

Central Administrative Tribunal  
Principal Bench

O.A. No. 3088/2002

with

O.A. No. 3089/2002

O.A. No. 3090/2002

O.A. No. 3091/2002

Hon'ble Shri Govindan S. Tampi, Member(A)  
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 24th day of June, 2003

O.A. No. 3088/2002:

Shri Raj Singh Sharma  
s/o Sh. Inder Man Sharma  
Operator, Telecomm  
Directorate of Preventive Operations  
Customs and Central Excise  
Lok Nayak Bhawan, Khan Market  
New Delhi. ....

Applicant

WITH

O.A. No. 3089/2002:

Sh. Samunder Singh  
s/o Late Sh. Jage Ram  
Operator, Telecomm  
Directorate of Preventive Operations  
Customs and Central Excise  
Lok Nayak Bhawan, Khan Market  
New Delhi. ....

Applicant

O.A. No. 3090/2002:

Sh. Shardanand  
s/o Sh. Indraj  
Operator, Telecomm  
Directorate of Preventive Operations  
Customs and Central Excise  
Lok Nayak Bhawan, Khan Market  
New Delhi. ....

Applicant

O.A. No. 3091/2002:

Sh. Ved Pal Jakhar  
s/o Sh. Deep Chand  
Operator, Telecomm  
Directorate of Preventive Operations  
Customs and Central Excise  
Lok Nayak Bhawan, Khan Market  
New Delhi. ....

Applicant

(By Advocate: Sh. P.T.S. Murthy, through Sh.  
R.L. Prasad)

Vs.

1. Union of India  
through Ministry of Finance  
Department of Revenue  
North Block  
New Delhi.

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(10)

2. Chairman Central Board of Excise and Customs  
North Block  
New Delhi.
3. Commissioner  
Preventive Operations  
Customs and Central Excise  
4th Floor, Lok Nayak Bhawan  
Khan Market  
New Delhi.

.... Respondents  
in all the above OAs

(By Advocate: Shri R.V.Sinha, through Sh. R.N.Singh)

O R D E R(Oral)

By Shri Shanker Raju, M(J):

Issue involved in these OAs is founded on an identical facts and question of law, accordingly, these OAs are being disposed of by this common order.

2. Applicants, who are working as Operator (Telecomm) in the Directorate of Preventive Customs, Central Excise, have assailed respondents' order dated 9.10.2002. Wherein the pay scale assigned to them has been down graded except recovery of excess payment w.e.f. 1.1.1996 to 30.4.2002. Applicants have sought quashment of this order with continuance of pay scale of Rs.4500-7000.

3. Brief facts of the case are that Fifth Central Pay Commission had recommended the upgraded pay scale for the post of Radio Operator in the operational stream and also recommended higher pay scale for next higher post, i.e., Supervisor and Communication Assistant.

4. Accordingly, by a notification dated 30.9.1997 issued by Department of Expenditure promulgating the Central Civil Services (Revised Pay)

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(11)

Rules, 1997 recommended the revised pay scales to the operational stream, which was accepted by the Government vide notification dated 1.1.1998 putting Radio Operator of operation stream in the pay scale of Rs.4500-7000.

5. Applicants, in pursuance of notification to fill up four posts in the grade of Operator (Telecomm) invited applications, were offered temporary post of OTC in the pay scale of Rs.4500-7000. The offer of appointment was accepted and the applicants joined their duties by giving joining report.

6. DPC which had met on 1.8.2001 found the applicants working satisfactory and confirmed them w.e.f. 1.8.2001.

7. The recommendations of Fifth Central Pay Commission were based on wrong facts as the post of Radio Operator in the operation stream does not actually require Diploma in Radio Technology, and as per the recruitment rules prescribed for the post, the minimum qualification being matriculation and a second class certificate in wireless proficiency, whereas the qualifications prescribed for corresponding post of Radio Technician (non-diploma holder) in the maintenance stream are also identical, and prior to Fifth Central Pay Commission it was noted that the post carried identical pay scale. This mistake, with a view not to be compounded and to maintain the established relativities in the pay scale extended to the various posts in the same organisation.

Accordingly, Ministry of Finance (Department of Expenditure) has reconsidered the matter vide notification dated 30.4.2002 in partial modification of notification dated 30.9.1997 where entries at Sl. No.41 to 45 under the heading of Telecommunication Wing of the Department of Revenue have been deleted, and consequently the posts which were earlier placed at the serial numbers from 41 to 45 of the notification dated 30.9.1997 would only be given normal replacement pay scales corresponding to the applicable pre-revised scales of pay.

8. In the light of the aforesaid, by an order dated 9.10.2002 instead of pay scale of Rs.4500-7000, the normal replacement pay scales have been allowed to the Operators w.e.f. 1.5.2002 and it has been decided not to recover the excess payments made during the period from 1.1.1996 to 30.4.2002 on account of extension of higher pay scale. This has given rise to the present OAs.

9. Learned proxy counsel adverted to the pleadings in OA. In the OA, the aforesaid action is assailed on the ground that once recommendations of Fifth Central Pay Commission has been implemented, the respondents, at the time of appointment of applicants, ought not to have accepted the recommendations and once the expert body like Central Pay Commission had recommended the pay scales, the respondents are precluded from taking a contrary view. Acceptance as well as implementation of the recommendation and

continuing it for six years cannot be a erroneous view. As the aforesaid pay scale is not an anomaly, it cannot be rectified by the anomaly's Committee.

10. It is also stated that no reasonable opportunity was afforded before pay scales have been reduced.

11. Applicants have relied upon the decision of the Apex Court in Purshotam Lal & Ors. v. Union of India, 1973(1) SCC 651 to contend that it is too late for the respondents to replace the scale by lower scale and as the pay scales have been given after hectic consultation and examination, there cannot be unreasonable classification which is bad in law as per the decision of Apex Court in Shyam Babu Verma & Ors. v. Union of India, 1994 SCC (L&S) 683.

12. On the other hand, respondents' counsel Shri R.V.Sinha, through Shri R.N.Singh, vehemently opposed the contentions and stated that while considering the restoration of pay parity, existing earlier, in respect of posts in operational, maintenance and cipher streams in the telecommunication wing, it was found that parity between the scales of different posts in these streams was disturbing due to the fact that Fifth Central Pay Commission recommended the upgradation of pay scale of the post of Radio Operator in the operation stream under the erroneous impression that the prescribed minimum qualification for appointment to the post including Diploma in Radio Technology. However, subsequently, it had come to notice that requisite

qualification is merely matriculation and was found that Fifth Central Pay Commission has erroneously recommended the pay scale recommended for Diploma holders to the non-diploma holders. In order to maintain established relativities, action has been taken to modified the notification dated 30.9.1997 as well as a decision taken on 1.1.1998. Learned counsel contends that as the recommendation of Fifth Central Pay Commission was an erroneous decision and mere acceptance and implementation does not preclude the Government to rectify the mistake. Applicants have no vested right for revised pay scale accorded to them on an erroneous decision and mistake of the Government.

13. We have carefully considered the rival contentions of the parties and perused the material on record. At the outset, the Apex Court in the following decisions has held that an administrative error or a wrong decision would not confer a right upon a Government servant to avail an advantage which is not admissible as per law and is founded <sup>on</sup> erroneous decision or a mistake.

1. State of Haryana v. Ram Kumar Mann, 1997(2) SCSLJ 257
2. Sh. A.K.Sharma v. Union of India, JT 1999 (1) SC 113.

14. It is also settled in law that recommendation of Pay Commission is not binding on the Government.

15. We find that the Pay Commission has erroneously recommended the pay scale relevant for diploma holders to non-diploma holders whereas the pay scale in the operation stream to the Operator has been

normal replacement pay scale admissible to the Radio Operator in operation stream. Accordingly, on account of this erroneous decision, matter was reconsidered and accordingly notification dated 30.9.1997 was modified vide modification dated 30.4.2002. Accordingly Sl. No.41 to 45 of these notification pertaining to the applicants were made entitled to the replacement pay scale. However, as assignment of higher pay scale to the applicants were not attributable to them, excess payment already made during the period on the basis of recommendation of 5th CPC from 1.1.1996 to the date of modified notification i.e., 30.4.2002 has been decided not to be recovered.

16. In our considered view, it is on the erroneous decision of the Fifth Central Pay Commission higher pay scale has been accorded to the applicants, whereas legally they are entitled for the replacement pay scale as the grant of pay scale to the applicants was founded on a mistake/erroneous decision of the Government, modification of which and reduction of pay scale of the applicants to their entitlement, cannot be said to be arbitrary ~~and~~ <sup>un</sup>in violation or contrary to law.

17. As the excess payment has been decided not to be recovered, and the action taken by the respondents is in pursuance of the reconsideration by the Government in hectic consideration with the concerned department, mere denial of reasonable opportunity to show cause, cannot vitiate the action of the respondents.

18. In the result, for the foregoing reasons, we do not find any infirmity in the orders passed by the respondents and also in revision of the pay scales of the applicants. All above OAs are found bereft of merit and the same are accordingly dismissed. No costs.

Copy of this order be placed in all the relevant OAs.

S. Raju  
(Shanker Raju)  
Member (J)

/rao/

(Govindan S. Tampi)  
Member (A)