

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA

O.A. No. 1186/2013

PARTICULARS OF THE APPLICANTS:

1. Shri Krishna Kumar Kundu, son of Shri Tarak Nath Kundu, working as DEO-B at Statistics Department, All India Institute of Hygiene & Public Health, 110 C R Avenue, Kolkata 700 073, residing at 134/1, Mitra Para Road, P.O. Naihati, District - North 24 Paraganas, Pin 743165
2. Shri Pradip Kumar Saha, son of Late Dharani Kanta Saha, working as DEO-B at Statistics Department of the same Institute, residing of 589 M B Road, Birati Near College More, Kolkata 700051
3. Shri Ajoy Kumar Singha Roy, son of Shri Janaki Nath Singha Roy, working as DEO-B at Statistics Department of the same Institute, residing of Village & Post Office - Nasibpur, District - Hooghly, Pin 712223.
4. Shri Gautam Kundu, son of Shri Badri Narayan Kundu, Working as DEO-B attached to Pension Cell of the same Institute, residing of Hat Khola Panchanantala, P.O. - Chandan Nagar, District - Hooghly, Pin 712136.
5. Shri Biswajit Roy, son of Shri Binoy Bhuson Roy, working as DEO-C at Statistics Department of the same Institute, residing at 16 Lake East, 6th Road, santoshpur, Kolkata 700 075.
6. Shri Surajit Dasgupta, son of Shri Tapash Ranjan Dasgupta, working as DEO-B at Statistics Department of the same Institute, residing at B-Block, Chauhati, Via Rajpur, P.S. Sonarpur, District - South 24 Parganas, Pin 700 149
7. Shri Mohit Das, son of late Rabin Bhusan Das, working as DEO-B, attached to Administration Block (RHU & TC) Singur of the same Institute, residing at Kismat Apurbapur, Natun Bazar, Singur, Hooghly, Pin 712409
8. Shri Amar Nath Kundu, son of Shri Gobinda Chandra Kundu, working as DEO-B, attached to Epidemiology Department, B M Campus, Salt Lake under the same Institute, residing at 'Amardeep, Gosituli, By Lane, P.O. Hooghly, District - Hooghly, Pin 712103.

9. Shri Nagesh Kumar Pal, son of Shri Atul Chandra Pal, working as DEO-B, attached to Epidemiology Department, B M Campus, Salt Lake under the same Institute, residing at 199/1, 2 no. Rajya Dhar Pur Govt. Colony, P.O. - Serampur, District - Hooghly, Pin 712203
10. Shri Subodh Kumar Barua, son of late Kumud Bandhu Barua, working as DEO-B, attached to Epidemiology Department, B M Campus, Salt Lake under the same Institute, residing at Athpur Natun Pally, P.O. - Shyamnagar, District - North 24 Parganas, Pin 743127
11. Shri Bikash Chandra Mondal, son of Shri Gadadhar Mondal, working as DEO-B, at Statistics Section, Urban Health Centre of the same Institute resident of Plot no. RR-374 EKTP Ph-IV, Anandapur, Kolkata 700107
12. Shri Gautam Kumar, son of late Parmeshwar Thakur, working as DEO-B, attached to Urban Health Centre, 19B, Chetla Hat Road, Kolkata 700073, under the same Institute, residing at 30A, Hariseva Street, Kidderpur, Kolkata 700023.

..... APPLICANTS

V E R S U S -

- i) Union of India, through the Secretary, Ministry of Health & Family Welfare, Government of India, Nirman Bhavan, New Delhi 110011
- ii) The Director General of Health Services, P.H. (CDL) Section, Nirman Bhavan, New Delhi 110011
- iii) The Director, All India Institute of Hygiene & Public Health, 110 Chitta Ranjan Avenue, Kolkata 700073
- iv) Sr. Accounts Officer, Pay & Accounts Office, Ministry of Health & Family Welfare, 15/1, Chowringhee Square, Kolkata 700 069

..... RESPONDENTS

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

O.A/1186/2013

Heard on 07.11.2019

Date of Order: 4.12.19.

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member



Krishna Kumar Kundu & 11 Ors.

Vs.

Union of India & Ors.

For the Applicant(s): Mr. A.Chakraborty, Mr. T.R.Mohanty, Counsel

For the Respondent(s): Mr. M.K.Ghara, Mr. L.K.Chatterjee, Counsel

ORDER

Bidisha Banerjee, Member (J):

This application has been preferred to seek the following reliefs:

"8.(i) Undisturbed continuation of scales of pay for Data Entry Operators in terms of the Office order vide no. E.8-17/90, dated 8.9.2005 on the basis of this Hon'ble Tribunal (Calcutta Bench) order dated 25.02.2005 in O.A. No. 597 of 1989 followed by the Director General of Health Services letter dated 18.07.2005 having approval of the Ministry of Finance, Department of Expenditure vide U.O. No. C-74/Estt.III(B)/05.

(ii) No recovery and/ or reduction in usual pensionary benefits if so happens in case of any retirement mother.


(iii) Office orders dated 01.09.2014 and 2.09.2014 issued by Additional Director, Kolkata is bad in law and therefore the same may be quashed.

(iv) Leave may be granted to file this Original Application jointly under Rule 4(5)(a) of the CAT procedure Rule 1987."

2. The grievance of the applicants in a nutshell is as under:

In the context of the 4th Central Pay Commission's Recommendation, the Government of India formed a Committee namely 'Seshagiri Committee' for

B-



reorganization of existing Electronic Data Processing posts. Accepting the recommendations of the said Committee, the Government of India introduced a uniform pay-structure. The Ministry of Finance (Department of Expenditure), Government of India issued an O.M. vide No. F.7(2)/I.C./36(46), dated 11.09.1989, prescribing the pay structure for Electronic Data Processing posts, viz Data Entry Operator (Grades 'A', 'B', 'C', 'D' and 'E'), Data Processing Assistant, etc. When in all other Ministries/Departments the pay-scales and posts were being introduced, the applicants' case was being arbitrarily delayed. Aggrieved, as such, the applicants preferred O.A. No. 597 of 1999 (Krishna Kumar Kundu & Others Vs. Union of India & Ors). A Division Bench of this Tribunal passed an order on 25.02.2005 directing the respondents to implement the decision of the Sheshagiri Committee. The Directorate General of Health Services, New Delhi passed an order on 18.07.2005 conveying the approval of Competent Authority. Such order had also approval of the Ministry of Finance, Department of Expenditure vide U.O. No. C-74/Estt.III(B)/05. The Hygiene Institute even issued an office order on 08.09.2005 implementing the revised pay-scales for the Data Entry Operators, i.e. DEO.

When two DEOs, S/Shri Nilmani Chakraborty and Bata Krishna Manna, who were accorded the due benefits in terms of such implementation, retired from service, their actual pensionary benefits were not paid. They preferred two cases, vide O.A. No. 544 of 2013 and O.A. No. 545 of 2013, which were heard and disposed of by this Tribunal directing the respondents to consider and decide the matter within a period of one month. According to the applicants, although the Institute calculated their retirement benefits correctly and sent the proposals to the Senior Accounts Officer, the said Sr. A.O. vide his impugned orders dated

01.08.2013, arbitrarily and illegally reduced the actual entitlement and that, the said Accounts Officer verbally informed them that the order dated 25.02.2005 passed by the Hon'ble Tribunal in O.A. No. 597 of 1999 was irregular and not maintainable. Against such alleged illegal action the said two D.E.Os. preferred individual cases vide O.A. No. 1087 of 2013 and O.A. No. 1091 of 2013 before this Tribunal. The present applicants being identically circumstanced Data Entry Operators, having felt serious uncertainty of their present and future service benefits or those acquired at the instance of the Pay Commissions, Government of India and the decisions, have come up with the present O.A.

3. The respondents, to refute the allegations, have averred as under:

That, applicants belonged to Electronic Data Processing cadre. Previous structure of this category was Junior Computer, Senior Computer and Statistical Assistant and the pre-revised pay scale, depicted as under:

Jr. Computer: Rs. 950-1500/-
 Senior Computer: Rs. 1200-2040/-
 Statistical Assistant: Rs. 1400-2300/- as per 4th Central Pay Commission.

There were 16 number of such posts in the respondents office, as follows:

Jr. Computer	11
Senior Computer	04
Statistical Assistant	01

As per the Recruitment Rule (R-R), Annexure R-1, the educational qualification of the Junior Computer was Matriculation; while the other two were purely promotional posts, in the order as above.

That the "Seshagiri Committee" had recommended reorganization of existing Electronic Data Processing posts. After such recommendation, the Ministry of Finance (Department of Expenditure) issued on O.M. dated 11.09.1989, prescribing the pay structure for Electronic Data Processing posts viz. Data Entry Operator Grade A, B, C, D, E etc., depicted as under;



Sl No	Post	Pay Scale	Qualification
1.	DEO-Gr. A	Rs. 1150-1500/-	Entry Grade for Higher Secondary & knowledge of Data Entry work.
2.	DEO-Gr. B	Rs. 1350-2200/-	Entry Grade for Graduate & knowledge of Data Entry work or Promotion Grade for DEO-A
3.	DEO-Gr. C	Rs. 1400-2300/-	Promotion from DEO-B
4.	DEO-Gr. D	Rs. 1600-2660/-	Promotion from DEO-C

A proposal for re-designation and revision of pay scales of EDP staff of the Institute was submitted vide letter dated 26.08.1994 for the revised designation, DEO-A, DEO-B and DPA-A. Further a revised proposal of Jr. Computer, Sr. Computer and Statistical Assistant as DEO-B, DEO-C and DPA-A was resubmitted on 07.01.1999 as per recommendation of Ministry of Finance, Department of Expenditure vide OM dated 11.09.1989.

By that time a group of EDP staff, aggrieved by the delay of Implementation of the recommendation of the Seshagiri Committee, approached this Tribunal in O.A. No. 597/1999 and sought for restructuring as per recommendation of Seshagiri Committee.


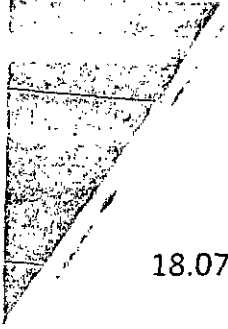
During pendency of the O.A., approval from Directorate General of Health Services was received vide their letter dated 30.07.2001 and re-designation and

revision of pay scale of EDP staff was done as follows:

Sl No	Old Designation and scale	New Designation	Pay Scale
1.	Jr. Computer (Rs. 950-1500)	DEO-A	Rs. 1150-1500/-
2.	Sr. Computer (Rs. 1200-2040)	DEO-B	Rs. 1350-2200/-
3.	Statistical Assistant (Rs. 1400-2300/-)	DEO-C	Rs. 1400-2300/-


The letter was addressed to the PAO, MOHFW, Kolkata with a copy endorsed to the Director, AIH & PH, Kolkata for implementation with effect from 11.09.1989 along with the amendment of the R-R of the above categories of posts in terms of provisions contained in the Department of Expenditure O.M. dated 11.09.1989 adhering to the job description notified by NIC dated 08.01.1990 keeping parity with DoPT model R-R. Accordingly, the office, vide its office order dated 27.09.2001 implemented the same. Inadvertently such development was not brought to the notice of this Tribunal before its final disposal on 25.02.2005, either by the officer or by the applicants.

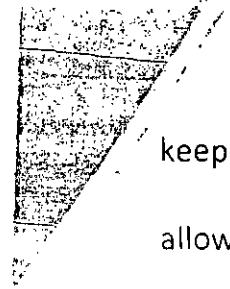
That, this Tribunal being kept in complete darkness about the above implementation of Dr. Seshagiri Committee report as well as the said OM dated 11.09.1989, finally disposed of the matter and passed an order dated 25.02.2005 in OA No. 597/1999 with a direction to the respondent authorities to take a final decision regarding implementation of Dr. Seshagiri Committee recommendation of restructuring of EDP staff of the Institute in the light of Juridical pronouncement made in this regard within a period of four months from the date of communication of the order, and to extend the benefits to the applicants from the date they are/were eligible to get such benefits as per entitlements within two months thereafter.



The development was reported to Dte. GHS vide their letter dated 18.07.2005 to implement order. Without seeking further clarification from the competent authority, All India Institute of Hygiene and Public Health, Kolkata issued orders dated 08.09.2005 and 15.09.2005 and re-designated DEO Gr. A, B & C D as DEO-B, DEO-C and DEO-D with effect from 01.01.1986 on receiving an undertaking by the concerned employees to the effect that they would have to refund of sum of amount which might happen to have drawn in excess out of pay fixation. This undertaking had to be retained in the service book of the incumbents because the approval of Directorate General of Health Services dated 18.07.2005 was without any specification about re-designation and attached pay scale of DEOs and no approval was obtained from the competent authority. In compliance of the order of Dte. GHS dated 18.07.2005, a copy of the office order dated 08.09.2005 was sent to the Dte. GHS and a copy was endorsed to PAO, MOHFW, Kolkata. Since then all the erstwhile EDP staffs have been enjoying the pay scale of DEO-B, DEO-C & DEO-D accordingly till date.

In regard to the two incumbents, Sri Nilmoni Chakraborty and Sri Bata Krishna Manna, the respondent would aver that while retirement benefits in respect of these two superannuated employees, who belonged to DEO cadre was calculated and sent to Pay and Accounts office, as per their last pay drawn certificate for settlement, Sr. Pay and Accounts Officer raised a few queries from their end. Pay and Accounts office, in Health & FW, vide his letter dated 12.07.2013 stated that as no final decision of re-structuring of EDP staffs have been taken by the competent authority, pay of the official may be continued in the scale of Rs. 1200-2040/- that was prior Rs. 1350-2200/- which was given with effect from 11.09.1989 and pay at the time of retirement may be arrived at






keeping in abeyance the scale of Rs. 1350-2200/-. Over payment of pay & allowances crept in due to fixation of pay in the scale of Rs. 1350-2200/- may be calculated and intimated to the PAO, so that it could be recovered from the gratuity by the PAO. Accordingly, the pensioners' benefits were calculated vide the office order of AIH & PH, Kolkata dated 25.07.2013.



The respondents would further aver that, in a subsequent letter dated 22.08.2013, All India Institute of Hygiene and Public Health, Kolkata informed the PAO, Kolkata that "the re-designation and revision of the pay scales of EDP staff has already been executed in this Institute with effect from 11.09.1989 as per approval of Dte. GHS' letter dated 30.07.2001 but the fact was not intimated to the Hon'ble CAT. The PAO office in reply dated 17th September, 2013 acknowledged the Dte. GHS' approval regarding the re-designation and revision of the pay scales of EDP staff but made another query "whether the Recruitment Rules for Jr. Computer, Sr. Computer and Statistical Assistant as DEO-A, DEO-B AND DEO-C has been finalized as on date". As the said Recruitment Rules were not finalized, the same could not be furnished to PAO, MOHFW, Kolkata".

"Accordingly pension was settled from the end of Director, AIH & PH, Kolkata. A portion of the retirement benefits remained withheld by the pay & accounts office. Aggrieved, Shri Nilmoni Chakraborty and Shri Bata Krishna Manna filed case O.A. No. 1091 of 2013 and O.A. No. 1087 of 2013 in the Hon'ble CAT, Calcutta Bench against the withholding of the retiral benefits. This Tribunal passed an interim order dated 03.10.2013 and directed the respondents to release the pensioner benefits based on the originally sanctioned pension. Subsequently, the benefits were released by the respondents as per this Tribunal's order".



Further that, "as the DGHS order dated 18.07.2005 was not specific in respect to the designation and scale of pay of the DEOs, the All India Institute of Hygiene and Public Health, Kolkata had undertaken certain administrative steps, as follows:



- A. A Committee was constituted to review the issue afresh. The committee recommended that entry level should be DEO-A and revised order to be issued.
- B. The case is pending before Hon'ble CAT, Calcutta Bench. A question arose whether revised order in respect to EDP staff can be issued during pendency of the case or not..
- C. A meeting was convened by the office on 11.12.2013 under the Chairmanship of the Director of the Institute. It was attended by the Sr. Pay & Accounts Officer, MOHFW, Kolkata among others. The matter was discussed at length with the officials from PAO. It was decided that a draft reply be sent to DGHS where all issues would be mentioned".

The respondents would further contend that, subsequently, when the matter was examined in entirety, it was found that the office orders dated 08.09.2005 and 15.09.2005 were issued without proper approval of the competent authority i.e. the DGHS. The orders were cancelled vide Office Order dated 01.09.2014. Hence the Office order dated 27.09.2001, issued with the approval of DGHS vide letter dated 30.07.2001, stood valid. Accordingly, the office intended to make recovery of the excess amount already paid in this regard. As per DoPT OM No. 18/26/2011-Estt (Pay-I) dated 06.02.2014, Sri Manna, the applicant along with present working DEOs of the Institute were given a show cause notice vide Office Order No. E.8-17/90 (Vol. II) dated 02.09.2014, to

explain within 7 days, why recovery should not be done. But the Hon'ble CAT, Calcutta Bench, vide its order dated 16.09.2014 in the MA No. 350/00295 of 2014 (arising out of O.A. 1186 of 2013) has given an interim stay order on the said office order dated 02.09.2014 and the said interim order is continuing.



4. At hearing, Ld. Counsel for the applicant would place the order impugned in the present O.A. dated 01.09.2014, which is extracted hereunder for clarity:

"File No. E.8-17/90 (Vol-II)

Dated: 01-09-2014

OFFICE ORDER

In accordance with the OM No. 18/26/2011-Estt (Pay-I) of Ministry of Personnel, PG and Pension, DOPT. Government of India, dated 06-02-2014, the incorrect Office orders No E.8-17/90 dated 08-09-2005 & 15-09-2005 issued by the Institute in respect of re-designation and revision of Pay Scales of the existing and ex-employee of the DEO category of staff of this institute stand cancelled as the proposed new designations and the attached pay scale were accorded by this office without due approval from the competent authority.

The Office order No E. 8-17/90 dated 27/09/2001 of this Institute issued in compliance with the DGHS letter No A. 12018/3/95-PH (CDL) dated 30-07-2001 is hereby reinstated.

This issues with the approval of Director.

Sd/-

Additional Director"

Ld. Counsel would vociferously contend that the order was bad in law as the authorities have falsely recorded that the office orders dated 08.09.2005 and 15.09.2005 were issued without due approval of the competent authority, which was far from truth.

Drawing our attention to the office order dated 18.07.2005 as contained in Annexure-A/2 to the O.A. issued by the Director Administration, Directorate General of Health Services, Ld. Counsel would contend that the order passed by the Kolkata Bench in in O.A.No. 597/99 dated 25.02.2005 was directed to be

implemented with due approval of the competent authority and with due approval of the Ministry of Finance, Department of Expenditure. The said order dated 18.07.2005 is extracted hereunder with supplied emphasis, for clarity:



"To

The Director,
All India Institute of
Hygiene & Public Health,
110-Chittaranjan Avenue,
Kolkata – 700073.

Sub: Implementation of CAT order dt. 25.2.05 in OA No. 597/99 filed by Sh. K.K. Kundu and others V/s UOI for granting revised pay scales to EDP posts.

I am directed to refer to the Institute's letter No. E. 12-09/99 dt. 5.5.05 on the subject cited above and to convey the approval of Competent Authority to the implementation of CAT, Calcutta Bench order dt. 25.2.05 passed in OA No. 597/99 titled Sh. Krishan Kumar & others V/s UOI for grant of revised pay scales to the Data Entry Operators (Applicants only).

You are requested to take immediate necessary action under intimation to this Date.

This has the approval of Ministry of Finance, Deptt. of Expenditure vide their U.O. No. C-74/Estt.III(B)/05.

Yours faithfully,
Sd/-
(A.K. PURI)
DIRECTOR ADMN."

Further, Ld. Counsel would place the Office Order dated 08.09.2005, on the basis of which the order passed by the Tribunal and its implementation being duly approved by the Ministry of Finance, was executed. The very opening statement of the order is that "In terms of approval of Ministry of Finance, Department of Expenditure" and, therefore, it was a deliberate attempt on the respondents to mislead this Tribunal to contend that the orders in 2005 were issued without approval of Ministry of Finance. The Office Order dated 08.09.2005 is extracted

hereunder for clarity:

"GOVERNMENT OF INDIA
OFFICE OF THE DIRECTOR
ALL INDIA INSTITUTE OF HYGIENE & PUBLIC HEALTH
110, CHITTARANJAN AVENUE
KOLKATA - 700 073

No.E.8-17/90

Dated: - 08-09-2005.

OFFICE ORDER

In terms of approval of Ministry of Finance, Department of Expenditure vide their U.O. No.C-74/Estt.III (B)/05 conveyed by the D.G.H.S (vide Reference No.C-13013/3/99-PH-CDL dated 18-7-2005) to the implementation of CAT, Calcutta Bench Order dated 25-2-2005 for grant of revised pay scales to the Data Entry Operators (Applicants only) with effect from as indicated new pay scale to the Data Entry Operators as given below.

List of Applicants enclosed herewith.

REVISED DESIGNATION	PROPOSED NEW DESIGNATION	PRE-REVISED SCALE FROM 1-1-86 to 10-9-89 OLD NEW
DEO Gr. "A"	DEO Gr. "B"	950-1500 TO 1350-2200
DEO Gr. "B"	DEO Gr. "C"	1200-2040 TO 1400-2200
DEO Gr. "C"	DEO Gr. "D"	1400-2300 TO 1600-2660

REVISED DESIGNATION	PROPOSED NEW DESIGNATION	PRE-REVISED SCALE FROM 11-9-86 to 31-12-95 OLD NEW
DEO Gr. "A"	DEO Gr. "B"	1150-1500 TO 1350-2200
DEO Gr. "B"	DEO Gr. "C"	1350-2200 TO 1400-2300
DEO Gr. "C"	DEO Gr. "D"	1400-2300 TO 1600-2660

REVISED DESIGNATION	PROPOSED NEW DESIGNATION	FROM 01-01-96 ONWARDS EXISTING REVISED
DEO Gr. "A"	DEO Gr. "B"	4000-6000 TO 4500-7000
DEO Gr. "B"	DEO Gr. "C"	4500-7000 TO 5000-8000
DEO Gr. "C"	DEO Gr. "D"	5000-8000 TO 5500-9000

Concerned member of staff of E.D.P may exercise their option for fixation of their pay as per rule and they are also requested to submit an "UNDERTAKING" (to be retained in each of their Service Book) by each of them to the effect that they would have to refund such extent of sum of amount that may happen to have been drawn in excess out of this fixation. This fixation is also related to the amendment of Recruitment Rule for which a reference has been made separately.

This issues with the approval of the Director.

Sd/-
[Dr. (Mrs.) Amala Das]
Additional Director"

" NAME OF THE APPLICANTS



Name & place of posting	Present Designation	Proposed new Designation	Present scale of pay	Proposed new scale of pay
S. Barua (Chetla) Goutam Kumar (Chetla) P.K. Saha (Instt.) Mohit Das (Singur) G. Kundu (Instt.) A. Sinha Roy (Instt.) K.K. Kundu (Instt.) S. Dasgupta (Instt.) B. Roy (Instt.) B.K. Mondal (Chetla)	Data Entry Operator Grade - "A"	Data Entry Operator Grade - "B"	Rs. 4000-6000	Rs.4500-7000
S. Das (Instt.) R. Biswas (Instt.) N. Chakraborty (Instt.)	Data Entry Operator Grade - "B"	Data Entry Operator Grade - "C"	Rs.4500-7000	Rs.5000-8000
B.K. Manna (Chetla)	Data Entry Operator Grade - "C"	Data Entry Operator Grade - "D"	Rs.5000-8000	Rs.5500-9000

Sd/-
[Dr. (Mrs.) Amala Das]"

Ld. Counsel for the applicant would thus vehemently oppose the contention of the respondents that the orders of 08.09.2005 being issued without approval of the Ministry of Finance or of the competent authority, and that, hence it could be recalled to the disadvantage of the applicants, who received the benefits of the said order, after a long passage of time. Ld. Counsel would argue that if the seniority positions of the applicants have to be changed from DEO Grade D to C, C to B and B to A *en masse*, the same would have a cascading effect, which would not be conducive to the administrative interest. Ld. Counsel would further fortify his claim with written arguments by relying upon the

following decisions, as enumerated herein below:

- (i) **State of Orissa Vs Dr. (Miss) Binapani Dei, AIR 1967 SC 1269**, where the Hon'ble Supreme Court held that the principles of natural justice is paramount, while holding as follows:



"It may be recalled that there were four different dates before the State authorities ; (1)- the entry in the Ravenshaw Girls' School Admission Register showing the date of birth as August 22, 1906, (2) the entry in the Admission Register of the First Year Class showing the date of birth as some date in April, 1907; (3) the report of the Principal, Lady Hardinge Medical College, Delhi, showing the date of birth as April 4, 1908, as recorded in the Medical College Admission Register; and (4) the first respondent's statement supported by her father's statement at the time when she joined the service in 1938 giving her date of birth as April 10, 1910. If an enquiry was intended to be made, the State authorities should have placed all the materials before the first respondent and called upon her to explain the discrepancies and to give her explanation in respect of those discrepant and to tender evidence about her date of birth.

It is true that some preliminary enquiry was made by Dr. S, Mitra. But the report of that Enquiry Officer was never disclosed to the first respondent. 'The rafter the first respondent was required to show cause why April 16, 1907, should not be accept das the date of birth and without recording any evidence the order was passed: We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences as already stated must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken; the High Court was, in our judgment, right in setting aside the order of the State.

The appeal therefore fails and is dismissed with costs."

(emphasis added)

- (ii) In **M.Gopala Krishna Naidu vs. State of Madhya Pradesh, AIR 1968 SC 240**, where, while referring to Binapani Dei (supra), the following has been held:

"The very nature of the function implies the duty to act judicially. In such a case if an opportunity to show cause against the action, proposed is not afforded, as admittedly it was not done in the

present case, the order is liable to be struck down as invalid on the ground that it is one in breach of the principles of natural justice. In *the State of Orissa v. Dr. (Miss) Binapani Devi and others* ([1967] 2 SCR 625) this Court held that an order fixing the date of birth of the government servant concerned there and declaring that she should be deemed to have retired on a particular date on the basis of the date so determined without giving an opportunity to show cause against the action proposed was invalid on the ground that the determination was in violation of the principles of natural justice. It was there observed: -

"The State was undoubtedly not precluded, merely because of the acceptance of the date of birth of the first respondent in the service register, from holding an inquiry if there existed sufficient grounds for holding such enquiry and for re-fixing her date of birth. But the decision of the State could be based upon the result of an enquiry in a manner consonant with the basic concept of justice. An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is however under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice."

(emphasis added)

(iii) In *A.K.Kraipak & Ors. Vs. Union of India & Ors*, AIR 1970 SC 150, that

"In *State of Orissa v. Dr. (Miss) Binapani Dei and Ors.* ([1967] 2 S.C.R. 625) Shah, J. speaking for the Court, dealing with an enquiry made as regards the correct age of a government servant, observed thus "We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it.-The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (1) no one shall be a judge in his own case (*Nemo debet esse judex propria causa*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon there- after a third rule was envisaged and that is that quasi- judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years

many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in *Suresh Koshy George v. The University of Kerala and Ors.* ([1969] 1 SCR 317) the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that was necessary for a just decision on the facts of that case."

(iv) In *D.K.Yadav Vs. J.M.A. Industries Ltd.*, 1993 SCC(3) 259, the Hon'ble

Apex Court held as under:

*"It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and be given him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In *Mohinder Singh Gill & Anr. v. The Chief Election Commissioner & Ors.* [1978] 2 SCR 272 at 308F the Constitution Bench held that 'civil consequence' covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation everything that affects a citizen in his civil life inflicts a civil consequence. *Black's Law Dictionary*, 4th Edition, page 1487 defined civil rights are such as belong to every citizen of the state or country they include rights capable of being enforced or redressed in a civil action. In *State of Orissa v. Dr. (Miss) Binapani Dei & Ors.*, this court held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principles of natural justice."*

(emphasis added)

- (v) In **Swadeshi Cotton Mills Vs. Union of India, (1981) 1 SCC 664**, R.S.Sarkaria, J., speaking for the majority in a Three-Judge Bench of the Hon'ble Supreme Court lucidly explained the meaning and scope of the concept of "natural justice. Referring to several decisions, it was observed thus:

"Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice viz. (i) audi alteram partem and (ii) nemo iudex in re sua. The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle-as distinguished from an absolute rule of uniform application-seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review of appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, short of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

(emphasis added)

Citing and placing the aforesaid extracts, the applicant would contend that the law on curable defects has been laid down and settled by the Hon'ble Supreme Court in a catena of judgments. A curable defect would not make the decision invalid, if due efforts are taken in time to cure the same and appropriate

administrative approvals or orders are obtained to cure the defects. However, the defects in the present inquiry are clearly not curable and so the entire inquiry has to go, being declared bad in law. In this regard reliance has been placed on the following:



- (i) **Sardar Harcharan Singh Brar Vs. Sukh Darshan Singh, (2004) 11 SCC 196.**
- (ii) **Regu Mahesh Vs. Rajendra Pratap Bhanj Dev, (2004) 1 SCC 46.**
- (iii) **G.Mallikarjunappa Vs. Shamanur. Shivashankarappa, (2001) 4 SCC 428.**
- (iv) **Navinchandra N.Majithia Vs. State of Maharashtra, (2000) 7 SCC 640.**
- (v) **B.K.Srinivasan Vs. State of Karnataka, (1987) 1 SCC 658.**

Further that, in **Uday Shankar Triyar Vs. Ram Kalewar Prasad Singh, (2006) 1 SCC 75**, the Hon'ble Supreme Court has clearly demarcated the law on procedural defects in the following words;

"17..... Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a hand-maiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use....."

In this regard, reliance has been placed on the following decisions of the Hon'ble Apex Court,

- (i) **Swaran Singh Chand Vs. Punjab State Electricity Board, 2009(7) SCALE 622**, it has been unequivocally held that instructions issued by the Government are binding on it, and that:

B

"10. It is furthermore well-settled that when the State lays down the rule for taking any action against an employee which would cause civil or evil consequence, it is imperative on its part to scrupulously follow the same. Mr. Justice Frankfurter in *Vitarelli v. Seaton* [359 US 535] stated:

"An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. ... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword." (Emphasis added)

11. The guidelines issued by the State are binding on it....."

(ii) In *H.V. Nirmala v. Karnataka State Financial Corporation* (2008) 7

SCC 639 it has been held that:

We are, however, not unmindful of the legal principle laid down in Vitarelli vs. Seaton : (1959) 359 US 535 which has been noticed in Ramana Dayaram Shetty vs. International Airport Authority : (1979) 3 SCC 489 stating :-

"10. Now, there can be no doubt that what para (1) of the notice prescribed was a condition of eligibility which was required to be satisfied by every person submitting a tender. The condition of eligibility was that the person submitting a tender must be conducting or running a registered IInd Class hotel or restaurant and he must have at least 5 years' experience as such and if he did not satisfy this condition of eligibility, his tender would not be eligible for consideration. This was the standard or norm of eligibility laid down by Respondent 1 and since the Respondents 4 did not satisfy this standard or norm, it was not competent to Respondent 1 to entertain the tender of Respondents 4. It is a well-settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in *Viteralli v. Seaton* where the learned Judge said:

"An executive agency must be rigorously held to the standards by which it professes its action to be judged Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure



must be scrupulously observed This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."
(Emphasis Supplied)



- (iii) In *Ramanna Dayaram Shetty Vs. International Airport Authority*, (1979) 3 SCC 489, the Hon'ble Supreme Court has held the following:

"It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those Standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr Justice Frankfurter in Viteralli v. Seaton [359] where the learned Judge said:

"An executive agency must be rigorously held to the standards by which it professes its action to be judged..... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirement that bind such agency, that procedure must be scrupulously observed..... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

This Court accepted the rule as valid and applicable in India in A.S.Ahuwalia v. Punjab [(1975) 3 SCR 82] and in Sukhdev v. Bhagatram [(1975) 3 SCR 619]. Mathew, J., quoted the above-referred observations of Mr. Justice Frankfurter with approval. It may be noted that this rule, though supportable also as emanation from Article 14, does not rest merely on that article. It has an independent existence apart from Article 14. It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power by the executive authority. If we turn to the judgment of Mr. Justice Frankfurter and examine it, we find that he has not sought to draw support for the rule from the equality clause of the United States Constitution, but evolved it purely as a rule of administrative law. Even in England, the recent trend in administrative law is in that direction as is evident from what is stated at pages 540-41 in Prof. Wade's Administrative Law 4th edition. There is no reason why we should hesitate to adopt this rule as a part of our continually expanding administrative law. Today with tremendous expansion of welfare and social service functions, increasing control of material and economic resources and large scale assumption of industrial and commercial activities by the State, the power of the executive Government to affect the lives of the people is steadily growing. The attainment of socio-economic justice being a conscious end of State policy, there is a

vast and inevitable increase in the frequency with which ordinary citizens come into relationship of direct encounter with State power-holders. This renders it necessary to structure and restrict the power of the executive Government so as to prevent its arbitrary application or exercise. Whatever be the concept of the rule of law, whether it be the meaning given by Dicey in his "The Law of the Constitution" or the definition given by Hayek in his "Road to Serfdom" and "Constitution of liberty" or the exposition set-forth by Harry Jones in his "The Rule of Law and the Welfare State", there is, as pointed out by Mathew, J., in his article on "The Welfare State, Rule of Law and Natural Justice" in "democracy Equality and Freedom," "substantial agreement is in justice thought that the great purpose of the rule of law notion is the protection of the individual against arbitrary exercise of power, wherever it is found". It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the power involves affection of some right or denial of some privilege."

5. On the contrary, Ld. Counsel for the respondents would submit that the respondents were always at liberty to undo the wrong by revising the pay and recovering the excess paid due to erroneous fixation. Ld. Counsel would submit that in fact the benefits were given twice to the applicant, i.e. the incumbent, who was entitled to move from DEO Gr. A to DEO Gr. B, moved actually to DEO Gr. C, which error was detected long after implementation of the orders. Ld. Counsel would also submit that there was no violation of principles of natural justice since the proposed revision was on the basis of a show cause issued to the applicants. Therefore, the limited issue that fell for consideration was whether the orders issued in implementation of the direction of this Tribunal in 2005, could be revisited after a lapse of 14 years and could be recalled on the ground that while implementing the orders, the authorities had, in fact, failed to notice that the recommendations of the Sheshagiri Committee stood already



implemented even before this Tribunal directed implementation of the recommendations and double benefit was never justified.

6. We heard Ld. Counsels for the parties and perused the materials on record.

From the records and pleadings, we discern the following:



(i) At the material time when O.A. 597/99 was decided and the order dated 25.02.2005 was delivered by this Tribunal, there was a clear recording of the statement of the respondents' counsel that as of the date of the order "the matter is still under active consideration of the Government". His statement resulted in recording of following:

"it appears that correspondences have been going on between the Ministry of Health and the local respondents and the last correspondence as it appears was made on 7-1-99 vide annexure 'G' wherein the pay structure to be introduced in the respondents Department has been explained. The applicants made several representations for early introduction of the said pay structure but the same is still pending".

Further, this Tribunal has recorded the following:

"3. During the course of hearing it is brought to our notice the decisions of various Benches of the Tribunal as also Hon'ble Supreme Court which directed for implementation of the new pay structure for EDP Staff. Recently in a Full Bench decision of this Tribunal held at Jaipur in the case of Pradeep Kumar Sharma and Ors v. Union of India and Ors (page 79 of J.S.Kalra's Administrative Tribunal Full Bench Judgements-2002-2003) it has been held that the said revised pay scale should be introduced from 1-1-1986.

4. From the records it appears that although recommendation was made from the local respondents to the Ministry but no final decision has yet been taken and the matter is pending since long.

5. In view of the above, we hereby dispose of this application with a direction to the respondent authorities, especially the respondent Nos. 2, 3 and 4 to take a final decision regarding implementation of the Sheshagiri Committee Report of restructuring for the EDP Staff of All

India Institute of Hygiene and Public Health in the light of Judicial pronouncements made in this regard within a period of four months from the date of communication of the order and to extend the benefit to the applicants for the date they are/were eligible to get such benefit as per their entitlements within two months thereafter."



A mere running over eye on the said observations and decisions would demonstrate and exemplify that as on the date of the order, the respondents had clearly stated that the Ministry was yet to take a final decision in the matter.

(ii) The order dated 18.07.2005, as contained in Annexure-A/2, clearly and indubitably fortifies the submissions of the applicant, that the order of this Tribunal in O.A. 597/99 was implemented upon due approval of the competent authority and with the approval of Ministry of Finance, Department of Expenditure, as conveyed in the year 2005, leaving no room for us to doubt the implementation without approval of the competent authority.

(iii) When similar matter, i.e. **O.A. No. 234/2007** filed by **Amar Nath Kundu & Ors.**, came to be decided by this Tribunal in 2008, it was recorded by this Tribunal that "the respondents have implemented the order only to those who were parties in the said OA and have not extended the benefit to the applicants of the present OA". Taking note of the decision in **Inder Pal Yadav vs. UOI & Ors., 1985(2) SCC 648**, that those who could not come before the Court and obtain the verdict in their favour need not be placed at a disadvantageous position with those who have come before the Court and obtained a decree, the O.A. was disposed of with a direction upon the respondents as under:

"5. In the conspectus of the facts of the case we think if the applicants are similarly situated the respondents must extend the benefit of OA 597/99 to them. Therefore, the respondents are directed to consider the case of the applicants in conspectus of the facts stated in their reply

statement and pass appropriate orders and grant the benefit of the judgment of OA 597/99 to the applicants within a time frame of 4 (four) months."

At no point of time the respondents ever took the plea of double implementation.



(iv) In the subsequent decision rendered on 24.06.2013 in Nilmani Chakraborty vs. UOI & Ors. in O.A.No. 544/2013, this Tribunal had directed to consider and decide the representation of Nilmani Chakraborty within one month. Similar order was issued in case of Batakrishna Manna vs. UOI & Ors., O.A.No. 545/2013 decided on 24.06.2013 and both were allowed full pension on the basis of pay fixed in 2005 as admitted by the respondent authorities.

The Institute, therefore, allowed the said two incumbents to retain their benefits, whereas seek to take away the identical benefits of the present applicants, which is highly discriminatory, trying to create a class within a class.

(v) The respondents have failed to show that prior to decision in O.A.No. 597/99 on 25.02.2005, authorities had already extended the benefits of Sheshagiri Committee recommendation to the present applicants by granting them appropriate scale as DEO Gr. A or B or C or D, as nothing of such sort has been annexed with the reply filed by the respondents or placed before us.


Therefore, the respondents have miserably failed to make out a case of double implementation, as they had alleged. The benefits of 2005, therefore, do not appear to be wrongly given. Such being the position, we fail to comprehend why the applicants should be deprived of the financial benefits that they earned out of implementation of the 2005 order of this Tribunal.


(vi) Respondents have relied upon a decision in **T.V.L.N.Mallikarjuna Rao & Ors. Vs. UOI & Ors., Civil Appeal No. 10862/2014**, which was rendered on different facts and circumstances since the applicants therein were claiming a pay scale of Rs. 1350-2200/- in the post of Data Entry Operator Grade-B. The decision, therefore, fails to lend any support to them. On the contrary, the decisions cited by the applicants support their cause on all fours.

7. Respondents have disclosed the decision or a proposal for amendment of recruitment rules for the post of DEO cadre as per CCS (RP) Rules, 2016, which in our considered opinion would have no bearing ⁱⁿ with the present issue, whether the applicants would be entitled to retain the benefit bestowed on them in the year 2005 by virtue of a decision of this Tribunal, which found them eligible for such benefits.

8. Since, we are of the considered opinion that the benefits in 2005 were not wrongly given and the said benefits were released with due approval from the Ministry of Finance, we quash the impugned orders and direct the authorities to allow the applicants to retain the financial benefits of 2005 that was granted to them upon due approval of the Ministry of Finance, with all consequential benefits including fixation of pension and refund of any recovered amount, in case of any retired employee etc.

O.A. thus stands allowed. No costs.


(Dr. Nandita Chatterjee)
Member (A)


(Bidisha Banerjee)
Member (J)