

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.3006/2004

M.A. NO.2524/2004

New Delhi, this the 13th day of October, 2005

HON'BLE MR. V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

1. R. Issac,
Directorate of Naval Air Material,
Naval Headquarters,
New Delhi.
2. D. Jai Simcan,
Directorate of Logistics Support,
Naval Headquarters,
New Delhi.
3. P.K. Dass,
Directorate of Logistic Support,
Naval Headquarters,
New Delhi.
4. Surjeet Singh,
Directorate of Naval Air Material,
Naval Headquarters,
New Delhi.
5. Shiv Kumar,
Directorate of Naval Air Material,
Naval Headquarters,
New Delhi.
6. R.K. Verma,
Directorate of Procurement,
Naval Headquarters,
New Delhi.
7. K.L. Krishnamurty,
Directorate of Logistic Support,
Naval Headquarters,
New Delhi.
8. B.L. Jatav,
Directorate of Procurement,
Naval Headquarters,
New Delhi.
9. G. Nageswara Rao,
Material Organisation,
Visakhapatnam.
10. G.V. Subramaniam,
DGNP, Visakhapatnam.



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11. D.N.V. Stya Narayana,
Material Organisation,
Visakhapatnam.
12. Kumar Naraendra,
Material Organisation,
Visakhapatnam.
13. V.V.S.R. Murthy,
Material Organisation,
Visakhapatnam.
14. N. Ramakrishana,
Material Organisation,
Visakhapatnam.
15. K.N. Murthy,
Material Organisation,
Visakhapatnam.
16. K. Ramesh Kumar,
Material Organisation,
Visakhapatnam.
17. A.K. Mishra,
Material Organisation,
Visakhapatnam.
18. E. Shivsankar,
Material Organisation,
Visakhapatnam.
19. R.S. Manjunath,
Material Organisation,
Kochi.
20. K.K. Rajappan,
Material Organisation,
Kochi.
21. T. Dinash Kumar,
Material Organisation,
Kochi.
22. G.K. Nair,
B.V. Yard,
Kochi.
23. C.P. Singh,
Material Organisation,
Mumbai.
24. M.M. Varghese,
Material Organisation,
Mumbai.
25. Pratik Majumdar,
Material Organisation,
Mumbai.

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26. A.K. Poul,
Material Organisation,
Mumbai.
27. S.K. Saxena,
Naval Store Depot,
Haddo Post,
Portblair.
28. P.M. Babu,
Headquarter Goa Area, Dabolim
Goa.

.... Applicants.

(By Advocate Shri Rajeev Sharma)

Versus

1. Union of India,
through its Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. Union of India,
through its Secretary,
Ministry of Finance,
North Block,
New Delhi.
3. Naval Headquarters,
through Chief of Naval Staff,
'C' Wing, Sena Bhawan,
New Delhi.
4. Union of India,
through its Secretary,
Department of Personnel,
Public Grievances & Pensions,
North Block,
New Delhi.

... Respondents.

(By Advocate Shri B.K. Berera)

O R D E R

Hon'ble Mrs. Meera Chhibber, Member (J).

This is a second round of litigation whereby applicants have challenged the speaking order dated 27.2.2003 passed by respondents pursuant to the directions given by this Tribunal in its order dated 18.12.2002 in O.A. 163/2002.

2. The brief facts as submitted by the applicants are as under:



3. Applicants are working as ANSO-1 and II in Group "A" and "B" posts, respectively. The existing staff of Naval Armament Service, Naval Store Officers and Civil Technical Officers are named as Civilian Officers and in the Indian Navy the sanctioned strength of Civilian Officers of Naval Store cadre working as Senior Naval Store Officers, Naval Store Officers, Assistant Naval Store Depot at different places is 139. The same is an unorganized service.

4. A petition was filed before the 13th Lok Sabha under the parliamentary rules, which had been forwarded to a committee to examine the grievances. The committee vide its report dated 21.11.2000 recommended formation of Naval Store organization as an organized service. Prior to 5th Pay Commission at the level of ANSO, there were 94 posts, out of which 47 posts were to be filled up through direct recruitment and the remaining 47 through departmental promotion. Applicants who have been directly recruited the feeder cadre was Assistant Store Keeper, Store Keeper, Senior Store Keeper, Foreman of Store and Senior Foreman of Store. The next promotional level was in the cadre of Naval Store Officer (NSO) and the eligibility is 8 years as ANSO having the pay scale of Rs.3000-4500. The next post is senior NSO in the pay scale of Rs.3700-5000 and thereafter Director. After the 5th Pay Commission's recommendations ANSO has been redesignated as ANSO-1 and as per the new pattern ANSO-II is the lowest rung as far as direct recruits are concerned. As far as the existing direct recruits under the old pattern are concerned, the post of ANSO can be compared with the post of ANSO-1 under the new pattern. The post of ANSO-1 is to be filled up by direct recruitment as well as by promotion. The scale of pay under the new pattern for ANSO-II is Rs.2000-3200 (Rs.6500-10500) and for ANSO-I it is Rs.2200-4000 (Rs.8000-13500). The recommendation of 5th Central Pay Commission was to merge all the three services, i.e. Naval Armament Service, Naval Store Officers and Civil Technical Officers as Indian Naval Engineering Service prescribing an examination.

5. The existing staff of ANSOs was bifurcated in two parts 31 designated as ANSO-II and 63 as ANSO-1. Respondents have fixed five years requisite service as ANSO-II to become eligible for the post of ANSO-I.



6. Similar was the case in the Intelligence Bureau under the Ministry of Home Affairs in respect of the post of Deputy Central Intelligence Officer and after considering carefully the case of the officers of the Intelligence Bureau, Government has issued a memorandum dated 1.6.1998 under which all the existing officers were given pay scale of Rs.2200-4000 (pre-revised) and accordingly upgraded the existing post for temporary period to provide benefit of fifth pay commission to the existing staff. The new pattern was given effect for future recruitment in the department. Technical officers of the Intelligence Bureau were also extended the same benefit and applicable from 1.1.1996. The applicants herein are also demanding the same pay scale w.e.f. 1.1.1996. Their request contained in their representation was rejected by the respondents on 8.12.2000 contending that the two cadres are not similar as the post of DCIO in IB is an existing post whose pay scale has been upgraded whereas the post of ANSO-I is a new creation involving restricting of the cadre and as the finance has not agreed to the recommendations they have not been promoted as ANSO-I retrospectively.

7. Being aggrieved, applicants filed earlier O.A. 163/2002, which was partly allowed after dealing with respective contentions of both the parties, on 18.12.2002 by setting aside the order dated 7.12.2001 and directed the respondents "to reconsider the issue of according upgradation to applicants w.e.f. 1.1.96 in the light of observations made above and particularly the enbloc upgradation as has been accorded to their counter parts in IB. This exercise shall be done by passing a detailed and speaking order within a period of 4 months from the date of receipt of a copy of this order. If the respondents decide to accord them the benefit from 1.1.96, applicants shall be entitled to all consequential benefits. No costs".

8. Pursuant to the directions of the Tribunal, respondents have passed once again the same order with different date i.e. 27.2.2003, taking the same grounds which were taken in the earlier order but was quashed by the Tribunal, therefore, the order dated 27.2.2003 is absolutely wrong and unsustainable in law.

9. It is this order which has been challenged by the applicants in the present O.A. Applicants have sought quashing of order dated 27.2.2003 and a direction to the respondents to declare that all the applicants are entitled for the higher pay scale of

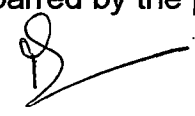
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Rs.2200-4000 (pre-revised) with effect from 1.1.1996 without imposing any condition and from the respective date of their joining as ANSO and to pass such order which this Tribunal may deem fit and proper in the circumstances of the case.

10. The main contention raised by the counsel for the applicants in this case is that once this Court had quashed the order dated 7.2.2001, the effect of same is as if the said order was not in existence at all. It also means that all the grounds taken therein by the respondents stood quashed by the Tribunal, therefore, respondents could not have taken the same grounds all over again to reject their claim by a subsequent order. He submitted that if this was to be allowed, it would amount to treating the earlier order passed by this Tribunal as a nullity and the arguments advanced before the Court in the earlier O.A. would be nothing less than a futile exercise. Therefore, respondents cannot be allowed to reject their claim once again by taking the same very grounds. He also submitted that the judgment given by this Tribunal was not challenged by the respondents in the Hon'ble High Court of Delhi, meaning thereby that they had accepted the said judgment. The earlier judgment has thus attained finality, therefore, respondents cannot over reach the court's judgment. He thus prayed that the order passed by the respondents may be quashed and the relief may be granted to the applicants.

11. Counsel for the applicants also submitted that applicants are only 21 in number. It is, therefore, wrong to suggest that if the relief is granted to applicants, it would have wide financial implications. According to him, the total amount, which would be required to be given to the applicants, would come to approx. Rs.20 lakhs. Therefore, the reasoning given by the respondents while rejecting their claim is not based on any data. He reiterated that since similar posts have been upgraded in I.B. the same relief should have been given to the applicants as well, as they are very small in number who are left out.

12. Counsel for the respondents took two preliminary objections to the maintainability of the O.A. itself. He submitted that O.A. is barred by limitation because O.A. was filed only on 08.12.2004 whereas they are challenging the order dated 27.2.2003 that is more than after one year. He also submitted that the O.A. is barred by the principle of



res judicata also as all these points were taken by applicants / respondents in the earlier O.A. as well but the Tribunal only asked the respondents to reconsider the matter on the question of discrimination, therefore, applicants cannot take all those grounds again for challenging the decision taken by the respondents by filing yet another O.A. He thus prayed that the O.A. may be dismissed on the preliminary grounds itself.

13. On merits, they have submitted that Government of India had not approved/accepted the recommendations of the 5th Central Pay Commission regarding merger of the cadres of the Indian Armament Service, Store Officers and Technical Officers as their duties and responsibilities involved vary from cadre to cadre. They have denied that all posts of ANSO were upgraded as ANSO-I. As per Para 63.75 of the 5th CPC recommendations, a new grade of ANSO-I was to be considered for gradual promotion. However, it was left open to the Ministry of Defence to decide the number of posts required in the grade of ANSO-I. They further submitted that it is wrong to suggest that ANSO-II is a dying cadre because as per SRO 47 dated 5.2.2002, direct recruitments have been introduced in the ANSO-I and NSO grades. The duties and responsibilities of ANSO-I and ANSO-II are not similar and identical. The ANSO-I is a Group 'A' post which obviously has higher duties and responsibilities vis-à-vis ANSO-II, which is only Group 'B' post. The 5th CPC never recommended that all existing incumbents of ANSO should be designated as ANSO-I, otherwise it would not have left the number of posts to be decided by the Ministry of Defence.

14. They have further submitted that the case of ANSO-I is not similar and identical to that of either of DCIO of IB or TOs of IB. They have further explained that if higher scales to the post of ANSO-I are given retrospectively w.e.f. 1.1.1996, it would mean that the entire policy and the notified rules in this regard would have to be amended which is neither feasible nor desirable and would have also large scales repercussions.

15. The Pay Commissions are constituted for evaluating the duties and functions of the employees and the nature thereof vis-à-vis the educational qualifications required therefor. Although the Pay Commission is considered to be expert, the State in its wisdom and in furtherance of a valid policy decision may or may not accept its



recommendations. Such a policy decision ex facie cannot be termed to be arbitrary or irrational attracting the wrath of Article 14 of the Constitution.

16. They have further submitted that applicants had challenged the orders passed by the respondents by filing Contempt Petition No. 82/2004 wherein the Tribunal had categorically observed that the earlier order passed by the respondents was very sketchy whereas now they have passed a detailed order, therefore, both the orders cannot be said to be same. They have thus prayed that the O.A. may be dismissed.

17. Applicants have not filed any rejoinder but counsel for the applicants submitted that since applicants have been litigating all this while in the Tribunal or Hon'ble High Court of Delhi and the last order passed by the Hon'ble High Court is dated 28.1.1004 whereby they were given liberty to file fresh contempt petition in the Tribunal and Tribunal dismissed the second CP on 04.6.2004, therefore, the present O.A. filed on 08.12.2004 cannot be rejected on the ground of limitation. The delay in filing the OA may be condoned.

18. On the question of res judicata, he submitted that since he is challenging the new orders passed by the respondents, it cannot be said to be barred by res judicata.

19. We have heard both the counsel and perused the pleadings as well.

20. Counsel for the applicants relied on 2000 (1) SCC 27, 1999 (I) SCC 260 while counsel for the respondents relied on 1995 (I) SCC 259, 2002 (4) SCC 556, 2003 (11) SCC 658, 2000 (8) SCC 580 and 2002 (6) SCC 72. The preliminary objections raised by the respondents are rejected because respondents passed a reasoned order on the directions given by Court which gives a new cause of action to the applicants to challenge the same by filing a separate Original Application. Moreover, from perusal of the judgment dated 18.12.2002, it is seen that Court had quashed the order dated 7.2.2001 by observing that applicants are almost on similar footing as the employees of I.B. cadre, therefore, the matter was remitted back to the respondents for reconsideration. The Tribunal had not ^{rejected} ~~reflected~~ all the grounds as there is no finding to that effect, therefore, if applicants have valid grounds to challenge the reasoning given by the respondents for rejecting the stand taken by them, it is always open to the applicants to do so.

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21. As far as the question of limitation is concerned, it is seen that applicants had initially filed CP No. 223/2003 but the same was rejected on 15.9.2003 by observing that respondents have passed a detailed and speaking order in terms of the directions of the Tribunal, therefore, no contempt has been committed by them (page 50 at 52). Thereafter, applicants filed MA No. 2063/2003 in CP No. 223/2003 for recalling the said order passed in contempt petition but even that was rejected on 1.10.2003 by observing while the former order was not a detailed and speaking order, the latter order is detailed, reasoned and speaking order passed in compliance of the directions of the Tribunal, therefore, there is no willful and contumacious disobedience of the directions of the Court. However, applicants would be at liberty to assail respondents' order dated 27.2.2003 if they are aggrieved in accordance with law (page 53 at 54). The order dated 1.10.2003 was challenged by the applicants by filing Civil Writ Petition No. 187 of 2004. However, the said writ petition was dismissed as withdrawn as liberty was given to the applicants to file a fresh contempt petition vide order dated 28.1.2004. Thereafter, applicants filed another CP No. 82/2004, which was also dismissed as not maintainable vide order dated 4.6.2004. It is thus clear that applicants were litigating about the same matter either before the Hon'ble High Court or before the Tribunal till 04.6.2004 and within about six months thereafter, applicants filed the present O.A. The reasoning given by the applicants in their application for condonation of delay is thus bonafide as they were litigating unsuccessfully in different proceedings. MA No.2524 of 2004 for condonation is allowed. Delay is condoned.

22. On merits the applicants' counsel had strenuously argued that once the earlier order passed by the respondents was quashed by the Tribunal, they could not have taken the same grounds for rejecting their claim the second time. However, it is seen that when applicants had filed MA 2063/2003 in CP 223/2003 in OA 163/2002, the Tribunal had categorically observed in its order dated 1.10.2003 that the impugned order in OA 163/2002 and the order passed by the respondents pursuant to the Tribunal's order dated 18.12.2002 are not identical. While the former was not detailed and speaking order, the latter order is detailed, reasoned and speaking order, therefore, this observation had already been made by the Tribunal in its order dated 01.10.2003.



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Even otherwise, it is seen that in order dated 27.02.2003, respondents have specifically stated in Para 2 (ii) that the case of posts of DCIO Executive and Technical Cadres (the post of DCIO in the Technical Cadre being designated as ATO earlier) of IB is not similar to that of ANSO in Ministry of Defence. They have also explained that recommendations of the 5th CPC regarding executive cadre of IB were accepted because no redistribution of posts was involved in the case of DCIO, therefore, higher scale was extended in their case w.e.f. 1.1.1996. In so far as the posts of Assistant Director were concerned, all the posts were initially placed only in the scale of Rs.10000-15200. All the posts were extended the pay scale of Rs.12000-16500 (being lower of the 2 pay scales recommended by the 5th CPC for this post) w.e.f. 1.10.1997 (recommendations of the 5th CPC having been notified only on 30.9.1997) with the higher pay scale of Rs. 14300-18300 being extended only with prospective effect. In so far as the post of Assistant Technical Officer (ATO) in the Technical Cadre of IB is concerned, the 5th CPC in Para 70.59 of the report had recommended that 30 of the existing 121 posts may be upgraded from the scale of Rs.2000-3500 (revised : Rs.6500-10500) to the grade of Technical Officer in the scale of Rs.2200-4000 (revised Rs.8000-13500) and this recommendation of 5th CPC, if accepted could only have been implemented with prospective effect as "redistribution" of posts was clearly involved therein. But since historical parity had already existed between the executive and technical cadres of IB and the post of ATO in the Technical Cadre had always been on par with that of Deputy Central Intelligence Officer (DCIO) in the executive cadre of IB. All the posts of DCIO have been upgraded to Rs.8000-13500 and an identical dispensation had, therefore, to be extended to the posts of ATO although the same had not been recommended by the 5th CPC whereas in case of applicants not only redistribution of posts but restructuring of cadre was involved as a new grade of ANSO-I was created by upgrading 73 of the existing 94 posts of ANSOs with rest of the posts continuing in the lower scale being redesignated as ANSO-II. They had also explained that in terms of preambles to Part B and C of CCS (RP) Rules, 1997 in all cases where cadre restructuring/redistribution of posts, etc. is involved, the higher pay scale can necessarily take effect only prospectively whereas in case other than this, the higher

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pay scale would take effect w.e.f. 1.1.1996. The reasoning given by the respondents as to why the posts of ANSO-I could be upgraded only prospectively is thus explained by the respondents and we find no illegality in the reasoning given by the respondents, especially when they have explained that if higher scale to ANSO-I is given retrospectively w.e.f. 1.1.1996, it would mean that the entire policy and notified rules in this regard will have to be amended. It is in this backdrop that respondents have stated that if such a relief was to be given to the applicants, it would have large scale repercussions because 5th CPC has recommended upgradation of pay scales of specific posts through restructuring of the cadres/redistribution of the posts in number of other organizations as well and if relief is given to one, others who are similarly situated, would also ask for the same benefit. It is not as if the respondents have talked about the financial repercussions only but a large scale repercussion in totality otherwise as well. Therefore, the contention of applicants' counsel that applicants are only 21 in number and it would have the extra burden of about only Rs.20 lakhs cannot be accepted in this background.

23. Even otherwise, the main emphasis of the counsel's argument was that once this Tribunal had quashed the first order passed by the respondents, they could not have taken the same ground to reject the request of the applicants but on perusal of the judgment, we find the only ground on which this Tribunal had quashed the earlier order and had directed the respondents to reconsider the case was because the Court felt that applicants were almost similarly situated as those of IB officers. The other grounds raised by the respondents while rejecting the case of applicants were not even dealt with by the Tribunal nor any findings were recorded for rejecting those grounds. To be precise, the Tribunal had observed as follows:

"From the comparative study of NS cadre of IB in case of ATOs and NSO that they are almost on similar footing but yet have been discriminated in the matter of giving benefit, therefore, respondents are directed to reconsider the matter".

Pausing here for a moment, we would like to clarify that even on the question of parity, no positive finding was recorded by the Tribunal to state that applicants were similarly situated as that of cadre of IB. It is important to note the word used in the judgment

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dated 18.12.2002 is that applicants are almost on similar footings. It goes without saying there is difference between saying they are similarly situated or almost similarly situated. The expression 'almost' itself shows that no definite finding was arrived at by the Tribunal. It was in this backdrop that the order passed by the respondents on 07.12.2001 was quashed by the Tribunal and respondents were directed to reconsider the issue in the light of observations made in the order. It was further observed in the order that if the respondents decide to accord them the benefit from 1.1.1996, applicants shall be entitled to all consequential benefits which again shows that no positive directions were given by the Tribunal either to show that they were similarly situated nor any directions were given to grant them the higher scales w.e.f. 1.1.1996. It was left open to the respondents to reconsider the whole matter. Respondents have reconsidered the matter and have rejected it by a reasoned order.

24. The question before us now is, whether in these circumstances can we still give directions to the respondents to give higher pay scales to the applicants. At this juncture, it would be relevant to quote few judgments of the Hon'ble Supreme Court. Hon'ble Supreme Court has repeatedly held in case after case that fixation of pay and determination of parity in duties is the function of the executives. While taking a decision in this matter, several relevant factors, including those noted in Secretary Finance Department case (1993 Supp (1) SCC 153) have to be considered. Financial capacity of the Government and the priority given to different types of posts under the prevailing policies of the Government are also relevant factors. In the context of the complex nature of issues involved, the far-reaching consequences of a decision in the matter and its impact on the administration of the State Government, Hon'ble Supreme Court has taken the view that ordinarily courts should not try to delve deep into administrative decisions pertaining to pay fixation and pay parity. The courts should approach such matters with restraint. It has further been held that Courts should interfere with administrative decisions pertaining to pay fixation and pay parity only when they find such a decision to be patently irrational, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors. It was also held that even if the order fixing the pay scale is found to be unsustainable, the

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Court should not grant any particular pay scale but should only direct the authority concerned to reconsider the matter (**State of Haryana Vs. Haryana Civil Secretariat Personal Staff Assn.**, 2002 (6) SCC 72). It was also held that parity cannot be claimed as a fundamental right of employee nor can it be claimed on the ground of designation being the same.

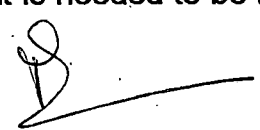
25. In **Union of India Vs. P.V. Hariharan** reported in 1997 SCC (L&S) 833, Hon'ble Supreme Court deprecated the Tribunal for interfering with matters of pay scales. It was held as under:

"Quite often the Administrative Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realize that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales".

26. In **Union of India Vs. Makhan Chandra Roy** (1997 (11) SCC 182), it was reiterated that the equation of post or pay must be left to the executive for Government and must be determined by expert bodies like Pay Commission. The Court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration.

27. In **State of Maharashtra Vs. Chandrakant Anant Kulkarni** (1981 (4) SCC 130, it was observed that the matter of equation of posts is purely an administrative function and such matter should be left to the concerned Government. Any revision of pay would be an exercise which is totally unauthorized and would amount to taking a policy decision which is within the domain of the authorities themselves who are the authors of the pay scales or revision thereof.

28. In **State of UP Vs. J.P. Chaurasia** (1989 (1) SCC 121), Hon'ble Supreme Court observed that the matter of pay scale does not just depend upon either the nature of work or volume of work done as primarily what is needed to be noticed is evaluation of



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duties and responsibilities of the respective posts. More often than not, functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance, like the responsibility attached to a particular office. In such cases, it would not be open to the Court to consider whether the equation of posts made by the Government or the pay scales accorded to them is right or wrong, as such matters are exclusively within the province of the Government. Perhaps the only question the Court can enquire into is whether appropriate policy has been adopted by the Government which does not result in hostile discrimination which is a very narrow and limited area of enquiry. When equation of posts had been done on some basis, the same should not be altered so as to equate with some other post and enhance their pay scales.

29. From the above judgments, it is clear that courts cannot grant particular pay scale to the employees as these are the matters which are to be decided by the expert bodies or the administration. Similarly, in the case of State Bank of India Vs. M.R. Ganesh Babu (2002 (4) SCC 556), it was held by the Hon'ble Supreme Court as follows:

"The principle of equal pay for equal work has been considered and applied in many reported decisions of this Court. The principle has been adequately explained and crystallized and sufficiently reiterated in a catena of decisions of this Court. It is well settled that equal pay must depend upon the nature of work done. It cannot be judged by the mere volume of work; there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. The principle is not always easy to apply as there are inherent difficulties in comparing and evaluating the work done by different persons in different organizations, or even in the same organization. Differentiation in pay scales of persons holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. The judgment of administrative authorities concerning the responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgment of the authorities concerned which, if arrived at bona fide, reasonably and rationally, was not open to interference by the court"

(Emphasis added)



30. In the case of **Union of India and Anr. Vs. Pradip Kumar Dey** (2000 (8) SCC 580), pay scales claimed by the respondent therein were those which were prescribed for the post of Assistant Sub Inspector, which was a promotional post for a Naik. It was held that acceding to the claim made by the respondent would not merely result in change in the pay scales but may also lead to alteration of the pattern of hierarchy requiring reorientation and restructuring of the other posts above and below the post of respondent. Added to this, such consequences are likely to be felt in the various other central police establishments as well. All those which are likely to have a chain reaction, may require further consideration afresh by an expert body like the Pay Commission of the Government itself at an appropriate time in an appropriate manner. Courts should normally leave such matters for the wisdom of administration except the proven cases of hostile discrimination.

31. If the instant case is examined in the backdrop of above quoted judgments, it is seen that the Tribunal never gave a definite finding that applicants were similarly situated as that of the cadre of IB, therefore, it is not open to the applicants now to add words in the judgment already pronounced by the Tribunal. At the cost of repetition, we will observe that it is settled law that in the matters of pay fixation or claiming parity in the pay scales with some other organizations, courts should not give any directions as these are the matters which need to be decided by expert bodies like the Pay Commission or the administration. Since the only ground taken by the counsel for applicants was that respondents could not have taken the same grounds but we have already observed above, that the other grounds were not even dealt with nor found to be bad in law or rejected by the Tribunal in the first judgment, therefore, the contention of applicant's counsel cannot be accepted. We find no illegality in order dated 27.2.2003 wherein respondents have given detailed reasons as to why the higher pay scale cannot be given to the applicants herein with retrospective date from 1.1.1996. The reasons given by the respondents are well founded and are supported by reasons. We, therefore, find no reason or justification to quash the said order nor can given any

direction to the respondents to grant the relief to the applicants as claimed by them.

The O.A. is accordingly dismissed. No order as to costs.

(MRS. MEERA CHHIBBER)
MEMBER(J)

(V.K. MAJOTRA)
VICE CHAIRMAN (A)

'SRD'