

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1/1990
T.A. No.

199

DATE OF DECISION 1-6-93

<u>Shri O.P. Aggarwal</u>	Petitioner
<u>Shri G.D. Bhandari</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & Ors.</u>	Respondent
<u>Shri A.K. Behra</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. N.V. Krishnan, Vice Chairman (A).

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

(Hon'ble Shri N.V. Krishnan, Vice Chairman (A))

The applicant is at present a Senior Translation Officer in Russian and English in the Naval Headquarters under the second respondent, the Chief of Naval Staff. He is aggrieved by the letter dated 7-3-88 (An.A-29) by which the following two letters were cancelled:-

- i) Letter dated 27-12-83 (An.A-16) by which the applicant was permitted to exercise an option under civilians in Defence Services (Revised Pay) Rules, 1973-R.P. Rules for short-w.e.f. 1-7-73 in the revised pay scale Rs.550-900.
- ii) Letter dated 10-1-86 (An.A-18) by which the applicant was permitted to opt for the revised pay scale 650-1200 w.e.f 10-7-73 under the RP Rules.

It was further directed that the applicant's pay will

be fixed under the RP Rules w.e.f 1-1-73 in the post held by him on that day and the over-payments, if any, should be recovered. On a representation made by the applicant against this letter, the An.A-30 letter dated 7-2-89 was issued confirming the An.A-29 letter. It is against the An.A-29 and A-30 letters that this application has been filed.

2. The brief facts giving rise to this grievance are as follows:-

2.1 The applicant was an employee of the Hindustan Aeronautics Limited (HAL), Nasik- a Govt. of India undertaking under the Ministry of Defence, where he was employed as a Russian-English Interpreter in 1957. Due to the departure of Russian experts, some posts of interpreters became surplus in the HAL.

2.2 Efforts were made for the absorption in the Ministry of Defence of persons like the applicant who were rendered surplus. In pursuance of these efforts, the applicant was appointed on 14-10-71 in the Air Force headquarters as a Senior Translator (Russian & English) in the pay scale Rs.320-530. His pay was fixed at the minimum of the pay scale i.e. Rs.320/-.

2.3 Subsequently, his appointment as Sr.Translator was regularised from 26-8-72 vide the An.A-3 letter dated 2-9-92 and he was kept on probation for two years from that date.

2.4 While so employed, it would appear that the Union Public Service Commission (UPSC) conducted an interview for regular appointment to the post of Translation Officer (Russian/English) / The names recommended by the UPSC are in the An.A-8 list which is stated to be the enclosure to the UPSC's letter dated 16-2-73 and it also contains the recommendations of UPSC regarding the initial pay. The applicant was recommended by the UPSC and it also recommended that

/in the Naval
H.Qrs.

6

his pay should be fixed according to rules.

2.5 It is stated that thereafter, the applicant was appointed in the Naval headquarters as a Translation Officer w.e.f. 10-7-73. Long afterwards, on 9-2-83, the pay of the applicant as Senior Translator, Air Force Headquarters, which was originally fixed at Rs.320/- in the pay scale Rs.320-530 from 14-10-71 (An.A-1), was revised to Rs.395/-, by granting him five increments in that pay scale vide the An.A-14 letter of the Ministry of Defence.

2.6 In the meanwhile, the revised pay scales based on the Third Pay Commissions' recommendations came into force w.e.f. 1-1-73. It is not clear from the application as to what option was exercised by the applicant when the R.P. Rules were notified on 24-12-73 bringing them into force from 1-1-73, alongwith the revised pay scales (An.A-20). However, respondents state in reply to para 4(26-29) of the application that, based on his pay of Rs.410/- in the ^{revised} ~~prescribed~~ pay scale, the applicant's pay was fixed at the stage of Rs.650/- as on 1-1-73 in the revised pay scale Rs.550-900.

2.7 In view of the fact that the applicant's pay was revised by the order dated 8-2-83 (An.A-14) retrospectively from 14-10-71, an opportunity to exercise a fresh option was, apparently, given to him. This is by the letter dated 27-12-83 (An.A-16) addressed by the Ministry to the second respondent, the Chief of Naval Staff with a copy to Air Force Headquarters where he was working at the relevant time. By this letter, the applicant was permitted to exercise an option in favour of the revised pay scale of Rs.550-900, which corresponds to the pre-revised pay scale of

6

Rs.320-530 applicable to the post of Senior Translator (Russian/English) held by the applicant in the Air Force Headquarters, w.e.f. 1-7-73, under the provisions of rule 7 of the R.P.Rules, by waiving the time limit stipulated for the exercise of such options. Accordingly by the order dated 6-1-84 (An.A-17) his pay on 1-1-73 was fixed at Rs.675/- on the revised scale Rs.550-900.

2.8 Apparently, the applicant was not satisfied with this sanction. Therefore, another letter dated 10-1-86 (An.A-18) was issued by the Ministry (Respondent 1) to the second respondent, by which sanction of the President was communicated accepting the belated option exercised by the applicant w.e.f. 10-7-73 (A.N) in the revised pay scale Rs.650-1200 in lieu of the pre-revised pay scale Rs.350-800 applicable to the post of Translation Officer in the Naval headquarters, the charge of which he had assumed on that day.

2.9 Accordingly, by the An.A-19 order, his pay in ~~the~~ ^{pre-revised} pay scale on the post Senior Translator in the Air Force Headquarters was continued even after the revised pay scale came into force from 1-1-1973. This was done by cancelling the earlier An.A-17 order. His pay in this pay scale was Rs.410/- p.m. on 14-10-92. He was continued on this pay till his appointment to the post of Translation Officer in the Naval headquarters on 10-7-73. On such appointment, his pay was fixed at Rs.450/- in the pre-revised pay scale of Rs.350-800 applicable to the post. By virtue of the An.A-18 letter permitting the applicant to opt for the revised scale Rs.650-1200 applicable to this post, w.e.f. 10-7-73 his pay was fixed at Rs.710/- (An.A-19).

2.10 It appears that the Ministry of Defence noticed some irregularities in the sanctions (An.A-16 & An.A-18)

6

issued for the exercise of belated options. Therefore, the impugned letter dated 7-3-88 (An.A-29) was issued cancelling these two letters. This letter directed that the pay of the applicant should be fixed under the R.P.Rules, 1973 w.e.f. 1-1-73 on the post held by him on that date and over-payments should also be recovered.

2.11 On receipt of this letter, the applicant submitted a representation dated 23-9-88 (An.A-25) to the Joint Secretary (Estt.), Ministry of Defence. As that letter gives in a nutshell the substance of the applicant's claim and the new plea taken by him to avoid the consequence of the impugned letter An.A-29 letter, it is reproduced below:-

"I submit herewith the summary of the case recorded on NHQ File No.CP(G)/3598.

SUMMARY OF THE CASE.

1. I was working as Senior Translator(Russian/English) in the Air HQ in the pre-revised scale of Rs.320-15-530 wef 14-10-71 and my pay fixation orders were issued in 1983 vide Air HQ OO Part II/NE No.8/PKP/83 dated 19-2-83. As per these orders my pay was fixed at Rs.395/- p.m. wef 14-10-71 in that grade. Before issue of these orders on 19-2-83, I was promoted as Translation Officer (Russian/English) in NHQ on 10-7-73. Thus, on 10-7-73, I did not know my basic pay and IIIrd Pay Commission Report was also not out by that date and I had to join NHQ at the minimum of the pre-revised pay scale of Rs.350-800. Had I known my basic pay in the lower grade on the date of my promotion on 10-7-73 and IIIrd Pay Commission Report had been out by that date, I would have certainly earned my annual increment in the lower grade on 1-10-73 and then would have joined NHQ in order to get my pay fixed at Rs.710/- p.m. in Translation Officer's revised scale of Rs.650-1200 under FR 22(C). I think I am not at fault if Govt. issued my pay fixation orders late in 1983 and fixed my pay at Rs.710/- p.m. as specified in para 2 of Air HQ oo Part II/NE No.11/RKP/86/NE dated 20-3-86. Anyhow, now if Govt. wants to refix my pay in the other way after a gap of 16 years wef 1-1-73 on the post I was holding on that date, in view of the above, there is no other alternative for me except to forgo my promotion benefits from 10-7-73 to 1-10-73 such that my pay is fixed at the same stage of Rs.710/- p.m. in the revised scale of Rs.650-1200 wef 10-7-73. If my promotion benefits are not deferred from 10-7-73 to 1-10-73, for no fault of mine, I shall be losing one increment for all the years to come wef July 1973 and face a recovery of more than Rs.12,000/-.

2. If it is treated as an appointment in NHQ on 10-7-73, even then my pay is to be fixed at Rs.450/- p.m. under FR-22(C) in the pre-revised scale of Rs.350-800 taking into account that I was drawing Rs.410/- p.m. in Air HQ in the pre-revised scale of Rs.320-12-530 as per the recommendations of UPSC "Pay to be fixed according to rule" and then it will be fixed at Rs.710/- p.m. from the same date under CDS(RP) Rules 1973. In this case, the post held on 1-1-73 does not come in the picture and thus my pay will be fixed at Rs.710/- p.m. under CDS(RP) Rules 1973 keeping in view the pay of Rs.450/- p.m. I was drawing on my appointment in NHQ on 10-7-73. In this case, I do not lose any increment and do not face any recovery."

2.12. This representation was considered and the final reply (An.A-30) was issued on 7-2-89 stating that the Ministry of Defence stuck by the An.A-29 letter. In other words, the cancellation of the letters An.A-16 and An.A-18 sanctiones were confirmed as also the directions regarding refixation of pay in the revised pay scale from 1-1-73 and recovery of over-payments.

2.13 It is in these circumstances that the applicant has preferred this application seeking to quash the impugned An.A-29 and A-30 letters and to give a direction to the respondents to give him the benefit of the fixation done earlier by him in pursuance of the An.A-18 letter. It is contended that the orders at A-29 vulate the O.M. dated 9-7-74 (An.A-23) of the respondents which, it is alleged, provides that there should be no drop in the emoluments of an employee if it is a result of the retrospective application of rules. He also contends that retrospective revision is unauthorised and in any case recovery, even if legal, cannot be for excess payments made prior to three years preceding the date of the An.A-29 order.

3. It has to be added at this stage that in this application, the applicant has referred to the cases of his erstwhile colleagues in the HAL namely SR Das, D.Gupta and BS Yadav who were also rendered surplus and

6

absorbed in the Naval headquarters as Translation Officers and alleged that these officers have been given favoured treatment by violating the departmental rules in the matter of fixation of pay. A substantial part of the OA deals with this allegation and yet the applicant seeks for himself the same benefit. At this point, we only notice that these allegations were never made earlier in the representation made by the applicant to the Joint Secretary (Estt.) (An.A-25).

4. The respondents have filed a reply, largely admitting the facts narrated above. They have defended their action in issuing the impugned An.A-29 letter. As that is a comprehensive statement, the relevant paras from their reply are reproduced below:-

"Para 4(26-29) The applicant and others are ex-employees of HAL, Nasik, whereas S/Shri SR Das D Gupta and BS Yadav were appointed as ad-hoc Translation Officer (R/E) in a Group 'B' Gazetted post in the Navy in the pay scale of Rs.350-800, the applicant joined Air headquarters as ad-hoc Sr.Translator (E/E) a non-gazetted post in the pay scale of Rs.320-530. As per rules, a maximum of 5 advance increments could be granted upon fresh appointment in Govt. service. In the case of applicant, the same was done and his initial pay was raised to Rs.395/- from Rs.320/-. Similar benefits upto 5 advance increments was given to S/Shri SR Das, D Gupta and BS Yadav but their pay was fixed higher because they were appointed to a gazetted post as Translation Officer (R/E) in the pay scale of Rs.350-800. As such the pay drawn by the applicant and others in HAL, Nasik has no relevance at all. Based on Rs.410/- in the pre-revised scale i.e. applicant's pay as on 1-1-73 his pay was fixed at Rs.650/- in the revised scale of Rs.550-900.

Para 4(30)- The revised option allowed to the applicant was not according to the rules. Rule 5 of CDS(RP) Rules, 1973 lays down that a Govt. servant may elect to continue to draw pay in the existing scale until the date on which he earns his next increment in the existing scale or until he vacates his post or ceases to draw pay in that scale. However, this option, as laid down in Ministry of Defence OM No.2(19)/74/D(Civ-I) dated 09-7-74 is not available to persons appointed to a post after the 01 Jan 73, whether for the first time in the Govt. service, or by transfer of promotion from another post and they are necessarily to be allowed pay in the revised scale only. The applicant was a direct recruit and not

6

a departmental promotee. It is denied that he was regularised as T.O.(R/E) in the Navy wef 10-7-73. In fact, he was working as a Sr.Translator (R/E) in Air Headquarters when he was selected to a Group 'B' gazetted post of T.O(R/E) wef 10-7-73 in the Navy by UPSC. His appointment as TO (R/E) wef 10-7-73 is fresh appointment and for the first time in a Gazetted post.

Para 4(31) The post of T.O is filled by direct recruitment through UPSC. After being selected through UPSC, the applicant was appointed as T.O wef 10-7-73 and posted to Naval headquarters. It was recommended by UPSC that his pay would be fixed according to rules. It implies that his pay would be fixed under Article 156-A CSR. Accordingly, his pay was fixed at Rs.450/- in the scale of Rs.350-800. The CDS(RP) Rules, 1973 were issued in Dec 73 and were effective from 1-1-73. Since, he was appointed as T.O. from a date subsequent to 1-1-73, the option as stated above was not available to him. Therefore, his pay was required to be fixed as Sr.Translator in the scale of Rs.550-900 as under:-

Basic Pay	-	Rs.410-00
DA/DP	-	Rs.160-00
I.R.	-	<u>Rs. 50-00</u>
		Rs.620-00
Add 5%	-	<u>Rs. 20.50</u>
Total	-	<u>Rs.640.50</u>

Since the stage available in the scale of Rs.550-900 is Rs.650/- his pay could be fixed at Rs.650/- wef 1-1-73. Based on Rs.650/- his pay on appointment as T.O. wef 10-7-73 could be fixed at Rs.680/- in the scale of Rs.650-1200. His pay under Ministry of Defence OM dated 24-6-76 could be fixed as under:-

(a) First his pay based on Rs.410/- fixed at Rs.450/- under normal rules as T.O.

(b) Now pay to be fixed under CDS(RP) Rules, 1973 is as under:

Basic pay	-	Rs.450.00
D.A/DP	-	Rs.164.00
I.R.	-	<u>Rs. 50.00</u>
Total	-	Rs.664.00

Since the next stage in the scale of Rs.650-1200 is Rs.680/- his pay could be fixed at Rs.680/- w.e.f. 10-7-73. Thus, the pay of the applicant either under Ministry of Defence OM dated 9.7.74 or under OM 24.6.76 or under CDS(RP) Rules, 1973 could be fixed at Rs.680/- only. The procedure regarding fixation of pay in respect of employees who had opted to retain his existing scale of pay and has been promoted to a higher post between 1-1-73 and the date of operation of his option is to be fixed in the revised scale of the higher post is laid down in Min of Defence OM No.2(5)76/D(Civ-I) dated 24-6-76."

62

5. The applicant has filed a lengthy rejoinder to the reply. Only two points made are to be noticed.

(i) The first relates to the manner in which he brushes aside the differences brought out in the reply of the respondents between the case of the applicant and that of his erstwhile colleagues, SR Das, D. Gupta and BS Yadav. He has stated as follows in this regard in the rejoinder para 4(5) and 4(6) of the reply.

"However, it is denied that both the cases are not identical. Both the posts of Senior Translators (R/E) in Air Hqs and Translation Officers (R/E) in Naval Hqs are in the field of Russian Language under the same Ministry of Defence. It is immaterial if Air Hqs designated its translators as "Senior Translators (R/E)" in the pay scale of Rs.320-15-530 & Naval Hqs designated its translators as "Translation Officers (R/E)" in the pay scale of Rs.350-800 but both carried out similar types of duties "Translation work" in the same Defence Service Hqs. Moreover, all the interpreters were from the same office of HAL NASIK where they were working in the same scale."

(ii) In regard to the pay fixation, the argument advanced is similar to his representation A-23. This has been done in the rejoinder to para 4.30 and 4.31 of the respondents' reply. It reads as follows:

"Had the applicant known his exact basic pay on 10-7-73 that he would be drawing Rs.410/- p.m. on 1-1-73, he would have opted the revised scale wef 1-1-73 as usual and would have certainly earned his annual increment in Air Hqs wef 1-10-73, by continuing in Air Hqs till 1-10-73. Thus, his pay would have been fixed at Rs.650/- p.m. in Translator's revised scale of Rs.550-900 wef 1-1-73 under CDS(RP) Rules 1973 keeping in view that he was drawing Rs.410/- p.m. in the pre-revised scale of Rs.320-530 and then on grant of annual increment, his pay would have been raised to Rs.675/- p.m. wef 1-10-73. On joining Naval Hqs, his pay would have been fixed at the same rate of Rs.710/- p.m. in Translation Officer's revised scale of Rs.650-1200 under FR-22(c). Since he was kept in darkness by the Respondents by not issuing his pay fixation orders in time and he did not know his exact basic pay on 10-7-73 as well as 3rd pay commissions report was also not published by that date, he left Air Hqs on 10-7-73 without earning his annual increment falling on 1-10-73 for which the applicant cannot be blamed."

6. I have heard the learned counsel for both sides and perused the records.

6

7. The learned counsel for the applicant forcefully pleaded that the applicant should be given the same treatment as was given to his former colleagues in the HAL who have now been absorbed in the Naval HQrs. However, in the same breath, he also contended that these officials were given favoured treatment not authorised by the rules. It almost seemed that the burden of the application was not to seek any relief for the applicant but to take away the alleged unauthorised and illegal concessions and favours given to the applicant's erstwhile colleagues SR Das, D.Gupta and BS Yadav. However, none of these persons has been impleaded as respondents and no specific prayer has been made against them. Therefore, the question whether they have been enjoying illegal benefits do not arise consideration.

8. As pointed out above, the pleadings do not disclose that the applicant had, at any stage, requested the respondents to consider his case in the light of the manner in which the pay has been fixed in respect of Shri SR Das, D Gupta and BS Yadav. Therefore, we cannot, strictly speaking, consider such a prayer made for the first time in the O.A, without making a prior request to the department for, the scheme of the Administrative Tribunals Act, 1985 envisages that if a representation is made and rejected, the grievance can be agitated before the Tribunal only on the basis of the points made in the representation. The exception is points of law which can be raised before the Tribunal, if the factual basis for raising the question are specified in the O.A. In this case a representation A-23 was filed. This issue was not raised therein. Strictly speaking, it is not necessary to consider this.

9. Nevertheless, I am satisfied that on merits, the applicant's case is not at all comparable with those of Shri SR Das, D.Gupta and BS Yadav. For, the applicant

31

accepted a lower post of Sr. Translator in the Air Force Headquarters in the pay scale Rs.320-530 which post he held till 10-7-73 forenoon i.e. until after the deemed date on which the RP Rules came into force. As against this, SR Das, D.Gupta and BS Yadav were appointed on the higher post of Translation Officer in the pay scale Rs.350-800 in the Naval H.Qrs and were holding this post when revised pay scale came into force on 1-1-73. These differences are material and are bound to be reflected in the fixation of pay on the coming into force of the RP Rules. The applicant cannot, therefore, either contend that he should be treated like SR Das, D.Gupta and BS Yadav or sweep under the carpet the important and material differences between their cases ^{and his case} ~~as he has~~ as he has attempted to do in the extract reproduced in para 5(i) supra.

10. That takes ^{us} to the merits of the pay fixation done by the respondents.

11. Admittedly the post held by the applicant on 1-1-73 was that of a Sr. Translator. No doubt, his pay was fixed in October 71, only at the minimum of the pay scale Rs.320-530 and this was revised to Rs.395/- only in 1983 (An.A-14). That will, no doubt, give him a cause of action for exercising ^a fresh option in respect of the revised pay scale Rs.550-900 corresponding to the pre-revised pay scale Rs.320-530. He could have exercised a fresh option under Rule 5 of the R.P. Rules either to come over to the revised pay scale Rs.550-900 from 1-1-73 or from 1-10-73 when he earns the next increment in the pay scale Rs.320-530 or when he ceases to hold that post in that pay scale.

12. The applicant does not have any right to exercise any option in respect of the pay scale which should have applied to him on his subsequent appointment as Translation Officer in the Naval headquarter on 10-7-73 even though

his pay was fixed in the ^{revised} ~~previous~~ scale Rs.350-500 on that date, because the revised pay scale had not been notified then. This ^{is} ~~for~~ two reasons. Firstly, Rule 4 of the R.P Rules makes it clear that the revised pay scales apply from 1-1-73 to all posts specified in ^{& Schedule} ~~Sat~~.I. Therefore, the post of Translation Officer carried this pay from 1-1-73. Secondly, option under Rule 5 is restricted only to the post held on 1-1-73. The applicant had no right to exercise any option in respect of the pay applicable to the post of Translation Officer. This has also been made clear in the instructions issued by the Ministry of Defence in OM No.2(5)76/D(Civ-I) dated 24-6-76 (An.A-22. That clarification reads as follows:-

"A. question has been raised as to how the pay of a person who had opted to retain his existing scale of pay and has been promoted to a higher post between 1-1-73 and the date of operation of his option is to be fixed in the revised scale of the higher post. It is clarified that rule 9 of the CDS(RP) Rules, 1973 has been worded flexibly to cover fixation of pay in the post held on 1-1-73, the revised scale of pay of which may have been elected from a date subsequent to 1-1-73, as also cases where a Government servant who has retained the existing scale of pay of the post held by him on 1-1-73 is brought to the revised scale of another post while drawing pay in the pre-revised scale. In the latter types of cases, the pay will be fixed on promotion to higher post under the normal rules in CSR and for this purpose the pay of the lower post should be taken as the basic pay on the date of appointment to the higher post plus dearness allowance, dearness pay and interim reliefs appropriate to such basic pay at the rates in force on 31st December, 1972. The benefits of 5% and a maximum of Rs.50/- under rule 7(1) (a) of the CDS(RP) Rules, 1973 will not be admissible in such cases.

13. It is quite clear from the An.A-22 O.M. that the applicant had no choice about the pay scale which should govern his appointment on his appointment as Translation Officer on 10-7-73. The circular states how to pay should be fixed. It is clear that the respondents have fixed the applicant's pay strictly in accordance with this ^{ins} ~~restriction~~.

14. It is important to note that in the representation dated 23-9-88 (An.A-25) the applicant has pleaded that he should be permitted to get his promotion as Translation Officer postponed from 10-7-73 to 1-10-73 so that the revised pay on that post could be fixed after he earns one more increment on the post of Senior Translator on 1-10-73 in the scale Rs.320-530 and the revised pay could be fixed at Rs.710/- in the revised scale Rs.650-1200, from 1-10-73. That is also the stand taken in the rejoinder extracts of which have been reproduced in para 5(ii) supra. These submissions make it clear that the fixation of pay in the revised scale of the post of Translation Officer (Rs.650-1200) at Rs.710/- on 10-7-73 (An.19) is a mistake. This is exactly the case of the respondents.

15. The applicant has pleaded that under the O.M. dated 9.7.74 (An.A-23)-recovery cannot be made if there is a drop in emoluments after refixation of pay in the revised scale. He has misinterpreted the O.M.. It will be seen from the reply of the respondents to para 4.31 of the O.A.- reproduced in para 4- that in the pre-revised scale of pay, his emoluments as Translation Officer was Rs.664/- on 10-7-73. It has been refixed at Rs.680/- in the revised pay scale. There is no drop in emoluments. What is recovered is the overpayment resulting from fixation of his pay at Rs.710/- instead of Rs.680/-.


16. Therefore, there is no merit in this application in so far as it concerns the pay fixation in the revised pay scale by giving the direction as in An.A-29 which have been summarized in para 1 supra.

17. Nevertheless, ^{I am} ~~we are~~ of the view that the applicant is entitled to some relief in view of the highly belated

le

action taken by the respondents. The RP Rules came into force on 1-1-73. The flaws in the An.A-16 sanction dated 27-12-83 and in the A-18 sanction issued on 10-7-86 i.e. issued after about 10-13 years after the RP Rules came into force, which are now pointed out on 7-3-88 by the respondents (An.A-29), should have been evident to them long back. The RP Rules had been in force for more than 10 years when the An.A-16 was issued. The O.M. dated 9-7-74 (An.A-23) and 24-6-76 (An.A-22) containing departmental instructions are clear and unambiguous. Therefore, the An.A-16 and A-18 sanctioned ought not to have been issued at all. The applicant has drawn higher pay than due from July 73 in pursuance of these letters when the An.A-29 letter was issued on 7-3-88 i.e. after about 15 years. Recovery of over-payments is extremely harsh and the over-payments are certainly not due to the fault of the applicant. If the respondents had suffered any loss on this account it was open to them to fix responsibility and recover the same from the official(s) who passed the mistaken orders (An.A-16 and A-18). The applicant cannot, however, be left to enjoy fully the fruits of this mistake. I am, therefore, of the view that the recovery should be restricted to the over-payment made in the last three years ending 7-3-88 on which date the impugned An.A-29 letter was issued.

18. I, therefore, hold that the impugned An.A-29 and An.A-30 letters dated 7-3-88 and 7-2-89 are valid except in regard to the recovery of over-payments. The respondents are permitted to recover the over-payments made in the three year period from 7-3-85 to 7-3-88 and to this extent, the An.A-29 letter ^{shall} stand modified. Application is disposed of as above.


(N.V. KRISHNAN)
Vice Chairman(A)
1-6-93