

Central Administrative Tribunal, Principal Bench

Original Application No.46 of 1998

(13)

New Delhi, this the 8<sup>th</sup> day of September, 2000

Hon'ble Mr. S. R. Adige, Vice Chairman(A)  
Hon'ble Mr. Kuldip Singh, Member (J)

1. K.S. Dhingra  
S/o Shri S. Santokh Singh Dhingra  
R/o B-208 F, Gali No.2,  
Majlis Park,  
Delhi-110 033.
2. D.S. Chopra  
S/o Late Shri S. Sohan Singh Chopra  
R/o 345, Deepali Enclave, Pitampura,  
Delhi-34.
3. B. Gopinath  
S/o Shri K.S. Bhaskaran Nair  
R/o 1354, Sector-12, R.K. Puram,  
New Delhi-110 022.
4. A.K. Laroiya  
S/o Late Shri J.R. Laroiya  
R/o A-475, Sector 19, Noida-201301.
5. T.S.R. Swamy  
S/o Late Shri Prakasa Rao,  
R/o Z-13, Sarojini Nagar,  
New Delhi-23.
6. R.K.D. Mangal  
S/o Late Shri Jia Lal  
R/o CC/22D, Hari Nagar, Clock Tower,  
New Delhi-64.
7. J.A.R. Moorty  
S/o Late Shri J.S. Moorty  
R/o 4/62 W.E.A., Karol Bagh,  
New Delhi-110 005. - Applicants  
(all employed as Civilian Staff Officers,  
under Ministry of Defence)

(By Advocate - Applicant No.1 in person)

Versus

1. Union of India  
through Secretary to the Government of India, Ministry of Defence, DHQ PO,  
New Delhi-11.
2. Secretary to the Government of India,  
Ministry of Finance,  
(Department of Expenditure),  
North Block,  
New Delhi-110 001.

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3. Joint Secretary (Training) & Chief  
Administrative Officer,  
Ministry of Defence, C-II Hutsments,  
Dalhousie Road,  
DHQ PO, New Delhi-110 011. - **Respondents**

(By Advocate - Shri Rajinder Nischal)

O R D E R

**Mr. S.R. Adige, VC (A)**

Applicants impugns Annexure A-1 order by which applicant No.1's pay in the revised scale of Rs.10,000-15,200/- has been fixed at Rs.11,950/- p.m. w.e.f. 1.1.96, without taking into account D.A. @ 148% of his basic pay as on 1.1.96 as a part of his existing emoluments, ~~which they contend violates~~, which he contends violates his fundamental rights and renders the provision of civilians in Defence Services (Revised Pay) Rules as unconstitutional, discriminatory, arbitrary, ultra vires and void ab initio.

2. Initially applicant No.1 alone had filed this O.A. but subsequently upon orders dated 15.12.98 passed on M.A. No. 2348/98 and 2349/98, other applicants were also allowed to be added as applicants.

3. Applicant No.1 was appointed as a Civilian Staff Officer on 1.11.83 and was authorised a basic pay of Rs.1100/- in the pay scale of Rs.1100-1600. The 4th Pay Commission's recommendations which came into force w.e.f. 1.1.86 recommended a replacement scale of Rs.3000-4500 in

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place of Rs.1100-1600. Applicant No.1 himself states in Paragraph 4.6 of his O.A. that in Chapter 13 of its report the 4th Pay Commission, on the question of payment of D.A. had recommended that the compensation should provide full neutralisation on account of price rise to employees drawing basic pay upto Rs.3500/- p.m.; 75% to those getting basic pay between Rs.3501 to Rs. 6000/- p.m. and 60% to those drawing pay more than Rs.6000/- p.m. subject to marginal adjustments. The neutralisation on account of price rise was to be shown as a distinct element of remuneration. The D.A. was being sanctioned to Central Government employees in accordance with Resolution dated 13.9.86.

4. It is further stated that subsequently the Central Government set up the 5th Pay Commission, and its recommendations, in so far as applicants are concerned, have been implemented w.e.f. 1.1.96 in terms of the Civilians in Defence Services (Revised) Pay) Rules, 1997 (Annexure A-2). By these Rules Government has sanctioned a scale of Rs.10000-15200/- as a replacement scale of Rs.3000-4500. It is stated that the 5th Pay Commission has recommended full neutralisation on account of price rise for the employees at all levels and the said recommendations have been accepted by Government and all civil servants are being sanctioned D.A. at uniform rates.

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5. It is further stated that in the meanwhile Central Government employees were sanctioned D.A. at the following rates w.e.f. 1.1.96 at index average 1510 (1960=100) in terms of Finance Ministry O.M. dated 20.3.96 in keeping with the 4th Pay Commission's recommendations.

<u>Pay Range</u>	<u>Rate of monthly D.A. payable</u>
i) Basic pay upto Rs.3500/- p.m.	148% of pay
ii) Basic pay above Rs. 3500/- p.m. & upto Rs.6000/-	111% of pay subject to minimum of Rs.5180 p.m.
iii) Basic pay above Rs. 6000/- p.m.	96% of pay subject to a minimum of Rs.6660/- p.m.

6. Applicant No.1 states that he was drawing the following emoluments on 1.1.96 in the pre-revised scales

Basic Pay	Rs.4250/- p.m.
DA	Rs.5180/- p.m. (representing 148% of Rs.3500/- and 122% of applicant's basic pay)
Interim Relief	Rs.525/-

7. Applicant No.1 asserts that based on the above emoluments, his pay has been fixed at Rs.11950/- p.m. in the revised scale of Rs.10000-15200, but while doing so full compensation on account of price rise i.e. DA of 148% of his basic pay of Rs.4250/-

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p.m. has not been taken into consideration, while for employees drawing basic pay upto Rs.3500/- p.m. full neutralisation on account of price rise has been provided and thus the revised pay ~~pay~~ includes the element of DA of 148% of the basic pay.

8. Thus applicants allege that the respondents' impugned order is arbitrary, illegal, discretionary and violative of Articles 14 and 16 of the Constitution.

9. Respondents deny that applicants' pay fixation in the revised pay scale w.e.f. 1.1.96 pursuant to the 5th Pay Commission's recommendations ~~is~~ <sup>are</sup> illegal or arbitrary, and urge that the O.A. is without merit and deserves to be dismissed.

10. Applicant No.1 has filed rejoinder in which he has denied respondents' contentions and broadly reiterated his own.

11. We have heard applicant Shri Dhingra who argued the case in person and Shri Nischal for respondents. We have perused the materials on record and given the matter our careful consideration.

12. As pointed out by respondents in their reply the 5th Pay Commission's report contained the

detailed criteria adopted by it for fixing the minimum and maximum pay scales in Government and after fixing the same, the intermediate pay scales were graduated and determined, based on pay fixed at these levels. For fixing minimum pay, the Commission adopted a compensation factor of 30.9% being the increase in per capita NNP during the period 1986-96. For fixing maximum salary the pre-tax disparity ratio between minimum and maximum salary at 4th Pay Commission level of 10.7 was adopted. Within the minimum and maximum so fixed, the 5th Pay Commission made specific recommendations regarding the manner of pay fixation in proposed revised pay scales (Annexure R-III). Broadly speaking a sum equal to 20% of basic pay was to be added to existing emoluments to determine pay in the revised scales. However, Government in consultation with Federations representing employees improved upon the pay fixation formula, such that the 20% was raised to 40%, which is reflected in the Civilian in Defence Services (Revised Pay) Rules, 1997 (Annexure R-IV) in accordance with which applicants' pay have admittedly been fixed.

13. Applicant himself relies on Explanation below Rule 7(1)(A) of those rules which defines existing emoluments to include

- a) the basic pay in the existing scale
- b) DA appropriate to the basic pay admissible at index average 1510 (160=100) and

(c) Amounts of first & second instalments of interim relief admissible on basic pay at existing scale.

14. On that basis he asserts, that while fixing his pay in the revised scale full compensation on ~~his~~ account of price rise i.e. DA 148% of his basic pay of Rs.4250/- p.m., as on 1.1.96 should have been taken into consideration, but as pointed out by respondents nothing in the rules requires full compensation in respect of DA in the old scale on 1.1.96, while considering pay fixation in the revised pay scale. Indeed Rule 7 (1)(A) relied upon by applicant itself states that existing emoluments would include DA appropriate to the basic pay admissible at index average 1510 (1960=100), and applicant himself has stated that pursuant to Finance Ministry's O.M. dated 20.3.96 he was drawing DA @ Rs.5180/- p.m. at index average 1510 (1960=100).

15. ~~Exhibit~~ Col. 7 of the comparative statement annexed by applicant with his O.A. (Annexure A-6) reveals that DA payable as on 1.1.96 as a percentage of basic pay is 148% only in respect of those in the pay of Rs.300/-4500. As the pay scale goes higher, the DA payable on 1.1.96 as a percentage of Basic Pay generally reduces, with one or two exceptions and at the highest pay scale of Rs.9000/- (fixed) it is only 96% of basic pay, although because

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the basic pay is itself large, the DA is also ~~large~~ in  
absolute term.

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16. Applicants are also in the L class as  
others in their cadre in the pre-revised pay scale of  
Rs.3000-4500, and it is not their case that pay has  
not been fixed in the same manner as has been fixed in  
respect of others of their cadre who are in the  
pre-revised scale of Rs.3000-4500. Hence applicants  
cannot claim that they have been discriminated against  
vis-a-vis <sup>others</sup> ~~others~~ in their cadre who are also in the  
pre-revised scale of Rs.3000-4500.

17. It bears notice that a similar  
challenge to the Civilians in Defence Services  
(Revised Pay) Rules, 1997 mounted in O.A. No.  
1010/99 Deepak Majumdar Vs. U.O.I. & Others was  
rejected by C.A.T., P.B. by the order dated 25.1.2000  
and the O.A. was dismissed. Nothing has been shown  
to us to establish that the aforesaid order has been  
stayed, quashed or set aside. We as a Coordinate  
Bench are bound by the findings contained in the order  
dated 25.1.2000 in Deepak Majumdar's case (supra).

18. This O.A. is, therefore, dismissed.  
No costs.

*Kuldeep*  
(Kuldeep Singh)  
Member(J)  
/GK/

*S.R.Adige*  
(S.R.Adige)  
Vice Chairman(A)