribution of posts presently in lower pay scales as well as restructuring of the cadre, alone with re-determination of the suitability of the incumbents of such posts through prescribed selection processes, upgradation of posts will be effective only prospectively. Thus, there are two categories in which the upgraded posts fell, viz. those which involved no fresh assessment and therefore, became effective from 1.1.1996 and those which called for re-distribution/re-structuring and fresh assessment of suitability and, therefore, became effective only prospectively. While the applicant states that his case fell in the first category represented by para 4 (a) of

the OM, referred to above, the respondents state that his case fall in the second category referred to in 4 (b) of the OM.

20. In the above scenario, it is necessary to find out as to which of the para - 4 (a) or 4 (b) - is relevant, as far as this DA is concerned. It is the applicant's plea that having been the senior-most of ADG in CPWD on 1.1.1996, when the accepted recommendations of the 5th CPC were made effective from, he was the automatic choice for being placed in the higher scale of Rs. 24050-26000/- without any fresh assessment. Respondents do not agree. According to them, as only two out of six posts of ADG have been upgraded, the revised higher scale was to be provided subject to the condition laid down in para 4 (b) of OM dated 30.6.1999. Re-distribution of posts presently in the lower scale, in the recommended higher scale as well as restructuring of the cadre and fresh assessments were called for and, therefore, the higher pay scales were not to be extended in situ to the present incumbent but were to be granted prospectively, after going through the formalities prescribed by DoP&T for appointments to the post in the applicable higher replacement scales and on the incumbents fulfilling the prescribed necessary residency requirement. The respondents pleaded that they were also governed by the clarification issued by the DoF on 5.6.2002, as to the date on which the upgraded scales were to be given. The said DoF note dated 4.6.2001 reads below:-

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"Reference preceding note.

2. The Ministry of Urban Affairs & Employment may kindly refer to their proposal seeking clarification for placement of existing posts of ADG from the pay scale of Rs. 22400-24500 to the pay scale of Rs. 24050-26000. The proposal has been considered in this Department and it is clarified that while higher pay scale for two of the existing six posts of Additional Director General in the CPWD would be effective only from the date approval for this upgradation was conveyed (and not from 1.1.1996). However, no fresh assessment of the eligible candidates would be necessary. Accordingly it is advised that the placement in their higher scale of pay in respect of this post may be made with prospective effect on the basis of existing seniority amongst the eligible candidates belonging to Works Stream of the CPWD."

(emphasis supplied)

21. The above clarification has led to the issue of the respondents' - Ministry of UD & PA - letter No. 28017/7/99-EC.T/FW.T dated 6.1.2001, which reads as under:-

"I am directed to convey the sanction of the President to the upgradation of two existing posts of Additional Director General (Works) (Rs. 22,400-24,500/-) out of six posts of Additional Director General (Works) to the pay scale of Rs. 24050-26000/- with effect from 30th June, 1999 in the Central PWD.

2. The placement in the higher scale of pay in respect of these two posts will be made on the basis of existing seniority amongst the eligible candidates belonging to the Works Scheme of the CPWD without any fresh assessment of the eligible candidates.

This issues with the approval of the Ministry of Finance, Deptt. of Expenditure (Implementation Cell) vide their HO No. 89/5/2000-TC dated 4.6.2001."

22. The above two communications state that the date for upgradation of the posts stood at 30.6.1999 but that

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no fresh assessment of the eligible candidates was necessary. Keeping in view the above, the respondents have placed, vide their order No. 24/6/2001-EC.TT dated 6.6.2001, three persons in the higher scale of Rs. 24050-26000/-.

Respondents have also stated that two of those who were granted the higher scale without fresh assessment were the senior-most of the ADAG. There was nothing incorrect or irregular in this action. The only rider they attach to this statement is that future vacancies in the higher scale will be made only on the basis of the recommendations of DPC and after following the requisite procedure.

The above two communications and the respondents' action in pursuance thereon cannot be reconciled with the contents of the DoF OM dated 30.6.1999, communicating Presidential directions placing a number of posts in various organisations, including CPWD in higher scales, subject to fulfilment of conditions enumerated in para 4.

That being the case, the applicant cannot be faulted for raising the plea that he had been unfairly discriminated against. Para 4 of the OM specifically ordered that (a) where the upgradation of posts involved only the placement of the incumbents in the higher scales to discharge the same duties and responsibilities they were already discharging without any change in eligibility criteria and fresh assessment, the higher replacement was to be granted retrospectively w.e.f. 1.1.1996 and that (b) where the placement in the higher scale had to be preceded by redistribution of posts, restructuring of cadre and determination of suitability in terms of the prescribed procedure for promotion and specified residency

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conditions. it would be only prospective. It is on record that on 1.1.1996. the applicant was the senior-most ADG in CPWD. next only to DG (W) and already holding additional charges of four posts of ADG. No higher responsibility as ADG was called upon to be discharged by him. nor was any fresh assessment of suitability necessary. Even otherwise. his suitability is established by the fact he was also asked to hold full additional charge of the still senior post of DG (W). Therefore. para 4 (a) as brought out by the applicant - and not para 4 (b) as canvassed by the respondents - has become applicable in this case. The posts stood upgraded retrospectively w.e.f. 1.9.1996. The fact that in the instances mentioned in the Office Memorandum dated 30.6.1999 the post of ADG in CPWD is not specifically mentioned as falling within the parameters of para 4 (a) does not alter the situation. as the posts indicated are only illustrative and not exhaustive. What we are concerned with is the proper interpretation of paras 4 (a) & (b) and their relative applicability or otherwise and in the circumstances of the case. We are convinced that the instant case clearly falls within parameters of 4 (a), and, therefore. it would follow that the upgraded vacancies of ADG in CPWD also became effective 1.1.1996 retrospectively. No other interpretation would be acceptable.

23. The applicant. it is not disputed. was the senior-most ADG in the Organisation. The respondents cannot, by any account, raise the plea that the applicant was not fit to hold the upgraded post. as they had

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themselves asked him to hold the charge of the still senior post of the Head of the Organisation, i.e., of DG (W), on full additional basis, in the very same year, i.e., 1996. Applicant's claim for the benefit of placement in the higher scale of Rs. 24050-26000/- w.e.f. 1.1.1996 with full consequential benefits, is thus fully established.

24. Our attention has also been drawn to the contents of DOP&T's detailed note dated 18.7.2002 annexed to the counter affidavit, addressed to the Ministry of Urban Development on the issue whether the upgraded posts be confined to Civil Engineering stream or could be opened to the other streams as well. The same, however, is not at all relevant for determining the present issue. No comments, therefore, are offered thereon.

25. The other objection raised by the respondents is that as the upgraded posts have been sanctioned only on 6.6.2001, effective from 30.6.2001 on a date much after the retirement on superannuation of the applicant. On 30.11.1996, he could not have claimed placement in that scale, that too from 1.1.1996. This argument falls to the ground as the Presidential sanction for the upgradation of posts has in fact been ordered in para 4 of the OM dated 30.6.1999, effective from 1.1.1996, in terms of para 4 (a) therein. That being the position, the same could not have been modified by the UO note dated 4.6.2001 from the DoE and the consequent letter dated 6.6.2001 by the respondents. Resultantly, the applicant's plea that the effective date of sanction of

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the upgraded post be declared as 1.1.1996 merits acceptance. Consequential benefits would have to follow, as pointed out above.

26. The second request by the applicant relates to the grant of pay of DG (W) to him for November, 1996 when he had been directed to look after the full additional charges of the post. Therefore, according to him, he should have been granted the pay of the DG (W) at Rs.26000/- . The respondents have not denied that the applicant was asked to look after the charge of DG (W) when Shri K.K.Madan, the incumbent, relinquished the post, on his appointment as Member, UPSC. The three letters all bearing No. 30/7/96-ECI/ED1 dated 29.10.1996, 31.10.1996 and 1.11.1996 deserve mention in this context. They are reproduced as below:-

ii) New Delhi, the 29th Oct. 1996

ORDER

It is hereby ordered that Sh. G.S.Tawarmalani, senior-most Addl. Director General will hold additional charge of the post of Director General of Works, CPWD consequent on relief of Sh. K.K.Madan, DG (W) to take up his new assignment as a Member of the Union Public Service Commission. New Delhi.

iii) New Delhi, the 31st Oct., 1996

Office Order

Sh. K.K.Madan, Director General of Works, CPWD, is hereby relieved of his duties w.e.f. 31st Oct. 1996 (AN) to take up his new assignment as Member, Union Public Service Commission. As already ordered vide order dated 29-10-96. Sh. T.S.Tawarmalani, ADG (S&P) will hold additional charge of the post of DG (W) until further orders.

iv) New Delhi, the 1st Nov., 1996

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Office Order

In supersession of Office Order of even number dated 31st Oct.. 1996, it is hereby ordered that Sh. K.K. Madan, DG (W) CPWD is relieved of his duties w.e.f. 1st November 1996 (ANI) to take up his new assignment as Member, UPSC. As already ordered vide order dated 29.10.1996, Shri G.S. Tawarmalani, ADG (S&P) will hold additional charge of the post of DG (W) CPWD until further orders.

(Emphasis supplied)."

27. It is evident that the applicant, being the senior-most ADG, had been asked to hold full additional charge of the post of DG, when the post fell vacant following the relinquishment of the post by the incumbent Shri Madan on his being posted as Member UPSC. This vacancy had arisen on a regular basis, which had to be filled up. This posting is, therefore, different from the order No. 28/1/95-ECT/07 dated 3-2-1995 whereunder the applicant had been directed to look after the routine and urgent work of DG (W), CPWD when the earlier DG (W) Sh. Madan was on casual leave. In this context, reference to FR-49 (1) relied upon by the applicant, we feel, is germane:

"Where a government servant is formally appointed to hold full charge of the duties of a higher post in the same office as his own and in the same cadre/line of promotion, in addition to his ordinary duties he shall be allowed the pay admissible to him, if he is appointed to officiate in the higher post, unless the competent authority reduces his officiating pay under Rule 35: but no additional pay shall, however, be allowed for performing the duties of a lower post"

(Emphasis supplied)

28. It is not denied on record that the applicant has been asked to function as DG (W) and had performed all

the functions and exercised all the powers of DG (W), in addition to his own duties. It was not case of a stop-gap-arrangement. However, the respondents aver that this was done with the approval of only the Minister of State in charge of Department of Urban Affairs, but not of the competent authority i.e. ACC. When the senior most ADG (W) was given the full charge of post of DG, by the authority no less than that of the Minister concerned, who represents the Government/President, to say that the competent authority had not approved the appointment, is a bit strange. Further, the applicant's plea that he was not told about the absence of the approval of the competent authority, also has merit. It is quite possible that since the applicant was himself to retire on superannuation, at the end of November, 1996, i.e. one month after the earlier DG demitted office, the Government would have decided that the regularisation of selection need be done only on a later date for the successor to the applicant. The same, however, does not make the additional charge held by him ad hoc or stop gap in nature. Therefore, the respondents could not have taken a view that FR 49 (i) would not apply in the case of the applicant. Their attempt to rely on FR-49 (vi) is totally misplaced as it relates to holding the current charge of routine duties, which is not the case here.

29. At the same time, since a mention has been made regarding the absence of competent authority's order for directing the holding of the additional charge of the senior post, we are not issuing any specific directions that the individual is entitled to the pay of the DG (W)

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during November, 1996, but are only advising that the case be placed before the ACC for regularisation of the appointment, as the applicant, the senior-most ADG, had, under the specific directions of the Minister, which were duly communicated, held full additional charge of DG (W). and appropriate decision be taken on the basis of ACC's recommendations.

30. The third plea by the applicant that he should be granted additional remuneration for holding charges of ADG (Arch.) as well as of ADG (SR), ADG (WR) and ADG (DR) in addition to his own charge, during various periods in 1995-96, to our mind, has no sanction in law. It is an accepted practice in Organisations across the board to direct officers to hold additional charges of equivalent posts in the same Organisation on a purely stop gap and/or temporary basis. That alone has happened in this case. In the absence of individuals selected to man the newly created posts, the applicant, being one of the officers available, was directed to look after the additional charges. This clearly was a matter of public policy and it did not vest any right in him to claim additional remuneration. Reliance placed by the applicant on FR-49 (iii) in support of his plea, is far off the mark, as the said provision relates to extra duties being directed to be performed in posts in other offices and/or in other cadres or lines of promotion. Here the applicant has been directed to hold additional charges only of the post of ADG in his own Organisation. The same cannot entitle him to draw any additional remuneration. And this is common sense as well. We are

indeed surprised that this plea has been made by a senior and experienced civil servant, like the applicant. This plea necessarily has to fail.

31. In the above view of the matter, the OA succeeds partially and is accordingly disposed of with the following directions:-

- i) direction contained in the letter No. 28107/7 /99-EC.I/EW.I dated 6.6.2001 to treat the upgraded post in the scale of Rs. 24050-26000/- as having become effective on 30.6.1999, is set aside as the same has become effective on 1.1.1996, with all consequences. Resultantly, being the senior-most ADG, the applicant is also placed in the higher scale w.e.f. 1.1.1996 with all consequential benefits.
- ii) The respondents shall place the case of the applicant before the ACC for consideration of regularisation of the period held by the applicant as Director General by way of additional charge (November, 1996) and in the event of such consideration, resulting in his favour, fix his pay at Rs. 26000/- with consequential benefits.
- iii) The applicant's request for additional remuneration for holding additional charges of Additional Director General (Arch.), ADG (SR), ADG (WR) and ADG (DR) during 1995-96 is dismissed, as being bereft of any merit.

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32. The applicant is also entitled to have cost of litigation quantified at Rs. 5000/- (Rupees Five Hundred only), reimbursed to him by the respondents.

(Govindan S. Tampi)
Member (A)

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(V.S. Aggarwal)
Chairman