

9

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 1212/98
OA No. 1213/98
OA No. 1214/98

New Delhi, this the 13th day of October, 1998

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

OA No. 1212/98:

1. Baldev Raj s/o Late Sh. Brij Lal Sharma
r/o J-69, Arya Samaj road,
Uttam Nagar, New Delhi.
2. M.K. Sinha s/o Late Sh. Birendra Kr.
r/o RZ 174, Raj Nagar-I,
Gali No. 9, Palam,
New Delhi.
3. Shashi Kala w/o T.S. Loi
r/o Sector XII, 540, R.K. Puram
New Delhi.
4. Vijay Abrol s/o Brij Mohal Abrol
r/o G-613, Sarojini Nagar,
New Delhi.
5. Ganga Devi Gupta w/o Rajesh Gupta
r/o 95, Safdarjung Enclave,
New Delhi.
6. R.K. Chadha s/o S.S. Chadha
r/o C-4-D/67B, Janakpuri,
New Delhi.
7. Saroj Bala Bhatnagar w/o U.C. Bhatnagar
G-256, Nauroji Nagar,
New Delhi.
8. Anil Shanker Yagnik s/o R.S. Yagnik
H 1/2c Krishna Nagar, New Delhi.
9. S.P. Nagal s/o Shyam Sunder Lal
G-2307, Netaji Nagar, New Delhi.
10. R.K. Vadhera s/o P.L. Vadhera
D-501, Sarojini Nagar, New Delhi.
11. S. Kashyap w/o Ashok Kashyap
A/25, Kesho Ram Park, Bindapur,
Pocket 3, New Delhi.
12. Shanti Sharma w/o B.B. Sharma
AG-1, 165D, Vikaspuri,
New Delhi.
13. Versha Sahani w/o S.L. Sahani
2158-A, Guru Arjun Nagar,
New Delhi.

[Signature]
13.10.98

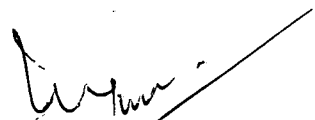
14. G.K. Bhatia w/o Sh. R.S. Bhatia
Qr.No. 9B Jangpura Extn., Near Eros Cinema
New Delhi.
15. Jyoti Kalia w/o U.D. Kalia
Sector V. 700, Pushap Vihar,
Saket, New Delhi.
16. Vidya Vanti w/o M M Malhotra.
AE/163, Shalimar Bagh,
New Delhi.
17. Chanchal Dhingra w/o R.G. Dhingra
B-1/43. Lajpat Nagar, New Delhi.
18. Ranjit Nokwal w/o Sukhdev Singh
r/o Sector IV 1236, R.K. Puram, New Delhi
19. P.K. Khosla w/o Sh. V.M.S. Khosla
r/o Seector No. 34, H.No. 161.
Him Giri Apartments, NOIDA.
20. Asha Sethi w/o N.K. Sethi,
678,, Bhai Parmanand Colony,
West Mukherji Nagar, New Delhi.
21. Janak Chadha w/o Prem Nath Chadha
r/o New Four Storey, Q.No. 27,
Vishal Enclave, Rajori Garden
Police Station, New Delhi.
22. Raman Kanta w/o K.L. Wasan
r/o E-41, Kotla Firozshah
New Delhi.
23. D.K. Sinha s/o Sh. I.P. Sinha
r/o RZ-39D, Gali 6, Rajnagar-I
Palam, New Delhi.
24. Goldiba Xalxo w/o Daniel Xalxo,
r/o Sec. 7, Q.No. 16, R.K. Puram,
New Delhi.

OA No. 1213/98

1. Mrs. Nirmaljeet Kaur w/o Dilbagh Singh
r/o Type II 92, North West Moti Bagh,
New Delhi.
2. Mrs. Urmil Jaitely w/o Sh. K.K. Jaitely,
r/o D-535 Sarojini Nagar
New Delhi.
3. Mrs. Swarn Prabha w/o Sh. J.K. Bhanot.
r/o RB-A-18 Sector VI, R.K. Puram,
New Delhi.

OA No. 1214/98

1. Rakesh Nayyar s/o Sh. S.S. Nayyar,
r/o 2A/3, Geeta Colony,
New Delhi.



2. O.P. Meena s/o Shri Krishan Lal Meena
r/o D-300, Gali No. 9, Shad Nagar.
Palam, New Delhi
3. R.Bhagat s/o Sh. Dev Nath Bhagat
r/o H.No. 60, Maidan Garhi, Nai Colony,
New Delhi.
4. Santosh Kumari w/o late Shri Satbir Singh,
r/o vill. Ghijhi, Distt. Rohtak. ... Applicants

(By Advocate: Shri Deepak Verma)

Versus

1. The Secretary,
Deptt. of Statistics,
Ministry of Planning & Prog. Impl.
Govt. of India, Sardar Patel Bhawan,
Sansad Marg, New Delhi.
2. The Secretary,
Deptt. of Expenditure,
Min of Finance,
Govt. of India, North Block,
New Delhi.
3. The Executive Director,
Computer Centre, Deptt. of Statistics,
East Block 10, R.K. Puram.
New Delhi. ... Respondents

(By Advocate: Shri Gajendra Giri)

O R D E R (ORAL)

delivered by Hon'ble Shri T.N.Bhat, Member (J)

We have heard Sh. Deepak Verma, counsel for applicant and Sh. Gajendra Giri, counsel for respondents in these three cases which involve a common question of facts and law to be adjudicated upon. These cases are, therefore, being disposed of by this common judgement.

2. The applicants in OA-1212/98 who were earlier placed in the pay scale of Rs. 1400-2300 are working as Data Entry Operators. After the acceptance of the recommendations of the Vth Pay Commission the respondents placed the applicants in the pay scale of Rs.5000-8000. By the impugned order dated 29.4.98 the

[Signature]

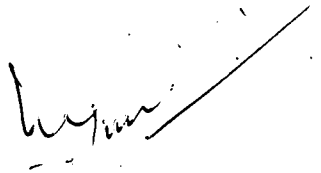
12

(4)

respondents have reduced their pay and have re-fixed them in the pay scale of Rs.4500-7000 on the ground that according to the respondents the pay scale of Rs.5000-8000 was inadvertently given to the applicants. According to the Id. counsel for the applicants the respondents apart from reducing the pay scale of the applicants have started recovery of the amount allegedly paid in excess to the applicants. However, it may be mentioned that by the interim order passed by this Tribunal on 19.6.98, which continues to be in force even now, the respondents have been restrained from effecting the recovery of the excess amount.

3. The applicants in OA 1213/98 are working as Electronic Data Processing Assistants Grade 'A' who prior to the revision of pay scales were working in the pay scale of Rs.1000-1650. They are assailing the order dated 27.4.98, as at Annexure A-1, by which their pay has been reduced w.e.f. 2.4.96 to 26.8.97 i.e. from the date of their ad hoc promotion to the date of restructuring of Electronic Data Processing staff and for the aforesaid period they have been placed in the pay scale of Rs.4500-7000.

4. In the third OA viz. OA-1214/98 some persons working as Data Entry Operator Grade 'A' in the pre revised pay scale of Rs.1150-1500 have assailed the order dated 22.4.98 by which their pay scale has been reduced to Rs.3050-4500 on the ground that the revised pay scale of Rs.4000-6000 had been inadvertently given to them earlier.



5. It is not disputed that before passing the orders impugned in these OAs, no show cause notice was given to the applicants. The contention of the respondents is that since the applicants had given an undertaking that in case any excess payment was found due to them they would refund the same to the Government either by adjustment against future payments or otherwise, there was no need for giving a show cause notice. The further contention of the respondents is that the higher pay scales inadvertently granted to the applicants in these OAs would have been admissible only if certain conditions were fulfilled. In this regard reliance is placed upon the recommendations of the Vth Pay Commission. It appears that while recommending the higher pay scales the Pay Commission had suggested that appropriate amendments should be made in the Recruitment Rules and restructuring etc. should be done before the higher pay scales are granted instead of the normal replacement pay scales. During the course of his arguments the learned counsel for the applicant in these OAs has referred to a number of documents and has contended that rationalisation of pay scales and the requisite restructuring etc. had already been done by the respondents. He further refers to the office memorandum dated 30.6.98 issued by the Ministry of Planning and Programme Implementation, Department of Statistics, Government of India according to which the higher replacement scales was to be extended retrospectively w.e.f. 1.1.96 in cases where rationalisation or restructuring had already been done and prospective introduction of the higher replacement scales could be done in those cases where restructuring of cadres or redistribution of posts was called for. In reply, the

Signature

(6)

learned counsel for respondents states that the necessary steps which would entitle the applicants in the OAs to the higher replacement scales having as impugned additional and that so far the applicants would be entitled to get only the normal replacement scales and not the higher scales recommended by the Vth Pay Commission and accepted by the Government.

6. After giving our careful consideration to the contentions made at the Bar we are of the considered view that the impugned orders cannot be allowed to stand. This is so on the ground that the applicants have not been afforded any opportunity to show cause why these orders which adversely affect them should not be passed. We also do not find ourselves in agreement with the learned counsel for the respondents that the case set up by the applicants in these OAs is entirely without foundation. We find that the matter involves substantial questions which need to be addressed by the respondents before they can take any final decision in the matter. This can be done only after the applicants are afforded reasonable opportunity to make representations and explain their position. We further feel that it would be hard on the applicants if their pay is reduced without granting them any opportunity in this regard.

7. In the event, all the three OAs are allowed, the impugned orders reducing the pay of the applicants in the respective OAs are quashed and the respondents are hereby directed to take a fresh decision in the matter after considering all the facts and circumstances and after affording the applicants in these

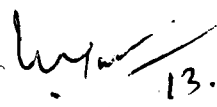
(7)

cases adequate opportunity to make representations and to explain their position. We further direct that till the time the final decision is taken by the respondents the applicants shall continue to be paid salary according to the higher replacement scales which had earlier been granted to them provided an undertaking given by them to the effect that if eventually the matter is decided against them they would refund the excess payment in lump sum.

8. As regards the applicants in OA 1213/98 we specifically make it clear that if any recovery has been effected from the applicants the same shall be refunded to them and they shall further be afforded opportunity to represent their case afresh.

9. With this order the OA is disposed of, leaving the parties to bear their own costs.


(S.P. BISWAS)
Member (A)


13.10.98.
(T.N. BHAT)
Member (J)