

LIBRARY

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATANo. O.A. 473 of 2016
M.A. 858 of 2017Reserved on: 17.9.2019
Date of order: 04.12.2019Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

1. Amlan Jyoti Biswas,
 Son of Late Anil Kumar Biswas,
 Date of Birth-28.12.1960,
 Designation – Senior Statistical Officer,
 Appointing authority-Cadre Controlling Authority:
 Subordinate Statistical Service,
 Ministry of Statistics & Programme Implementation,
 Govt. of India,
 Office Address – Anthropological Survey of India,
 Govt. of India,
 27 J. L. Nehru Road,
 Kolkata – 700 016,
 Residential Address – Northview,
 31 Central Road, Barrackpore,
 Kolkata – 700 122.

2. Jaideep Majumder,
 Son of Late Jagannath Majumder,
 Date of Birth – 19.11.1972,
 Designation – Senior Statistical Officer,
 Appointing authority – Cadre Controlling Authority:
 Subordinate Statistical Service,
 Ministry of Statistics & Programme Implementation,
 Govt. of India,
 Office Address – Central Statistics Office,
 IS Wing, 1 Council House Street,
 Kolkata – 700 001,
 Residential Address – 57 Prantik Sarani,
 Dum Dum Cantonment,
 Kolkata – 700 065.

3. Ashok Kumar Shaw,
 Son of Late Nathuni Shaw,
 Date of Birth – 12.01.1973,
 Designation – Senior Statistical Officer,
 Appointing authority-Cadre Controlling Authority:
 Subordinate Statistical Service,
 Ministry of Statistics & Programme Implementation,
 Govt. of India,
 Office Address – Nation Sample Survey Office,
 Govt. of India,
 Rupmati Mahal, 1st Floor, G.T. Road,
 Khadina More, Chinsurah,
 Distt. – Hooghly (W.B), Pin – 712 102,
 Residential Address – 16/1/A Sital Sarkar Lane,
 Mahesh, Serampore,
 Distt. – Hooghly, Pin 712 202.



Lef

4. Ajay Sexena,
 General Secretary,
 All India Association of Statistical Officers,
 MOS & PI, Govt. of India,
 National Sample Survey Office,
 Govt. of India,
 C G O Complex, 2nd Floor, Sanjay Place,
 Agra, U. P. Pin - 282 002.

.. Applicants

Versus

1. Union of India
 through the Secretary,
 Govt. of India,
 Ministry of Statistics & Programme
 Implementation Sardar Patel Bhawan,
 Sansad Marg, New Delhi - 110 001.
2. The Secretary,
 Govt. of India,
 Ministry of Finance,
 Deptt. of Expenditure,
 Govt. of India,
 North Block,
 New Delhi - 110 001.
3. The Secretary,
 Govt. of India Ministry of Personnel,
 Public Grievances & Pensions,
 Deptt. of Personnel & Training,
 Govt. of India,
 North Block,
 New Delhi - 110 001.

.... Respondents

For the Applicant : Mr. K. Sarkar, Counsel

For the Respondents : Mr. P.N. Sharma, Counsel

O R D E R

Per Dr. Nandita Chatterjee, Administrative Member:

The applicants have approached the Tribunal in second round litigation primarily challenging the speaking order issued on 18.11.2015 in compliance to directions in O.A. No. 335 of 2012 and seeking the following relief in particular:-

"i) to grant leave to file this joint application in terms of Rule 4(5)(b) of the Administrative Tribunals (procedure) Rule, 1987.

hch

ii) to direct the respondents to cancel, withdraw and/or rescind the purported speaking order dated 18.11.2015 as contained in Annexure "A-11" herein;

iii) to direct the respondents to sanction and/or grant the Statistical Investigators /applicants of National Sample Survey Organization & others (Known as SI grade III & IV in SSS) under the Ministry of Statistics & Programme Implementation, Govt. of India, the scale of pay of Rs. 5500-9000/- w.e.f. 01.01.1996 and to re-fix their pay accordingly up to date with other consequential benefits.

iv) to direct the respondents to produce the entire records of the case before this Hon'ble Tribunal for effective adjudication of the issues involved herein;

v) and to pass such further or order or orders as to this Hon'ble Tribunal may deem fit and proper."

2. The applicants have filed an M.A. bearing No. 858 of 2017 praying for joint prosecution of this O.A., and, on being satisfied that they share a common interest and are pursuing a common cause of action, the M.A. is allowed under Rule 4(5)(a) of Central Administrative Tribunal (Procedure) Rules, 1987.



3. Heard rival contentions of both Ld. Counsel, examined pleadings and documents on record. Written notes of arguments have been filed by the applicant. Despite the expiry of the scheduled timeline for filing of written notes of arguments as directed on 21.8.2019, no written notes of arguments have been filed on behalf of Ld. Counsel for the respondents.

4. The facts, in a narrow compass, are that the applicants are all Investigators of NSSO (FOD) (SI Gr. III & IV of SSS) belonging to the Subordinate Statistical Service of the respondent authorities. Complete parity prevailed with reference to all parameters of service conditions of Investigator Gr. II of Labour Bureau and Investigators as well as Jr. Investigators of CSO upto the 4th Pay Commission. Such parity, however, was disturbed upon the recommendations of 5th CPC, and, after implementation of the 5th CPC recommendations, an anomaly committee was constituted vide DOPT's O.M. dated 6.2.1998, following which, DOPT, vide its O.M. dated 5.11.1998, decided to settle the anomalies

[Handwritten signature]

arising out of implementation of the 5th Pay Commission recommendations.

The then All India Association of Investigators of NSSO (FOD) had pointed out the anomalies in respect of disparity in pay scale between Investigators of NSSO (FOD) and Investigators Gr. II of Labour Bureau vide their representation dated 12.10.1998. The said anomaly, was discussed in the National Anomaly Committee meeting, and, it was decided that higher pay scale of Rs. 5500-9000/- (in pre revised pay scale of Rs. 1400-2300) would not be extended to Investigators Gr. II of Labour Bureau w.e.f. 1.1.1996, consequent to which concerned officials of Labour Bureau were extended the pay scale of Rs. 5000-8000/- (pre revised pay scale of Rs. 1400-2300/-) w.e.f. 1.1.1996.

Certain Investigators Gr. II of Labour Bureau approached the Tribunal in its Guwahati Bench in O.A. No. 335 of 2012 and the Guwahati Bench of the Tribunal disposed of the said O.A. (Amit Kumar Chetia & others v. UOI) with the following directions:-

“Therefore, we are of the opinion that interest of justice would be met if we direct the respondent No. 1 to consider and dispose of the representation filed by the applicants association dated 1.6.2012 (Annex-8) in consultation with respondent No. 2 taking into account the findings arrived by us [Para 12 to 14] above within a period of six months from the date of receipt of a copy of this order. We order accordingly. It is also directed that the respondent No. 1 shall pass a reasoned and speaking order under intimation to the applicants.”

In compliance with such directions, the respondent authorities examined the matter in consultation with Ministry of Finance (Department of Expenditure) and issued a speaking order dated 18.11.2015 which has primarily been challenged in the instant O.A.

5. To examine the scope of such challenge, we would, at the outset, refer to the speaking order as impugned and annexed as Annexure A-11 to the O.A. The said speaking order is reproduced below:-

[Signature]

File No. 11024 / 12 / 2012 - SSS
Ministry of Statistics & Programme Implementation
(SSS Division)

Sardar Patel Bhawan,
Room No. 528, Sansad Marg
New Delhi - 110001

Dated: 18th November 2015

ORDER

Sub: OA No. 335/2012 filed by Sh. Amit Kumar Chetia on behalf of All India Association of Statistical Investigators (AIASI) relating to grant of pay scale of Rs.5500-9000 to Investigators of NSSO (FOD) and other similar incumbents of Subordinate Statistical Service (SSS) - Regarding.

Applicants of OA titled [Sh. Amit Kumar Chetia & Others Vs. UOI] OA No. 335/2012 before the Hon'ble CAT Guwahati Bench seeking the following reliefs:-

- (i) To set aside and quash the gradation / seniority list dated 14.07.2011 to the extent it places the Investigator Grade II of the Labour Bureau en-block above that of the Statistical Investigator of the National Sample Survey Organisation in the said gradation / seniority list.
- (ii) To direct the respondent authorities to sanction to the Statistical Investigators of the National Sample Survey Organisation the scale of pay of Rs.5500-9000 w.e.f. 01.01.1996.
- (iii) To direct the respondent authorities to restore the past seniority of the Statistical Investigators of the National Sample Survey Organisation en-block above to that of the Investigator Grade II of the Labour Bureau in the gradation list of Investigator Grade II of the Subordinate Statistical Service (SSS).
- (iv) Any others order (s) as to your Lordship's may deem fit and proper in the facts and circumstances of the case.
- (v) Cost of application.
- (vi) Any other relief / reliefs that the applicants may be entitled to."

02. In the light of the above prayer, Hon'ble CAT Guwahati Bench has directed under Para 15 of the judgment dated 13.03.2015 in OA No. 335 / 2012 [Sh. Amit Kumar Chetia & others Vs. UOI] that "Therefore, we are of the opinion that interest of justice would be met if we direct the respondent No. 1 to consider and dispose of the representation filed by the applicants association dated 01.06.2012 (Annex-8) in consultation with respondent No. 2 taking into account the findings arrived by us [Para 12 to 14] above with in a period of six months from the date of receipt of a copy of this order. We order accordingly. It is also directed that the respondent No. 1 shall pass a reasoned and speaking order under intimation to the applicants.

hch

03. In compliance with the above direction of the Hon'ble CAT, the issues raised by All India Association of Statistical Investigators (AIASI) vide their representation dated 01.06.2012 has been examined by CCA of SSS (Respondent No. 1 of OA) in consultation with Ministry of Finance (Department of Expenditure) (Respondent No. 2 of OA) and the facts of the case are as under:

(A) That there was absolute parity in respect of all parameters of service conditions between the Investigators Grade II of Labour Bureau and Investigators of NSSO (FOD) and Junior Investigators of CSO etc. up to 4th Central Pay Commission (i.e. 31.12.1995). However, parity in the pay scales between these posts were disturbed by the 5th CPC (01.01.1996 to 31.12.2005). The recommendation of 5th CPC in respect of Investigators of NSSO (FOD), Junior Investigators of CSO and Investigators Grade II of Labour Bureau were as under:

(i) **Recommendation of 5th CPC in respect of Investigators of NSSO (FOD) under Para 81.16:** "There are currently, 1713 sanctioned posts of Assistant Superintendents (Rs.1600 - 2660) and 1453 sanctioned posts of Investigators (Rs.1400 - 2300) in the Field Operations Divisions of NSSO. Many representations have been made to us that these two categories of posts should be merged and given the scale of Rs.1640-2900 (Pre-revised). The Department of Statistics is not in favor of the merger. Having examined the qualifications and duties and responsibilities of Investigator and Assistant Superintendents, we recommend the up-gradation of Investigator and Assistant Superintendents and accordingly the replacement scales of Rs.1600 - 2660 and Rs.1640 - 2900 should be given to the Investigators and Assistant Superintendents respectively. We are also of the opinion that there should be direct graduate recruitment in the pay scale of Rs.1600 - 2660 and 2000-3500 in a time bound manner."

(ii) **Recommendation of 5th CPC in respect of Junior Investigators of CSO, etc. under Para 81.17:** "A large number of posts of Junior and Senior Statistical Investigators in the scales of Rs.1400 - 2300 and Rs.1640 - 2900 are spread over different ministries and offices of the Government of India. We observe that some of these posts are isolated and the chances of promotions for the incumbent in such cases are very bleak. We recommend that all such posts with statistical functions be constituted into a Subordinate Indian Statistical Service (SSS) and all recruitment to the feeder posts in Indian Statistical Service (ISS) be centralized and placed under the ISS cadre Controlling Authority. All post of Junior Statistical Investigator in the scale of Rs.1400 - 2300 be upgraded and given the replacement scale of Rs.1600 - 2660. All Junior Statistical Investigators / Statistical Assistant in the scale of Rs.1400 - 2300 will henceforth be called Statistical Investigator Grade II. All posts of Senior Statistical Investigators / Assistant at present in the pay scale of Rs.1640 - 2900 may be given the replacement scale of Rs.2000- 3500 and be called Statistical Investigator Grade I. At the level of Statistical Investigator Grade II, recruitment may be taken up with graduation in Statistics as a minimum qualification. The entrants in the scale would move through the replacement scale of Rs.1640 - 2900 and Rs.2000-3500 in a time bound manner. Post-graduation may be made the minimum qualification for entry to 50% of the post of Statistical Investigator Grade I. The entrants to this level will move through the replacement scale of Rs.2375-3750 and the entry scale of ISS Group 'A' in a time bound manner."

hah



(iii) Recommendation of 5th CPC in respect of Investigators Grade II of Labour Bureau under Para 74.13: "As in the Directorate General of Employment and Training, there are posts of Computers and Investigators in the Labour Bureau. Our recommendations contained in paragraph 74.13 (supra) will apply to these posts as well and the posts of Investigator, Grade-II and Investigators, Grade I may be placed in the replacement scales of pay corresponding to Rs.1640-2900 and Rs.2000-3500 respectively and redesignated as Junior Investigators and Senior Investigators. The posts of Computers in the scale of pay of Rs.950-1500 should be progressively abolished and placed only in the corresponding replacement scale of pay during the interim period. Comparison of Pay Structure of Investigators of NSSO (FOD), Jr. Investigators of CSO etc. of Subordinate Statistical Service (SSS) with Investigator Grade II of Labour Bureau is, as below:

Sl. No.	Name of the posts	Pay Scale in 3 rd CPC (01.01.1976 to 31.12.1985)	Pay Scale in 4 th CPC. (01.01.1986 to 31.12.1995)	Pay Scale in 5 th CPC. (01.01.1996 to 31.12.2005)	Pay scale in 6 th CPC. (01.01.2006 to till date)	Essential qualification prescribed in respect of each category in the relevant RRs for Direct Recruitments from SSC.
1	Investigator of FOD, Jr. Investigator of CSO, Statistical Assistant, etc. in various Ministries.	425-700	1400-2300	5000-8000	GP. 4200	Degree with Mathematics or Statistics or Economics as a subject from a recognized University.
2	Investigator Grade II of Labour Bureau and Statistical Assistant of Deptt. of Post.	425-700	1400-2300	5500-9000	GP. 4200	Degree from any recognized University with Statistics or Mathematics or Economics as one of the subject.

(B) The above recommendations of 5th CPC were accepted by the Union Cabinet vide GSR No. 569 (E) dated 30.09.1997 and implemented w.e.f. 01.01.1998.

601

(C) After implementation of 5th CPC recommendations, an anomaly committee was constituted vide DOP&T OM No. 19 / 01 / 1997 – JCA dated 06.02.1998 and DOP&T OM of even number dated 05.11.1998 to settle the anomalies arising out of implementation of the 5th Pay Commission's recommendations.

(D) All India Association of Investigators (Now All India Association of Statistical Investigators) of NSSO (FOD) pointed out anomaly in respect of disparity in the pay scale Investigators of NSSO (FOD) and Investigators Grade II of Labour Bureau through Secretary, Staff Side, National Council (JCM) vide their representation dated 12th October 1998.

(E) The above anomaly was discussed in the National Anomaly Committee meeting held on 26.05.2000, 15.09.2000 and 20.11.2000, however, the official side stick to the position that higher pay scale of Rs.5500 – 9000 (Rs.1400-2300) is not being extended to Investigators Grade II of Labour Bureau w.e.f. 01.01.1996 and concerned officials of Labour Bureau have been extended the pay scale of Rs.5000 – 8000 (Pre-revised Rs.1400-2300) w.e.f. 01.01.1996 in the light of general recommendations, contained under Para 81.17 of 5th CPC and as per the provisions of MOS&PI OM dated 30.06.1998. Hence, it may not be treated as an anomaly. However, the staff side still insisted that this may be treated as an anomaly taking into account that higher pay scale of Rs.5500 – 9000 (pre-revised Rs.1400-2300) would have to be granted to Investigators Grade II of Labour Bureau, sooner or later and it would adversely affect the horizontal and vertical relativities among the statistical functionaries spread over in different Ministries of Govt. of India. It was further contested by the applicants that the posts of Investigator of NSSO (FOD) in the pay scale of Rs.5000 – 8000 (Pre-revised Rs.1400-2300) had a historical parity in all respects with their counterparts of Investigators Grade II of Labour Bureau. Apart from this, it was also pointed out by the applicants that the 5th CPC had recommended pay scales based on the qualifications and fair comparison in their deliberations at Para 40.17 and 40.18, page 407 (Vol.-I) of the 5th CPC Report, the spirit of the same, however, did not reflect in recommending Pay Scale to the Investigators of NSSO, FOD. It was further pointed out before the Anomaly Committee that "the 5th CPC explicitly appreciated the qualification, duties and responsibilities entrusted by Investigators of NSSO (FOD) before recommending the pay scale of Rs.5000 – 8000 (Rs.1400-2300) but there was no such reason for granting the higher scale of pay of Rs.5500-9000 (Pre-revised Rs.1400-2300) to their counterparts (i. e Investigators Grade II of Labour Bureau) and other similar Statistical functions posts existed in other Ministries / Departments. The duties & responsibilities of Investigators of NSSO (FOD), Junior Investigator of CSO etc. were as under:

(i) Duties responsibilities of Investigators of NSSO (FOD):

The primary duties of Investigators are collection of data on throughout the country (i) socio-economic surveys (ii) Price collection surveys: (Middle class price collection; Consumer price Index (Rural & Urban); International Comparison of price (ICP) (iii) Enterprise surveys (iv) Urban Frame Survey (vi) Investigators of NSSO (FOD) are required to conduct the work in the most difficult and adverse conditions. They are also required to take an instant and 'on the spot' decisions and they have to face different situations and different people at the same time. Risk factor is also involved in the data collection work.



Lei

(vi) Methodological Survey (vii) Preparation of different types of Reports / Briefs / Notes for the use of Higher officers of NSSO (FOD) on behalf of MOS&PI for formulation of policy & plan for Govt. of India. Besides, the duties of Investigator of NSSO (FOD) at the headquarters, involves cent percent checking and scrutiny of data and tabulation etc. The duties also involve putting up various receipts / returns to the higher officials after examining them thoroughly and assisting in analysis and report work on various aspects of Socio Economy (SE), Annual Survey of Industries (ASI), Improvement of Crop Statistics (Agriculture Statistics), Urban Frame Survey (UFS).

(ii) **Duties responsibilities of Junior Investigators of CSO & Other Ministry:** The primary duties of Investigators are collection, compilation, analysis and tabulation of required data received from the State Governments / Ministries / Departments: (ii) Analysis of State / Union Budget / State forecast (iii) VIP references (iv) Parliament questions / matters (v) Legislative matters (vi) preparation of different types of Report / Briefs / Notes for the use of PM / FM / Higher officers (vii) Releasing funds to State Govt. for different items i.e. preparation of sanction orders.

(iii) **Duties Responsibilities of Investigators Grade II of Labour Bureau:** The primary duties of Investigators are collection and compilation of Labour Statistics from the primary units. For this purpose, the Investigator Grade II has to undertake extensive tours throughout the country. Besides, the duties of Investigator Grade II at the headquarters, involves cent percent checking and scrutiny of data and tabulation etc. The duties also involve putting up various receipts / returns to the higher officials after examining them thoroughly and assisting in analysis and report work on various aspects of Labour Welfare activities.



(F) As a result of above, disagreement was recorded during the course of last Anomaly Committee Meeting held on 20.11.2000.

(G) On the other hand Investigator Grade II of Labour Bureau had challenged, before CAT Chandigarh that they may be extended the pay scale of Rs.5500-9000 (Pre-revised Rs.1400-2300) w.e.f. 01.01.1996 as recommended by 5th CPC and CCS (RP) Rules 1997.

(H) In the meantime, Subordinate Statistical Service (SSS) was constituted vide Notification dated 12.02.2002 and subsequent amendment dated 4th April 2003 by clubbing all the recognised Group "B & C" statistical function posts scattered in different Ministries of India in the pay scale of Rs.5000-8000 (Pre-revised Rs.1400-2300), Rs.5500-9000 (Pre-revised Rs.1600-2660) and Rs.6500-10500 (Pre-revised Rs.1640-2900). The Subordinate Statistical Service was constituted with four grade structure, which is reproduced below:

hah

Post	Category	Pay scale	No. of sanctioned posts
Statistical Investigator Grade-I	Non-functional	Rs.7450-11500	467
Statistical Investigator Grade-II	Functional	Rs.6500-10500	1091
Statistical Investigator Grade-III	Non-functional	Rs.5500-9000	701
Statistical Investigator Grade-IV	Functional	Rs.5000-8000	1635

(ii) On account of above, the 14 posts of Investigator Grade II of Labour Bureau were also en-cadred in Subordinate Statistical Service (SSS) based on pay scale of Rs.5000-8000 (Pre-revised Rs.1400-2300) and subsequently, these incumbents were also absorbed in SSS as Statistical Investigator Grade IV w.e.f. 01.04.2004. They were placed in the seniority list according to their inter-se-seniority in the cadre of SI Grade IV (Rs.5000 - 8000) of SSS.

(J) On the recommendations of 6thCPC, the pay scale of both Statistical Investigator Grade - II [Functional] and Statistical Investigator Grade I [Non-functional] of SSS were merged and placed in PB-2 with common grade pay of Rs.4600. Further, Statistical Investigator Grade III (pre-revised pay scale of Rs.5500 - 9000) [Non-functional] and Statistical Investigator Grade IV (pre-revised pay scale of Rs.5000 - 8000) [Functional] were merged in Statistical Investigator Grade II and placed in PB-2 with common grade Pay of Rs.4200. The revised structure is as under:

Pre- revised	Revised by 6 th CPC	Number of posts
Statistical Investigator Grade-I	Statistical Investigator Grade-I (PB-2) (Grade Pay- 4600/-)	1754
Statistical Investigator Grade-II	Statistical Investigator Grade-II (PB-2) (Grade Pay- 4200/-)	2186
Statistical Investigator Grade-III		
Statistical Investigator Grade-IV		

(K) The 15 posts of Investigator Grade II (PB-2, GP of Rs.4200pre-revised Rs.5000-8000) of Labour Bureau were en-cadred in SSS vide OM No. 12032 / 01 / 2010 dated 13th October 2010 and OM No. 12032 / 01 / 2010 dated 7th March 2010 and subsequently the concerned officials were absorbed in SSS as Statistical Investigator Grade II [Now Junior Statistical Officer (JSO)] vide SSS Order dated 01.03.2011.

hch

(L) In the meantime, the Labour Bureau has extended the pay scale of Rs.5500-9000 (Pre-revised Rs.1400-2300) to Investigators Grade II w.e.f. 01.01.1996 vide order No. 79 / 11 / 2004 - Admin. I dated 14th July 2011 issued in the light of Judgment dated 21st March 2011 in C. W. P. No. 13743 - CAT of 2004 (O&M) given by Hon'ble Punjab & Haryana High Court, Chandigarh. Further, remaining Investigator Grade II of Labour Bureau have also been extended the pay scale of Rs.5500-9000 (Pre-revised Rs.1400-2300) w.e.f. 01.01.1996 vide Labour Bureau Order No. 95 of 2013, issued vide their file No. 79 / 20 / 2011 - Adm. I dated 18.07.2013. On account of this, the incumbents belonging to Labour Bureau sought higher seniority in SSS over and above to those incumbents, who were holding the pay scale of Rs.5000-8000 (Pre-revised Rs.1400-2300) as on 01.01.1996 and as well as in the cadre of Statistical Investigator Grade II (Re-designated as Junior Statistical Officer vide Notification dated 31.05.2013) in Subordinate Statistical Service (SSS).

(M) On account of the recommendations of 6th CPC, the Subordinate Statistical Service (SSS) was re-structured from four Grades to two Grades (GP of Rs.4200 and Rs.4600) w.e.f. 01.01.2006 and revised RRs were Notified vide Notification dated 31.05.2013.

(N) In view of the above, the Association of the applicants has represented vide their representation dated 01.06.2012 that they may also be extended the pay scale of Rs.5500-9000 w.e.f. 01.01.1996 in the light of Anomaly at item number 33 & 39 of 5th CPC and their anomaly may be resolved. Hence, as per directions of Hon'ble CAT Guwahati in OA No. 335 / 2012 the representation of Association dated 01.06.2012 the matter was referred to Ministry of Finance for consideration to grant the pay scale of Rs.5500-9000 to applicants of OA.

4. The issue relating to grant of pay scale of Rs.5500-9000 (Pre-revised Rs.1400-2300) w.e.f. 01.01.1996 in the light of representation dated 01.06.2012 and as per observations under Para 12-14 of Hon'ble CAT Guwahati judgment dated 13.03.2015 has been examined in consultation with Ministry of Finance and same may not be feasible even on notional basis to sort out seniority related problem arising out of retrospective revision of pay scale of Investigators Grade II of Labour Bureau w.e.f. 01.01.1996 due to the following reasons:

(i) The entire contingent of Investigators Grade II from Labour Bureau has not so far been en-cadred in the SSS. In fact, out of 175 posts only 29 posts have so far been offered by Ministry of Labour. This is further compounded by the fact that Labour Ministry did not offer any post at all for encadrement in SSS at the time of formation of SSS in 12th February 2002. In fact, the structure of SSS at that time did not include the posts from Labour Bureau. Labour Bureau offered only 14 posts for encadrement on 28.03.2002. This being so, the formation of SSS was an event independent of the posts of Investigator in SSS. Moreover, there does not appear any urgency or need on the part of the Ministry of Labour to operate these posts as part of the cadre of SSS.

(ii) Revision of pay scale occurring solely in Labour Bureau should not be a factor initiating the process of formation of SSS in view of a revision of pay scale occurring for bulk of posts existing outside SSS and that too, from a date in 2011 much later than formation of SSS.



hsl

(iii) The pay scale of Rs.5000-8000 and Rs.5500-9000 were given by the 5th CPC to a number of posts. If such an enblock revision in case of Investigators from Rs.5000-8000 to Rs.5500-9000 follows in near future, there may be repercussion on similar other posts. This will have huge financial implications.

(iv) - The solution appears to be not to encadre the incumbents of Labour Bureau in the SSS. This is a sustainable and fair proposition because out of 179 posts, only 29 have so far been offered by the Ministry of Labour for encadrement and that too, only after SSS was constituted. This means the Investigator Grade II of Labour Bureau could continue as an independent unit outside SSS, as hitherto. There encadrement is no longer a viable option as mentioned above. The 29 employees of Labour Bureau, already encadred, may be given an option either to get absorbed in SSS based on the existing seniority position or opt-out of the SSS like the remaining other employees of Labour Bureau, who are still not part of SSS.

05. In view of above, an option was given to incumbents of Labour Bureau vide this Ministry OM of even number dated 04.12.2014 with the following conditions.

- (i) I hereby declare that the information furnished above is true to the best of my knowledge and belief.
- (ii) I am willing / Not willing to continue in SSS as per RRs and terms and condition applicable at the time of entry into the SSS.
- (iii) I am willing to accept the existing seniority assigned by CCA of SSS to the incumbents of SSS, who were holding the pay scale of Rs.5000 - 8000 (SI Grade IV) (GP of Rs.4200 after 6th CPC) and will not claim seniority now or in future in the cadre of SSS on the basis of revised pay scale of Rs.5500 - 9000 granted to Investigators Grade II of Labour Bureau, i.e. my parent Department retrospectively. I also agree that the pay scale of Rs.5500 - 9000 granted by Labour Bureau / Deptt. Of Post will not be a factor relevant for fixing my pay or seniority in SSS. Accordingly, my representations for revision of seniority in the cadre of SI Grade II may be treated as withdrawn. In this regard the decision of the CCA of SSS shall be final and binding and no dispute would be brought against the CCA of SSS before any court of Law in future.
- (iv) I am willing to be governed by the relevant service rules of Subordinate Statistical Service (SSS).
- (v) I hereby declare that while exercising the above option, I am neither influenced by any agency nor am I under any duress from any quarter.

06. The above option form was challenged by Investigators Grade II of Labour Bureau before the PB, CAT New Delhi in OA No. 4503 / 2014 [Hans Raj Vs. UOI] where in the decision of UOI was up-held vide Hon'ble PB, CAT Judgment dated 24.07.2015. However, the judgment of Hon'ble PB, CAT New Delhi has further been challenged by applicants of OA No. 4503/2014 before Hon'ble High Court of Delhi vide WP (C) No. 8437 / 2015 [Hans Raj Vs. UOI], which is still pending for final decision after de-cadreing the Investigators Grade II (Rs.5500-9000 (Pre-revised Rs.1400-2300)) of Labour Bureau from Subordinate Statistical Service (SSS).

07. In view of the above reasons stated under Para 4 to 6, the pay scale of Rs.5500-9000 (Pre-revised Rs.1400-2300) could not be extended to applicants of OA No. 335/2012 w.e.f. 01.01.1996 (During the tenure of 5th CPC i.e. 01.01.1996 to 31.12.2005) at par with Investigators Grade II of Labour Bureau with all consequential benefits and the claim of applicants are hereby rejected.

08. This issue with the approval of CCA of SSS.

5/1/2017
(K. Saraswathy)
Under Secretary to the Govt. of India
Tel. 011-23340888

W.E.F.



The following is inferred from a close reading of the said speaking order:

- (i) That, upto the 4th CPC, there was absolute parity between service conditions of the Investigators Gr. II of Labour Bureau and Investigators of NSSO (FOD) and Jr. Investigators of CSO.
- (ii) Such parity, however, was disturbed with the recommendations of the 5th CPC, which, inter alia, recommended that, having examined the qualifications, duties and responsibilities of Investigators and Assistant Superintendents, upgradation of Investigators and Assistant Superintendents are recommended in the replacement scales of Rs. 1600-2660/- and Rs. 1640-2900/- respectively, implying thereby that the Fifth Central Pay Commission recommended two distinct replacement pay scales for the Investigators and Assistant Superintendents respectively.
- (iii) The 5th CPC further recommended that, all such posts of junior and Sr. Statistical Investigators which are separately distributed over different Ministries and Offices in Govt. of India, be constituted into a separate Indian Statistical Service and the recruitment of feeder posts in Indian Statistical Service be centralized and placed under ISS cadre controlling authority. The CPC further recommended that, all posts of Junior Statistical Investigators in the scale of pay of Rs. 1400-2300 be upgraded with the replacement scales of Rs. 1600-2660/-. Further, all Junior Statistical Investigators / Statistical Assistants in scale of Rs. 1400-2300 should be henceforth be called Statistical Investigator Gr. II. The posts of Sr. Statistical Investigators / Assistants presently in pay



heh

scale of Rs. 1640-2900/- would be given replacement scales of Rs. 2000-3500/- and be called Statistical Investigator Gr. I.

- (iv) The recommendations further laid down that Investigators of FOD, Junior Investigator of CSO, Statistical Assistant etc. in various Ministries should be recruited with an essential qualification of degree in Mathematics or Statistics or Economics as a subject from a recognized University and be accorded a pay scale of Rs. 5000-8000/- w.e.f. 1.1.1996. Such recommendations of the 5th CPC were accepted by the Union Cabinet and implemented, accordingly, w.e.f. 1.1.1996.
- (v) Consequent to the 5th CPC recommendations, an anomaly committee was constituted and, as submitted by the then All India Association of Investigators vide their representation dated 12.10.1998, the anomaly regarding disparity in pay scale between Investigators of NSSO (FOD) and Investigators Gr. II of Labour Bureau was discussed in the National Anomaly Committee meeting. As there was disagreement between the contentions of the official side [which argued that the officials of Labour Bureau to be extended the pay scale of Rs. 5000-8000/- (pre-revised Rs. 1400-2300/-) w.e.f. 1.1.1996] and the staff side [who insisted that this may be treated as an anomaly taking into account the higher pay scale of Rs. 5500-9000/- be granted to Investigators Gr. II of Labour Bureau], the disagreement was recorded in the course of the last anomaly committee meeting held on 20.11.2000.
- (vi) The official side highlighted that there is significant difference between the duties and responsibilities of Investigators of

lcf



NSSO (FOD) and that of the Junior Investigators of CSO and other Ministries. The official side further pointed out that there are significant differences in duties and responsibilities of Investigators of NSSO (FOD) and those of the Investigators of Labour Bureau.

- (vii) The Subordinate Statistical Service was constituted w.e.f. 12.2.2002 with four grade structure and 14 posts of Investigators Gr. II of Labour Bureau were encadred in the Subordinate Statistical Service with pay scale of Rs. 4000-6000/- (pre-revised Rs. 1400-2300/-). The concerned Investigators were who was further absorbed in SSS as Statistical Investigator Gr. IV w.e.f. 1.12.2004, and placed in the seniority list according to their interse seniority in the cadre of Statistical Investigator Gr. IV (Rs. 5000-8000/-) of Subordinate Statistical Service.
- (viii) On the recommendations of Sixth Central Pay Commission, the posts of Statistical Investigators Gr. I & II were merged and placed in PB 2 with common Grade Pay of Rs. 4600/-. Further, the Statistical Investigators Gr. III and Gr. IV were placed in common Grade Pay of Rs. 4200/-. Another 15 posts of Investigator Gr. II of Labour Bureau were thereafter encadred in Subordinate Statistical Service vide orders dated 7.3.2010 and the concerned officials were absorbed in Subordinate Statistical Service as Statistical Investigator Gr. II.
- (ix) During pendency of the restructuring process, certain Investigators Gr. II of Labour Bureau had approached the Tribunal in its Chandigarh Bench with the prayer that they



hch

be extended the pay scale of Rs. 5500-9000/- (Pre revised Rs. 1400-2300) w.e.f. 1.1.1996. The Chandigarh Bench of this Tribunal dismissed the plea of the applicant on the ground that they were similarly circumstanced as that of NSSO (FOD) and, being aggrieved, the applicant had challenged the decision in the Punjab and Haryana High Court, Chandigarh in Writ Petition No. 13743 of 2004. The Hon'ble High Court, having directed that the pay scale of Rs. 5500-9000/- be extended to the Investigators Gr. II w.e.f. 1.1.1996, the Labour Bureau extended the same to all their Investigators Gr. II. Emboldened by such enhanced pay scale, the encadred incumbents, who were erstwhile Investigators Gr. II in the Labour Bureau, sought higher seniority in Subordinate Statistical Service over those who are holding the pay scale of Rs. 5000-8000/- w.e.f. 1.1.1996 as well as in the cadre of SI Grade II (re-designated as Junior Statistical Officer).

(x) As the disparity in pay scales were included as items 33 and 39 of the anomaly committee consequent to 5th CPC, and, as directed by the Guwahati Bench of the Tribunal in O.A. No. 335 of 2012, the matter was referred to the Ministry of Finance. The Ministry of Finance did not consider the proposal feasible even on a notional basis as because:

(i) The entire contingent of Investigators Gr. II of Labour Bureau have not been encadred in the Subordinate Statistical Service and only 29 posts out of 175 posts have been so encadred in the Subordinate Statistical Service.

4th



- (ii) That revision of pay scale which took place only in the Labour Bureau in 2011 should not vitiate the formation of Subordinate Statistical Service which had been formed in 2002.
- (iii) Enblock revision of Investigator Gr. II of Rs. 5500-9000/- would have repercussion in similar other posts along with significant financial implications.
- (iv) The Investigators Gr. II of Labour Bureau could continue as an independent Unit under Subordinate Statistical Service.
- (v) And, that, their encadrement is no longer feasible option.

Accordingly, the 29 employees of Labour Bureau who were already encadred were advised on 4.12.2014 to either opt to remain out of Subordinate Statistical Service akin to other employees of Labour Bureau, who are not part of Subordinate Statistical Service, or to continue in the SSS in their existing level of seniority.

- (vi) The said option form was challenged by the Investigators Gr. II of Labour Bureau in Principal Bench of the Tribunal in **O.A. 4503/2014, M.A. 1570/2015, M.A. 323/2015, CP. 267/2015, M.A. 315/2015, M.A. 3958/2015 (Hans Raj & ors. v. Union of India & ors.)** which upheld the decision of the Union of India. The said decision was challenged in Hon'ble High Court of Delhi, which, as the respondents would explain during the hearing, stood dismissed.

hth

Accordingly, the applicants in O.A. No. 335 of 2012 (filed in the Guwahati Bench of this Tribunal) who were the encadred officials in Subordinate Statistical Service, could not be given the benefit of pay scale of Rs. 5500-9000/- at par with Investigators Gr. II of Labour Bureau.

6. Ld. Counsel for the applicant would advance the following arguments in their support:-

- (i) The 5th CPC had recommended pay scales based on qualifications. The spirit of the same was, however, not reflected while recommending pay scale to Investigators of NSSO (FOD). That, the applicants, in the instant O.A. were at par with Investigators Gr. II of Labour Bureau and Assistants of Department upto 4th CPC with regard to all parameters of qualifications including duties, responsibilities, minimum educational qualification etc.
- (ii) That, the Central Administrative Tribunal, Guwahati Bench while adjudicating O.A. No. 335 of 2012, had observed that the recruitment procedure and minimum educational qualification were more or less same with regard to the applicants' post with that of the Investigators Gr. II in Labour Bureau.
- (iii) The contentions of the respondents that 29 posts of Investigators Gr. II of Labour Bureau have been decadred from Subordinate Statistical Service vide O.M. dated 4.12.2014 with an option to concerned officials which, tantamounts to the fact that there is no pending anomaly in Subordinate Statistical Service, is challenged on the grounds that such anomaly existed since 1.1.1996 and the said

hnl

anomaly was recognized in principle by DOP&T and Ministry of Finance.

- (iv) That, there is no co-relation between the anomaly items 33 and 39 given the disagreement recorded in the meeting of the National Anomaly Committee on 20.11.2000 and the notification of the Subordinate Statistical Service in 2002, and, that, it is mandatory for the respondent to appoint an arbitrator to resolve items 33 and 39 which has been violated by the respondent authorities.
- (v) That, the decision in ***Hans Raj (supra)*** does not apply to the present applicants.
- (vi) That, as two different posts with different pay scales have merged in Subordinate Statistical Service, even after exercising the option dated 4.12.2014, the anomaly will not be resolved in Subordinate Statistical Service.
- (vii) The applicants have countered the arguments of the respondent authorities that enblock revision to a higher pay scale would have huge financial implication in the light ***S.B. Vohra v. Union of India & ors. (2004) 2 SCC 150*** and its ratio that financial implication vis-à-vis grant of a particular pay scale may not always be a sufficient reason and difference should be mutually discussed and tried to be resolved.
- (viii) Ld. Counsel for the applicant would also rely on ***G.C. Ghosh v. Union of India & ors. (1992) 19 ATC 94 SC*** which has ruled that decision taken in a specific case by the judiciary or by the Government should apply in rem to similarly circumstanced officials.



(ix) The applicants would also highlight the ratio in ***Mewa Ram Kanojia v. All India Institute of Medical Sciences ATJ 1989 (1) SC 654*** on the doctrine of "equal pay for equal work" as a constitutional goal enjoining the State not to deny equality in matters relating to employment or pay scales.

Reliance has also been placed on ***Union of India v. V.S. Thakur, (2008) 13 SCC 463***, on ***K.T. Veerappa v. State of Karnataka, (2006) 9 SCC 40***, on ***State of Madhya Pradesh v. Ramesh Chandra Bajpai, (2009) 13 SCC 635***, and, on ***Uttar Pradesh Land Development Corporation v. Mohd. Khursheed Anwar, (2010) 7 SCC 739***, to contend that judicial interference is warranted in administrative decisions pertaining to pay parity if such decision is prejudicial to a section of employees.

7. The respondents, per contra, have argued:

(i) That the entire contingent of Investigators of Labour Bureau have not been encadred in Subordinate Statistical Service and that only 29 posts out of 175 have been so encadred. There was no urgency or need on the part of the Ministry of Labour to operate/utilize these posts as part of Subordinate Statistical Service. Consequently, any pay revision occurring solely in Labour Bureau cannot vitiate the process of Subordinate Statistical Service nor can such revision of pay scale implemented in 2011 in a block of posts outside Subordinate Statistical Service, impinge on Subordinate Statistical Service constituted in 2002.

(ii) The encadrement of Investigators Gr. II of Labour Bureau is no longer a viable option for Subordinate Statistical Service and the 29 encadred employees have been asked to opt either to get absorbed in Subordinate Statistical Service based on existing seniority position or to opt out and get back to Labour Bureau.



(iii) The Ministry of Labour did not raise the issues relating to anomaly items No. 33 and 39 as well as encadrement of Investigators Gr. II in Subordinate Statistical Service and consequently Ministry of Finance did not take into account such issues while deciding on the pay scales to post of Investigator Gr. II of Labour Bureau.

(iv) The respondents have categorically denied that there is parity among the duties and responsibilities of Investigators of NSSO (FOD) and that of Investigators Gr. II of Labour Bureau. According to the respondents, the primary duties of Investigators NSSO (FOD) are as under:-

"(i) Duties responsibilities of Investigators of NSSO (FOD):

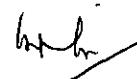
The primary duties of Investigators are collection of date on throughout the country (i) socio-economic surveys (ii) Price collection surveys : (Middle class price collection; Consumer price Index (Rural & Urban); International Comparison of Price (ICP) (iii) Enterprise surveys (iv) Urban Frame Survey (v) Investigators of NSSO (FOD) are required to conduct the work in the most difficult and adverse conditions. They are also required to take an 'instant' and 'on the spot' decisions and they have to face different situations and different people at the same time. Risk factor is also involved in the data collection work, (vi) Methodological Survey (vii) Preparation of different types of Reports/Briefs/ Notes for the use Higher Officers of NSSO (FOD) on behalf of MOS&PI for formulation of policy & plan for Govt. of India. Besides, the duties of Investigator of NSSO (FOD) at the headquarters, involves cent percent checking and scrutiny of data and tabulation etc. The duties also involve putting up various receipts / returns to the higher officials after examining them thoroughly and assisting in analysis and report work on various aspects of Socio Economic (SE), Annual Survey of Industries (ASI), Improvement of Crop Statistics (Agriculture Statistics), Urban Frame Survey (UFS)."

Further, the respondents have clarified the duties and responsibilities of Labour Bureau as follows:-

"(iii) Duties Responsibilities of Investigators Grade II of Labour Bureau:

The primary duties of investigators are collection and compilation of Labour Statistics from the primary units. For this purpose, the Investigator Grade II has to undertake extensive tours throughout the country. Besides, the duties of Investigator Grade II at the headquarters, involves cent percent checking and scrutiny of data and tabulation etc. The duties also involve putting up various receipts/returns to the higher officials after examining them thoroughly and assisting in analysis and report work on various aspects of Labour Welfare activities."

(v) The respondents have further argued that the applicants are not covered by the ratio of the judgment of the Hon'ble High Court of Punjab and Haryana at Chandigarh as the jurisdiction of the said High Court



extended to the petitioners therein who were Investigators Gr. II in the Department of Labour Bureau and they did not belong to the cadre of Subordinate Statistical Investigators Service. Further, the cause of action therein was the allegedly erroneous grant of pay scale of Rs. 5500-9000/- to the Investigators Gr. II of Labour Bureau.

The grant of Rs. 5500-9000/- to Investigators Grade II of Labour Bureau is not the cause of action in the instant O.A. In the instant O.A., the applicants are encadred officials of the Subordinate Statistical Investigators Service [(SSIS) Gr. III and SSIS Gr. IV] who are claiming parity with the Investigators Gr. II of Labour Bureau.

8.1. The issue whether the applicants are entitled to pay parity is granted to the Investigators Gr. II of Labour Bureau will depend on the following factors:

- (i) Whether the duties and responsibilities of the two cadres are identical;
- (ii) Whether the applicants and the Investigators Gr. II of Labour, Bureau are working for the same employer;
- (iii) The scope of judicial intervention in the context of such claim by the instant applicants.

9.1. The respondents have categorically asserted that there is a difference in functions and responsibilities between the two sets of applicants in Investigators Gr. II of Labour Bureau. Although, the applicants have broadly referred to similarity in nature of work, they have not disputed the job descriptions as detailed in the speaking order of the respondent authorities. Hence, we are not convinced that the applicants of the instant O.A. and the Investigators Gr. II of Labour Bureau are assigned identical duties and responsibilities.

[Signature]

9.2. Coming to the second issue, it is not a matter of dispute that the applicants are encadred as Statistical Investigators Gr. III and IV in the Subordinate Statistical Service with the liberty to opt out of the same, whereas the Investigators Gr. II of Labour Bureau have not been offered encadrement in Subordinate Statistical Service nor has the Labour Bureau expressed any interest in encadrement of Investigators Gr. II. Hence, the applicants in the instant O.A. and the Investigator Gr. II of Labour Bureau are two distinct cadres.

9.3. In ***Randhir Singh v. Union of India, AIR 1982 SC 879*** the Hon'ble Apex Court ruled that principle of 'equal pay for equal work' is not an abstract doctrine but one of substance.

In ***Kishore Mohanlal Bakshi v. Union of India, AIR 1962 SC 1139*** the Hon'ble Court was confronted with the issue that there was discrimination between Class I and Class II Income Tax Officers in as much as that they did the same kind of work but were granted different pay scales. While rejecting their arguments that the pay scale should be same for officers doing same kind of work, the Hon'ble Apex Court had directed as follows:-

"If this contention had any validity, there could be no incremental scales of pay fixed dependent on the duration of an officer's service. The abstract doctrine of equal pay for equal work has nothing to do with Article 14. The contention that Article 14 of the Constitution has been violated, therefore, also fails."

In ***Supreme Court Employees' Welfare Association v. Union of India, AIR 1990 SC 334*** the Hon'ble Apex Court emphasized the need for reasonable classification stating as follows:-

"In other words, where unequal pay has brought about a discrimination within the meaning of Article 14 of the Constitution, it will be a case of 'equal pay for equal work', as envisaged by Article 14 of the Constitution. If the classification is proper and reasonable and has a nexus to the object sought to be achieved, the doctrine of 'equal pay for equal work' will not have any application even though the persons doing the same work are not getting the same pay. In short, so long as it is not a case of discrimination under Article 14 of the Constitution, the abstract doctrine of 'equal pay for equal work', as envisaged by Article 39(d) of the Constitution, has no manner of application, nor is it enforceable in view of Article 37 of the Constitution."

[Signature]

In **State of Punjab v. Surjit Singh, (2009) 9 SCC 514** the Hon'ble Court acknowledged that the principle of "equal pay for equal work" could not be applied blindly such, as in **Union of India v. E.S. Soundara Rajan, (1980) 3 SCC 125**, where employees belong to two distinct categories; or as in **C.R. Seshan v. State of Maharashtra, AIR 1989 SC 1287**, wherein the differentiation in pay between the two groups of employees is based on difference in duties and responsibilities, or, as held in **Garhwal Jal Sansthan Karmachari Union v. State of UP, (1997) 4 SCC 24**, wherein there is a difference in duties and functions. In **State of MP v. Ramesh Chandra Bajpai, (2009) 13 SCC 635** the Hon'ble court has held that "equal pay for equal work" could be invoked only when the employees are similarly situated. Designation of quantum of work is not determinative. In **Union of India v. Mahajabeen Akhtar, (2008) 1 SCC 368**, the Hon'ble Apex Court ruled that parity cannot be granted where nature of duties and educational qualifications are different.

In **T. Venkateswarulu v. Tirumala Tirupathi Devasthanams, (2009) 1 SCC 546**, the Hon'ble court ruled that the function of determining equivalence is an executive function and is to be done by expert bodies and Courts do not generally interfere in the task of job evaluation unless there is cogent material showing grave error and exercise of court's jurisdiction is absolutely necessary to undo justice. It has been further held in **Inder Singh v. Vyas Muni Mishra, 1987 (Supp) SCC 257** that the principles will not apply when two group of persons are not doing the same kind of work and hence equal pay cannot be claimed, as held in **Union of India v. Tarit Ranjan Das, (2003) 11 SCC 658**, merely because of same or similar designation in two separate services.

Leh



In **Federation of All India Customs & Central Excise Stenographers v. Union of India AIR 1988 SC 1291**, it was observed as follows:-

"The same amount of physical work may entail different quality of work, some more sensitive some requiring more tact, some less – it varies from nature and culture of employment. The problem about equal pay cannot always be translated into a mathematical formula. It has a rational nexus with the object to be sought for, as reiterated before a certain amount of value judgment of the administrative authorities who are charged with fixing the pay scale has to be left with them and it cannot be interfered with by the Court unless, it is demonstrated that either it is irrational or based on no basis or arrived at mala fide either in law or in fact."

In **S.H. Baig & ors. v. State of M.P. & ors. 2019 (1) AISLJ 327**, the Hon'ble Court observed as follows:-

"12. Parity of pay-scales cannot be given to the appellants even on the principle of equal pay for equal work. The appellants contend that some of the Ministerial employees were assigned work in the Executive Police Force. Some persons in the Ministerial (E) branch have been appointed to the Police Force as Deputy Superintendent of Police also. The Ministerial (E) staff is also assigned duties of Executive Police Force during elections. The Government maintains that the members of the Ministerial (E) branch do not discharge executive functions. It is well settled law that even if persons are holding same rank/designation and having similar powers, duties and responsibilities they can be placed in different scales of pay and cannot claim the benefit of the principle of equal pay for equal work. [See: Randhir Singh v. Union of India, 1982 (1) SLJ 490 (SC) = (1982) 1 SCC 618 and State of Punjab v. Jagjit Singh Ors., (2017) 1 SCC 148.] In this case the qualifications for appointment, mode of recruitment, training, the duties and responsibilities not being similar, the appellants are not entitled for the relief of equal pay."

9.4. In the instant matter, the respondents have carried out the recommendations of subsequent CPCs. While encaderring certain posts from Labour Bureau, they have applied their mind to the necessity of encadrement of a specific number of posts and have not recourse to mass encadrement.

9.5. The respondents have consciously deliberated on the nature of duties and responsibilities between the work done by the applicants and those rendered by the Investigators Gr. II of Labour Bureau and have concluded on the difference in duties and responsibilities between the two sets of employees.

9.6. The respondents have clarified that the Labour Bureau had never raised an anomaly or sought the views of the Finance Ministry while

hath

granting pay scale to its Investigators Gr. II. The anomaly was raised by the All India Investigators regarding disparity of pay scale between Investigators of NSSO (FOD) and Investigators Gr. II of Labour Bureau.

9.7. According to the respondents, the pay scale of Rs. 5500-9000/- as extended to Investigators Gr. II in Labour Bureau in the light of judicial decision in WP No. 13743 of 2004 Punjab & Haryana High Court at Chandigarh, is not automatically applicable to another set of officers encadred in Subordinate Statistical Service with distinct set of duties and responsibilities.

9.8. The respondent authorities have also arrived at a practical decision in offering an option to the encadred Investigators of Subordinate Statistical Service either to continue in the pay scale of Rs. 5000-8000/- at their existing level of seniority, to seek absorption therein or to opt out of Subordinate Statistical Service and to revert back to the Labour Bureau.

Hence, we do not find the decision of the respondent authorities to be marred with malafide or to be guilty of arbitrariness in fact or in law. Accordingly, the scope of judicial intervention is limited.

10. In reverting to the issues highlighted in para 8.1 above, we therefore conclude that:

- (i) The duties and responsibilities of the two cadres are not identical.
- (ii) The cadres are distinct subject to option exercisable by the officials encadred in Subordinate Statistical Service.
- (iii) Judicial intervention is not warranted in the speaking order of respondent authorities dated 18.11.2015.

11. Before parting, we would also like to refer to the judgment of Hon'ble High Court of Delhi in WP (C) No. 8437/2015 and WP (C) No.

hhr

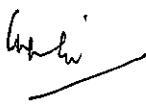
9921/2015 dated 13.11.2017, wherein the petitioners had challenged the O.M. dated 4.12.2014 (whereby the respondents had decided to decadre 29 posts of Investigator Gr. II of Labour Bureau). The Writ Petitions were dismissed by the Hon'ble Court, while discussing the ratio in **P.U. Joshi & ors. v. The Accountant General, Ahmedabad & ors.** (2003) 2 SCC 632 with the following observations:-

"In these circumstances, we are of the view that the only manner in which the Petitioners, if they so desire, can be treated as holders of Group 'B' posts is by going back, upon de-cadrement, to their parent department, the Labour Bureau, which has now, admittedly, treated their said post as a Group 'B' post. In our view this methodology worked out by the Respondent is just and fair and does justice to all the parties involved."

In the instant O.A. too, we find that a reasonable formula has been developed by the respondent authorities in allowing the applicants upon decadrement to opt to either to continue in Subordinate Statistical Service at their existing seniority or to opt out of the Subordinate Statistical Service and revert to their parent department where they would have a fair chance to access their desired pay scale.

Accordingly, we would like to accord the applicants liberty to prefer their options to remain in Subordinate Statistical Service or to revert to the Labour Bureau so that the scope of any rigid discrimination in pay scales amidst extant and erstwhile Investigators Gr. II in the Labour Bureau is put to rest.

12. The applicants, in their written notes of arguments, have urged that an arbitrator be appointed to resolve the pending anomalies at item No. 33 and 39 consequent to the 5th CPC. We do not find any such relief prayed for in the Original Application and such prayer, made beyond the scope of this O.A., is not maintainable.



This O.A. is hence disposed of with the following findings and directions:-

- (i) This Tribunal does not consider it expedient to intervene in the speaking order dated 18.11.2015 (Annexure A-11 of the O.A.). Hence, the O.A. fails on merit.
- (ii) The applicants are at liberty to opt, as directed by the respondent vide their notification dated 4.12.2014, and, in the event, once such options are preferred, the respondent authorities will decide on further course of action with reference to the optee applicants within 16 weeks from the date of receipt of a copy of this order.

13. With these directions, the O.A. is disposed of. No costs.



(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP