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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.2422/2000

with

O.A.No.739/99

Hon'ble Shri V.K.Majotra, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

New Delhi, this the 16th day of March, 2001

O.A.No.2422/2000:

1. S.K.Biswas
Draughtsman
2. Ashok Pant, Technician
3. Surender Singh, Technician
4. Surender Singh, Draughtsman
5. P.R.Singh, Technician

All applicants are working as Draughtsmen/
Technicians in the office of central Road
Research Institute, New Delhi. ... Applicants

(By Advocates: Ms. Prasanthi Prasad with Mrs. Asha G.
Nair)

Vs.

1. Union of India
through the Director General
Council of Scientific and
Industrial Research, Rafi Marg
New Delhi.

2. The Director
Central Road Research Institute
New Delhi. ... Respondents

(By Advocate: Shri Kapil Sharma with Shri Rajiv
Dutta, Sr. Counsel)

with

O.A.No.739/99:

1. S.K.Biswas
Draughtsman
2. Ashok Pant, Technician
3. Jeewan Lal, Technician
4. Surender Singh, Draughtsman
5. P.R.Singh, Technician

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Dutta, Sr. Counsel).

O R D E R

Hon'ble Shri Shanker Raju, Member (J)

As the issue involves in both these OAs is
common and identical relief prayed, the same are
disposed of through this common order.

2. MA for joining together in both the OAs is
allowed.

3. In OA No.739/99, the applicants have
sought a relief for quashing the impugned order dated
25/27 May, 1998 and direct the respondents to accord
the higher pay scale of Rs.5500-9000 w.e.f. November,
1996/February 1997/ March, 1997. In the meanwhile,
the respondents vide their order dated 2.8.2000 issued
a Scheme regarding assessment of the employees in
Group-II in the pre-revised scales of Rs.1350-2200 and
Rs.1400-2300 to the next higher grade of Rs.5500-9000
consequent upon the merger of these two scales to the
revised scale of Rs.4500-7000 under the CCS (Revised
Pay) Rules, 1997 which was placed in the meeting of
the Governing Body of CSIR where the combined

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residency period has been reduced from 14 years to 10.5 years for the purpose of assessment to next higher grade of Rs.5500-9000.

4. The applicants in OA No.2422/2000 had been working as Draftsmen/ Technicians with Respondent No.2 and are in Group-II(2) w.e.f. February/March, 1990 in the pre-revised pay scale of Rs.1350-2200. As in the year 1997, the recommendations of the 5th Central Pay Commission the revision of the pay scales were adopted and accepted by the respondents, the pre revised pay scales of Rs.1350-2200 and Rs.1400-2300 were merged and the replacement pay scale of Rs.4500-7000 came into existence w.e.f. 1.1.1996. According to the applicants they have been placed in the revised pay scale of Rs.4500-7000 w.e.f. 1.1.1996. According to the merger/normal assessment scheme of the respondents assessment/promotion from one grade to the next grade would be on the completion of 7 years in the said grade/scale. The applicants were due for their assessment promotions during various dates in November, 1996 to March, 1997 from the Group II to the next grade of Senior Draughtsmen/Technician Group II; due to merger of Group II(2) and Group II(3). According to the respondents as Group II(2) and Group II(3) had already been merged on 1.1.1996, and no more exists after 1.1.1996 and the next promotion can only be given in Group II(4). According to the applicants, on merger of these pay scales w.e.f 1.1.1996, their arises no question to grant them non-existing pre revised scale in 1997. According to the applicants as the promotion took place after 1.1.1996, the promotion has to be effected to the higher scale of Rs.5500-9000

from Rs.4500-7000. The applicants have been called for appearing before the assessment committee in February, 1998 and on successful completion of trade test and interview orders were issued intimating them about their assessment promotion. In this order it had been communicated that the applicants were promoted from pre revised scale of Rs.1350-2200 to the next grade of Rs.1400-2300 pre revised, which was non existent after 1.1.1996, as Tech. Group II(3) w.e.f. the various dates in 1996-97. It is contended that as the Grade II(2) was merged with Group II(3) on the implementation of the 5th Central Pay Commission and the pay fixation was accordingly done in the revised scale of Rs.4500-7000 and the assessment should have been done in the higher Group II(4) and not in the same Group II(3). According to the applicants, the respondents had failed to follow the scheme correctly. The applicants had also filed OA 739/99 before this Tribunal and during the pendency, the impugned order dated 2.8.2000 was issued wherein it was intimated that the matter regarding assessment of employees in the pre-revised scales of Rs.1350-2200 to the next grade of Rs.1400-2300 (pre-revised) which was considered by the Governing body and thereafter it had been decided that all those employees who are in the pre-revised scale of Rs.1350-2200 and Rs.1400-2300 had been placed with in the revised grade of Rs.4500-7000 w.e.f. 1.1.1996 and will be considered for assessment to the next higher grade of Rs.5500-9000 on completion of combined residency period of 10.5 years rendered in pre revised scale of Rs.1350-2200 and 1400-23000 before 1.1.1996 and in the revised scale of Rs.4500-7000 w.e.f. 1.1.1996. The applicants

assailed this order on the ground that on completion of 7 years residency period in Group-II(2) in the year 1996 to 1997 they are entitled for their assessment promotion on completion of 7 years. Accordingly the respondents granted them the promotion from Group II(2) to Group-II(3) as their promotion was affected after 1.1.1996 and on account of merger of Group II(2) and Group II(3) they need to be assessed to the next higher grade, i.e., Group II(4) in the scale of Rs.5500-9000 on completion of the 7 years residency period, which they had completed during the period 1996-1997. It is further contended that the respondents are trying to confuse between the grade and the pay scales what has been projected in the circular is promotion relating to the pay scale but according to the MANAS promotion is to be higher grade along with upgradation to the higher scale. Accordingly the next higher scale of Rs.4500-7000 revised scale should be Rs.5500-9000. It is further contended that the change of pay scale and the change of grade are two separate matters and without any interconnection and nexus between them. The pay scales are revised and changed due to revision of pay scales and a fiscal inflatory of reasons to economy as recommended by the 5th Central Pay Commission whereas the applicants grade has to be changed due to their eligibility and are entitled of promotion after 7 years of service as per the departmental service rules. In this conspectus, it is contended that intermingling the scales and grades are highly unfair and arbitrary and discriminatory. It is also contended that as on 1.1.1996 the pre revised scales were non existent due to merger and intermingling of

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replacement scales of Rs.4500-7000 placing the applicants in the grade of Rs.1400-2300 w.e.f. 1.3.1997 is unconstitutional. It was also applied to the pre revised scale of Rs.1350-2200. It is also stated that it is relevant to consider to Group II(3) as on November 1996 to November, 1997 as the next scale of promotion which stands to Rs.5500-9000 and the applicants are entitled for promotion of Group-III for a scale of Rs.6500-10000 w.e.f. February, 1997 and 1996. According to the applicants as persons on Group II(2) were placed in pay scale of Rs.4500-7000 the promotion in pursuance of assessment, should have been given in the scale of Rs.5500-9000 on the corokkary of legitimate expectation.

5. On the other hand, learned senior counsel of the respondents, Shri Rajiv Dutta refuted contentions of the applicants and further contended that Group II is further divided in 5 grades and for eligibility for consideration to the next higher, one has to serve 7 years in each grade. According to him, vide letter dated 15.12.1997 the recommendations of the 5th Central Pay Commission was accepted by the respondents where pre revised pay scales of Rs.1350-2200 and Rs.1400-2300 have been given the revised scale of Rs.4500-7000. The respondents fix the pay scale of the applicants in the revised pay scale of pay and conducted the assessment for applicants and others on 4.3.1998 and declared the applicants to have been promoted for from Group II(2) (Rs.1350-2200) to Group II(3) (Rs.1400-2300) under the pre revised pay scales. According to the respondents after careful consideration of the matter,

the Governing body of the CSIR brought certain amendments to MANAS which were notified on 2.8.2000. According to this, the person would be eligible for consideration for assessment to the pre-revised scale of Rs.1640-2900 to the revised scale of Rs.5500-9000 on completion of 10.5 years of service as against the normal requirement of 14 years. It is explained that before amendment a person had to serve for 7 years of service in the scale of Rs.1350-2200 for promotion to Rs.1400-2300 and thereafter another 7 years in the scale of Rs.1400-2300 for promotion to Rs.1640-2900 as such as the requirement of residency period of 14 years had been reduced to 10.5 years and the financial benefit of this decision is made effective from 1.1.1996 or due date of completion of 10.5 years. According to the respondents there cannot be a merger of the two scales. What has been done by the 5th Central Pay Commission is the replacement of two pre revised scales. The question of merger of Group II(2) and Group II(3) has been denied on the ground that 5th Central Pay Commission is not competent to amend MANAS and no such amendment was notified before 2.8.2000. All which had been done is to brought revised scales of Rs.4500-7000 for two pre revised scales of Rs.1350-2200 and Rs.1400-2300. This would not amount to any merger as such the contention of the applicant that they should be promoted to Grade-II(4) is not supported by any rules. According to them the fixation of the pay of the applicant was made in the revised pay scales and notified on 4.2.1995 and their assessment to next higher grade was done on 4.3.1998. The process of assessment is complicated and was simultaneously carried out to other employees much

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before notification and acceptance of the 5th Central Pay Commission. This averment is corroborated by the fact that the notification dated 4.3.1998 speaks of only pre revised pay scales. According to the respondents, if the pay of the applicants had been fixed in pay scale of Rs.4500-7000, they have to serve another 7 years for eligible to Group II(4) in the scale of Rs.5500-9000. It is further pointed out that the stand of the applicants itself contradictory as, on one hand, they alleged that Group II(2) and Group II(3) got merged and on the other hand, they seek pay scale of Rs.5500-9000 in Grade II(3). According to them this grade ceased to exist. It is also contended that if affect is given to the promotion to Group II(3) as notified on 4.3.1998, their pay shall be fixed in Rs.4500-7000 and they have to wait for another 7 years for being eligible to be considered to Group II(4) in the scale of Rs.5500-9000. Most importantly, it is contended that 5th Central Pay Commission had not recommended the scale of Rs.5500-9000 as replacement of pre revised scale of Rs.1400-2300. It is lastly contended that pay scales cannot have overridden effect over the grades. Two promotional post can carry single pay scale. Had the applicant on the basis of notification dated 4.3.1998 fixed the pay of the applicants in Group-II(3) in the scale of Rs.4500-7000, the same would not be beneficial to them. MANAS does not contemplate that higher grade should contain a higher pay scale. According to the recommendations of the 5th Central Pay Commission the next higher grade of Rs.4500-7000 is Rs.5000-8000 and in the pre revised scale of Rs.1350-2200 and 1400-2300 was fixed in Rs.5500-9000.

As such one becomes eligible for the scale of Rs.5500-9000 in Group II(4) and this cannot be done with a backdoor entry.

6. In the rejoinder the applicants have reiterated the contentions taken by them in the OA. The applicants' counsel has taken the plea and reiterated that there had been a merger of pay scales of two groups which cease to exist and as such they are entitled for the assessment to Group II(4). It is contended that due to merger of two scales and consequent acceptance of respondents by fixing the pay of the applicants in the revised pay scale of Rs.4500-7000 w.e.f. 1.1.1996 the applicants are eligible and entitled for promotion to the next higher grade of Rs.5500-9000 in Group II(4). According to them, on fixing the pay of the applicants in this grade there is an automatic acceptance of the revised scale of Rs.4500-7000 w.e.f. 1.1.1996 and the next assessment promotion is to be done in the pay scale of Rs.5500-9000 after having residency period of 7 years, which the applicants had already completed in 1996-1997. According to them, assessment against the non-existence scales after 1.1.1996 is contrary to the law. The applicants further refuted the plea of the respondents that the decision arrived at in the meeting of Governing body is beneficial to them.

7. We have carefully considered the rival contentions of the parties and perused the material on record. The contention of the applicants' counsel is that the applicants were in Group II(2) w.e.f. March, 1990 in the pre-revised scale of Rs.1350-2200 and as

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the two pre-revised scales in the Group-II had been merged as on 1.1.1996 the only promotion which could be given to the applicants in Group-II(4) in the pay scale of Rs.5500-9000. To substantiate the plea, it is further stated that the applicants have been illegally placed in the scale of Rs.4500-7000 in the Group II(2) w.e.f. 1.1.1996 which is the revised version of pre-revised version of Rs.1400-2300 and 1350-2200. After merger and in absence of scale of Rs.1400-2300 the applicants cannot be placed in that and as they have already completed the residency period of 7 years as prescribed in the rules they should be brought promotion to Group II(3) with revised pay scale of Rs.5500-9000. On the other hand, the respondents' plea that the recommendations of 5th Central Pay Commission had only recommended the scale of Rs.4500-7000 as a replacement scales of two pre-revised scales and there is no merger of the two scales. As a result the gradings in Group II is not affected at all. The two pre revised scales now has a common replacement scale. In this view of the matter it has been shown that 5th Central Pay Commission has not recommended the pay scale of Rs.5500-9000 for the replacement scale of Rs.1400-2300. As such the applicants have no right to demand this scale for Group II(3). It is further contended on the part of the respondents that after amendment in the MANAS and reducing the residency period from 14 years to 10.5 years the applicants had been benefited rather prejudiced. The applicants have been made eligible for consideration for promotion to Group II(4) in the pay scale of Rs.5500-9000. It is also contended that according to the MANAS, the statutory rules governing

promotion of the applicants in different grades in Group II the minimum eligibility service is of 7 years in each grade. Before amendment, the applicants have to serve 7 years in the pay scale of Rs.1350-2200 and therefore another seven years in the scale of Rs.1400-2300 for promotion to pre revised scale of Rs.1640-2900 and the fact remains that the scale of Rs.4500-7000 is a replacement scale of the two pre revised scales and the scales are not merged at all. According to the respondents, 5th Central Pay Commission is not competent to amend the MANAS. We agree with the contentions of the respondents' counsel. In our considered view what has been done in the 5th Central Pay Commission, which is accepted by the respondents is grant of a common replacement scale to the two pre revised scales which does not amount to merger of the pay scales in Group II as contended by the applicants' counsel. The recommendations of the 5th Central Pay Commission will not have any overriding effect of amending the statutory rules framed by the respondents where inter-alia one of the eligible criteria is to have served in each grade for a period of 7 years in order to qualify for the next grade. In our considered opinion, the grades are not at all affected by the recommendations of the 5th Central Pay Commission. Apart from it there is nothing illegal if the two grades have the same revised pay scale. In our view, if the fact given to the promotion to the Group II(3) of the applicants notified on 4.3.1998 their pay scales are to be fixed in the scale of Rs.4500-7000 and they will have to wait for 7 years for being eligible for consideration to Group-II(4) in the pay scale of Rs.5500-9000 but

with a view to benefit the applicants, persons eligible for consideration for promotion to Group II(4) in the scale of Rs.5500-9000 normally a requirement of residency period of 14 years, which have been reduced to 10.5 years. The 5th Central Pay Commission has recommended the scale of Rs.5500-9000 as replacement of scale of two pre-revised merger scales of Rs.1400-2300 and 1350-2200, the applicants have no right to demand this revised scale for Group - II(3). If the intention of the 5th Central Pay Commission was to merge the scales then the next higher scale equivalent to scale of Group II(3) is 4500-7000 is Rs.5000-8000 and not Rs.5500-9000. The applicants have to be eligible for scale of Rs.5500-9000 attached to Group II(4) and cannot get a back door entry by over coming this criteria.

8. As far as the challenge to the legality of the provisions of the MANAS the notification which had been issued is rather beneficial to them reducing the residency period and the same cannot be termed as illegal or arbitrary.

9. The contention of the applicants that on account of merger of two scales and consequent decision of the respondents to fix their pay in the scale of Rs.4500-7000 w.e.f. 1.1.1996 they become entitled for Rs.5500-9000 in Group II(4) amounts to automatic acceptance of replacing scale of Rs.4500-7000 w.e.f. 1.1.1996. As we have already held that there cannot be a question of merger of scales, and only replacement scale to pre revised scales was accepted by the respondents on the basis of

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the 5th Central Pay Commission the applicants cannot claim assessment for Group II(4) without undergoing the residency period which is statutory under the rules in Group II(3). The applicants have to first come to Group II(2) then Group II(3) and thereafter to qualify for Group II(4) after getting them eligible in accordance with the statutory rules. As the residency period to the promotion in assessment in Group II(4), 14 years are required as residency period, the action of the respondents by reducing the same to 10.5 years is a rather beneficial step and the same cannot be faulted with.

10. Yet another contention of the applicants that after 1.1.1996 there cannot be an existence of pre-revised scale of Rs.1350-2200 and Rs.1400-2300 as they had been merged into Rs.4500-7000 placing the applicants in the scale of Rs.1400-2300 w.e.f. 1.3.1997 is not only illegal but also is not correct. As per para 2.2.2. revised MANAS the applicants belong to Group II(2) and are to be promoted to Group II(3) in the pay scale of Rs.1400-2300 as such they had been rightly promoted to Rs.4500-7000 on the recommendations of the 5th Central Pay Commission as the applicants have not completed the maximum number of years of residency period in the pre revised scale of Rs.1400-2300 as this scale had not been merged, they were eligible for promotion as Group II(3) in the pay scale of Rs.4500-7000. The employees only Group II(3) who were having the pay scale of Rs.1400-2300 prior to 1.1.1996, Rs.4500-7000 after 1.1.1996 shall be entitled to place in the pay scale of Rs.5500-9000 on their assessment promotion on completion of 7 years

combined service in pre revised scales. As such Group II(3) pre revised cannot be made equivalent to revised pay scale of Rs.5500-9000.

11. In this view of the matter and having regard to the reasons and discussions made above, we find no infirmity in the letter issued by the respondents on 2.8.2000. The OA is accordingly found bereft of merit and the same is dismissed but without any order as to costs.

(SHANKER RAJU)
MEMBER(J)

/RAO/

(V.K.MAJOTRA)
MEMBER(A)

Attested

By

16/3/2001

C.O.

C-IV