

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH : NEW DELHI**

OA No. 2963/2004

with

OA No. 1021/2005

MA No. 928/2005

11.7.2006

**HON'BLE SHRI JUSTICE B. PANIGRAHI, CHAIRMAN  
HON'BLE SHRI N. D. DAYAL, MEMBR (A)**

OA 2963/2004

B.R.Arya,  
210-C, Pocket-C,  
Mayur Vihar-II,  
Delhi-110091

**...Applicant**

(By Advocate Shri Jog Singh )

**VERSUS**

1. Government of N.C.T of Delhi.  
Through its Principal Secretary (Finance),  
4<sup>th</sup> Level Delhi Sectt., Players Building,  
New Delhi.
2. Union of India,  
Through its Secretary,  
Govt. of India, Ministry of Finance,  
Deptt. of Expenditure, New Delhi.

**..Respondents**

(By Advocate Shri Ajesh Luthra for respondent No.1 )

OA 1021/2005

1. Shri Hari Narain,  
S/O Late Shri Munna Lal,  
R/O 1369, Type-II,  
Gulabi Bagh, Delhi-110007
2. Shri Puran Mal,  
S/O Shri Arun Singh,  
R/O 201, Bharat Nagar, Delhi-52
3. Shri Dharam Pal,  
Shri Charan Singh,  
R/O V-489, Gali No.17,  
Main Road, Vijay Park, Delhi.
4. Shri Pritam Singh,  
S/O Mehra Singh,  
R/O 368, Vill. & P.O. Pochan Pur,  
New Delhi.
5. Shri Murari Lal,  
S/O Shri Banwari Lal,  
R/O DDA Janta Flat, Nand Nagri,  
Delhi-93
6. Shri Sunder Lal,  
S/O Sh.Ram Swaroop,  
R/O B-547, Raghubir Colony,  
Gali No.4/5, Kondli, Delhi.

7. Sh.Hargovind Singh,  
S/O Shri Ram Chander,  
R/O B-3/145, Moh. Nabi Karim,  
Hapur, Ghaziabad (UP)
8. Sh. Subhash Chandra,  
S/O Shri Chhedi Lal,  
R/O Qtr.No.923, Gulabi Bagh,  
Delhi-7
9. Sh.Ramesh Chander,  
S/O Sh. Chhaju Ram,  
R/O 61-A, Nanda Enclave,  
Nazafgarh, New Delhi.
10. Shri Nand Kishore,  
S/O Shri Roop Lal,  
R/O RZ-B/80, Raj Nagar,  
Palam Colony, New Delhi.
11. Sh.Braham Prakash Singh,  
S/O Shri Tej Singh,  
R/O RZ 170/13, Gali No.4/A,  
Durga Park, Nasir Pur Rd., New Delhi.
12. Shri Roop Ram Banswal,  
S/O Shri Ram Singh Banswal,  
R/O 347, Jwala Puri,  
Paschim Vihar, New Delhi.
13. Shri Anand ~~Kumar~~ <sup>2</sup>  
S/O Shri Lal Singh  
R/O F-57, Nanak Pura,  
New Delhi-21
14. Shri Devi Dayal,  
S/o Shri Mangloo Ram,  
R/O B-7/115, Sec.III,  
Rohini, Delhi-85
15. Shri Surinder Kumar,  
S/O Shri Hazari Ram,  
R/O Qtr.No.33, Sec.VIII,  
R.K.Puram, New Delhi.
16. Shri Kailash Chand,  
S/O Shri Sohan,  
R/O Dilshad Colony,  
A-1/207, Ghaziabad (UP).
17. Shri Harish Kumar,  
S/O Shri Tej Ram,  
R/O 436, Lancer's Road,  
Timarpur, Delhi-54
18. Shri Mukesh Kumar,  
S/O Shri Hari Kishan,  
R/O A-67, Bim Vihar,  
Gali Johripur, Delhi.

(By Advocate Shri Jog Singh )

VERSUS

1. Government of N.C.T. of Delhi,  
Through Chief Secretary,  
Delhi Secretariat, Players Building,

...Applicants

- I.P.Estate, New Delhi-110002
2. The Principal Secretary (Finance),  
Government of N.C.T. of Delhi,  
Delhi Secretariat, Players Building,  
I.P.Estate, New Delhi-110001
3. The Secretary,  
Ministry of Finance,  
Govt. of India, North Block,  
New Delhi.
4. Controller General of Accounts,  
Govt. of India, 7<sup>th</sup> Floor Lok Nayak Bhawan,  
Khan Market, New Delhi.
- ..Respondents**
- (By Advocate Shri Ajesh Luthra for respondent Nos 1 and 2 )

### O R D E R

**By Hon'ble Shri N. D. Dayal, Member (A)**

The above two OAs are taken up together as they have similar facts and involve common questions of law. The averments in OA 2963/2004 have been considered for the sake of convenience.

2. The applicant in OA 2963/2004 and the applicants in OA 1021/2005 are mainly aggrieved by the OM dated 22.09.1992 of the Department of Expenditure, Ministry of Finance and further OM dated 14.2.1994 of the Govt. of NCT of Delhi as well as DOPT clarification dated 2.7.1997. It is alleged that the respondents have created a classification in the cadre of Accounts Officers (AOs) by bifurcating the sanctioned posts of AOs into a discriminatory ratio of 80% and 20% for Senior AOs and AOs respectively and placing the Sr. AOs purportedly in a functional promotional grade with pay fixation under FR 22(1)(a)(1) subject to meeting the eligibility condition of 3 years regular service, which is assailed as irrational, illogical, arbitrary and discriminatory. The applicants who belong to the reserved category, therefore, claim that the posts of AOs and Senior AOs should be added together and treated as posts of AOs only for the purpose of promotion from the feeder grade and reservation policy should be

implemented accordingly as per the prescribed percentages taking all the 100 % posts of AOs together and not merely the posts of AOs which have been limited to 20% thereby restricting their opportunities for promotions. Accordingly their seniority be properly fixed giving them both the monetary and service benefits that would follow with retrospective effect as per their eligibility in that regard. The applicants have also sought amendment of the recruitment rules. It is specifically prayed that the applicants be promoted on regular basis to the posts of AOs in vacant posts of the reserved quota as per rules and subsequently given the grade of senior AOs also retrospectively with all consequential benefits from the date of availability of vacancies in the reserved quota and subject to their eligibility for promotion.

3. We have heard the learned counsel for both parties and gone through the pleadings. The respondents have opposed the relief sought by the applicants in their counter reply to which a rejoinder has been filed. Further written submissions have also been made.

4. Learned counsel for the applicants has submitted that the applicant in OA 2963/2004 is working as AO on ad hoc basis from 24.8.98. The applicants in OA 1021/2005 are working as JAO/AAO in the feeder grade for promotion to AO. The respondents have deprived them all of regular promotion, even though they are eligible for the same, by redistributing the total number of posts in the cadre of AOs in the ratio of 80% and 20% and treating the number of posts of AO as limited to 20% whereas 80% of the posts have been declared as promotional posts and designated as Senior AO in a higher pay scale than the AOs. Thus the number of posts of AOs

have become very limited whereby the promotional prospects of the applicants have become restricted to the percentage of posts that are kept aside for the reserved categories within the 20% posts that are now left of AOs. He has drawn attention to impugned OM dated 22.9.92 issued by the Ministry of Finance whereby a promotional grade of Rs.2200-4000 was created for the post of AOs who were themselves in the scale of Rs.2375-3500. It is contended that no new posts have been created of Sr. AOs but simply a pay scale with a higher maximum stage has been introduced to provide monetary benefits to AOs who possess at least three years of regular service by calling it a functional promotional grade and giving the benefit of FR 22(1)(a)(1) by adopting the principle of seniority cum fitness for grant of the higher pay scale. The scale of pay of AOs and the higher scale of pay overlap each other with the minimum of the higher pay scale being less than the minimum of the pay scale available to AOs. The OM dated 22.9.92 carries no mention of the designation of Senior AO which has been introduced only in the subsequent clarificatory impugned OM issued by Govt. of NCT of Delhi in 1994. It is stated that the sanctioned posts will actually continue to be those of AOs only and 80% of the AOs mainly as per their seniority, would get a better pay fixation in higher scale as a financial benefit.

5. It is submitted that if additional posts of AOs are sanctioned 80% of them would accordingly become available to the AOs for pay fixation in the higher scale. Thus it is merely a redistribution of AOs posts and there are no posts created in the higher grade nor are the duties and responsibilities to be performed by those in the higher scale of greater importance. It is merely their designation which will

undergo a change from AO to Senior AO limited to 80% of the posts of AOs and the Senior, eligible AOs will get the advantage of upgradation. It is, therefore, incorrect to call the higher pay scale of Rs.2200-4000 as promotional grade and the 80% posts to be regarded as in a functional promotional grade. Rather it is a higher grade provided by upgradation to the AOs within their cadre strength limited to 80% of the posts of AOs and it is the same person working in the post of AO who would start drawing increased pay. There are no recruitment rules for Senior AO which provide for the higher pay scale and method of promotion etc. Even the recruitment rules for AOs do not incorporate any change.

6. It has been argued that the applicant in OA 2963/2004, who was eligible, should have been considered for promotion on regular basis in 1998 instead of being given promotion on ad hoc basis. Thereafter, service put in by the applicant would have counted for giving the benefit of higher pay scale and redesignation as Senior AO under reserved category quota applied to 80% of the upgraded AOs as per seniority and his position appropriately fixed in the seniority list. His pay should also have been fixed accordingly. In the impugned orders dated 15.2.1994 issued by the Govt. of NCT of Delhi there is a reference to OM dated 22.9.1992 in which both the pay scales have been shown against the Accounts Officers only with merely a mention of functional promotional grade against the higher scale. It is stated that no arrears of pay would be admissible to the Senior AOs for the period prior to 1.4.1992 and there would be no probation period in the higher grade as it already exists in the grade of AOs. A constitution of DPC was indicated and it was clarified that

formal amendments to the DASS Gr.I recruitment rules, 1993 providing for scale of Rs.2200-4000 will be considered later on. It is therefore contended that all this goes to support the case of the applicants for the relief that has been claimed.

7. In their counter reply, the respondents have opposed the relief sought by the applicants. They have questioned the eligibility of the applicants for regular appointment on the post of AO under reserved category keeping in view the Government instructions of operation of post based roster and the rules with regard to the zone of consideration for the purpose. It is stated that consequent upon restructuring of the <sup>or</sup>ganised cadre, 80% of the sanctioned strength of the cadre of AOs having the pay scale of Rs.2375-3500 (revised to Rs.7500-12000) were placed in the higher promotional scale of Senior AO of Rs.2200-4000 (Revised to 8000-13500) leaving only 20% posts in the grade of <sup>AOs</sup>~~AOs~~. Thus separate roster had to be maintained for the two sets of lower and higher posts as per the Scheme contained in C & AG Circular. A perusal of this Scheme dated 23.1.1998 shows that a clarification was issued to the effect that as the posts of Senior AO/AAO/Senior Auditor / Senior Accountant are promotional posts for AO/SO/Auditor/Accountant respectively, separate rosters are to be maintained for lower and higher posts. For preparing the roster, the total strength borne on each lower and higher cadre will be taken into account. The rosters may have to be expanded / contracted depending upon the increase /decrease in the strength. It is noticed that these clarifications were given in respect of maintenance of post based revised reservation

rosters with reference to DoP&T OM dated 2.7.1997 which is also impugned by the applicants.

8. The respondents have informed that there are only 22 posts of AOs (20%) and the remaining 86 posts (80%) are in the higher promotional scale of Senior AO. Therefore 4 posts out of 22 are reserved for SC/ST in the cadre of AO. It is stated that since the posts in higher pay scale are in the functional promotional grade, the benefit of FR 22(1)(a)(1) would be admissible on appointment to this grade. It is also stated that the applicant in OA 2963/2004 was allowed to continue on ad hoc basis as AO because the post in SC category was available otherwise he would have had to face reversion. It is submitted that the post of AO is a selection post and all the vacancies were taken into account at the time of holding DPC on 24.4.2000 and 12.11.2002.

9. On 24.4.2000, the total strength of the Accounts Officers was 20. Out of these 20 posts, 4 posts (3 SC & 1 ST) were reserved for SC/ST, whereas, remaining 16 posts were meant for General Category candidates, 4 posts were already filled by the officers of General Category on regular basis. Thus 12 posts of General Category were lying vacant. As such, 12 Accounts Officers of General Category and 4 of SC/ST category could be appointed on regular basis with the approval of DPC.

10. Again on 12.11.2002, the total strength of the Accounts Officers was 21. Out of these 21 posts, 4 posts (3 SC & 1 ST) were reserved for SC/ST whereas remaining 17 posts were meant for General Category candidates. Out of 17 posts of AOs of General Category, 5 posts were already filled by the officers of general category on regular



basis. Thus 12 posts of General Category, three posts of SC category and one post of ST category were lying vacant. Hence, 12 <sup>AOs</sup> ~~AOs~~ of General Category and 4 of SC/ST category could be appointed on regular basis with the approval of DPC.

11. Thus the respondents have justified the action taken by them and segregation of the posts of AOs into 20% for AOs and 80% for Senior AOs, the latter being not available to the feeder grade for promotion to the post of AO. It is clarified that the recruitment rules for the post of AO were notified on 20.4.1983 and as per para 7 in (2) thereof the post of AO is to be filled by selection on merit on the recommendations of DPC. There has been no irregularity in making promotion to the post of AOs. Therefore, it is contended that the prayer of the applicants is misconceived. In their written submissions they have further denied the applicant's claim based upon the stand taken by them.

12. In the rejoinder the applicants have contended that even if separate rosters are maintained, one should be for the total number of posts of AO in the lower scale and then another for 80% of the post in grade of Senior AO. Therefore OM dated 22.9.1992 and the clarification with regard to DoP&T OM dated 2.7.1997 have been incorrectly interpreted. In their written submissions it is alleged that the Scheme was meant to accelerate the career growth of the AOs and <sup>not</sup> to adversely affect the promotional avenues of the feeder cadre.

There cannot be any sub classification of posts within the cadre of AOs on the ground of carving a functional promotional grade out of it.

13. We find that the main question that has been raised by the applicants is of the validity of the action taken by the respondents to

re-distribute the total number of posts of AOs into two groups of 80% and 20% and thereafter limit the promotion from the feeder grade to the post of AO only to 20% of the posts of AOs while 80% of these posts would be treated as in the functional promotional grade with a pay scale that has a higher maximum stage and available to the AOs as per seniority and eligibility conditions after holding DPC and permitting fixation of pay in the promotional scale under FR 22 (1) (a) (1). From the submissions made and pleadings on record it appears that the posts of AOs which are occupied by the senior most eligible persons would be designated as the Senior AO posts and benefit extended to the incumbents thereof. There being no additionally created posts of Senior AOs, such posts would keep changing with the incumbent AO and within the sanctioned strength of AOs. The AOs who get upgraded will not vacate their earlier posts. Our attention has not been drawn to any material on record which specifies separate and distinct duties and responsibilities of greater importance given to Senior AOs. We are therefore not persuaded that the action taken by the respondents is not merely a financial benefit extended by upgradation to 80% of the AOs especially when the ingredients of promotion are not present.

14. A co-ordinate Bench of this Tribunal at Chandigarh in a batch of OAs decided on 24.11.2004 relating to Railways reported in 2005 (1) ATJ 1, was dealing with the issue as to whether restructuring of a cadre and adjustment of existing staff in such a scheme can be termed to be a promotion and as to whether in such restructuring scheme, the members of SC/ST category can be granted reservation as is available to them in the matter of normal promotions. The

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Tribunal took note of relevant decisions of co-ordinate Benches of the Tribunal as well as the judgments of the Hon'ble Supreme Court on the subject which are discussed ahead. As per the decision of the Jabalpur Bench of this Tribunal in **Ashok Kumar Srivastava v. UOI & Ors.** 1987 (4) STC (SICATC) 385, placement of some seniors to the upgraded posts with better pay scale does not amount to any fresh appointment by promotion and these persons do not vacate their earlier posts. As no element of promotion or appointment is involved in upgradation of posts the reservation policy would not apply. It was observed that this decision was upheld by the Apex Court in SLP No. 11801/87 and relied upon by the Jodhpur Bench in OA 326/1989 to decide that reservation was not applicable in the case of upgradation of existing posts. The Apex Court upheld the same in CA No.1481/96, **All India Non-SC/ST Employees Association (Railway) v. V.K. Aggarwal & Ors.** based upon earlier decision in CA No.3622/1995, **UOI v. V.K. Sirothia** which was as under:-

"The finding of the Tribunal that the so called promotion as a result of re-distribution of posts is not promotion attracting reservation on the facts of the case, appears to be based on good reasonings. On facts, it is seen that it is case of upgradation on account of restructuring of the cadres, therefore, the question of reservation will not arise. We do not find any ground to interfere with the order of the Tribunal. The Civil Appeal is dismissed. No costs."

15. When the issue again came up in CA No. 304/99 in CA No.1481/96 before the Hon'ble Supreme Court, it was held on 31.1.2001 that

"It appears from all the decisions so far that if as a result of reclassification or readjustment there is a case of upgradation, the principle of reservation will not be applicable. It is on this basis that this Court on 19<sup>th</sup>

November, 1988 had held that reservation for SC & ST is not applicable in the upgradation of existing posts and Civil Appeal No.1481/1996 and the connected matters were decided against the Union of India. The effect of this is that where the total number of posts remained unaltered, though in different scales of pay, as a result of re-grouping and the effect of which may be that some of the employees who were in the scale of pay of Rs.550-700 will go into the higher scales, it would be a case of upgradation of posts and not a case of additional vacancy or part being created to which the reservation principle would apply. It is only in addition to the total number of existing posts some additional posts are created that in respect of those posts the reservation will apply, but with regard to those additional posts the dispute does not arise in the present case. The present case is restricted to all existing employees who were redistributed into different scales of pay as a result of the said upgradation.

The Union of India shall re-work the seniority in the light of the clarification made today and report back within 6 weeks from today. "

16. It is further seen that the Chandigarh Bench of this Tribunal in OA 426/PB/94 decided on 24.07.2001, following the law in this regard inter alia held that restructuring amounts to only consideration of persons for being placed in the next higher grade on the basis of their service record and confidential reports for adjudging their fitness only. In the batch of OAs decided on 24.11.2004 the bench had also noted a decision of the Principal Bench of the Tribunal in OA 1540/2003 (*Shiv Kumar & Ors. v. UOI & Ors*) decided on 29.4.2004 wherein following the view taken by the Apex Court, it was inter alia held that promotion was distinguished from upgradation by the test of creation of additional posts. DoP&T letter dated 25.10.2004 has also been referred to in which it is clarified based on the judgements of the Apex Court, that where the total number of posts remained unaltered, though in different scales of pay, as a result of re-grouping, it would be a case of upgradation of posts and not a case of additional vacancy

or post being created to which the reservation principle would apply. If the case is restricted to all existing employees who were redistributed into different scales of pay as a result of upgradation, there cannot be any reservation.


17. A Full Bench of the Andhra Pradesh High Court in **Union of India and ors. Vs. K. Radhakrishan Murthy and another etc.** while dealing with a case of stepping up of pay referred with advantage to **Union of India v. Ashoke Kumar Banerjee**, 1998 (2) SCSLJ 41 wherein it was held that for fixation of pay under FR 22 (1) (a) (1) there are two conditions required to be satisfied which are that the employee must be promoted to a post which involves duties and responsibilities of greater importance than those attached to the former post and also that the employee must be moving from a lower scale attached to a lower post to a higher scale attached to a higher post. In the present case, this requirement cannot be said to have been met. Even the duties and responsibilities of Senior AO being of greater importance has not been confirmed by the respondents by any material brought to notice. Hence the applicability of FR 22 (1) (a) (1) in this case also cannot be sustained.

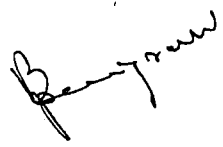
18. Evidently, by restructuring there can be a process of moving upwards and having a higher status while remaining on the same pedestal, whereas promotion has the effect of taking a frog-leap from the lower pedestal to the next higher pedestal leaving behind the original platform. Thus it would appear that in the context of reservation in upgraded existing posts by restructuring, keeping in view the various factors which are also present in this OA, the law that has been laid down does not support the stand taken by the

respondents herein. Besides, it is well settled that administrative orders cannot infiltrate into an arena that is already governed by judicial pronouncements.

19. In view of the above discussion it is apparent that the features of the present OA are similar to those cases which formed part of the matter before the co-ordinate Bench at Chandigarh. It is therefore directed that all the posts of AOs shall be available to the feeder cadre for promotion and filled as per the recruitment rules keeping in view the provisions of reservation policy. 80% of the posts of AOs would be treated as upgraded and re-designated as Senior AOs and the benefit of pay fixation in the higher pay scale extended to those AOs who are senior and eligible as per criteria prescribed by the respondents. These 80% posts would not be regarded as promotional posts and FR 22 (1 (a) (1) shall not apply. There would be no reservation of post in placement in the 80% of the upgraded posts of AOs. In view of these directions the impugned orders are set aside to that extent. The present position is inter alia based on the impugned orders of many years ago. Decisions which have been implemented till date shall not be disturbed.

20. The consequential benefits due to the applicants shall be considered by the respondents accordingly and appropriate orders issued as per law within a period of four months from the date of receipt of this order. The applications are disposed of. There shall be no order as to costs.

  
(N.D. Dayal)  
Member (A)

  
(B. Panigrahi)  
Chairman