

Central Administrative Tribunal
Principal Bench

OA No. 1582/2002

with

OA No. 2807/2002

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New Delhi this the 1st day of October, 2004.

Hon'ble Mr. Kuldip Singh, Vice-Chairman (J)
Hon'ble Mr. S.A. Singh, Member (A)

OA No. 1582/2002

1. All India Postal Employees Group 'C' (formerly known as All India Postal Employees Union Class III) through its General Secretary Shri R.N. Chaudhary, Dada Ghosh Bhavan, 1, Patel Road, New Delhi - 110 008.
2. Shri Girish Gupta s/o Shiv Prasad Gupta R/o 56, Neb Sarai, New Delhi - 110 068.
3. Shri Gauri Shanker Verma S/o Sh. Om Prakash Verma, R/o K-215, Street No. 2, Mahipal Pur Ext., New Delhi - 110 037.
4. Shri Baljit Singh Malik s/o Sh. Bharat Singh Malik R/o D2-193, Kidwai Nagar (West), New Delhi - 110 023.
5. Sh. D.R. Katara s/o Sh. Tanwar Chand Kalara, R/o H-77A, Village Saboli, P.O. Nandnagri, Delhi -93. ...Applicants

(By Advocate: Shri K.B. Rohtagi and Shri Mahesh Kasana)

-versus-

1. Union of India through The Secretary, Department of Posts, Ministry of Communication, New Delhi - 110 001.
2. Chief Post Master General, Delhi Circle, Meghdoot Bhawan, Link Road, New Delhi - 110 001.

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3. Secretary,
Ministry of Finance.
Govt. of India.
North Block, New Delhi.

4. Secretary,
Department of Personnel & Training,
Ministry of Home Affairs,
North Block, New Delhi.Respondents

(By Advocate: Shri Ravinder Sharma proxy for Sh. R.P. Aggarwal and
Shri B.K. Berara)

OA No. 2807/2002

1. All India RMS & MMS Employees Union Group 'C'
represented by its General Secretary Mr. C.C. Pillai,
D-2, Telegraph Place,
Bangla Sahib Marg,
New Delhi – 110 001.

2. Mr. Giriraj Singh,
TBOP Sorting Assistant
Delhi P.S.O.
Delhi – 110 054.Applicants

(By Advocate: Shri R. Sathish with Sh. A.Sharma)

-versus-

1. Union of India through
The Secretary,
Department of Posts,
Ministry of Communication,
New Delhi – 110 001.

2. Chief Post Master General,
Delhi Circle,
Meghdoot Bhawan,
Link Road, New Delhi – 110 001.Respondents

(By Advocate: Shri Ravinder Sharma proxy for Sh. R.P. Aggarwal and
Shri B.K. Berara)

ORDER

By Mr. Kuldip Singh, Vice Chairman (J):

Since the facts and reliefs claimed in both these OAs are identical and common question of law is involved, they are being disposed of by this common order. For the sake of convenience, we would be taking the



facts from OA No. 1582/2002, which has been filed by All India Postal Employees Union Group 'C' whereas OA No. 2807/2002 has been filed by All India RMS & MMS Employees Union Group 'C' and one Mr. Giriraj Singh, who is working as Sorting Assistant, has also been arrayed as applicant no. 2 in the said OA. Similarly some other individuals have also been arrayed as applicants in OA. No. 1582/2002.

2. In both these OAs, the applicants have sought the relief for quashing and setting aside of letters dated 6.6.2001 and 14.2.2002. They have also sought upgradation of pay scales, in accordance with the recommendations of Dutta Committee, which are incorporated in the report dated 18.12.1998, with effect from 1.1.1996 with consequential benefits.

3. The applicants, who are Group 'C' employees in the Postal Department, include Sorting Assistants, Postal Assistants (TBOP), Postal Assistants (BCR) and HS Grade-I, etc. They claim that they are working under the direct control and supervision of respondent no. 2 whereas respondent no. 1 is the supervisor and administrative authority of respondent no. 2. The applicants allege that prior to 1.6.1974, the scheme of promotion was such that not more than 6% postal Assistants the then known as Time Scale Clerks could get 1st promotion as LSG (Lower Selection Grade) in the entire career of their service.

4. It is further submitted that from 1.6.1974, promotion scheme known as 20% LSG was introduced, which had given some relief to the employees but the same was not at all satisfactory as the said Scheme failed to provide sufficient relief. Therefore, a bilateral agreement was arrived at and the same was signed between respondent no. 1 and staff representatives on 30.11.1983 to introduce a Time Bound One Promotion (TBOP) on completion of 16 years of service in the basic grade ^{known as}



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TBOP. It was agreed between the parties that on completion of 16 years of satisfactory service, a Postal Assistant would be promoted in the cadre and scale of LSG on providing matching cost in the form of abolition of 5% operative posts and 15% supervisory posts. Besides that, the special allowances like charge allowance and supervisory allowances were withdrawn and the scheme of 20% LSG promotion, which had been introduced on 1.6.1974, was also withdrawn. Under this scheme, a specific scale of Rs. 425-640/- in the then prevailing scale was agreed for the promotion under TBOP to all the Postal Assistants (PAs), who were then in the scale of pay of Rs. 250-480/- and the ratio between the entry scale and the promotional scale stood as 100:144 after complying with the formula of matching cost given by the staff.

5. It is further stated that a similar scheme of Bi-ennial Cadre Review (BCR) for promotion on completion of 26 years of service was introduced w.e.f. 1.10.1991 vide letter dated 11.10.1991 again on matching savings in the form of further abolition of 1% operative posts and 5% supervisory posts over and above 5% & 15% abolition of posts effected at the time of TBOP and the scale of Sorting Assistants/ ^{Postal Assistant} at the entry level became Rs. 975-1660/-, for TBOP Rs. 1400-2300/- and for BCR Rs. 1600-2660/-.

6. It is further submitted that the recommendations of the Vth Central Pay Commission (Vth CPC) came into being w.e.f. 1.1.1996, which recommended four tier grades i.e. of Sorting Assistants/Postal Assistants, Sorting Assistants/Postal Assistants (TOBP), Sorting Assistants/Postal Assistants (BCR) and HSG-I.

7. The applicants further allege that Vth CPC recommended Assured Career Progression Scheme (for short ACP) guaranteeing two promotions to group 'C' employees in all Central Government Departments on completion of 10 and 20 years of service without any matching cost and

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these were called as first and second assured career progression. However, it is stated that Vth CPC did not recommend any particular pay scale for TBOP and BCR officials but the department has, in most arbitrary and whimsical manner, granted unreasonable and unjustified pay scales for the TBOP and BCR staff as if the schemes were to be retained in the Department of Posts. It was left to the Department either to continue with the old schemes, namely, the Schemes of TOBP & BCR or to adopt the ACP scheme, as recommended by the Vth CPC. But, in any case, the Department was bound to follow one of the Schemes in its entirety and not in piecemeal. The department neither continued, in entirety, with the earlier Schemes known as TBOP and BCR Schemes nor adopted ACP Scheme. It is stated that periodicity for promotion under ACP Scheme was lower than the periodicity under the TBOP & BCR Schemes. Under the ACP Scheme, there was no provision for matching cost and, in fact, the practice of matching cost has been given a go by and for earlier promotion under the ACP Scheme has been provided.

8. It is further stated that under the Schemes of TBOP & BCR, first promotion takes effect after completion of 16 years of service and second after completion of 26 years of service and that too it was linked with the provisions of matching cost and savings. It is further stated that though the respondents continue with TBOP & BCR Schemes but they adopt ^{efc} the ACP scales, which were lower scales, without following and adopting other two mandates of their promotion on completion of 10 years and 20 years of regular service without matching cost. Thus, in fact, the department has violated the recommendations of the Vth CPC as it still continues with the TBOP & BCR Schemes but at the same time it has adopted the pay scales as per ACP Scheme. Because of this dispute,

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Dutta Committee had to be constituted to report and suggest justified scales under TBOP & BCR Schemes.

9. It is further stated that Vth CPC remained silent on the scales of TBOP/LSG & BCR /HSG-II in case the schemes of TBOP & BCR were to be retained in the Department of Posts. But, the respondents arbitrarily implemented the pay scales for TBOP/LSG personnel as well as for those PAs of BCR and HSG-II, which generated dis-satisfaction among the staff as these scales were recommended by the Vth CPC for first and second ACP, respectively, which operate adversely against them because it is reducing the ratio between the entry scale TBOP/LSG and BCR/HSG-II scale.

10. The applicants further submit that the recommendations of the Vth CPC have seriously disturbed the long existing relativities, both horizontally and vertically, leading to grave dissatisfaction, despondency, lowering of moral of the LSG and HSG-II and HSG-I officials. Because of this dissatisfaction, after several rounds of negotiations with the authorities/department, Dutta Committee was constituted for obtaining necessary decision of the Government as under:

1. Improvement of pay scales for Postal Group 'D' in entry, TBOP and grades.

2. Upgradation of pay scales of LSG, HSG-II and HSG I levels and LSG scale for PO and RMS Accountant.

3. Upgradation of scales of pay of Drivers and Workshop staff.

4. Improved pay scales for Stenographers in the Department of Posts.

5. Upgradation of pay scales of Jr. Accountants.

6. Grant of special pay for all qualified JAOs awaiting promotion in the Department of Posts.

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7. Regularization of part time/contingent paid/casual labours (Mazdoors) and grant of bonus and other benefits at par with regular employees.

8. Issues arising out of implementation of Department of Posts Order No. 23-8/97 PE-I (PCC) dated 3.7.1998 granting upgrades scales of pay to Postmen/Mail Guard cadre.

11. It is further stated that after several rounds of discussion, Dutta Committee submitted its report on 18.12.1998 to the respondents recommending that entry pay scale of PA/SA has been upgraded to Rs. 4000-6000/- on account of enhanced qualification and knowledge of computers and typewriting coupled with competitive test. However, the scales of TBOP/BCR remained unchanged. Hence, the staff demanded for enhancement of scales, which are as under:-

	“Existing	Demanded
LSG/TBOP	4500-7000	5500-9000
HSGII/BCR	5000-8000	6500-10500”

However, the department took the plea that pay scales of PA/SA cadre at entry level were upgraded on account of enhanced qualification and skill and higher scales at next level were not justified on promotion to TBOP/BCR as higher qualification was not required and the same remained unchanged whereas the staff representatives had been maintaining that with introduction of technology and modernization, the supervisory responsibilities of LSG/TBOP and HSGII/BCR are enhanced proportionately. So, they reiterated the demands for improvement of their pay scales.

12. It is further stated that Dutta Committee, after examining the entire facts and circumstances, recommended the pay scales of Rs. 5500-8650/- instead of Rs. 4500-7000/- for PAs (TBOP) and the pay

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scale of Rs. 6500-9500/- instead of pay scale of Rs. 5000-8000/- for PAs (BCR) and pay scale of Rs. 7450-11500/- instead of 6500-10500/- for HSG-I. However, the same was not implemented despite repeated requests. The Unions again served a notice for going on strike as the same was not implemented but the Minister assured that the department would consider ~~to~~ this issue, which was unique to the Department of Posts and will, therefore, have no impact outside the Department. Since nothing was done, another Committee was appointed known as Internal Departmental Committee, which was not unanimous in agreeing to the demands raised by the Unions.

13. The applicants now claim that since the aggrieved employees are being unjustly treated, the Tribunal's interference would be imperative to undo the discrimination resulting from arbitrary state action or inaction. So, in the present case, the interference of this Tribunal is absolutely necessary to undo the injustice meted to the applicants.

14. It is further stated that since the respondents have ignored to accept the legitimate demands of the applicants, arising out of the disturbed relativities pursuant to the recommendations of the Vth CPC, they have failed to consider that the applicants, who were promoted from PAs, are also burdened with additional responsibilities, risks and skills with assumption of higher grade i.e. from PAs to LSG (TOBP)/HSG II/(BCR)/HSG-I. The applicants further allege that the Department have failed to consider the increased responsibilities of the applicants. They have also failed to consider that TBOP/BCR Schemes were approved only upon undertaking of the postal employees to accept 6% additional responsibility in operative cadres and 20% additional responsibility in supervisory cadre on a matching savings basis.

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15. It is further stated that the entire relativity has been disturbed due to reduced percentage of increase which was quid-proquo resulting in arbitrary discrimination of the applicants.

16. It is further stated that the Department, by denying the benefit of ACP to the applicants, have unduly discriminated due to the reason that under the time bound promotion, an increment is due for the promotion on completion of 16 years and 26 years of service, respectively, while under the ACP, an increment is assured of promotion on completion of 12 years and 24 years of service, respectively. Thus, it is prayed that the recommendations made by Dutta Committee be accepted and respondents be directed to consider the Group 'C' employees of the Postal Department for upgradation of their pay scales.

17. Respondents have contested these OAs and in their counter reply, they have pleaded that in the Department of Posts, there is a basic cadre for Group 'C' called Postal Assistant/Sorting Assistant. Prior to the Vth CPC, the pay scale of PA/SA was Rs. 975-1600/- . However, the Vth CPC upgraded the pay scale of PA/SA from Rs. 975-1600/- to Rs. 1320-2040/- on account of enhancement in basic qualification from Matriculation to 10+2 with knowledge of computer and typing. Hence, PAs/SAs have been given the replacement scale of Rs. 4000-6000/- . These PAs/SAs were eligible for promotion to LSG and thereafter to HSG -II and then to HSG-I. Since the posts in LSG, HSG-II and HSG-I were norm based and as such they were few as compared to a number of PAs/SAs in the basic cadre, the department introduced TBOP/BCR Schemes in respect of Group 'C' employees under which officials were to be placed in next higher pay scales in the hierarchy after completion of 16 years and 26 years of regular service. The Schemes were based on matching savings to certain extent.

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18. It is further stated that the Pay Commission had not recommended any change in the scales of pay for the TBOP. It is further stated that a Committee was constituted to consider for grant of higher pay scales for the TBOP/BCR officials after examining various issues arising from implementation of the Vth CPC recommendations, which were contained in the Charter of Demands presented by the staff. The Committee recommended the following pay scales:

“LSG	Rs. 5500-8650
HSG-II	Rs. 6500-9600
HSG-I	Rs. 7450-11500”

19. That as per the Settlement Document dated 1.5.2000 signed by the Unions and Member (D), Post Services Board, Department of Posts, the Department was to consider, as agreed upon, the demands relating to upgradation of pay scales for different cadres, including PAs of the Department and various other issues raised, which are unique to the Department of Posts and will, therefore, have no impact outside the Department. The said demands are in the nature of anomaly as per the definition of 'anomaly' in terms of DOP&T OM and if the demands are in the nature of anomalies, the same will be considered by the Anomaly Committee. Hence, an Internal Departmental Committee was constituted under the Chairmanship of Shri S.C. Dutta. The said Committee, consisting of representatives from various departments of Posts, considered the recommendations of Dutta Committee on the matter of pay scales and other related matters and submitted its report. The Committee did not recommend any change in the existing pay scale of postal group 'D' employees in entry to TBOP and BCR grades after considering the views expressed by the representatives of the Department

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of Personnel & Training and Department of Expenditure. The Committee, taking into account all these aspects of the matter, recommended that there is no case for upgradation of the pay scales for HSG-I. The Committee also did not support any upgradation of pay scales of LSG/TBOP and HSG-II for PA/SA.

20. Based on the same, the Government also considered the question of upgradation of pay scales of TBOP/LSG, BCR/HSG-II and HSG-I and took a decision that no modification in the above pay scales is required as it would disturb vertical and horizontal relativities in terms of pay scales of similarly placed employees within the Department and among other Departments in Government and the same would result in fresh demands from other cadres, etc. Thus, it was not possible to consider upgradation of pay scales for any category of the staff.

21. It is further stated that on the recommendations of the Vth CPC, ACP Scheme became available for Central Government employees but it has not been extended to the PAs because there are certain features of the Scheme which were found to be less beneficial to those in the PAs and postmen cadres vis-à-vis the TBOP and BCR Schemes, which were introduced on the basis of an agreement in the P&T Council of JCM. Moreover, TBOP and BCR Schemes were under implementation since 1983 and 1991, while the ACP scheme came into effect only from August, 1999. So it was decided to continue the benefits of the TBOP/BCR Schemes to Group 'C' and 'D' employees of the Department of Posts. It is further stated that under the ACP Scheme service for granting financial upgradation is counted from the date of entry in the Department while under TBOP Scheme service is counted from the date of entry in the grade. Promotion to PA cadre is 50% by promotion from Group 'D' and postman cadres and 50% by direct recruitment from open market. If ACP

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is extended to PAs cadre under 50% promotion quota and they are promoted from the lower cadres, will get the next higher pay scale only after 24 years of service in the PAs cadre as their promotion to PAs cadre from lower cadre will be counted as one promotion earned whereas under the TBOP/BCR Schemes, the benefit of two financial upgradations are given on completion of 16 years and 26 years of service, respectively, irrespective of the promotion awarded to PAs from Group 'D' or postman cadres. Thus, it is found that the TBOP/BCR Schemes are more beneficial to the employees rather than the ACP Scheme and, therefore, the same was not implemented. It is denied that the employees i.e. the applicants in both these OAs have been given discriminatory treatment.

22. It is further stated that the recommendations of the Pay Commissions, including the Vth CPC, are based on a comprehensive assessment of the vertical and horizontal relativities among similarly placed employees both within the department and other departments in Central Government and, hence, modifications of these recommendations are undertaken only when an anomaly is established. However, based on an assurance by the then Minister of Communication, a Committee was constituted but the recommendations of the said Committee are not automatically enforceable and final decision thereon is taken by the Government having regard to various factors, such as, financial effect on other employees, which are to be considered and, therefore, it is not found feasible to implement the recommendations of Dutta Committee. Hence, it is prayed by the respondents that the OAs are liable to be dismissed.

23. We have heard the learned counsel for both the parties and have gone through the records.





24. The main contention of the learned counsel for the applicant is that the Committee headed by Shri S.C. Dutta had given its report on 18.7.1998 after dealing with the issues and had found that pay scales are matters for consideration by Pay Commission and percentage difference between respective scales getting reduced as a result of exercise carried out by 5th Pay Commission. The Committee further found that the recommendations of the 5th Pay Commission may operate adversely, therefore, recommended the higher scales for LSG, HSG-II and HSG-I but the same is not being implemented. However, another Committee was constituted, which was known as Internal Departmental Committee. The said Committee was also constituted under the Chairmanship of Sh. S.C. Dutta. Besides other officers from the Department of Posts, there was one representative from the DOP&T and one representative from the Department of Expenditure. The Committee considered the recommendations made by Dutta Committee vide its report dated 18.7.1998 and the departmental representatives of the Department of Posts were still of the view that the enhanced Entry/TBOP/BCR scales should be recommended for this select category of Group 'D' employees of the Department of Posts but the representatives of the Department of Personnel and Training and the Department of Expenditure, have however, expressed their views that the aforesaid categories of Group 'D' employees in the Department of Posts cannot be treated as a unique category only based on the reasons advanced by the representatives of the Department of Posts. These posts do not require any additional/special qualifications and they have all along been treated as part of Group 'D' cadre and they have given various reasons that as to how the upgradation of pay scales of Group 'D' employees would disturb the vertical and horizontal relativity within



the Department of posts itself. Thus, the Committee was not unanimous and so the recommendations given by the Dutta Committee earlier could not be implemented.

25. Learned counsel for the applicants also referred to various judgments in support of his contentions. In one of the judgments rendered in the case of ***Union of India & Ors. vs. Hindustan Development Corporation and Ors.***, reported in (1993) 3 SCC 499, the Apex Court held as under:-

“Administrative Law – Legitimate expectation – Meaning of – Nature, scope and applicability of the doctrine – Legitimacy of expectation- Basis or foundation of rights and obligations vis-à-vis the administrative authorities arising out of – Held, it only operates in public law field and provides locus standi for judicial review – Its denial is a ground for challenging the decision/action – But denial can be justified by showing some overriding public interest – Denial does not by itself confer an absolute right to claim relief – Grant of relief should be limited only to cases where denial amounts to denial of any right or where decision/action is arbitrary, unreasonable, not in public interest and inconsistent with principles of natural justice – Court will not interfere merely on ground of change in govt. policy – In govt. contract with private parties for supply of goods, in absence of any fixed procedure for fixation of price and allotment of quantity to be supplied, held, adoption of dual pricing policy by govt. (lower price for big suppliers and higher price for small suppliers) in public interest and allotment of quantity by suitably adjusting the same so as to break the cartel, does not involve denial of any legitimate expectation...”

Learned counsel also relied upon the judgment rendered by the Hon'ble Supreme Court in the case of ***National Buildings Construction Corporation vs. S. Raghunathan and Others***, reported in (1998) 7 SCC 66, in which the Supreme Court held as under:

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“A. Administrative Law - Legitimate expectation - Doctrine of, held, is akin to natural justice, reasonableness, and promissory estoppel - Its essence is fair play in administrative action - the State cannot therefore unfairly disregard its policy statements - The doctrine is a source of procedural as well as substantive rights - Locus standi and conditions for invoking the doctrine - Persons seeking to invoke the doctrine must be aggrieved and should have altered his position acting upon State action/inaction - Whether or not expectation is legitimate is a question of fact - Legitimacy of expectation has to be determined keeping in view larger public interest and not according to claimant's perception - On facts, held, legitimate expectation stood displaced by policy decision which was based on objective assessment of prevailing circumstances - Decision of respondent-Corporation to pay Foreign Allowance with reference to pre-revised basic pay and not with reference to revised basic pay, therefore, upheld - Natural justice - Policy decision - Constitution of India, Art. 14 - Estoppel - Promissory estoppel - Evidence Act, 1872, Section 115 - Public interest.”

The Hon'ble Supreme Court in another judgment rendered in case of **Food Corporation of India vs. M/s. Kamdhenu Cattle Feed Industries**, reported in (1993) 1 SCC 71, has held as under:

“Administrative Law - Legitimate expectation - Consideration of, forms part of principle of non-arbitrariness under Art. 14 as well as rule of law - It becomes an enforceable right in case of failure of State or its instrumentality to give due weight to it - Whether expectation is legitimate is a question of fact which has to be determined not according to the claimant's perception but in the larger public interest - A decision in the matter is open to judicial review - A bona fide decision would satisfy the requirement of non-arbitrariness - Constitution of India, Arts. 14, 32, 136 and 226 - Doctrine of legitimate expectation.”

The Supreme Court in case of **Navjyoti Coop. Group Housing Society & Ors. vs. Union of India & Ors.**, reported in (1992) 4 SCC 477 has held as under:-

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“Administrative Law – Natural justice – Legitimate expectation – Doctrine of – Persons enjoying certain benefit/advantage under old policy of govt. derive a legitimate expectation even though they may not have any legal right under private law in the regard of its continuance – Before adopting any new policy affecting the benefit/advantage, the aggrieved persons entitled to an opportunity to make representation before the govt. – Audi alteram partem – Policy decision.”

26. Learned counsel, after referring to the above judgments, submitted that the applicants, who are the employees of the Department of Posts, have a legitimate expectation, particularly after the recommendations made by Dutta Committee, that the Govt. would accede to their demands and would implement the recommendations of Dutta Committee. Learned counsel for the applicants also submitted that once the Govt. had agreed with the applicants to constitute Dutta Committee which had recommended certain benefits for the employees so the Government was estopped to alter its position to refer the matter to another Departmental Committee and not to accept the recommendations made by the Dutta Committee. Learned counsel on behalf of the applicants also submitted that when Internal Departmental Committee was constituted, applicants had not been heard. They had not been allowed to represent their case whereas at the time of Dutta Committee, the representatives from the side of the applicants were there, who were representing various Unions, which shows that the principles of natural justice have been violated by the respondents. Hence on this account also, the recommendations of the Internal Departmental Committee could not be accepted and the Internal Departmental Committee could not be accepted and

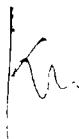




Govt. should be directed to accept the recommendations made by Dutta Committee on 18.7.1998 and also to implement the same.

27. In reply to this, learned counsel for the respondents submitted that the matter with regard to implementation of the recommendations of Dutta Committee has already been adjudicated upon in OA No. 217/2002 in the case of **R.N. Singh & Ors. vs. Union of India & Ors.**, which stood dismissed. In that case also, the applicants had relied upon the report of Dutta Committee and from the reply of the Department in that case, it is seen that the Government of India had constituted a further Internal Departmental Committee on 21.7.2000, which considered the recommendations made by Dutta Committee and did not find the same in favour of the applicants for parity of the pay scales. The Tribunal then also referred to a judgment given in the case of **State of Uttar Pradesh & Ors. vs. Ministerial Karamchari Sangh** [JT 1997 (8) SC 415] and more particularly in the case of **Union of India & Anr. Vs. P.v. Hariharan and Anr.** [1997 SCC (L&S) 838], wherein the following observations were made by the Hon'ble Supreme Court in **Hariharan's** case (Supra):

“Quite often the Administrative Tribunals are interfere with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government, which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realize that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon the issue.



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Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales."

28. Learned counsel for the respondents urged that since the case pertains to the same recommendations of Dutta Committee which have already been adjudicated upon by the Tribunal, this court should also dismiss these two OAs. Learned counsel further referred to the latest judgment in the case of **Dwijen Chandra Sarkar & Anr. Vs. Union of India and Anr.**, reported in JT 1998(8)SC 575 and stated that in this case also the Supreme Court granted the approval for promotion under TBOP Scheme. As the department has also stated in their counter affidavit that the Schemes under TOBP/BCR are more beneficial to the employees concerned in comparison to the ACP Scheme, that is why, ACP Scheme was not adopted and even the employees were also not willing to go for ACP Scheme as applicable to other Central Government employees. Since the employees working in the cadre of PAs/SAs and particularly those who are promoted from Group 'D' to PAs/SAs are a unique class, so they have to be kept separately and for that purpose TOBP/BCR Schemes had been made applicable to them. Otherwise they will not be entitled to the ACP Scheme since at the time of getting one promotion from Group 'D' to Group 'C' their chance to get one promotion under TOBP would have already been exhausted.

29. As regards the grant of relief of fixation of pay scales, we are of the considered view that by the judgment of the Hon'ble Supreme Court rendered in **P.V. Hariharan's** case (supra), the powers of the Tribunals and Courts have been well defined by the

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Hon'ble Supreme Court as to where these Tribunals and Courts can intervene in the matter of pay scales. As per the said judgment, it is laid down that it is the function of the Government, which normally acts on the recommendations of a Pay Commission. With regard to change of pay scale of a category, it has to see the comparison horizontally and vertically with similarly situated employees within the department and outside the department. However, the Tribunals and Courts can interfere only if they find that there is a clear case of hostile discrimination. In this case, we find that the applicants are unable to make out a case of clear discrimination and they are also unable to show that as to how they have been discriminated since the TBOP/BCR Schemes were operative from 1983 and 1991 and they were working perfectly on the basis of the demands raised by the various Unions, including the applicants. The Unions had represented that they have been disturbed by grant of pay scales on introduction of ACP Scheme by the Vth CPC particularly when the higher pay scales have been recommended at the entry level for PAs/SAs but to this Govt. had properly replied that earlier the educational qualification for these entrants was only Matriculation and now they have been allowed higher pay scales on the basis of higher educational qualification i.e. 10+2 plus knowledge of computer and typing which was not so prior to coming into being of Vth CPC.

30. So far as promotions at the level of TBOP/BCR are concerned, that had been done earlier also on the basis of matching cost and savings basis, but the ACP Scheme permits only two upgradations during the entire career of an employee whereas



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TBOP/BCR Schemes are the Schemes of a unique nature. They consider the promotions from the entry into the basic grade, which is a unique feature of the postal employees, so they cannot be said to have been discriminated in any manner.

31. As regards the judgments cited by the learned counsel for the applicants over the concept of doctrine of legitimate expectation, merely because Dutta Committee had given certain recommendations, that does not give any legitimate expectation to the applicants nor does it make the applicants to alter their position. The denial of expectation for implementation of the recommendations made by Dutta committee does not by itself create any right, which may be arbitrary or unreasonable and not in public interest because it is well settled principle that the recommendations of the Expert Committees, dealing with pay scale matters, are merely recommendatory in nature and ought to have been accepted by the Government taking into consideration various other factors. In this case, the Government has taken into consideration various other factors as to how it will disturb the relativity between cadres of the PAs/SAs with similarly Group 'C' employees of the Department, which seems to be sound reasoning to deny the acceptance of recommendations made by Dutta Committee. The doctrine of legitimate expectation also postulates that persons seeking to invoke the doctrine of legitimate expectation must be aggrieved and should have altered his position acting upon State action/inaction. But, here in this case, we do not find that the applicants acting upon the State action or inaction have altered their position. It is also a cardinal principle that legitimate expectation has to be determined keeping in view

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larger public interest and not according to claimant's perception. The reasoning given by the Govt. for not accepting the recommendations of Dutta Committee would go to show that the same has not been accepted to avoid disharmony among other cadres. It also appears to be quite strange that these Unions are enjoying the benefit under TBOP/BCR Schemes on the basis of matching and savings systems but merely because of the recommendations of the Vth CPC and the Dutta Committee, they want to get out the rigorous of matching savings only. The Unions do not want ACP Scheme, they want only that TBOP/BCR Scheme may be applicable to them but matching and savings systems be done away with as this works adversely to their legitimate expectation. But this cannot be their legitimate expectation. The expectation was never extended by the respondents to the extent that it could have created any right in favour of applicants to invoke doctrine of legitimate expectation.

32. The counsel for applicant also argued that in the inter-departmental committee majority had recommended to give benefit to applicants and majority decision should prevail. In our view this contention also have no merits because it is not obligatory even to accept unanimous report. As the Government has still to examine the report from various angles and also to examine its repercussions on other services. In this case since it affects other group 'C' employees both inside and outside the department, so Government is justified in not accepting the majority decision of Inter-departmental Committee.

33. We are also of the considered opinion that the applicants have failed to establish as to how they have been treated in a



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manner of hostile discrimination. Rather the applicants, who are enjoying TBOP and BCR benefits, are better placed than those who are given ACP benefits after Vth CPC.

34. In view of our above discussions, we do not find any ground to interfere particularly when there is no case of hostile discrimination. As such, OA being bereft of any merits is hereby dismissed. No cost.

(S.A. Singh)
Member (A)

/na/

(Kuldeep Singh)
Vice Chairman (J)

Attested:
Om Pandey
08/10/09
SO (J-1)