

Central Administrative Tribunal  
Principal Bench: New Delhi

O.A. No.2230/2000

New Delhi this the 20<sup>th</sup> day of July, 2001

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

- 1. Shri Kuldeep Singh,  
D-6/31, Gali No.5,  
Sadatpur, Delhi-110 094
- 2. Shri M.N.Papnoi,  
K-35/17, Sadatpur Extension,  
Delhi-110094
- 3. Shri M.V. Sovani,  
B-62A, Ashok Vihar Phase II,  
Near Municipal School  
Delhi-110 052.
- 4. Shri Madan Mohan,  
New GH/6/68,  
Paschim Vihar,  
New Delhi-110 059

-Applicants

(By Advocate: Shri C.Hari Shanker)

Versus

- 1. Union of India  
Through the Secretary,  
Ministry of Railways,  
Rail Bhawan,  
New Delhi-110 001
- 2. Railway Board,  
Through the Chairman,  
Ministry of Railways,  
Rail Bhawan,  
New Delhi-110 001

-Respondents

(By Advocate: Shri R.N.Singh, proxy for  
Shri R.V. Sinha)

O R D E R

By Hon'ble Mr. V.K. Majotra, Member (A)

Applicants 1 and 2 are Cipher Assistants (for short 'CAs') and applicant Nos. 3 and 4 are Cipher Operators (for short 'COs') in the Railway Board (Respondent No.2). They have impugned order dated 16.10.97 (Annexure A-1) whereby the scales of CO Grade II and CO Grade I in the Zonal Railways alone have been revised. They have also assailed Memorandum dated 15.3.99 (Annexure A-2) whereby applicants' representation dated 27.10.97 for

parity with the Zonal Railways in the matter of scales fixed for the posts of CO and CA had been rejected. The applicants have also challenged circular dated 4/5.9.84 issued by Respondent No.2, relating to anomaly in the grade of CA whereby re-structuring of the cadre of Cipher Inspectors (for short 'CIs') and COs on the Railways has been done w.e.f. 1.1.1984.

2. According to applicants, various Zonal Railways <sup>a</sup> were under the control of Railway Board. Till 4.9.84, Whereas there was a post of CA in the Railway Board, there was no such post in the Zonal Railways. The post of CO in the Railways and Zonal Railways bore an identical pay scale of Rs.425-700. According to applicants, COs in both organisations discharged identical functions and were governed by identical Recruitment Rules. The post of CA with the Railway Board bore a unique scale of RPS.425-800 with no equivalence in the Zonal Railways. Vide Circular dated 4/5.9.1984 (Annexe A-3), a cadre restructuring was done in the Zonal Railways whereby the grade of CO therein was bifurcated into CO Grade II and CO Grade I. While CO Grade II ~~was~~ remained at par with CO in the office of Railway Board, CO Grade-I in the Zonal Railways was granted a scale of RPS.550-800, which was even higher than that of CA (RPS.425-800) in the office of Respondent No.2. According to the applicants, this anomaly was unjustified as, inter-alia,

- i) the recruitment rules for CA and the newly created CO Grade I were, to all intents and purposes, identical,
- ii) recruitment to the post of CA in the

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office of Respondent No.2 and CO Grade I in the Zonal Railways was from equivalent posts, i.e. C.O. and C.O. Grade II respectively.

iii) the further promotion from C.A. and C.O. Grade I were to Senior C.A. and Cipher Superintendent respectively, which bore the same scale,

iv) the duties, functions and responsibilities of C.A. in the Railway Board and C.O. Grade I in the Zonal Railways were the same".

This disparity between the grade of CA in the Railway Board and CO Grade-I in the Zonal Railways continued with each successive Pay Commission and continues till date. Till the 5th Pay Commission, however, there was no disparity between CO in the office of Railway Board and CO Grade II in the Zonal Railways. They had the same pay scale. The 5th Pay Commission made recommendations regarding the Cipher staff in the Railways in paragraph 83.211 and 83.212 as follows:-

"83.211- The Cipher Operators perform a very sensitive job which is important from the point of national security. They are responsible for transmitting and deciphering secret and top secret messages through a coded groups of numerical and alphabets. They maintain secrecy under the Indian Official Secrets Act, 1923.

83.212 -The Cipher Operators have brought to our notice that the pay scale of Cipher Inspector has been downgraded as a consequence of Fourth CPC recommendations. They have demanded suitable higher pay scales and enlargement of the post of Cipher Inspectors. We consider the demands of the Cipher staff justified and recommend following pay scales and revised designations for them:

Designation	Pay scales		Revised Designation
	Existing RPS.	Proposed RPS.	
Cipher Operator Gr.II	1400-2300	1600-2660	Cipher Operator Gr.II
Cipher Operator Gr.I	1600-2660	1640-2900	Cipher Operator Gr.II
Cipher Inspector	1600-2660 +RPS.200	2000-3500 Cpl. Pay	Cipher Superintendent

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Accordingly revised scale of RPS. 5000-8000 and 5500-9000 were recommended for CO Grade II and CO Grade I respectively. Respondent No.2 vide Annexure A-1 revised the scales of CO Grade II and CO Grade I in the Zonal Railways on the basis of the above recommendations. However, no parallel revision of scale of CO in the office of Respondent No.2 was accorded. The applicants represented against the above mentioned omission/ commission vide representation which was rejected by Memorandum dated 15.3.99 (Annexure A-2). The following reliefs have been claimed by the applicants:-

"i) to quash and set aside the impugned Circular No. PCIII81/UPG/31 dated 4/5.9.84 (Annexe A-3) (insofar as it grants a scale to C.O. Grade II in the Zonal Railways above that of C.A. in the office of Respondent No.2) and Memorandum No. E99/PO12/ 5/RB2 dated 15.3.99 (Annexure-A-2).

ii) in the alternative, to direct the respondents to grant to C.Os and C.As in the office of Respondent No.2 the same scales of pay as are being granted to C.Os Grade II and Grade I in the Zonal Railways w.e.f. 1.1.96,

iii) consequent to the grant of relief (ii) hereinabove, to direct the respondents to disburse, to the applicants, arrears of pay because of the disparate low scales of pay granted to them earlier, as brought out in the present application, along with interest thereon at such rate as this Hon'ble Tribunal may be deem fit and proper".

3. In their counter reply, the respondents have contended that the impugned orders do not suffer from any infirmity. They have maintained that the Cipher staff in the Railway Board and that in the Zonal Railways are governed by different Recruitment Rules. Their respective functions and duties were considered by the 5th CPC and separate set of pay structure was recommended for them. According to the respondents, there is no case for

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any parity between the applicants and the staff in the Zonal Railways in view of unidentical cadre structure in the Railway Board and the Zonal Railways.

4. We have heard the learned counsel of both sides and considered the material on record.

5. Shri C.Hari Shanker, learned counsel of the applicants stated that whereas the post of CA existed only in the Railway Board, the post of CO carried the scale of 220-400 in both organisations prior to the 3rd CPC. From the 3rd CPC, the post of CA in the Railway Board was kept in the scale of 425-800 and the post of CO in both organisations was prescribed identical pay scale of 425-700. Vide Circular dated 4/5.9.84 when the structure in the Zonal Railways was revised, the post of CO was bifurcated into two grades namely, Grade.I 550-800 and Grade.II 425-700. With the 4th CPC the posts of CA and CO in the Railway Board were revised to 1400-2660 and 1400-2300 respectively. The posts of CO Grade I and CO Grade II were accorded the scales of 1600-2660 and 1400-2300 respectively. After revision of pay scales as per recommendation of 5th CPC, the comparative position of Railway Board and Zonal Railways COs is as under:-

Railway Board		Zonal Railways		
S.No.	Category	Pay Scale RPS/RSRP	Category	Pay scale RPS/RSRP
1.	Cipher Operator	1400-2300/ 4500-7000	Cipher Operator Gr.II	1400-2300/ 5000-8000
2.	Cipher Asst.	1400-2600/ 5000-8000	Cipher Operator Gr.I.	1600-2660/ 5500-9000
3.	Sr.Cipher Asst.	2000-3200/ 6500/10500	Cipher Inspector	1600-2660 plus spl.pay 6500-10500

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4. Cipher Officer 2000-3500/  
(Gaz.) 6500-10500

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6. The learned counsel thus pointed out that till 4/5.9.84 CO and CO Grade II in the Zonal Railways had the same pay scales of 425-700. From that date CO Grade I was carved out of the post of CO and granted a higher pay scale of 550-800 which was higher than that of the pay scale of CA in the Railway Board who had the pay scale of 425-800 only. With the 4th CPC, CO in the Railway Board and CO Grade-II enjoyed the identical scale of 1400-2300 but CA of the Railway Board and CO Grade I of the Zonal Railways were placed in 1400-2600 and 1600-2660 respectively. The anomalies in the case of CA from 4/5.9.84 and in the matter of CO of the Railway Board w.e.f. the 5th CPC have been introduced. Shri C.Hari Shanker further stated that the CPC has not considered the parity of pay scale of COs in the two organisations. As a matter of fact, CPC did not consider the matter relating to the COs of the Railway Board at all. When the nature of duties of the officials of these organisations are identical and they have had identical pay scales from the Third Pay Commission, the COs/CAs of the Railway Board must be given the pay scales granted to the COs Gr.II and COs Gr.I of the Zonal Railways on the recommendations of the 5th CPC.

7. Shri R.N. Singh, learned counsel of respondents contended that officials of the Cipher departments of the Railway Board and the Zonal Railways are governed by different Recruitment Rules and have different qualifications. Although they have similar kind of duties, the intensity and

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arduousness of duties of the staff working in the Zonal Railways is greater than those working in the Railway Board. He further stated that the 5th CPC considered and recommended separate set of pay structure of COs of Zonal Railways and Board's office. On being specifically asked as to whether the CPC has considered the question of the pay scales of the Cipher staff of the Railway Board on the basis of their qualifications, duties and responsibilities etc., the learned counsel was not able to show consideration <sup>by</sup> ~~of~~ CPC of these matters at all.

8. Shri Singh, learned counsel of respondents drew our attention to Union of India Vs. P.V. Hariharan and Anr. (1997) 3 SCC 568 contending that it is the Pay Commission who is the proper authority to decide upon the issue of pay scales as they go into such problems at great depth and happen to have full picture before them. Thus, the Tribunal cannot issue any directions in the matter of pay scales to the respondents. He further referred to the Full Bench judgment dated 9.10.2000 in OA-525/98 in the matter of parity of pay scales raised by the Lift Operators of MES before the Bombay Bench, wherein it was held as under:-

"In our view there is a strong case for granting the pay scale of Rs.260-400 with effect from 1.1.1973 to the Lift Operators of MES as they have all along been either superior or on par with the lift operators of the CPWD. Parity in pay scales was granted to the Lift Operators of M.E.S. in 1987 based on the judgment dated 23.11.1987 of the Supreme Court in the matter of Lift Operators of the CPWD. However, this Tribunal would not like to interfere in the matter of fixing/changing of pay scales as it is bound by other judgment of the Hon'ble Supreme Court in the case of Union of India Vs. P.V.

Hariharan 1997 SCC (L&S) 638 (supra). However, liberty is granted to the applicants Lift Operators of M.E.S. to place the issue before the National Council of the J.C.M. for consideration". Thus, the learned counsel contended that the Tribunal should not interfere in the present matter.

9. In the matter of P.V. Hariharan (supra), the above observations were made in the context when the Pay Commission had gone into problem at great depth and had a full picture before it. Certainly, the Pay Commission is a proper authority to decide upon the issue of pay scales, parity of pay scales after considering the qualifications, duties and responsibilities etc. of different categories of staff operating in the same organisations or different organisations. In the present case, the respondents have not been able to establish that the 5th CPC had considered the Recruitment Rules, qualifications, duties and responsibilities of the Cipher staff of the Railway Board anywhere in its report. From the narration of paragraphs 83.211 and 83.212, it appears that the CPC had dealt with the matter of COs of the Zonal Office of the Railways and not of the Railway Board at all. When the CPC did not consider the facts relating to the Cipher staff of the Railway Board, the Tribunal will certainly be within its rights to go into the issues raised in the present matter.

10. When the pay scales of the Cipher staff of the Railway Board have not been specifically considered by the 5th CPC, their recommendations contained in paragraphs 168.2 to 168.4 of the report <sup>which are reproduced here Ms</sup> will be relevant:-

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"168.2 However, despite our sincere efforts, there may be a few sporadic cases which might inadvertently have escaped our attention. We earnestly feel that getting the benefit of revised pay scales is a matter of right of all Government employees, irrespective of their post or category being mentioned in the Report or otherwise.

168.3 In the event of any Central Government post being left out without allotment of revised pay scales in the Report, it should be given the commensurate revised scale of pay as applicable for posts with similar entry qualifications, duties and responsibilities, duly retaining the horizontal and vertical relativities in the organisation. It will also be eligible for the provisions of Assured Career Progressions (ACP). If such post was in receipt of any special pay in addition to the pre-revised pay, such special pay component should be doubled and converted into a special allowance.

168.4 In any case, the replacement scale of the pre-revised scale is the minimum that such a category not covered by our recommendations should receive".

11. The respondents have admitted that the COs of the Railway Board and those of the Zonal Railways have similar duties. However, they have stated that intensity and arduousness of the duties of the Zonal staff is more than those of the Railway Board staff. This is a bald statement made by the respondents. They have not been able to indicate that duties of the COs of the zonal office are different than those of the COs of the Railway Board. Thus, certainly the COs of the Railway Board deserves a favourable consideration for parity with the pay scales of COs in the Zonal Railways as per the recommendations contained in Chapter-168 of the CPC which have been re-produced above. We further find that it is only from 1984 when Circular dated 4/5.9.84 was issued relating to bifurcation of COs of Zonal Railways into Gr.I and Gr.II, when CO Gr.II of Zonal Railways was given

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the same pay scale as the CO of the Railway Board. However, CO Gr.I was placed in a higher scale of 550-800 than even the CA of the Railway Board who was getting the pay scale of Rs.425-800.

12. In the facts and circumstances of the case when the 5th CPC has not specifically considered the duties and responsibilities of COs of the Railway Board vis-a-vis those of the Zonal Railways and when the respondents have rejected the representation of the applicants vide Annexure A-2 in a very sketchy manner, it is our considered view that respondents must decide the question of parity of pay scales of COs of the Railway Board with those of the Zonal Railways keeping in view their respective Recruitment Rules, duties, responsibilities and the historical parity of pay scales existing prior to the Third CPC. Respondents must also decide the relative pay scales of the CA in the Railway Board which have been higher than that of COs pay scale in both organisations till 4/5.9.84. In our view, since the applicants had not agitated against the Circular dated 4/5.9.84 (Annexure A-3), granting a scale of CO Gr.II in the Zonal Railways above that of CA in the Railway Board at the appropriate time, we are declining to consider the question of quashing and setting aside the same.

13. Having regard to the reasons recorded and discussion made above, we find that it will be in the interest of justice to dispose of the present OA to place the issue of parity of pay scales of the COs of the Railway Board with the COs of the Zonal Railways before the National Council of the Joint Consultative Machinery for its

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consideration. For this purpose, the respondents will take immediate steps to convene a meeting of the National Council of the JCM expeditiously within a period of four months from the date of receipt of a copy of this order. It is clarified that the respondents are expected to take appropriate action within the specified time. No costs.

S. Raju  
(Shanker Raju)  
Member (J)

V.K. Majotra  
(V.K. Majotra)  
Member (A)

cc.