

CENTRAL ADMNISTRATIVE TRIBUNAL
PRTNCTPAL BENCH: NEW DELHI

(15)

O.A. NO. 2139/2002

NEW DELHI THIS. 29th. DAY OF JULY 2003

HON'BLE SHRT GOVTNDAN S. TAMPT, MEMBER (A)
HON'BLE SHRT SHANKER RAJU, MEMBER (J)

1.	Perdeep Kr. Kapil	S/o D. R. Kapil
2.	Bhuvana Raman	W/o A. K. Raman
3.	R. Jayalaxmi	W/o Ram chandran
4.	Swarn Issar	W/o Rajesh Issar
5.	Indu Dutta	W/o Rajender Dutta
6.	Shampa Bhattacharjee	W/o S. K. Bhattacharjee
7.	Meenu Maheshwari	W/o Rajeev Maheshwari
8.	G. S. Anand	S/o D. M. Anand
9.	G. Ravindern	S/o Late Shri Gopalan
10.	P. S. Chauhan	S/o K. L. Chauhan
11.	Som Nath	S/o H. L. Madan
12.	N. P. S. Kohli	S/o J. S. Kohli
13.	Shashi Sapra	W/o T. S. Sapra
14.	Uma Kapoor	W/o A. Prasad
15.	Raj Kumar	S/o Late Shri Mani Ram
16.	Balbir Singh	S/o Late A. R. N. Sharma
17.	Krishan Chand Gautam	S/o R. C. Gautam
18.	Vinod Kumar	S/o G. R. Dondiyal
19.	Kishan Chand	S/o T. C. Sharma
20.	Pavneesh Sharma	W/o P. Lal
21.	A. K. Gupta	S/o Late H. C. Gupta
22.	C. M. Bajaj	S/o Late L. R. Bajaj
23.	Shahid Ali	S/o Late J. S. Ali
24.	S. L. Dhingra	S/o Birbhan Dhingra
25.	Rajender Kr. Kapoor	S/o Late H. L. Kapoor
26.	Bhag Singh	S/o Chhotey Singh
27.	Satya Dev Gupta	S/o Late S. K. L. Gupta
28.	Sudesh Anand	W/o Vinay Kumar
29.	Rakesh Chander	S/o Kishor Lal
30.	Praveen Kumar	S/o Bhagwan Das

31.	D. S. Arora	S/o	G. S. Gandhi
32.	Anand Parkash	S/o	Ganga Asrey
33.	Narender Kr. Mishra	S/o	Pitamber Mishra
34.	Indu Raheja	W/o	S. K. Raheja
35.	Vinod Kr. Sharma	S/o	P. R. Sharma
36.	S. C. Sahni*	S/o	Late N. L. Sahni
37.	Vijay Krishan*	S/o	H. K. Bhatnagar
38.	N. K. Popli*	S/o	Sh. R. N. Popli
39.	Manorma Bahal	W/o	Leel Bahal
40.	M. L. Goel	S/o	R. S. Goel
41.	S. K. Tripathi	S/o	R. C. Tripathi
42.	Rajinder Kumar	S/o	C.L. Azad
43.	Jyoti Prakash*	S/o	Bhim Sen

All Data Processing Assistant Grade III working under N. S. S. O. (DPC)
Hans Bhawan, New Delhi- 110002.

* Promoted as Data Processing Assistant Grade II after 1.1.1996

44.	Shri Vimal	S/o	Ganendra Ch. Chakravarty
45.	Shri Sunil	S/o	Rajabhau Dani
46.	Shri Kashinath	S/o	Balkrishna Kadu
47.	Shri Anilkumar	S/o	Kunjbiharilal Mohabey
48.	Shri Jayant	S/o	Ramchandra Dhume
49.	Shri Gopal	S/o	Vithalrao Virulkar
50.	Shri Suhas	S/o	Laxman Pendharkar
51.	Shri Krishna	S/o	Gulabrao Gadge
52.	Shri Suresh	S/o	Dattatraya Pultamkar
53.	Shri Radheshyam	S/o	Ramaji Bhonde
54.	Shri Anil	S/o	Shriram Bhalerao
55.	Shri T. Chandran	S/o	V. Thiruppathi
56.	Shri Hiralal	S/o	Fatuji Babde
57.	Smt. V. Ambujam	W/o	R. Venkatraman
58.	Shri Mohanlal	S/o	Ramkisan Shivhare
59.	Shri Abhay	S/o	Sedashiv Bhalerao
60.	Shri Anil	S/o	Manoharao Palsatkar

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61.	Shri Kishore	S/o	Chintaman Bhat
62.	Shri Suhas	S/o	Ramkrishna Namojwar
63.	Shri Balkrishna	S/o	Bhausaheb Kulkarni
64.	Shri Vasant	S/o	Trimbakrao Kakde
65.	Shri Suresh*	S/o	Madhavrao Panse
66.	Shri Sanjay	S/o	Digambarpant Nagarkar
67.	Shri Shyam	S/o	Khubchand Bhatia
68.	Shri Mahadeo	S/o	Parshuram Chopade
69.	Shri Raghavendra Rao	S/o	Balaji Rao
70.	Shri Ravindra	S/o	Gulabchand Agrekar
71.	Shri Vijay	S/o	Nathuji Naukarkar
72.	Shri Maniklal	S/o	Ramaji Barbate
73.	Shri Murali	S/o	Shyamrao Bawiskar
74.	Shri Kishore	S/o	Keshavrao Chande
75.	Shri Mohammad Shafi	S/o	Mohd. Fazil
76.	Shri Bandu	S/o	Rambhau Jilhare
77.	Shri Harish	S/o	Krishnarao Deshmukh
78.	Shri Kamlakar	S/o	Dattatraya Ksheersagar
79.	Shri Chandraprakash	S/o	Madhavrao Dadwe
80.	Shri Pradeep	S/o	Namdevrao Lohakare
81.	Shri Vinod	S/o	Janrao Raut
82.	Smt. Shubhangi	S/o	Shrinivas Patwardhan
83.	Shri Shashikant	S/o	Wasudeo Gothey
84.	Shri Keshav	S/o	Mahadeorao Choudhari
85.	Shri Sayeed	S/o	Nasir Khan
86.	Smt. Alka	W/o	Satish Pande
87.	Shri Prakash	S/o	Trimbakra Pathak
88.	Smt. Varsha	W/o	Hemant Dange
89.	Smt. Rohini	W/o	Ravindra Gijre
90.	Smt. Rekha	W/o	Chandrakant Hanumante
91.	Shri Noormohammad	S/o	Mehaboob Khan
92.	Smt. Maya	W/o	Diwakar Ambarkar
93.	Smt. Neelima	W/o	Mohan Mudki
94.	Shri Subhashish	S/o	Sudhirchandra Mazumdar
95.	Shri Shivkumar	S/o	Rameshwar Trivedi

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96.	Smt. Vasanti	W/o	Ramesh Deshpande
97.	Smt. Sandhya	W/o	Hemant Bhagat
98.	Shri Chandrashekhar*	S/o	Haribhau Khokale
99.	Smt. Pradnya	W/o	Prakash Deopujari
100.	Smt. Ashwini	W/o	Abhay Kolwadkar
101.	Shri Uday	S/o	Kashinath Brahma
102.	Shri Brajmohan	S/o	Bansilal Rathi
103.	Miss Uma	D/o	Laxminarayan Rao
104.	Shri Vishwas	S/o	Raghunath Rishi
105.	Shri Ashok	S/o	Rambhau Pandit
106.	Shri Anil	S/o	Dattatraya Kulkarni
107.	Shri Dhanraj	S/o	Nathuji Nellikwar
108.	Smt. M. Shashaikala	W/o	M.V.Rao
109.	Shri Sharad*	S/o	Shrikrishna Kulkarni
110.	Shri Upendra	S/o	Basant Vaidya
111.	Shri Ashok	S/o	Annaji Bagaddeo
112.	Shri Ashok	S/o	Sheshrao Suryawanshi
113.	Smt. Nilima	W/o	Deepak Moharir
114.	Shri Pramodkumar	S/o	Bhalchandra Gothey
115.	Shri Kishore	S/o	Trimbakrao Chinchole
116.	Shri Shyam	S/o	Moreshwar Paunikar
117.	Shri Yashwant	S/o	Marotrao Jogi
118.	Shri Gangadhar	S/o	A. Chandankhede
119.	Smt. Usha	W/o	P. Shreedharan
120.	Smt. Madhuri	W/o	Gopal Naidu
121.	Smt. Upali	W/o	D. Nandi
122.	Smt. Shrilata	W/o	A. Pal
123.	Sh. Amar Kumar	S/o	Paras Nath Dubey
124.	Sh. Sudhir	S/o	Yadavrao Langde
125.	Sh. Niranjan	S/o	Nilkanth Warhadpande
126.	Sh. Anil	S/o	Dinkar Raulwar
127.	Sh. Rajan	S/o	Shankar Lilare
128.	Smt. Bharati	W/o	Vinayak Sangamnerkar
129.	Ms. Sunita	D/o	Satish Verma
130.	Mrs. Sujata	W/o	Srikanth Tankhiwale

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131.	Ms. Jagruti	D/o	Uma Shankar Dave
132.	Sh. T.Ramchandran	S/o	Balkrishnan
133.	Sh. Sunil	S/o	Krushnarao Kayarkar
134.	Sh. Anwar	S/o	Sheikh Burhan
135.	Sh. Lakan	S/o	Shiv Narayan Shahu
136.	Sh. Naresh	S/o	Shesh Rao Bande
137.	Sh. Chandra Shekhar	S/o	Ramchandra Gaupale*

ALL Data Processing Assistant Grade III Working under NSSO (DPC), NIT BUILDING, WHC ROAD, GOKULPETH, NAGPUR - 440000.

*Promoted as Data Processing Assistant Grade II after 1.1.1996

138.	Shri Amar Kr. Sinha	S/o	Tribhuwan Prasad
139.	Shri Alok Kr. Gupta	S/o	Tulsi Pr. Gupta
140.	Shri Naseem Ahmed	S/o	Zainul Abedin
141.	Shri Ram Kr. Bose	S/o	Bimal Kr. Bose
142.	Raj Kishore Prasad	S/o	Bhubneshwar Prasad
143.	Shri Ram Ch. Keori	S/o	Dev Chand Keori
144.	Shri R.K. Banerjee	S/o	Anil Krishna Banerjee
145.	Mangal Kumar*	S/o	Beni Pandit

ALL Data Processing Assistant Grade III Working under NSSO (DPC), ROSE VILLA, GIRIDIH - 815301.

* Promoted as Data Processing Assistant Grade II after 1.1.1996

146.	Salil Ghosh	S/o	Late S.C.Ghosh
147.	Anjana Bhowmick*	W/o	N.C.Bhowmick
148.	Sanjit Brambha	S/o	Late M.N.Brambha
149.	Kausik Chowdhury	S/o	Late B.B.Chowdhury
150.	A.K. Bandhopadhyay	S/o	Deb Kr. Bandhopadhyay
151.	Rabindra Mohan Saha	S/o	Sachandra Mohan Saha
152.	Avinash Sovani *	S/o	Late K.P.Sovani
153.	Pradip Kr. Das	S/o	Rabindra Nath Das
154.	Suvendu Chatterjee	S/o	Late Sisir Kr. Chatterjee
155.	Uttam Kr. Das	S/o	Nipendra Kr.Das

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156.	Ranjit Kr. Dey	S/o	Late Gopal Ch. Dey
157.	Aninda Sengupta	S/o	Himansu Sengupta
158.	Sambhu Nath Bose *	S/o	Late S.N.Basu
159.	Malay Sarker	S/o	G.L.Sarker
160.	Bela Mitra *	W/o	T.Mitra
161.	Anath Bendhu Ray	S/o	Nirode Baran Ray
162.	Chandan Kr. Ray	S/o	Late K.B.Ray
163.	Rajdeep Das	S/o	C.R.Das
164.	Prabir Gupta	S/o	Late K.C.Gupta
165.	Pradip Ray	S/o	K.L.Ray
166.	Partha Sengupta	S/o	Late Gopal Ch. Sengupta
167.	Surajit Sengupta	S/o	Amar Sengupta
168.	Debasish Kar (Sr)	S/o	Nani Lal Kar
169.	Swapan Kr. Gupta	S/o	Late Purna Ch. Gupta
170.	Soumendra Kr. Addya	S/o	Late Madan Mohan Addya
171.	Pradip Kr. Sarker	S/o	Late D.N.Sarker
172.	Bidyut Saha	W/o	Late Panna Lal Saha
173.	Maloy Kr. Chowdhury	S/o	M.K.Chowdhury
174.	Ashim Kr. Gupta	S/o	Late Ramesh Ch. Gupta
175.	Soumen Das	S/o	Late Manmohit Nath Das
176.	J.Saha Chowdhury	S/o	Late B.K.Saha Chowdhury
177.	Narayan Ch. Bag	S/o	Sagar Ch. Bag
178.	Samar Deb Ray	S/o	J.R.Deb Ray
179.	Dilip Kr. Lenka	S/o	D.L.Lenka
180.	Debi Das	S/o	Mrinal Kanti Das
181.	Mohan Bhatterjee	S/o	Late K.L.Bhatterjee
182.	Prasanta Mukherjee	S/o	Late Kalidhan Mukherjee
183.	Ashit Kr. Mazumder	S/o	Shyama Kishore Mazumder
184.	Ashim Kr. Pain	S/o	Late S.K.Pain

ALL Data Processing Assistant Grade III working under
 NSSO,(DPD - HQ), Mahalanobish Bhawan, 10, G.L.T.Road
 KOLKATA - 700107

*Promoted as Data Processing Assistant Grade II after 1.1.1996

By Smt. Shyamala Pappu Sr. Advocate
 with Sh. Krishnamoorthy) APPLICANTS

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VERSUS

1. Union of India through Secretary
Ministry of Statistics,
Sardar Patel Bhawan, Sansad Marg,
New Delhi.
2. Chief Executive Officer & Director General,
National Sample Survey Organisation,
Ministry of Statistics,
Sardar Patel Bhawan, Sansad Marg,
New Delhi.
3. Deputy Director General,
National Sample Survey Organisation,
Data Processing Division, HQ,
Professor Mahalanobis Bhawan,
164, G.I.T Road, Baranagar,
Kolkata - 700108

..... Respondents

(By Shri Rajiv Bansal, Advocate)

O R D E R

BY HON'BLE SHRT GOVTNDAN. S. TAMPT, MEMBER (A)

M.A. 1732/2002 for joining allowed.

2. Reliefs sought for by the 184 applicants in this OA are as below:

- a) Quash and set aside the orders dated 18th July 2002 and 15th July 2002 of the respondent;
- b) direct the respondents to fix the pay of the applicants on pay upgradation/revision after allowing the benefit under FR 22 in terms of Rule 10 of CCS(RP) Rules, 1997;
- c) pass such other order/orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case; and
- d) Award costs of the present proceedings to the applicants.

3. Heard Smt. Syamala Pappu, Sr. Advocate with Sh. Krishnamoorthy, for the applicant and Shri. Rajeev Bansal, learned proxy counsel appeared for the respondents.

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4. All the applicants are serving in Electronic Data Processing Posts (EDP Posts) ^{as} Data Processing Asstt. Grade TTT in National Sample Survey Organisation, under the Ministry of Statistics & Programme Implementation and drawing the scale of Pay of Rs. 1600-2660/- granted to them by the Hon'ble Supreme Court and were granted the replacement scale of Rs. 5000-8000/- after 5th CPC recommendations were accepted. Subsequently on 18.9.01, they were placed in the higher replacement scale of Rs.. 5500 - 9000/- by the Government w.e.f. 1.1.96. They had become thus entitled to fixation of pay in terms of FR 22. On a similar revision of pay to similarly placed individuals in the office of the Registrar General, Ministry of Home Affairs, benefit of fixation under FR 22 was granted with some raise in the pay, while in the case of the applicants the revised pay stood revised downwards; as the benefit was not granted. Staff attached to the Computer Centres, under the same Ministry were also given the benefits , which have been denied to the applicant. In para 55.71 of their recommendation, 5th CPC had suggested the pay scale of Rs.1640-2900/- for the applicants which would have resulted in the replacement of Rs. 5500-9000/- under CCS (RP) Rules, 1997. However, the applicant's pre-revised scale of pay having been Rs. 1600-2660/- they were only given the scale of Rs. 5000-8000/=. It is only by the Govt order No. G.20011/1/2000-Admn TV (Pt) dated 18.9.01, the higher replacement scale of Rs.5500-9000/- , was granted to the applicant but by a wrong interpretation adopted by the respondents, the applicant's pay got reduced effectively. The matter was taken up by their Representative Union on 5.11.01 but pending decision thereon, respondents directed on 31.12.01 the refixation of pay of the applicants and ~~effec~~ent.

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recovery of amounts, drawn if any. Further representation dated 18.1.02 by their Association inviting reference to the practice adopted in Registrar General Officer, as well as their OM No. 22/1/97-Ad TT dated 6.1.98 and order No. A-26017/1/98 RG(PT TT) dated 19.3.98. Respondents have by their letter dated 4.3.02 declined to accept the above and had continued with the recovery of amounts allegedly received in excess. OA No. 982/02 filed by the applicants against the respondents action was disposed on 11.4.02 directing the respondents to pass a more detailed order with specific reference to the applicability or otherwise of FR 22 in the case of the applicants. Respondents by their letter No. C 18011/1/PKK/2002-CSW dated 18.07.02, forwarded order No. C18013/4/02-AD TV dated 15.7.2002 explaining the reasons on the inapplicability of FR 22. The same, however is hardly a speaking order. They also decided that the recoveries shall start from Aug 2002. Hence, this OA.

5. The grounds raised in the OA are that:

- a) the manner in which the pay of the applicants have been fixed in the upgraded scale w.e.f. 01.01.96 has resulted in recurring loss of emoluments;
- b) fixation of pay at a lower stage on upgradation of the pay scale is totally an illogical and unwholesome proposition. When a post gets a new scale it was to be treated as a new post and the appointments would have to be treated as a reappointment in the revised scale. Provision under FR 22(i)(a) (2) would apply;
- c) employees similarly placed, working in the office of the Registrar General of India have been given the benefit of fixation correctly, as against the applicants who have lost out on refixation. This was a clear violation of Articles 14 & 16;
- d) the position of similarly placed employees in the Computer Centre was similar;

e) the applicants' pay had been refixed in terms of preamble to part B of the first schedule to CCS(RP) Rules 1997 whereunder their pay was upgraded to Rs. 5500/- to Rs.9000/- w.e.f. 1.1.96 without any changes in the recruitment rules, redistribution of posts etc. and therefore, resort to FR 22 was permissible. In fact Rule 10 of CCS(R) Rules safeguards against any reduction in pay that too retrospectively from 01.01.96;

f) the applicants are seeking that their pay be fixed under CCS(RP) Rules with benefit of FR 22 in terms of Rule 10 ibid , the applicants have suffered loss of pay not in fact by the revision of the scale but because of improper fixation inspite of the safeguards provided in Rule 10 of CCS(RP) Rules;

g) respondents averment that in the case of the applicants, normal replacement scale has been merely replaced by the higher scale was misleading;

h) the applicants, have been discriminated vis-a-vis those in the office of the Registrar General under the Ministry of Home Affairs and in the Computer Centre (under the same Ministry as the applicants);

i) the directions to recover, alleged excess pay had cost financial loss to them, which would continue if not checked and

j) the impugned orders are illegal, arbitrary and discriminatory.

The applicants therefore, seek the intervention of the Tribunal to render them justice.

6. In the reply filed on behalf of the respondents, it is pointed out that as the applicants have been given the higher replacement scale of Rs.5500/- 9,000/- instead of the normal replacement scale of Rs.5000 - 8000/- in place of the pre-revised scale of Rs.1600 - 2660/- as a temporary measure (which was subsequently revised to Rs.5500 - 9000/-) that too retrospectively from 1.1.96 fixation of their pay under FR 22 was not applicable. The applicants version that subsequent replacement in the higher scale of Rs.5500/- to Rs.9000/- granted from 1.1.96 was neither an appointment to a new post

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nor one involving responsibilities of greater importance as to attract the benefit of fixation of pay either under FR 22 or Rule 10 of CCS(RP) Rules 1997. The placement of the applicants in the scale of Rs.5000 - 8000/- was only an interim measure. This had been specifically mentioned in the enclosure to order dated 18.9.01 of the Ministry of Statistics and Programme Implementation. However, excess pay drawn due to refixation in the higher scale of Rs.5500 - 9000/- / Rs. 7500 - 12000/- instead of the normal scale of Rs. 5000 to Rs.8000 / Rs. 7450 - Rs. 11500/- granted earlier has to be recovered. This cannot be questioned. The respondents further pointed out that all the grounds raised by the applicants are without any merit and cannot be accepted.

7. During the oral submissions, Smt. Symala Pappu, learned counsel for the applicants forcefully reiterated the pleas on behalf of the applicants, which were contested with equal vehemence by Sh. Rajeev Bansal, appearing for the respondents.

8. We have carefully considered the rival contention and examined the documents brought on record. The applicants in this case are EDP Staff ^{Who were} drawing pay in the scale of Rs.. 1600 - 2660/- ^{and the} ~~who~~ were granted the replacement scale of Rs.5000 - 8000/- following the acceptance of the recommendations of the 5th CPC w.e.f. 1.1.96. Later on the basis of the Govt. India's decision of 18.9.01, the replacement scale was fixed as Rs.5500 -9000/- and the pay was refixed that too w.e.f. 1.1.96. However, while ordering the refixation their basic pay got reduced than what was fixed in the normal replacement scale of Rs. 5000 - 8000/- . Further according to the applicants, if they were permitted

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to have the benefit of fixation under FR 22, they would have got still higher pay. For instance a person who was drawing basic pay of Rs. 1850/- in the pre-revised scale of rs.1600 - 2660/- was fixed at Rs. 5750/- (the stage above Rs.5613/-) which was his entitlement, according to the applicant as per ground 5.1 of the OA) in the scale of Rs. 5000 -8000/- w.e.f. 1.1.96 but the basic pay come down to Rs. 5675/- while being fixed in the higher scale of Rs.,5500 - 9000/- w.e.f. 1.1.96 . According to the applicants it would have gone up to Rs.5850/- had they been permitted to exercise the option to have the pay fixed in terms of FR 22. according to them therefore, not only that they did not get the higher amount they should have got, while being fixed in the higher replacement scale, but they were made to lose even in comparison to what they were permitted to draw earlier in the normal replacement scale. A pay revision always results in the enhancement of the pay but in this case it resulted in reduction and therefore this warrants, revision according to the applicants. On the other hand the respondents point out that the placement of the applicants in the normal replacement scale of Rs.5000 - 8000/- was only an interim measure which was made clear in the very beginning itself and once the Govt. decided to place the applicant on the higher replacement scale, refixation was to be made accordingly. It was found that while fixing the same earlier fixation warranted revision and accordingly recovery of excess amounts paid was ordered. This was the correct step to have been taken. The procedure adopted by the respondents in their order No. C-18013/4/2000- dated 15.7.02 was correct and therefore deserved, endorsement plead the respondents.

9. Impugned order dated 15.7.2002 reads as under:

Dated: 15th July, 2002.

O.R.D.E.R

In pursuance of Ministry of Finance (Department of Expenditure) O.M.No. F(7)(1)/IC/86(44) dated the 11th September, 1989 read with Ministry of Finance Resolution No. 50(1)/IC/97 dated the 30th September, 1997, the Ministry of Statistics & Programme Implementation granted the higher replacement scales to the various Data Processing Assistants Grade I to III. Accordingly, grant of higher pay scales has to be effective from 1st January, 1996 or from the date of official's appointment to the Grade or from the date from which they have got relief from Courts of Law, whichever is later.

2) The Ministry vide its Order No. A-12018/1/96-Ad.IV dated the 16th March, 1998 rationalised the EDP posts in DPD and SDRD. Further, an amendment was issued vide Order No. A-12018/1/96-Admn.IV dated the 4th August, 2000 with the following modifications:-

The cadre structure formulated in the Order dated 16-3-1998 would be applied for the purpose of future recruitment and the personnel recorded prior to this date, the following would be the Replacement / Fitment Scale of Pay:-

Sl. No.	Designation as it existed prior to 2-7-90	Revised designation and scale of pay (pre-revised scales of pay)
1.	DPA, Rs. 1200-2040	DPA, Gr. III, Rs. 1600-2660
2.	DPS, Rs. 1400-2300	DPA, Gr. II, Rs. 2000-2400
3.	Superintendent, Rs. 1640-2900	DPA, Gr. I, Rs. 2375-3500

The date of above re-classification were made effective from 1-1-1986 or the date from which different Courts of Law had granted to the Petitioners, as the case may be, whichever is later.

3. It reveals that applicants in the MA No. 785/2002 in O.A. No. 982/2002 and similar staff in DPD and SDRD having pre-revised scale of pay Rs. 1600-2660 from 01-01-1986 were granted normal replacement scale of pay Rs. 5000-150-8000 w.e.f. 1st January, 1996 as a temporary measure in the CCS (RP) Rules, 1997 pending examination of the recommendation of Govt. contained in Explanatory Preamble to part - B of the First Schedule. Since the replacement of revised scale of pay of Rs. 5500-9000 instead of the normal revised scale of Rs. 5000-8000 for the pre-revised scale of pay Rs. 1600-2660 has been given with retrospective effect from the 1.1.96, the applicants' request for fixation of their pay under FR-22 cannot be made relevant and applicable in this case. Since, all the applicants were holding

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the post of DPA-III with pre-revised scale of pay Rs. 1600-2660 prior to 01-01-1996, it CANNOT be averted that placement to the normal scales of pay Rs. 5000-8000 as an interim measure or subsequent replacement to higher scale at Rs. 5500-9000 now granted from 1-1-1996 under CCS(RP) Rules, 1997 is an appointment to a new post with / without involving assumption of duties and responsibilities of greater importance or as a re-appointment after the 1st day of January, 1996 to a post held prior to that date in order to derive the benefit of pay fixation as per FR 22 or Rule 10 of CCS(RP) Rules, 1997. Grant of higher scale of Rs. 5500-9000 from retrospective effect of 1-1-1996 in place of the normal replacement of pay Rs. 5000-8000 as an interim measure should not be construed as an appointment to a new post or re-appointment for deriving pay fixation under Rule 10 of CCS(RP) Rules, 1997.

1. All the applicants who were holding permanent posts in substantive or officiating capacity with pre-revised scales of pay Rs. 1600-2660 prior to 1-1-1996 therefore cannot claim that they have been appointed to a new post from 1-1-1996 for pay fixation under FR 22 of Fundamental Rules or re-appointed after 1st day of January 1996 to post held prior to that day for pay fixation under Rule 10 of CCS(RP) Rules, 1997.
2. Since the DPA-III having pre-revised scale of Rs. 1600-2660 prior to 1-1-1996 are given higher replacement scale of Rs. 5500-9000 instead of Rs. 5000-8000 and both minimum and maximum of the replaced scales are higher than the old scale, it cannot be said that there is a loss of pay.
3. The DPAs Gr-III in the pre-revised Scale of Rs. 1600-2660 were given the normal replacement scale of Rs. 5000-8000 as a temporary measure pending grant of higher replacement scale. Subsequently, higher replacement scale of Rs. 5500-9000 was granted to this group of employees as per MOS & PI order No. G-20011/1/2000-Admn. IV (Pt) dated 18-09-2001 as per provisions contained in M.I. O.M. No. 50(1)/970IC-1 dated 07-10-1997 regarding extension of revised scale of pay notified in Part-B of the first schedule to the Rules and their pay will be fixed under CCS(RP) Rules, 1997 w.e.f. 1-1-96 as per the guidelines contained in DOPT O.M.I. No. 22011/10/84-Est. (D) dated 04-02-92 as granting this higher replacement scale does not involve higher responsibility.

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10. The above order has been issued in terms of Tribunal's directions dated 11.4.2002 issued in OA 982/2002 on 11.4.2002. The order has explained in a lucid manner, the rationale of the respondents in the above action. The same is acceptable as being reasonable and just. The plea of the applicants is that they should have been given the benefit of Rule 10 of CCS (RP) Rules and through that fixation with reference to FR 22(1)(a) (2). The relevant provisions are as below:

A. Rule 10 of CCS(R) Rules 1997

10. Fixation of pay on re-appointment after the 1st day of January, 1996 to post held prior to that day - A Government servant who had officiated in a post prior to the 1st day of January 1996 but was not holding that post on that date and who on subsequent appointment to that post draws pay in the revised scale of pay shall be allowed the benefit of the proviso to Fundamental Rule 22, to the extent it would have been admissible had he been holding that post on the 1st day of January, 1996, and had elected the revised scale of pay on an from that date."

B. FUNDAMENTAL RULE 22(T)(a) (2)

The initial pay of a Government servant who is appointed to a post on a time scale of pay is regulated as follows:

"when the appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis."

h However on examination, we are convinced that the applicants cannot gain any assistance from the above rules. Rule 10 of CCS (RP) Rules, relate to re-appointment (or even

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new appointment) but what has happened in this case is only the placement of the post in the revised scale with attendant consequences flowing to the applicants. It is not at all a re-appointment and once Rule 10 of CCS(RP) Rules, do not apply fixation under FR 22 would also not apply. The applicants cannot therefore get the benefit they are seeking. Further, their plea that the refixation in the higher replacement has led to reduction in their basic pay is not correct. In the instance referred to above itself it is seen that as against Rs.5613/- the employee is fixed at Rs.5675/- as against Rs.,6538/- at Rs. 6375/- and as against Rs. 6954/- at Rs.7075/-. Merely because it was wrongly fixed earlier at Rs.5750/- 6500/- and 7100/- respectively the applicants do not have a right to continue with. Their plea that they should have been given Rs. 5850/- Rs. 6550/- and Rs. 7250/- respectively has no basis and cannot be accepted (refer chart at ground 5.1 on page of the OA). Applicants have not suffered any loss of pay, but have only been fixed at the correct stage in the revised scale of pay and directed to repay the amount received in excess. The decision cannot be questioned, merely because some other organisation - Registrar General's Office - had given the wrong fixation and higher pay. No violation of Article 14 of the Constitution has taken place and one wrong committed at one place for one....does not create a right at another place and for another, as held by the Courts of law, time and again (State of Bihar vs Kameshwar Prasad & Others SC SJ 2000 (1) 478), Gursharan Singh & Others Vs NDMC & Others [1998 (2) SCC 459], Secretary Jaipur Development Authority Jaipur Vs. Daulat Mal Jain & Others [1997 (1) SCC 35]). Refixation ordered by the respondents vide their order dated 15.7.02 has to stand. However, as some amounts have been received by them in



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excess, even if by mistake need not be recovered from them, as the earlier fixation was not at their instance, but of the Govt. instance. That is the only relief the applicants can get.

9. In the above view of the matter the OA fails and is accordingly dismissed. However, as an act of judicial indulgence it is directed that the amounts paid to the applicants on account of earlier fixation and recovery whereof was stayed by the Tribunal by its order dated 19.8.2002.

(Shanker Raju)
Member (J)

(Govindan S. Tampli)
Member (A)

Patwal/

Note: Please see orders
dated 5.8.04 in
M.A. 1337/04 in OA 2139/2002.