

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA No. 2657/2000
TA No.

20-2-2002 Date of Decision

Daybir Singh & ors.
Smt. G. D. Bhargava

...Petitioner (s)
...Advocate for Petitioner (s)

V E R S U S

VOID ors.
Smt. A. K. Bhargava

...Respondents
...Advocate for respondents

Coram :-

Hon'ble Shri/Smt. Kuldeep Singh, Member (T)
Hon'ble Shri Govindan S. Tampi, Member (A)

- 1. To be referred to the Reporter or not ? YES ☒
- 2. Whether it needs to be circulated to other Benches of the Tribunal ? NO

(GOVINDAN S. TAMPI)
MEMBER (A)

THIS CASE IS BEING
FILED IN THE
OFFICE OF THE
SECRETARY
TO THE TRIBUNAL
NEW DELHI

(16)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2657/2000

New Delhi, this the 20th day of February, 2002

Hon'ble Shri Kuldip Singh, Member (J)
Hon'ble Shri Govindan S.Tampi, Member (A)

1. Shri Rajbir Singh
P.No.6967731, Chargeman
COD, Delhi Cantt - 110 010.
2. Shri Nain Singh
P.No.27645, Sr. Chargeman
COD, Delhi Cantt - 110 010.
3. Shri Suresh Kumar
P.No.6967568, Chargeman
COD, Delhi Cantt - 110 010.
4. Shri S.K.Bagchi
P.No.27855, Chargeman
COD, Delhi Cantt - 110 010.
5. Shri Panna Lal
P.No.27828, Chargeman
COD, Delhi Cantt - 110 010.
6. Shri Munni Prakash
P.No.27835, Chargeman
COD, Delhi Cantt - 110 010.
7. Shri Om Prakash
P.No.27849, Chargeman
COD, Delhi Cantt - 110 010.
8. Shri Bansi Lal
P.No.27978, Chargeman
COD, Delhi Cantt - 110 010.
9. Shri Randhir Singh
P.No.27924, Chargeman
COD, Delhi Cantt - 110 010.
10. Shri Budhu Lal
P.No.27998, Chargeman
COD, Delhi Cantt - 110 010.
11. Shri Satpal Malik
P.No.6967662, Chargeman
COD, Delhi Cantt - 110 010.
12. Shri Puran Singh
P.No.27804, Chargeman
COD, Delhi Cantt - 110 010.
13. Shri Ram Dhan
P.No.6967627, Chargeman
COD, Delhi Cantt - 110 010.
14. Shri J.L.Sharma
P.No.27771, Chargeman
COD, Delhi Cantt - 110 010.

-2-

15. Smt. Radha Kumari
P.No.27787, Chargeman
COD, Delhi Cantt - 110 010.
16. Shri B.N.Sarkar
P.No.27769, Chargeman
COD, Delhi Cantt - 110 010.
17. Shri Chattar Singh
P.No.27926, Chargeman
COD, Delhi Cantt - 110 010.
18. Shri K.R.Kapat
P.No.27767, Chargeman
COD, Delhi Cantt - 110 010.
19. Shri Raghubir Singh
P.No.27766, Chargeman
COD, Delhi Cantt - 110 010.
20. Shri G.C.Lal~
P.No.27714, Chargeman
COD, Delhi Cantt - 110 010.
21. Shri Jagdish Chander
P.No.27688, Chargeman
COD, Delhi Cantt - 110 010.
22. Shri Shyam Lal
P.No.27708, Chargeman
COD, Delhi Cantt - 110 010.
23. Shri C.N.Darjee
P.No.27985, Chargeman
COD, Delhi Cantt - 110 010.
24. Shri Laxmi Parsad Notiyal
P.No.6967570, Chargeman
COD, Delhi Cantt - 110 010.
25. Shri J.C.Mandal
P.No.27824, Chargeman
COD, Delhi Cantt - 110 010.
26. Shri Bhagmal Singh
P.No.6965665, Sr.Chargeman
COD, Delhi Cantt - 110 010.
27. Shri Om Prakash
P.No.6967665, Chargeman
COD, Delhi Cantt - 110 010.
28. Shri Mahabir Prasad
P.No.27923, Chargeman
COD, Delhi Cantt - 110 010.
29. Shri Krishan Gopal
P.No.6968102, Chargeman
COD, Delhi Cantt - 110 010.
30. Shri Bhim Yadav
P.No.27782, Chargeman
COD, Delhi Cantt - 110 010

31. Shri Yogender Mehto
P.No. 6967652, Chargeman
COD, Delhi Cantt - 110 010.
32. Shri S.N. Tiwari
P.No. 6967569, Chargeman
COD, Delhi Cantt - 110 010.
33. Shri Manphool
P.No. 6967719, Chargeman
COD, Delhi Cantt - 110 010.
34. Shri Kanhiya Lal
P.No. 6967455, Sr. Chargeman
COD, Delhi Cantt - 110 010.
35. Shri Megha Sah
P.No. 6967651, Chargeman
COD, Delhi Cantt - 110 010.
36. Shri Gopi Ram
P.No. 6967497, Sr. Chargeman
COD, Delhi Cantt - 110 010.
37. Shri Ranjit Singh
P.No. 6967638, Chargeman
COD, Delhi Cantt - 110 010.
38. Shri Karnail Singh
P.No. 6967456, Chargeman
COD, Delhi Cantt - 110 010.
39. Shri Tara Chand
P.No. 27718, Chargeman
COD, Delhi Cantt - 110 010.
40. Shri S.K. Parbhakar
P.No. 6967459, Chargeman
COD, Delhi Cantt - 110 010.
41. Shri Om Prakash
P.No. 6967460, Sr. Chargeman
COD, Delhi Cantt - 110 010.
42. Shri Jagdish Shah
P.No. 27719, Chargeman
COD, Delhi Cantt - 110 010.
43. Shri Giyasi
P.No. 6967626, Chargeman
COD, Delhi Cantt - 110 010.
44. Shri Jagdama Prasad
P.No. 28001, Chargeman
COD, Delhi Cantt - 110 010.
45. Shri A.B. Punnappa
P.No. 6964556, Sr. Chargeman
COD, Delhi Cantt - 110 010.
46. Shri Palia Singh
P.No. 6967566, Chargeman
COD, Delhi Cantt - 110 010.

47. Shri Ram Avtar Singh
P.No. 6967572, Chargeman
COD, Delhi Cantt - 110 010.
48. Shri Satbir Singh
P.No. 6967458, Sr. Chargeman
COD, Delhi Cantt - 110 010.
49. Shri Kedar Nath
P.No. 27626, Chargeman
COD, Delhi Cantt - 110 010.
50. Shri Baldev Kishan
P.No. 27773, Chargeman
COD, Delhi Cantt - 110 010.
51. Shri B.L. Sharma
P.No. 27770, Chargeman
COD, Delhi Cantt - 110 010.
52. Shri Kailash Prasad
P.No. 27764, Chargeman
COD, Delhi Cantt - 110 010.
53. Shri Lakhmi Chand
P.No. 6966520, Sr. Chargeman
COD, Delhi Cantt - 110 010.
54. Shri Subhash Chander
P.No. 6966746, Sr. Chargeman
COD, Delhi Cantt - 110 010.
55. Shri Ranjit Singh
P.No. 27594, Sr. Chargeman
COD, Delhi Cantt - 110 010.
56. Shri Jai Ram Dass
P.No. 27632, Sr. Chargeman
COD, Delhi Cantt - 110 010.
57. Shri Mohinder Singh
P.No. 27644, Chargeman
COD, Delhi Cantt - 110 010.

...Applicants

(By Advocate Shri G.D. Bhandari)

VERSUS

1. Union of India through
The Secretary,
Govt. of India, Min. of Defence
New Delhi
2. The DG, Ordnance Services
Master General of Ord. Branch
Army Hqrs. DHQ PO
New Delhi
3. PIC Records,
Army Ordnance Corps, Records Office,
Trimulgherry PO,
Secunderabad - 500 015

(99)

-5-

4. The Commandant,
Central Ordnance Depot (COD)
Delhi Cantt.

...Respondents

(By Shri A.K. Bhardwaj, Advocate)

O R D E RHON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Challenge in this OA is directed at the action of the respondents, reducing retrospectively w.e.f. 1.1.96, the pay scale of the applicants from Rs.5000-8000/- to Rs.4500-7000/-.

2. Heard S/Shri G D Bhandari and A.K. Bhardwaj, learned counsel for the applicants and respondents respectively.

3. The applicants (57 of them) are working as Chargeman and Sr. Chargeman (Technical staff) in Army Ordnance Corps. On the recommendations of Dev Nath Committee, some restructuring in the grades of technical staff had been introduced. This was followed by the introduction of a four tier grade structure, adopted by the Fourth Pay Commission. However, in the respondents' organisation two categories of Chargeman had been combined to one grade of Rs.1400-2300/- instead of Rs.1400-2300/- and 1600-2660/-. This was contested by the applicants in their representation before the Fifth Central Pay Commission, which recommended for the adoption of 'uniform four grade structure' in all organisations. They also fixed the ratio of posts in the four grades. The same was accepted and the pay scales of Foreman Part I & II, Cadre were revised from Rs.1600-2660/- to Rs. 5500- 9000/-, 6500-10500 and 7450-11500/- while that of Chargeman Part I and Sr.

Chargeman Part I & II, from Rs. 1400 - 2300/- to Rs. 5000-8000/-, following the adoption of However, in the respondents' organisation alone the revision was ordered in the following pattern by no GSR 569(E) 30.9.97.

Sr. Foreman	:	Rs. 7450/- - 11500/-
Sr. Foreman	:	Rs. 6500/- - 10500/-
Foreman	:	Rs. 5000/- - 8000/-
Sr. Chargeman	:	Rs. 4500/- - 7000/-
Chargeman	:	Rs. 4500/- - 7000/-

This discriminatory approach was assailed by the applicants in their representation dated 17.10.97, which was replied to intimating that the matter was under active consideration. Still the respondents proceeded to issue the impugned orders on 21.11.97 reducing the pay scale of Chargeman and Sr. Chargeman from Rs. 5000 - 8000/- to Rs. 4500 - 7000/-. Fixation of pay of applicants has also been ordered accordingly, w.e.f. 1.1.96. The same was revised by order Part-II No. 13/99 dt. 16.1.99, in terms of the Ministry of Defence letter No. 11(6)/97/D (Civ-I) dated 11.11.97 and Army HQrs letter No.69242/CPC/OS-20 dt. 25.11.97 to Rs.5000-8000/-. Arrears were also paid to the applicants w.e.f. with the approval of competent Audit Authorities. However, all on a sudden, taking the cue from letter No. 29860/Tech/Vol.79/CA-6 dated 3.7.2000 issued by the respondents have lowered the pay scale of the applicants once again from Rs.5000 - 8000/- to Rs. 4500-7000/- retrospectively and have also ordered the recovery of the amounts paid in excess w.e.f. 1.1.96. This has been done without any notice or grant of opportunity to the applicants, in an arbitrary and illegal manner. This was also incorrect, as the recommendations of the 5th Pay Commission

-7-

Commission in regard to the pay scale of the Technical personnel,, which have been accepted by the Government, have been denied by the respondents. Hence this O.A.

4. Grounds raised by the applicants, in the above circumstances are as below:

- i) applicants claim is based on the recommendation of the 5th CPC, which were accepted by the Government by Notification dated 30.9.97 ;
- ii) recommendations of the Pay Commission having been duly accepted by the Government, respondents could not have modified the same on their own ;
- iii) the action of the respondents are violative of the Articles 14 & 16 of the Constitution and discriminatory to the applicants;
- iv) there has been violation of the principles of natural justice in that no notice had been given to the applicants before lowering their pay scales ;
- v) applicants having been once placed in the scale of Rs.5000-8000/- and having drawn at least three increments, have acquired a vested right for the above ;
- vi) the respondents' action is hit by estoppel ;
- vii) denying the applicants the scale of pay permitted in terms of Revised Pay Rules, 1997 was illegal;
- viii) even if some excess payment has been made to the applicant, for no fault of theirs, the amount so paid cannot be recovered;
- ix) the grant of pay in the scale of Rs. 5000 - 8000/- had been effected with the approval of the Competent Authority and it cannot be changed without the approval of the said authority and;
- x) respondents should have waited for the decision of the Tribunal in OA 1711/2000 before taking any decision in the matter.

5. In view of the above the applicants request that the impugned orders dated 3.7.2000 and 10.11.2000 be quashed and set aside and the applicants be continued in the pay

-8-

scale of Rs. 5000-8000/-. The operation of the impugned orders has been stayed by the Tribunal pending decision of this OA.

6. The above pleas have been very forcefully reiterated by Sh. G D Bhandari, learned counsel for the applicants during the oral submissions.

7. In the reply filed on behalf of the respondents it is pointed out that as the pre-revised pay scale of Chargeman and Sr. Chargeman was Rs. 1400 - 2300/- , after revision it was fixed in the replacement scale of Rs. 4500 - 7000/- . Subsequently following the receipt of Ministry of Defence letter No. 11(6)/97/D/Civ.I dated 11.11.97, through Army HQrs. letter dated 23.11.97 , the pay of the Chargeman cadre was refixed w.e.f. 1.1.96, in the scale of Rs. 5000-8000/- with Audit's concurrence. However following the promotion in the meanwhile of a few Chargemen to Sr. Chargeman posts, clarification was sought as to whether the scale of Chargeman was to be kept as Rs. 4500-7000/- or Rs. 5000 - 8000/- . AOC Records advised that the scale indicated by the Defence Ministry's letter dated 11.11.97 was not applicable and that the matter was under examination with the Ministry. DCDA (Pay) Delhi Cantt. called for pay refixation in view of AOC(R)'s letter dated 3.7.2000 whereafter refixation was ordered in the scale of Rs. 4500-7000/- and the salary of the concerned staff has been brought down from December 2000. It is averred by the respondents that as the applicants were earlier drawing pay in the scale of Rs. 1400 - 2300/-, the replacement pay should have been only Rs.4500-7000/- and not Rs. 5000 - 8000/-, as is being wrongly claimed by the applicants. Therefore the decision communicated by AOC

-9-

(Records) letter No.29860/Tech/VCR-79/CA-6 dated 3.7.2000 represented the correct position and it has to be accepted. The applicants' plea that their pay scale has been arbitrarily reduced was not acceptable as what has been done was only the rectification of the mistake in granting the inadmissible replacement scale to the Chargeman/Sr. Chargeman cadre. In the above view of the matter, there was no need whatsoever to issue any Show Cause Notice, as is sought to be shown by the applicants. Grant of the replacement scale of Rs. 5000 - 8000/- was a mistake, which arose on account of the Ministry of Defence letter dated 11.11.97 and the same had only been corrected, by the impugned action and therefore the applicants averment to the contrary are devoid of any merit and deserve to be rejected outright, argues Shri A K Bhardwaj, learned counsel for the respondents.

8. We had reserved the orders in the OA at the conclusion of the oral submissions. However, before the order could be pronounced, it was brought to our notice by the Shri G.D.Bhandari, ld. counsel for the applicants that the Ministry of Defence have vide their order No. 11 (13) 97/D (Civ.I) dated 26-12-2001 issued fresh instructions, relating to the introduction of the Four Grade Structure for Technical Supervisory Staff in Defence Establishments. The matter was, therefore, placed once again FOR BEING SPOKEN, none was present on the said date i.e. 23-1-2002, however, a copy of the above letter was brought to our notice, which showed that the claim of the applicants for the grade of Rs. 5000-8000/- had been accepted, though prospectively from 26-12-2000, with the actual benefits to arise after the restructuring and drafting of the Recruitment Rules was completed.

-10-

9. We have carefully deliberated upon the rival contentions and the examined the facts brought on record. We have also noted that another OA No. 1711/2000 is also pending consideration before another Bench here. However, as the position both in Law and in facts has been clearly delineated in the rival contentions and during the oral submissions, we are proceeding to decide this OA, without waiting for the disposal of OA 1711/2000.

10. While the applicants plead that their pay in the grades of Chargeman/Sr.Chargeman, fixed following the adoption of the recommendations of the Fifth Central Pay Commission, has been incorrectly and arbitrarily revised downwards from the scale of Rs. 5000-8000/- to that of Rs. 4500 - 7000/- , and that, too with retrospective effect and without notice, the respondents point out that nothing irregular or improper has been done and that the downward revision of the pay scale ordered in the case of applicants had been directed only to rectify the incorrect fixation of pay, earlier implemented.

11. For the determination of the above, it would be necessary to refer to certain basic facts. Paragraph 63.302 of the 5th Pay Commission relating to Army Ordnance Corps under the Department of Defence specifically states as below:

"While our recommendations on technical super visors as a common category would apply to technical supervisors who fall into the four grade structure, in this chapter we have considered the categories covered by the Part I and Part II cadres and categories where the four grade structure has been established but without the same pay scales. One of

(26)

the important demands of technical supervisors in part I and part II cadres is that they should also be brought on to the four grade structure. We have considered this suggestion and in view of our proposal to merge the highly skilled grade II and highly skilled grade I, there may be no requirement to make a distinction between the two cadres. We, therefore, agree that the uniform four grade structure may be implemented in all organisations. As regards the manner in which technical supervisors in these organisations may be restructured, detailed recommendations for each organisation are indicated below. Other organisations where there is a four grade structure but not presently covered under the general pattern of pay scales are also covered in the succeeding paragraphs."

AOC	EXISTING	PROPOSED	REMARKS
	-----	Foreman (Rs.2375-3750)	New grades to be introduced.
	-----	Asstt.F'man (Rs.2000-3500)	Distribution of posts in ratio of 5:25:25:45
	Foreman (Rs.1600 of Part I&II cadre.	Chargeman-I 2660) (Rs.1640-2900)	
	Chargeman (1400-2300) of Part-II cadre and Sr.C'man (1400-2300) of Part I&II cadres	Chargeman-II (Rs.1600-2660)	
EME	EXISTING	PROPOSED	REMARKS
	Not existing	Foreman (Rs.2375-3750) 100 % promotion	New grades to be introduced. Distribution of posts in ratio of 5:25:25:45
	Not existing	Asstt.Foreman (Rs.2000-3500) 100 % promotion	
	Foremen of Part II cadre	Chargeman-I (Rs.1640-2900)	

"Para 63.303 : As far as distribution of posts across the four levels is concerned, it is based on the consideration that in the AOC and EME posts may be distributed in the ratio of 45:25:25:5 for Chargeman II : Chargeman I : Asstt. Foreman : Foreman and in other organisations the ratio of 35 : 25 : 25 :15 as recommended by us under the chapter on Workshop Staff may apply. We also recommended that the conversion to a uniform grade structure be accompanied by introduction of direct recruitment to

(27)

-12-

the extent of 33-1/3% from amongst 3 year Diploma holders in Engineering/B.Sc at the level of Chargeman-II".

12. It is thus seen that the Pay Commission had recommended a Four Grade Structure for Technical Supervisory Staff in Defence Establishments and had also indicated the ratio in which the four grades and the posts were to be operated. Subsequently, Ministry of Defence had issued an order No. 11/97-D (CIB-1) dated 11.11.97 addressed to the Chief of Staff and all Inter Service Organisations wherein under sub heading (VII) the pay scales of Technical Supervisory and workshop staff have been shown below:

a)	Chargeman/	1400-40-1800-	5000-150-8000	54.38
	Chargeman 'B' /	50-2300		
	Chargeman (Technical			
	Grade II/Junior			
	Engineer Grade II			
	(Workshop)			
b)	Sr. Chargeman	1600-50-2300	5500-175-9000	54.38
	Chargeman 'A' /	60-2660		
	Chargeman			
	(Technical)			
	Grade I/Junior			
	Engineer			
	Gr.I Workshop			

13. In view of the above, Chargeman drawing the scale of Rs.1400-40-1800-50-2300 in the pre-revised scale are to be granted Rs. 5000-150-8000/- and Sr. Chargeman drawing Rs. 1600-2660 were to be given scale of Rs. 5500 - 9000/- . This has resulted in the fixation of pay of the applicants in the scale of Rs. 5000-8000/- and that too after obtaining clearance from competent authorities. This was similar to what has been granted to Technical staff in the EME who have also been given the same grade all w.e.f. 1.1.96. The applicants were thereafter also granted

increments in the scale of Rs.5000-8000/-. Only on a much later date i.e. 3.7.2000, a direction is found to have been issued by the A.O.C. Record Office to the effect that the matter regarding revised pay scale in respect of Chargeman Pt II Cadre and Sr. Chargeman Pt. I and II cadre was still under consideration with Govt. of India and that the staff should be paid only in the scale of Rs. 4500-7000/- and not Rs. 5000-8000 /- scale and if any payment has been made in scale of Rs. 5000-8000/-, the excess amount so paid be recovered. The said letter further stated "No such case will be referred to this office, as it will not serve any useful purpose." Following this, the impugned order dated 10.11.2000 refixing the pay of the officers in the scale of Rs. 4500-7000/- and ordering recovery has been issued. These facts are admitted by the respondents themselves. According to them, this is correct as AOC Records letter No. 29860/Tech/Vol-79/CA-6 dated 3.7.2000 had indicated that the matter was still being examined as some confusion had arisen in the implementation and that the pay of the applicants and those similarly placed should be brought down to the scale of Rs. 4500-7000/-. It is seen that the Ministry of Defence' letter dated 11-11-1997 was being sought to be amended, on account of some audit objection with the directions that the Ministry's instructions of 11-11-1997 need not be accepted. The said letter has gone on to state that no further reference be made 'as it will not serve any useful purpose'. To put it mildly, to our mind, this indeed is a very strange observation. The Government's having accepted the recommendations of 5th Pay Commission, the expert body set up to consider revision of pay and other service conditions, and the Ministry's having issued directions for giving effect to the same vide its letter dated 11-11-1997, a subordinate office like that of AOC

(Records), cannot override Ministry's directions and on their own, order downward revision of the scale with retrospective effect, direct reduction in pay and order recovery. This was totally incorrect and clearly avoidable. If any rectification was felt necessary, the only authority who could have done the same, was the Ministry itself. There is nothing on record to indicate that orders for the downward revision of the pay has been issued by the Ministry. In the circumstances, the directions of the AOC (Records) office and its total acceptance by the respondents' organisation cannot in any way be sustained in Law. It is true that originally the replacement scale of Rs.4,500-7,000/- was granted to those Chargeman and Sr. Chargeman, who were in the pre-revised scale of Rs. 1400-2300/-, but this has been changed under the directions of the Ministry of Defence' letter datd 11-11-97 as well as Army Headquarters' letter dated 25-11-1997, fixing the revised pay scale of Chargeman/Sr.Chargeman at Rs.5000-8000/-. Therefore, the lowering of the said scale to Rs.4500-7000/- sought to be given effect to on the AOC (Records) office, directions on 3-7-2000 and the proposed recovery of amount allegedly paid in excess, cannot at all be endorsed.

14. We find that our above view stands fortified by the contents of the Ministry of Defence letter No. 11 (13) 97 D (CIV.I) dated 26-12-2001. This letter makes it clear that the recommendations of the Vth Central Pay Commission, on the Four Grade Structure has been accepted and given effect to. The relevant order is reproduced below in full :-

(30)

- 25 -

"No.11(13)/97/D(Civ.I)
Government of India
Ministry of Defence

New Delhi, the 26th December, 2001

To,
The Chief of the Army Staff
The Chief of the Naval Staff
The Chief of the Air Staff

Subject : Recommendations of the Vth CPC regarding introduction of four Grade Structure for Technical Supervisory Staff in Defence Establishments.

Sir,

The undersigned is directed to refer to the recommendations given by the Vth CPC in nparas 54.45, 63.252, 63.302 and 63.303 of its report and to say that the Governm, ennt havee accepted the recommendations to introudce four grade structure for the Technical Supervisory category in Defence Establishments in the ratio of 35:25:25:15 for Chargeman Grade II, Chargeman Grade I, Assistant Foreman and Foreman respectively. Accordingly, the sanction of the President is conveyed the authorization of the revised pay scales and the grade structure as indicated in the Anenxure for the respective categories. For AOC, EME and OFB (Non-Technical category) the ratio will be as indicated in the Annexures, as per the specific recommendations of the Pay Commission for these organisations.

2. The existing cadre of Technical Supervisory Sstaff will be restructured by suitable upgradation and downgradation of the posts. If the revised number of posts is in excess of the existing strength of a particular grade, the difference will be deemed as newly sanctioned post in that grade. Similarly, if the revised number of posts in a grade is less than the existing strength, the number of posts equal to the difference will be treated as having been abolished in that grade. In case any of the existing employees cannot be adjusted within the newly introduced ratio, they will not be reverted and they shall hold the scale as personal to them till they wear out by promotion, retirement etc. However, the period of such retention of scale on personal basis shall not count for the purose of eligibility for further promotion.

3. Direct recruitment should be introduced to the extent of $33\frac{1}{3}$ % from amongst three years diploma holders in Engineering/B.Sc. at the level of Chargeman Grade.II, wherever, it is not already existing and the Recruitment Rules amended accordingly. Until the Recruitment Rules (RRs) are amended, filling up of the post of Chargeman Gr.II through other streams shall not exceeded $66\frac{2}{3}$ % of the vacancies.

4. Recruitment Rules for the new grade (s) which are to be introudced in the respective organisations, should be framed and placement of individuals in that grade (s) be done only after

-16-

fulfillment of the criteria as prescribed in the Recruitment Rules. Action should be taken by the concerned organizations, in consultations with concerned administrative section in the Ministry and Integrated Finance for redistribution of the posts and framing of Recruitment Rules for all grades so as to have uniformity in the RRs in all the organizations, for ensuring anomalies-free implementation of the orders.

5. These orders will be effective from the date of issue. The actual benefit would, however, be admissible from the date of actual placement of the individuals in different grades on restructuring.

6. This issues with the approval of Defence (Finance/AG/PB) vide their I.D.No.933 AG/PB dated 26-12-2001.

Yours faithfully

Sd/-

(Piara Ram)

Under Secretary to the Govt. of India"

Sl. No.6 in the annexure to the above letter, relating to AOC where the applicant works is as below :-

Sl.No.	Name of the Organisations	Existing Designation & Pay Scale (Pre-revised)	Revised Designation & revised Pay-scale	Remarks
6.	AOC	-----	(a) Foreman (Rs.7450-225-11500) New grade to be introduced	Posts in (a) (b) (c) & (d) in the preceding column
		-----	(b) Asstt.Foreman (Rs.6500-200-10500) New grade to be introduced	will be distributed in the ratio of 5:25:25:45 respectively

Foreman of Part I & II cadres (Rs.1600-2660) (c)Chargeman Gr.I (Rs.5500-175-9000)

Chargeman of Part II Cadre and Sr. Chargeman of Part I & II cadres (Rs.1400-2300) (d)Chargeman Gr.II (Rs.5000-150-8000)

-17-

EME

	(a) Foreman (Rs. 7450-225-11500) New grade to be introduced	Posts in (a) (b) (c) & (d) in the preceding column
*Asstt. Engineer (Rs. 2000-3500)	(b) Asstt. Foreman (Rs. 6500-200-10500) New grade to be introduced	will be distributed in the ratio of 5:25:25:45 respectively.
Foreman of Part II Cadres (Rs. 1600-2660)	(c) Chargeman Gr. I (Rs. 5500-175-9000)	*The post of AE are to be
Sr. Chargeman of Part I & II cadres (Rs. 1400-2300)	(d) Chargeman Gr. II (Rs. 5000-150-8000)	taken into account while distributing the supervisory posts in the above ratio.

15. The above shows that the Chargeman of Part II cadre and Sr. Chargeman of Part I & II cadres, drawing pre-revised pay of Rs. 1400-2300/- would be placed in the reevised scale of pay of Rs. 5000-8000/- (and not in the scale of Rs. 4500-7000/- which the respondents have sought to do). All the applicants have therefore become correctly entitled to the scale of pay of Rs. 5000-8000/-, which shows that the move to place them on Rs. 4500-7000/- was incorrect and improper

16. Only one aspect now remains to be decided upon and that relates to the date from the revised pay scale comes in to vogue. The latest letter of the Ministry of Defence dated 26-12-2001 states that "These orders will be effective from the date of issue. The actual benefit, however, be admissible from the date of placement of the individuals in different grades on restructuring". The order thus makes it prospective in operation and that would have been endorsed in normal circumstances, but the position in this OA are slightly different. The latest orders of the Ministry have fixed the revised scale of pay of the Chargeman/Sr. Chargeman in part I & II as Rs. 5000-8000/-,

-18-

which is nothing but the reiteration of what they had directed in their letter No.11/97-D (Civ.I) dated 11-11-1997, which have not been rescinded. The modification leading to the lowering of the scales had been ordered only by a subordinate formation i.e. the AOC (Records) office' letter dated 3-7-2000 and not by the Ministry. As observed in para 13 (supra), this modification has no sanction in law and the revised pay scales of Rs. 5000-8000/- as far as the applicants are concerned, have come in to being w.e.f. 1-1-1996 itself. They have also drawn the emoluments in the revised scales with annual increments also for three years. In that backdrop, postponing the adoption of the revised scales to some future date, after restructuring the cadres and drafting fresh RRs would in effect nullify the effect of the Pay Commission's recommendations, accepted and given effect in 1997, and now reiterated on 26-12-2001. We are, therefore, of the considered view that the applicants are entitled to the revised scales w.e.f. 1-1-1996 itself and that the respondents' action by the impugned orders revising the same downwards and ordering the recovery of the amounts allegedly paid in excess, should be quashed and set aside.

17. We also note that respondents have raised an objection that the matters regarding fixation of pay are better left to the expert body fixed by the Government of India and it was not for the Tribunal to adjudicate on them as has been decided by the Hon'ble Apex Court in the case of State of MP Vs P V Hariharan [JT 1997 Vol.III SC 569]. We are in full agreement with the same. However, in this case we are not passing any order as to particular scale or its relevance for a particular post but are only setting aside the wrong order of implementation issued by the respondents, contrary to the recommendations of the expert body i.e. 5th

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Central Pay Commission, duly accepted by the Government and directed for implementation by the Controlling Ministry of the respondents i.e. Ministry of Defence but thereafter sought to be modified by the respondents, a subordinate office. Interestingly Ministry of Defence have reiterated their earlier directions on 26-12-2001, putting the respondents clearly in the wrong. The Tribunal can in the circumstances, properly and legally interfere with the incorrect action of the respondents. That is exactly what we have done.

18. In the above view of the matter the application succeeds and impugned order, dated 3.7.2000 and 18.11.2000, directing the refixation of the pay of the applicant, revising it downwards for Rs.5000 - 8000/- to Rs. 4500 - 7000/- and ordering recovery of the amount allegedly paid are quashed and set aside. Respondents shall, within three months from the receipt of a copy of this order, rectifying their mistake and place the applicants in the correct pay scale of Rs. 5000 - 8000/- w.e.f. 1.1.96 and grant them all consequential monetary benefits. Interim order dated 19.12.2000 is made absolute. No costs.

(Govindan S. Tampi)
Member (A)

Patil/

(Kuldeep Singh)
Member (J)