

Central Administrative Tribunal, Principal Bench

Original Application No.505 of 2000

New Delhi, this the 24th day of August, 2000

Hon'ble Mr.Justice Ashok Agarwal Chairman
Hon'ble Mr.V.K.Majotra, Member (Admnv)

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- 1. Prabhakar Barad
- 2. Ms.Promila Tyagi
- 3. Lokeshwar Dass
- 4. Surender Kumar

All working as Investigators in the office
of the Registrar General of India, 2A Man
Singh Road, New Delhi.

- Applicants

(By Advocate Shri Shyam Babu)

Versus

- 1. Union of India through its Secretary,
Ministry of Home Affairs, North Block,
New Delhi.
- 2. Registrar General of India, Ministry of
Home Affairs, Government of India, 2A Man
Singh Road, New Delhi.

- Respondents

(By Advocate Shri A.K.Bhardwaj)

ORDER (Oral)

By V.K.Majotra, Member(Admnv) -

The applicants have assailed the process of
filling up the post of Assistant Director, Census
Operations (Technical) (for short 'AD,CS(T)') on the basis
of proceedings of Departmental Promotion Committee held
on 16.3.2000.

2. The applicants are working as Investigators in
the office of respondent 2. They were appointed as
Investigators on direct recruitment basis through the
UPSC between May 1994 and October, 1995. Recruitment
Rules for the post of AD,CS(T) (hereinafter referred to
as 'the existing RRs') provided as under:-

"Promotion: Investigator and Investigator Social
Studies) with 5 years service in the respective
grades rendered after appointment thereto on
regular basis and possessing atleast degree of a
recognized university with statistics/
mathematics/ economics/ commerce/ sociology/
anthropology as a subject.

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Note 1: The regular service, if any, rendered in the grades of Tabulation Officer, Senior Technical Asstt. and Senior Technical Assistant (Social Studies) prior to their merger in the grades of Investigators and Investigator (Social Studies) shall also be counted towards the above qualifying service of 5 years for promotion. (9)

3. The Fifth Central Pay Commission (for short '5th CPC') in para 70.8 made the following recommendations:-

<u>Existing</u>	<u>Proposed</u>
	Asstt. Dir. (Tech) (120)
(iii) Astt. Director (Tech) (120) (Rs.2200-4000)	Rs.2200-4000 75% by promotion of Statistical Investigators Gd.I/ Investigator Gd-I and 25% by DR
(iv) Investigator (325) Statistical (313) Social Study (12) Rs.1640-2900	(a) Statistical Investigator Gd.I (113) Rs.2000-3500 by DR for which the essential qualification should be at least 2nd class Masters degree in Statistics/ Maths/ Economics or Commerce with Statistics and 2 years experience in collection tabulation and analysis of statistical data.
	(b) Statistical Investigator II 200 posts Rs.1640-2900 by promotion.
	(c) 12 posts should be for Investigator (Gd.I) in the scale of Rs.1640-2900 in Social Study Stream, on 100% DR basis with master's degree in Anthropology, Sociology, or Mathematics with Statistics or village community study with special reference to SC/ST."

The Govt. of India accepted the recommendations of the 5th CPC. The Central Civil Services (Revised Pay) Rules, 1997 (for short 'CCS(RP)Rules, 1997') notified on 30.8.1997, provides as under:-

"The revised scales of pay mentioned in column 4 of this part of the notification for the posts mentioned in column 2 have been approved by the Government. However, it may be noted that in

certain cases of the 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, re-distribution 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 as prerequisite for grant of these scales but certain posts, as such cadre restructuring, redistribution of posts etc. it will be necessary for the ministries/ department concerned to not only accept these pre conditions but also to implement them before scales are applied to those posts. It was further provided that it would therefore be seen 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 normal replacement scales until then".

4. The applicants in the light of aforesaid provision in Part-C of the Schedule of CCS(RP)Rules, 1997 and the acceptance of the recommendations of the 5th CPC by the Government made a representation on 15.12.1997 for implementation of the recommendations of the 5th CPC, which was rejected by respondent 2 vide order dated 18.2.1998 (Annexure-D) stating that the ~~Registrar General~~ Government had decided not to accept the recommendations of the 5th CPC and to retain the existing structure of statistical cadre in the office of Registrar General, India (for short 'RGI'), according to which Investigator cadre in the office of RGI shall have only one grade and the pay scale applicable for this post shall be the replacement scale recommended by the 5th CPC and accepted by the Government and included in part 'A' of the First Schedule. Feeling aggrieved by afore-stated order of 18.2.1998, the applicants filed an OA 687/1998 in this Tribunal. During the pendency of

afore-mentioned OA 687/1998 the Department of Personnel & Training (for short 'DOPT') issued a memorandum dated 25.5.1998 (Annexure-E) providing for the following :-

(iii) Where there is upgradation of posts. - In some cases the Fifth Pay Commission has recommended a higher pay-scale and not equated revised scale. Further, in certain cases the recommendations of the Pay Commission are subject to fulfilment of specific conditions e.g. changes in Recruitment Rules, restructuring of cadres, redistribution of posts, etc. As per guide-lines issued by the DOP&T, whenever it has been decided to upgrade any post action should be taken by the Administrative Ministry/ Department concerned to reframe the Recruitment Rules therefor. As the eligibility criteria for direct recruitment or promotion or deputation, etc to the higher post will be different from those prescribed for a post on a comparatively lower scale, it will be necessary to review the relevant columns of the existing Recruitment Rules for the post for which an upgraded revised scale has been approved and to prescribe age limits, qualifications, experience and eligibility service for promotion/ deputation appropriate to the higher level. Such revision should, however, be undertaken in respect of only those pay-scales which have already been approved by the Government and notified or the eligibility as prescribed has undergone a change. Pending revision of the Recruitment Rules with reference to the pay-scales as approved by the Government, the existing rules for the lower pay-scale may not be operated".

The OA 687/98 was disposed of on 18.12.998 (Annexure-F)

as follows:-

"12. In view of what has been held and discussed above, we are convinced that the impugned letter dated 18.2.1998 issued by the office of the RGI whereby a decision has been taken not to accept the recommendations of the Fifth Central Pay Commission in relation to restructuring/ re-distribution of posts in the Statistical cadre in that office cannot be allowed to stand as it violates Articles 14 & 16 of the Constitution. We accordingly allow this O.A. and set aside the above said letter/order. We further direct the respondents to expeditiously take steps towards fulfilling the pre-conditions laid down by the Fifth Central Pay Commission, as accepted by the Government by framing and issuing Central Civil Services (Revised Pay)Rules,1997, including review of the recruitment rules and thereafter grant the consequential benefits to Investigators Grade-I as per the aforesaid recommendations. We further direct that this judgment shall be

implemented by the respondents as far as practical within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs." (2)

5. The applicants made a representation to respondent 2 on 8.12.1999 on the basis of the recommendations of the 5th CPC, DOPT's OM dated 25.5.1998 and order dated 18.12.1998 of the Tribunal in OA 687/98 stating that only Investigators Grade-I are eligible for promotion to the post of AD,CS(T) and not the Investigator. Till such time the relevant rules are amended as per instructions contained in Part-C of Notification dated 30th September, 1997, the DG, Census Operations is not competent to commence the process of promotion to the post of AD,CS(T). However, in total disregard of the instructions contained in OM dated 25.5.1998 and directions contained in the order dated 18.12.1998 of the Tribunal, the DPC met for filling up 32 posts in the grade of AD,CS(T) in accordance with the existing Recruitment Rules on lower pay scale on 16.3.2000. The applicants have averred that action of the DPC and the department for promotion to the post of AD,CS(T) under the existing old Recruitment Rules is void, without jurisdiction and in contravention of the recommendations of the 5th CPC having been accepted by the Government and the OM of the DOPT dated 25.5.1998. The applicants have sought declaration that only Investigator Grade-I as recommended by the 5th CPC and accepted by the Government and duly notified, are eligible for promotion to the post of AD,CS(T). They have also sought consequential benefits.

6. In their counter the respondents have stated that there are 311 posts of Investigators in the Statistical cadre in the organisation of RGI. As per

the existing recruitment rules 75% of the vacancies are to be filled by promotion failing which by direct recruitment and 25% by direct recruitment. The 5th CPC recommended restructuring of the cadre of Investigator by creating a new grade, namely, Investigator Grade-I in the pay scale of Rs.2000-3500 (pre-revised). Recruitment to this newly created grade of Investigator Grade-I has to be by 100% by direct recruitment for which essential qualification is at least 2nd class Master degree in Statistics/ Mathematics/Economics or Commerce with Statistics and two years experience in collection, tabulation and analysis of statistical data. Remaining posts of Investigators have to be restructured as Statistical Investigator Grade-II without any change in the pay scale i.e. Rs.1640-2900. Recruitment to this grade is by promotion. According to the respondents statistical cadre has not been restructured and the existing set up is continuing. The revised pay scales ^{for 1b} of all the posts in the Statistical cadre as per the recommendation of the 5th CPC as accepted by the Government have been implemented.

7. In OA 687/1998 the Tribunal set aside the stand taken by the respondents not to implement the recommendations of the 5th CPC. The respondents were also directed to take steps towards fulfilling the conditions ^{1b} laid down by the 5th CPC as accepted by the Government by framing and issuing CCS(RP)Rules, 1997 including review of recruitment rules and, thereafter grant consequential benefits to Investigator Grade-I. The respondents challenged the decision of the Tribunal in Civil Writ Petition No.2498/1999 in Delhi High Court which was dismissed on 16.5.2000. The Government have

decided to review its earlier decision not to accept the 5th CPC's recommendation regarding restructuring of the Statistical cadre and a proposal in this regard, according to the respondents, is under consideration of the Government. However, some vacancies having arisen in the office of RGI were proposed to be filled up by the Government in order to cater the increased volume of work in connection with the forthcoming Census Operations in 2000. The respondents have averred that till coming into force of the revised recruitment rules they are taking action for filling up the vacancies in the grade of AD,CS(T) under the existing recruitment rules. The respondents have contended that the process of filling up the post of AD,CS(T) on the basis of the recommendations dated 16.3.2000 of the DPC ~~are~~ ^{is} legal and justified as the revised recruitment rules have not been finalised.

8. We have heard the learned counsel and perused the record. The learned counsel of the applicant contended that this Tribunal vide their order dated 18th December, 1998 in OA 687/1998 had very clearly held that the decision of the RGI not to accept the recommendations of the 5th CPC in relation to restructuring and redistribution of the posts in Statistical cadre cannot be allowed to stand as it offends Articles 14 & 16 of the Constitution and the respondents were directed to take expeditious steps towards fulfilling the pre-conditions laid down by the 5th CPC as accepted by the Government by framing and issuing CCS (RP)Rules, 1997 including review of the recruitment rules and thereafter grant all consequential benefits to the Investigator Grade-I as per the

aforesaid recommendations. The respondents were directed to implement the judgment within a period of three months from the date of receipt of a copy of that order. This judgment has become final on dismissal of the Civil Writ Petition against the same vide orders dated 26.5.2000 of the Delhi High Court. In CP No.90/99 in OA 687/1998 the respondents have given an undertaking to the Tribunal that the Tribunal's order dated 18.12.1998 in OA 687/98 will be implemented in full by 30th September, 2000 positively. The notices issued in the CP were discharged on the aforesaid undertaking given by the respondents. However, according to the learned counsel of the applicants instead of amending the recruitment rules as required by the provisions of instructions contained in Part-C of Notification dated 30th September, 1997, the respondents have undertaken recruitment of AD,CS(T) without having amended the recruitment rules and in violation of the directions of the Tribunal in OA 687/1998 and also contrary to the respondents own assurance in the contempt case as stated above. The learned counsel of the applicants also drew our attention again to the instructions contained in memorandum dated 25.5.1998 of DOPT which are as follows:-

(iii) Where there is upgradation of posts.— In some cases the Fifth Pay Commission has recommended a higher pay-scale and not equated revised scale. Further, in certain cases the recommendations of the Pay Commission are subject to fulfilment of specific conditions e.g. changes in Recruitment Rules, restructuring of cadres, redistribution of posts, etc. As per guide-lines issued by the DOP&T, whenever it has been decided to upgrade any post action should be taken by the Administrative Ministry/ Department concerned to reframe the Recruitment Rules therefor. As the eligibility criteria for direct recruitment or promotion or deputation, etc to the higher post will be different from those

prescribed for a post on a comparatively lower scale, it will be necessary to review the relevant columns of the existing Recruitment Rules for the post for which an upgraded revised scale has been approved and to prescribe age limits, qualifications, experience and eligibility service for promotion/ deputation appropriate to the higher level. Such revision should, however, be undertaken in respect of only those pay-scales which have already been approved by the Government and notified or the eligibility as prescribed has undergone a change. Pending revision of the Recruitment Rules with reference to the pay-scales as approved by the Government, the existing rules for the lower pay-scale may not be operated.

(iv) Consequential changes.- It will be necessary to make consequential changes in the Recruitment Rules/ Service' Rules so as to prescribe eligibility conditions with reference to the revised pay scales. It will also be necessary to review other columns of the Recruitment Rules/ Service Rules where some minimum service in a particular pay-scale is prescribed for consideration on deputation etc".

9. According to the learned counsel of the applicants pending revision of recruitment rules with reference to the pay scale as approved by the Government the existing rules for the lower pay scale cannot be operated as is being sought to be done by the respondents in the instant case.

10. The learned counsel of the respondents contended that there are 113 posts of Statistical Investigators Grade-II, which posts are filled up by promotion. Posts of AD,CS(T) are being filled up by the respondents under the existing rules when the new rules have not come into existence which process is quite in order in view of the judgment in the case of Y.V.Rangaih and others Vs. J.Sreenivasa Rao and others, (1983) 3 SCC 284, in which it was held that vacancies in the promotional post accruing prior to the amendment have to be filled up in accordance with the unamended rules.

11. In our view the instructions contained in Part-C of Notification dated 30th September,1997 are

very clear in respect of certain posts where the recommendations of the 5th CPC are subject to fulfilment of specific conditions relating to changes in recruitment rules restructuring of cadre/ redistribution of posts into higher grades etc. It is made mandatory for the Ministries that where there are conditions prerequisite for grant of these scales to certain posts, it is necessary for the concerned Ministries/ Departments to not only accept these recommendations but also to implement them before the scales are applied to those posts. Till such time that the prerequisite conditions are fulfilled the normal replacement scales have to be operated. The DOPT in pursuance of the recommendations of the 5th CPC and towards implementation of the instructions contained in Part-C of afore-stated notification have clarified in their memorandum of 25th May, 1998 that pending revision of the recruitment rules with reference to pay scales, the existing rules for the lower pay scale cannot be operated.

12. Based on the judgments in the case of Jai Singh Dalal Vs. State of Haryana, 1993 Supp (2) SCC 600 and State of M.P. Vs. Raghuveer Singh Yadav, (1994) 6 SCC 151, in the matter of Rajasthan Public Service Commission Vs. Chanan Ram and another, (1998) 4 SCC 202 the Apex Court had differed with the ratio in the case of Y.V.Rangaiah (supra). The Apex Court has described distinguished features in all the above cases. Similarly, in view of the directions given in our order dated 18.12.1998 in OA 687/1998 in combination with the instructions contained in DOPT memorandum of 25.5.1998 and the assurance given by the respondents themselves in CP 90/99 in OA 687/1998, the ratio in the case of



Y.V.Rangaiah (supra) is not at all applicable. The facts and circumstances of the present case are entirely different in which in view of the recommendations of the 5th CPC having been accepted by the Government and relied upon by this Tribunal in issuing directions to the Government for taking expeditious steps for fulfilling the requisite pre-conditions laid down by the 5th CPC, the respondents should have undertaken the exercise of amending the recruitment rules and proceeded to fill up the post of AD,CS(T) thereafter from the category of Investigator Grade-I. However, realising that the respondents will certainly take some time to formulate the revised recruitment rules, we do not propose to interfere with the process of promotion to the post of AD,CS(T) till such time that the revised recruitment rules come in place. However, we reiterate the directions contained in the order of 18.12.1998 in OA 687/98 and calling upon the respondents to take necessary steps most expeditiously towards fulfilling the pre-requisite conditions laid down by the 5th CPC as accepted by the Government by framing and issuing CCS(RP)Rules, 1997 and undertaking revision of the recruitment rules and providing consequential benefits to the Investigators Grade-I by 30th September,2000, as already undertaken by the respondents in the contempt petition no.90/99 in OA 687/98, it is made clear that as soon as the revised recruitment rules come into place within a reasonable period thereafter say three months after 30th September,2000 the respondents will consider Investigator Grade-I as recommended by the 5th CPC for promotion to the post of AD,CS(T) and consequential promotions made to the post of AD,CS(T) on the basis of

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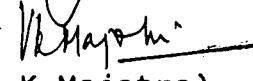
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the recommendations of the DPC held on 16th March, 2000
will cease to operate. The OA is accordingly allowed
with the above directions. No costs.


(Ashok Agarwal)

Chairman


(V.K. Majotra)

Member (Admnv)

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