

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 1374/98

Date of Decision: 6.11.1998

All India Association of Petitioners
Asstt. Supdt. (1), NSSO, FOD

(By Advocate: Sh. A. K. Sikri with Sh. V. K. Rao)

VERSUS

Secretary, Deptt. of Statistics Respondents

(By Advocate: Sh. K. R. Sachdeva for respondents

By Advocate: Sh. K. L. Bhandula &
Sh. Pradeep Srivastava for interveners)

CORAM

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

Hon'ble Shri S. P. Biswas, Member (A)

1. To be referred to the Reporter or not? *for*
2. Whether it needs to be circulated to other
Benches of the Tribunal? *AD*

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

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 1374/98

(3)

New Delhi, this the 6th day of November, 1998

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

In the matter of:

1. All India Association of
Asstt. Supdt. (1), NSSO, FOD,
Dept. of Statistics,
Ministry of Planning & Programme
Implementation, through its
General Secretary,
16-2-21 Old Post Office St.
Purnanandampet, Vijaywada (AP).

2. Shri C.M. Tiwary,
Asstt. Supdt., NSSO, FOD
Ministry of Planning &
Programme Implementation,
4/19, Asaf Ali Road,
New Delhi.

(By Advocate: Sh. A.K. Sikri alongwith
Sh. V.K. Rao)

.... Applicants

Vs.

1. Union of India
through Secretary
Dept. of Statistics,
Ministry of Planning &
Programme Implementation,
Sardar Patel Bhavan
Sansad Marg, New Delhi.

2. Chief Executive Officer,
National Sample Survey Organ.
Dept. of Statistics,
Sardar Patel Bhavan,
Sansad Marg,
New Delhi.

3. The Director,
National Sample Survey Orgn.
(Field Operation Division)
Pushpa Bhavan,
New Delhi - 110062.

4. The Secretary,
Dept. of Expenditure
Ministry of Finance,
North Block,
New Delhi.

.... Respondents
(By Advocate: Sh. K.R. Sachdeva for respondents
Sh. K.L. Bhandula & Sh. Pradeep Srivastava
for two groups of intervenors.)

6.11.98

ORDER

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

The Vth Central Pay Commission while considering the question of revising the pay scales of the employees working in the National Sample Survey Organisation (NSSO, for short) made the following recommendations in paras 81.16 and 81.17 of their report:-

"81.16 - There are currently 1713 sanctioned posts of Assistant Superintendent (Rs.1600-2660) and 1453 sanctioned posts of Investigators (Rs.1400-2300) in the Field Operation Division 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, however, is not in favour of the merger. Having examined the qualifications and duties and responsibilities of Investigator and Assistant Superintendents we recommend the upgradation of Investigator and Assistant Superintendent 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 (pre-revised). The entrants

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in this scale would move through the scales of Rs.1640-2900 and Rs.2000-3500 in a time bound manner.

81.17 - A large number of posts of Junior and Senior Statistical Investigators in the scales of Rs.1400-2300 and 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 statistical service and all recruitment to the feeder posts in India Statistical Service be centralized and placed under the ISS Cadre Controlling Authority. All posts of Junior Statistical Investigator in the scale Rs.1400-2300 be upgraded and given the replacement scale of Rs.1600-2660. All Junior Statistical Investigators/Statistical Assistants in the scale of Rs.1400-2300 will henceforth be called Statistical Investigators Grade-II. All posts of Senior Statistical Investigators/Assistants at present in the pay scale of Rs.1640-2900 may be given the replacement scale of Rs.2000-3500 and be called Statistical Investigators Grade-I. At a level of Statistical Investigator Grade-II, recruitment may be taken up with

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graduation in statistic as the minimum qualification. The entrants in this 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."

2. It, however, appears that even after acceptance of the Commission's report by the Government the ordinary replacement scale of Rs.5500-9000 which was admissible to the Assistant Superintendents in NSSO who are the Applicants herein was not granted to them. They, accordingly, filed OA-647/98 in this Tribunal. However, during the pendency of that OA the aforesaid revised pay scale was granted to them and when the matter came up for hearing before the Bench of the Tribunal on 21.7.98 the counsel for the respondents in that OA prayed for dismissal of the OA on the ground that the relief sought for had already been granted to the applicants therein. The counsel for the applicants in that OA, however, stated that some grievance still remained, in that, the further upgraded scale of Rs.6500-10,500 had not been given to the Assistant Superintendents while the same had been given to other categories in CSO like Senior Statistical Investigators and Statistical Assistants, etc. But the Tribunal held that for claiming the said relief the applicants would have to file a fresh OA. The counsel for

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the applicants in that OA, therefore, sought permission to withdraw the OA. Permission was granted and the OA was disposed of in terms of para 5 of that order by which liberty was specifically granted to the applicants in the OA to file a fresh OA in accordance with law, if so advised.

3. This OA has now been filed by the All India Association of Assistant Superintendents NSSO in Field Operations Division (FOD, for short) assailing the Office Memorandum issued by Resp. No.1 on 30.6.98 by which Sr. Investigators, Sr. Statistical Investigators and Statistical Assistants in the Central Statistical Organisation and other participating Ministries have been given the upgraded scale of Rs.2000-3500 and the replacement scale of Rs.6500-10,500. This action of the respondents is assailed mainly on the ground that according to the recommendations of the Vth Central Pay Commission the said upgradation could have been done only after constitution of Subordinate Statistical Service which, when constituted, would give entry to the applicants and similarly situated persons from the NSSO into that Service, entitling them also to the benefit of the higher replacement pay scale of Rs.6500-10,500. According to the applicants, without constituting the subordinate statistical service the grant of the upgraded pay scale of Rs.2000-3500 to Sr. Statistical Investigators and Others is illegal, arbitrary and an outcome of malafide intention to favour the holders of the said posts. The applicants are particularly aggrieved by the contents of para 3 of the OM dated 30.6.98 wherein it has been mentioned that according to the observations of



the Implementation Cell constituted by Department of Expenditure, Ministry of Finance, the process of constitution of the subordinate statistical service as well as the centralisation of recruitment to the feeder post in the Department of Statistics as recommended by the Vth Central Pay Commission is likely to be time consuming, it would suffice if the changes recommended in the mode of recruitment to the posts in the Field Operation Division and other statistical function posts and the consequential amendments necessary to the relevant recruitment rules are formally accepted and that once this is done the higher replacement scales for these posts can be extended retrospectively w.e.f. 1.1.96. The Implementation Cell had further observed that prospective introduction of the higher replacement scales recommended for various posts by the Vth Central Pay Commission would arise only in those cases where restructuring of cadres or redistribution of posts is involved. This, according to the applicants, is a totally erroneous interpretation given by the Implementation Cell and accepted by the respondents. It is contended by the applicants that grant of the higher pay scale of Rs.6500-10,500 (pre-revised Rs.2000-3500) before the constitution of the subordinate statistical service would amount to upgrading the scale of Rs.5500-9000 (pre-revised Rs.1640-2900) which was never envisaged in the recommendations of the Pay Commission.

4. On 4.8.98 when this matter came up for the first time for hearing on admission we heard the learned counsel for the applicants at length and directed issuance of notice to respondents on admission. A short notice was also directed to be issued on the question of interim

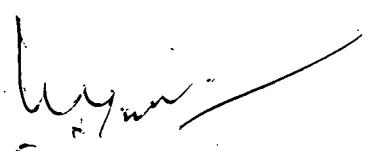
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relief returnable on 18.8.98 and till that date, as an interim measure, the respondents were directed to maintain status quo in respect of the replacement scale already granted and we further stayed the operation of the impugned order dated 30.6.98, in so far as it gave a higher pay scale to Sr. Investigators etc. The interim order continued to be in operation.

5. Two groups of people belonging to the categories of employees who are adversely affected by the interim order and / are also likely to be affected by the final order that may be eventually passed in this OA later came forth with applications for intervention. These two groups of employees are represented by S/Sh. K.L.Bhandula and Pradeep Srivastava.

6. The official respondents as also the interveners have in their respective counters filed to the main OA vehemently opposed the continuance of the interim order and have laid much emphasis on the point that paras 81.16 and 81.17 ibid separately deal with applicants on the one hand and the persons belonging to the categories of Sr. Investigators and Statistical Assistants etc., on the other and that therefore the applicants have no locus standi to assail the impugned OM dated 30.6.98. They have further relied upon some instructions/clarifications issued by the Department of Expenditure according to which the decision was taken to grant higher replacement scales to the aforesaid categories even without constituting the subordinate statistical service. An attempt has also been made to find fault with the interim order granted by the



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Tribunal on 4.8.98 and it has been contended that the said interim order is unjustified and should not be allowed to continue.

7. Since the pleas raised by the parties in their main pleadings are the same as have been raised by them on the question of interim relief the learned counsel for both the parties agreed that this OA may be disposed of at the admission stage itself. They accordingly made their submissions on the merits of the case as also on the question of interim relief. We accordingly propose to dispose of the OA itself at the admission stage.

8. During the course of their arguments the learned counsel for the official respondents as also those representing the two sets of interveners argued quite emphatically that para 81.17 of the Vth Central Pay Commission Report would not cover the Assistant Superintendents in NSSO of FOD as para 81.16 specifically covers them. However, it is not disputed that at present people belonging to the NSSO in the FOD are also included in the feeder cadre for promotion to the Indian Statistical Service (ISS, in short). Much emphasis has been laid by the respondents on the eligibility list issued on certain occasions in the past by the respondents giving the names of the persons found eligible for consideration to be promoted to Grade IV of the ISS. It has been argued that only Superintendents, and not Assistant Superintendents, are included in the feeder cadre. While making this contention the respondents and the interveners seem to forget that at the relevant time the Assistant Superintendents were only in the grade of

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Rs.1600-2660 and now by operation of the recommendations contained in para 81.16 they have been upgraded to the scale of Rs.1640-2900.

9. It is true that Senior Statistical Investigators/Assistants were already working in the grade of Rs.1640-2900 and were, therefore, included in the feeder cadre for being considered for promotion to the lowest scale in ISS. Since admittedly the Assistant Superintendents have also now been giving upgraded scale of Rs.1640-2900, they had a reasonable expectation of being included in the feeder cadre as and when the recruitment rules would be appropriately amended as recommended in para 81.17. That being so the contention of the respondents that the applicants have no case in this OA has to be rejected. It is on this ground that the learned counsel for the respondents had vehemently disputed the correctness of the interim order passed by us. As already mentioned, the contention of the respondents that the applicants who belong to the category of Assistant Superintendents could never expect to be included in the feeder cadre for promotion to the Grade IV of ISS does not appear to be correct.

10. It is in the above background that the question as to whether amendment/framing of the recruitment rules for constituting Subordinate Statistical Service was a pre-condition before the upgraded pay scale of Rs.2000-3500 could be given to the Senior Investigators and others assumes importance. In this regard, the applicants have relied upon the Ministry of Finance, Notification GSR 569 (E) dated 30.9.97. This notification

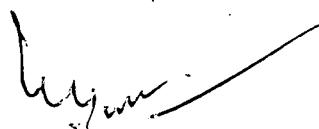
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contains the statutory rules called the Central Civil Services (revised pay) Rules 1997 ^{which} ~~and~~ have been framed under Article 309 read with Clause (5) of Article 148 of the Constitution of India. These rules have been issued in the name of the President of India. In para 'C' of these rules it is specifically mentioned that those cases where conditions such as changes in recruitment rules etc. have been prescribed by the Pay Commission it will be necessary for the Ministries to decide upon such issues and agree to the measures suggested by the Pay Commission before applying these rules w.e.f. 1.1.96. These rules further make a mention of the fact that it is implicit in the recommendations of the Pay Commission that such scales necessarily have to take prospective effect and the concerned posts will be governed by the ordinary replacement scales until then.

11. It appears that the concerned department, namely, the Department of Statistics in the Ministry of Planning and Programme Implementation had also issued an Office Memorandum on 14.10.97 (Annexure D to MA-1791/98) in which it was stated as follows:-

"As stated above, at present the statistical function posts in the scale of pay of Rs.1640-2900 (Group 'B') which have no direct line of promotion alone have been recognised as feeder posts for the purpose of promotion to Grade IV (JTS) of ISS. The replacement scale accepted by the Government, based on the Vth Pay



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Commission's recommendations, in respect of the scale of pay i.e. Rs.1640-2900 is Rs.5500-9000.

"In view of the position stated above, the Ministry of Agriculture, Ministry of Finance etc. are requested to ensure that the upgradation of scales of pay recommended by the Fifth Central Pay Commission in respect of Group 'C' and Group 'B' statistical function posts (including those which are presently recognised as feeder posts for promotion to Grade IV of ISS and other statistical function posts which may form part of the Subordinate Statistical Service) are not allowed until the Government has taken a decision on the recommendation of the Pay Commission for creation of a Subordinate Statistical Service. Pending a suitable decision on the Pay Commission's recommendation regarding creation of a Subordinate Statistical Service, the holders of the Group 'C' and Group 'B' Statistical function posts (referred to above) are given the replacement scales with reference to their existing scales of pay (i.e. the ones as accepted by the Government on the basis of the 4th Pay Commission's recommendations)."

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"It may be noted that if any Ministry etc. allows the upgraded replacement scale (i.e. Rs.6500-10500) in respect of statistical function posts which are in the scale of pay of Rs.1640-2900 (pre-revised) and which have been recognised as feeder posts for promotion to Grade IV of ISS, these posts, in principle, will stand de-recognised for the purpose of promotion to Grade IV of ISS on account of their being in the scale of pay Rs.6500-10500 (revised) higher than the scale of pay of Rs.5500-9000."

12. Another Office Memorandum (Annexure R-4) was issued by the same Department, namely, the Department of Statistics on 23.10.97 in which the matters referred to in paras 81.17, 81.15 and 81.16 were discussed and it was stated that until and unless the Subordinate Statistical Service is constituted some anomalies would arise if the upgraded pay scale of Rs.6500-10500 is granted to some of the categories of posts performing statistical functions as recommended in para 81.17 of the Vth Pay Commission's report. The anomalies likely to arise were enumerated in Para 6 of this O.M.

13. This view taken by the Department of Statistics extracted hereinabove is, in our considered view, the correct interpretation of the 5th Pay Commission's Report on the subject and ought to have been accepted by all concerned. It, however, appears that the Implementation Cell in the Ministry of Finance, Department of Expenditure by their communication on the subject dated

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4.5.98 (copy at Annexure R-5 to the counter reply of the official respondents) took a contrary view. In para 3 of this communication the Implementation Cell expressed the view that the Constitution of the Subordinate Statistical Service had not been specifically prescribed as a condition precedent for the grant of higher replacement scales of pay for the posts of Senior Statistical Investigators/Assistants and analogous posts in the various Ministries and Departments. Again, the reason given was that the process of constitution of the Subordinate Statistical Service as well as the centralisation of recruitment to the feeder posts in the Department of Statistics as recommended by the Pay Commission was likely to be time consuming. It was accordingly suggested that the changes recommended in the mode of recruitment to the posts in the Field Operations Division and other statistical function posts and the consequential amendments necessary to the relevant recruitment rules may be formally accepted with the approval of the competent authority by the departments concerned which, significantly, included the Department of NSSO and the Department of Statistics as also the other participating Ministries/Departments. This communication was in reply to the OM dated 23.10.97 ibid issued by the Department of Statistics, Ministry of Planning and Programme Implementation.

14. The learned counsel for the applicants has been at great pains to emphasise that the Department of Expenditure could not by the aforesaid executive order/letter amend or alter the statutory rules issued under Article 309 of the Constitution. It may be recalled

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that the statutory rules were the Central Civil Services (revised pay) Rules 1997 issued vide notification dated 30.9.97 and, as already indicated, in those rules there was a specific mention of the fact that before applying the upgraded scales of pay in cases where the condition had been put by the Vth Central Pay Commission relating to change in recruitment rules, restructuring of cadres, redistribution of posts etc. the higher replacement scales could be given only after the said conditions had been fulfilled. We are in agreement with the contention of the learned counsel for the applicant that without constituting the Subordinate Statistical Service the higher replacement scales could not be given to the Senior Statistical Investigators and others. It is now well-settled that mere statutory instructions cannot have the effect of altering or amending the main statutory rules. Statutory instructions can be issued only to supplement and not to alter the main rules.

15. It has also been vehemently contended by the learned counsel for the respondents that the Courts/Tribunals should not interfere with the recommendations of expert bodies like the Pay Commission. The correctness of this proposition cannot be disputed but in the instant case the applicants are not disputing the recommendations of the Vth Pay Commission but are only aggrieved by the wrong interpretation given by the respondents and the consequent action taken by them in granting higher pay scales to some posts without implementing the recommendations of the Vth Pay Commission for constituting Subordinate Statistical Service before granting the higher pay scales.

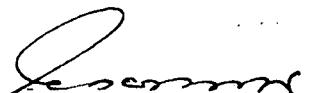
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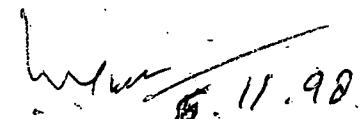
16. In view of all that has been held and discussed above, we find much merit in this OA. The contentions raised by the respondents, as indicated above, are based upon an erroneous interpretation of the recommendations of the Vth Central Pay Commission and are contrary to the provisions of the Statutory rules, namely, the Central Civil Services (Revised Pay) Rules, 1997.

17. In the result, we allow the OA and hereby quash the impugned Office Memorandum dated 30.6.98 so far as it relates to giving higher replacement scale of Rs.6500=10,500 to Senior Investigators/Senior Statistical Investigators and others. We further direct the respondents to consider expeditiously the question of constituting the Subordinate Statistical Service as a pre-condition for granting the said higher pay scale and till the constitution of that Service to give to the Senior Investigators, Senior Statistical Investigators and others the normal replacement scale recommended by the Pay Commission. As far as practicable, a decision on the question shall be taken within three months from the date a copy of this order is received by the respondents.

18. The OA is disposed of in terms of the above order, leaving the parties to bear their own costs.



(S.P. BISWAS)
Member (A)



(T.N. BHAT)
Member (J)

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