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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

1) O.A. NO. 177/1999
2) O.A. NO. 51/2000
M.A. NO. 48/2000

New Delhi this the 15th day of March, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

1) O.A. NO. 177/1999
2) O.A. NO. 51/2000

1. A.S.Lamba S/O Jage Ram,
R/O Vill. & P.O. Qutab Garh,
Delhi-110039.
2. Shri Kishan S/O Sube Ram,
R/O Vill. Nithari,
P.O. Nangloi, Delhi-110041.
3. Ram Rattan S/O Gagan Ram,
R/O Paposia Para,
Narela, Delhi.
4. Roshan Lal S/O Chint Ram,
R/O N-268, Raghbir Nagar,
New Delhi.

... Applicants
in both OAs

{ By Shri Deepak Verma, proxy for Shri Ashok Agarwal,
Advocate (in OA-177/99) and Ms. Kusum Sharma, Adv.
(in OA-51/2000) }

-Versus-

1. Union of India through
Secretary, Ministry of Urban Affairs
and Employment, Nirman Bhawan,
New Delhi.
2. Director General,
Government of India,
Directorate of Printing,
'B' wing, Nirman Bhawan,
New Delhi.
3. Manager,
Government of India Press,
Maya Puri, Ring Road,
New Delhi-110064.
... Respondents
(in both OAs)
4. Union of India through
Secretary, Ministry of Finance,
Department of Expenditure,
South Block, New Delhi.
... Respondent
(in OA-51/2000)

(By Shri D.S.Jagotra, proxy for Shri Rajiv Banasi,
Advocate along with Shri Ram Lal, UDC, Departmental
Respresentative)

O. R. D. E. R (ORAL)

Shri V. K. Majotra, AM :

M.A. No.48/2000 filed in O.A. No.51/2000 for joining together in one application is granted.

The applicants have challenged the legality and the validity of the action of the respondents in denying them the pay scale of Rs.5000-150-8000 without special pay with usual allowances with effect from 1.1.1996 as recommended by the 5th Central Pay Commission. The applicants were initially appointed as Lower Division Clerks (LDCs). Subsequently they were promoted as Upper Division Clerks (UDCs) and later on appointed as UDCs (Complex) with effect from different dates between 1989 and 1997. The applicants have submitted that the 5th Central Pay Commission recommended revision of the pay scale of Rs.1200-30-1540-40-2040 with special pay of Rs.70/- per month to Rs.5000-150-8000 without special pay for the post of UDC. They allege that instead of providing the pay scale of Rs.5000-8000 without special pay as recommended by the 5th Central Pay Commission and approved by the Government of India, the respondents have provided to the applicants the pay scale of Rs.4000-6000 w.e.f. 1.1.1996. They point out that their counter-parts working in CPWD under the same Ministry, and Central Hindi Directorate have been provided with the pay scale of Rs.5000-8000 without special pay w.e.f. 1.1.1996. The applicants state that they had made several representations during 1998 which have remained un replied.

2. The respondents through their counter have contended that the Government have accepted the recommendations in Part 'B' of the notification dated 30.9.1997 (Annexure R-I) subject to fulfilment of certain specific conditions relating, inter alia, to changes in recruitment rules, restructuring of cadres, redistribution of posts into higher grades etc. The whole matter has been under consideration of the Ministry of Urban Affairs and Employment, Department of Personnel & Training, Ministry of Finance and Ministry of Law. Pending final decision in the matter applicants were given special pay of Rs.70/- per month in the normal scale of Rs.4000-6000. The final decision as stated above has been taken by the Ministry of Finance, Department of Expenditure (Implementation Cell) vide their office memorandum No.6/51/99-IC dated 19.3.1999. Under this, the entire controversy has been resolved by deciding upon the following course of action :

.....It has been decided that the following course of action may be adopted for placement of UDCs carrying the pay scale of Rs.1200-2040 with special pay of Rs.70/- per month in the revised scale of Rs.5000-8000, as mentioned against Sl. No.I(8) of Part B of the First Schedule to CCS (RP) Rules, 1997:

(a) UDCs posted against 10% identified posts may initially be placed in the scale of Rs.4000-6000 and allowed special pay of Rs.140/- per month w.e.f. 1.1.1996.

(b) A sanction may be issued to create additional posts of Assistant in the scale of Rs.5000-8000 equal to a number of 10% identified posts of UDCs carrying special pay of Rs.70 per month.

(c) Against the additional posts of Assistants so created, UDCs may be considered for promotion on the basis of seniority-cum-

fitness. Their pay on promotion may be fixed in terms of FR 22(I)(a)(1). Further, wherever UDCs are carrying special pay of Rs.140, this may be taken into account in fixation of pay.

(d) From the date, the additional created posts of Assistants are filled up by promotion as mentioned in (c) above, the posts of UDCs carrying special pay of Rs.140 per month (pre-revised Rs.70) may be abolished.

(e) If any UDC drawing a pay of Rs.140 (pre-revised Rs.70) does not get promotion to the posts of Assistant in terms of para (b) above, he may be transferred and posted against an unidentified post of UDC not carrying special pay. From the date of transfer to the unidentified post, the special pay of Rs.140/- may be discontinued."

3. The respondents have maintained that before the final decision the applicants had been given the benefit of special pay in the normal pay scale of Rs.4000-6000 and that no arbitrariness, discrimination or unreasonableness has been evinced by the answering respondents and also that there has been no violation of Articles 14, 16 and 21 of the Constitution in implementing the recommendations of the 5th Central Pay Commission in respect of category of UDCs (Complex).

4. We have gone through the material on record. The matter of implementation of recommendations of the 5th Central Pay Commission in the matter of grant of upgraded pay scale to 10% posts of the UDCs in non-Secretariat administrative offices is not as simple a matter as is projected by the applicants in the present OAs. Whereas the applicants have contended that they should have been straightway

placed in the revised scale of Rs.5000-8000 as available to the Assistants as per Part 'A' of the First Schedule under rules 3 and 4 of the Gazette of India Extraordinary Part-II, Section 3(1) dated 30.9.1997, as a matter of fact, to their category Part 'B' instead of Part 'A' is applicable. As per Part 'B', the revised scales of pay mentioned in column 4 for the posts mentioned in column 2 have been approved by the Government. However, in certain cases of scales of pay mentioned in column 4, the recommendations of the Pay Commission are subject to fulfilment of specific conditions. These conditions relate, inter alia, to changes in recruitment rules, restructuring of cadres, redistribution of posts into higher grades etc. Therefore, in those cases where conditions such as changes in recruitment rules etc. which are brought out by the Pay Commission as the rationale for the grant of these upgraded scales, it will be necessary for the Ministries to decide upon such issues and agree to the changes suggested by the Pay Commission before applying these scales to these posts w.e.f. 1.1.1996. In certain other cases where there are conditions prescribed by the Pay Commission as pre-requisite for grant of these scales to certain posts such as cadre restructuring, redistribution of posts etc., it was made necessary for the Ministries/Department concerned to not only accept these preconditions but also to implement them before the scales are applied to those posts. In Part 'B' it is also 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 normal replacement scales until then. In Part 'B' at Sl. No.I.(g) the category of UDCs has been mentioned. The revised scale for this category carrying the present scale as Rs.1200-30-1540-40-2040 with special pay of Rs.70/- per month has been provided as Rs.5000-150-8000 without special pay under the relevant paragraph No.46.17 of the Pay Commission's Report. However, as stated above, before applying the recommendations of the Pay Commission, conditions pre-requisite have to be fulfilled. In this view of the matter, simply applying the revised scale without fulfilment of various conditions would not have been in order. Respondents through their O.M. dated 19.3.1999 referred to above, have brought out the modalities of implementing the recommendations of the 5th Central Pay Commission in relation to the category of UDCs posted against 10% posts in receipt of special pay. Under these orders, UDCs posted against the 10% identified posts have initially to be placed in the scale of Rs.4000-6000 and allowed a special pay of Rs.140/- per month w.e.f. 1.1.1996. Such UDCs have to be accommodated against the additional posts of Assistants in the scale of Rs.5000-8000 on the basis of seniority-cum-fitness, and on attaining such promotion, their pay has to be fixed in terms of FR 22(I)(a)(1). Wherever UDCs are carrying special pay of Rs.140 that has also to be taken into account while fixing their pay. Such UDCs drawing a pay of Rs.140/- (pre-revised Rs.70/-) who do not get promotion to the post of Assistant in the

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above terms, have to be transferred and posted against unidentified posts of UDCs not carrying the special pay. From the date of transfer to the unidentified post, the special pay of Rs.140/- has to be discontinued.

5. In the light of the above discussion, we find that recommendations of the 5th Central Pay Commission in respect of the categories of UDCs have been implemented in the true spirit through office memorandum dated 19.3.1999 referred to above.

6. In this view of the matter, in our view, there is no substance in the claim preferred by the applicants and these O.As. are dismissed being devoid of merit. There shall, however, be no order as to costs.

A. A.

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(Ashok Agarwal)
Chairman

(V. K. Majotra)
Member (A)

/as/

Attested
Shalal
W.C.P.