

Central Administrative Tribunal, Principal Bench

O.A. No. 3050/2004

New Delhi this the 25<sup>th</sup> day of January, 2006

**Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)**

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

1. M.L. Kohli  
S/o Shri M.R. Kohli  
Aged about 57 years  
R/o D-44 Prashant Vihar, New Delhi-110 085.
2. Monojit Banerjee  
S/o Late Shri M.S. Banerjee  
Aged about 57 years  
R/o T-348 Sarojni Nagar, New Delhi-110 023.
3. Shri S.K. Nayyar  
S/o Shri H.L. Nayyar  
Aged about 54 years  
R/o S-15 Green Park, New Delhi-110 016.
4. Pritpal Singh  
S/o Late Prem Singh  
Aged about 57 years  
R/o 39-C, Evershine Apartments,  
D-Block, Vikas Puri, New Delhi-10 018.
5. Shri H.R. Malhotra  
S/o Shri Pari Ram  
Aged about 55 years  
R/o G-281 Nanakpura, New Delhi.
6. Avtar Singh  
S/o Shri Sujan Singh  
Aged about 53 years  
R/o 48 Jangpura Road,  
Bhogal,  
New Delhi-110 014.

...Applicants

By Advocate: Shri R. Doraiswamy.

Versus

Union of India through

1. Secretary,  
Ministry of Commerce,  
Department of Commerce,  
Government of India,  
Nirman Bhawan,  
New Delhi.
2. Director General Supplies and Disposals,  
Jeewan Tara Building,  
Sansad Marg,  
New Delhi-110 001.
3. Secretary,

Ministry of Statistics & Programme Implementation,  
Sardar Patel Bhawan,  
Sansad Marg,  
New Delhi-110 001.

4. Secretary,  
Department of Personnel & Training,  
North Block,  
New Delhi.

...Respondents

By Advocate:Shri Madhav Panikar.

**ORDER (ORAL)**

**By Hon'ble Mr. Justice M.A. Khan , Vice Chairman (J)**

These six applicants have filed the OA for setting aside OM dated 25/6/2004 and the order dated 13.12.2004 issued by the respondents and a further direction to the respondents to restore the ACP pay scale of Rs.6500-10500 and the pay being drawn by the applicants in that scale since 9.8.1999 and for that purpose provide them with necessary option in terms of provisions contained in FR 15 and/or FR 23.

2. Briefly, the facts stated in the OA are that, these six applicants were working as Economic Investigator (Group 'C' Statistical Function Posts) in the Directorate General of Supplies and Disposals in the pay scale of Rs.5000-8000. They were granted first financial upgradation under Assured Career Progression Scheme (ACP Scheme) dated 9.8.1988 in the scale of Rs.6500-10500 with effect from 9.8.1999 vide order dated 28.10.1999 and 8.6.2000. The Government constituted a new four grade Centralised Cadre of Subordinate Statistical Services Group 'B' and Group 'C' under the Ministry of Statistics and Programme Implementation with effect from 30.1.2002 by encompassing all the two grade or three grade Statistical Function Posts located in various Ministries, Departments and Central Statistical Organisation including DGS&D. The four grades of the newly constituted Statistical Subordinate Services (SSS) were as under:-

"Post	Pay scale	No of Posts	Classification
Functional Grade Statistical Investigator Gr.I	Rs.5000-8000	1612	Group 'C'
Non-Functional Grade Statistical Investigator Gr.III	Rs.5500-9000	691	Group 'C'
Functional Grade Statistical	Rs.65000-10500	1075	Group 'B'

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Investigator Gr.II

Non-Functional Grade Rs.5000-8000 461  
Statistical  
Investigator Gr.II".

Group 'B'

3. The applicants were required to exercise their option to become the members of the initial constitution of the new Centralised Cadre of SSS. The applicants were apprehensive as to how their inter-se seniority will be reckoned in the new Centralised Cadre and also needed an assurance that their ACP pay scale would be protected. For this they made several representations, inter alia, requesting that their ACP pay scale and pay scale for protecting the financial upgradation granted under the ACP Scheme at the time of their absorption in SSS. But their request was turned down with a clarification that the applicants in the new four grade structure would be placed in the Statistical Investigator Grade-II in the pay scale of Rs.5500-9000. Acting on the instruction of the Ministry of Statistics and Programme Implementation, the Cadre Controlling Authority has arbitrarily reduced the pay scale of the applicants from Rs.6500-10500 which they were drawing in the pay scale of Rs.5500-9000 by order dated 13.12.2004, which is impugned in the OA on the basis of OM dated 24/25.6.2004.

4. The respondents contested the OA and have submitted that SSS has been constituted on the recommendation of the 5<sup>th</sup> Central Pay Commission and the OM dated 24/25.6.2004 contained guidelines/instructions for grant of financial upgradation under the ACP Scheme to the eligible incumbents on the post included in SSS so the present OA is not maintainable. It is submitted that while considering the proposal for grant of upgraded pay scale to the statistical functionaries, as recommended by the 5<sup>th</sup> Central Pay Commission, it was felt that constitution of SSS was a time consuming and complex exercise. Pending this, all the Ministries/Departments were advised vide OM dated 30.6.1998 to grant upgraded pay scales as recommended by the 5<sup>th</sup> Central Pay Commission w.e.f. 1.1.1996 subject to certain conditions. Accordingly, following pay scales were granted to Group 'B' and Group 'C' statistical function posts w.e.f. 1.1.1996:-

<p>"Pre-revised pay scales Group 'B' &amp; 'C' statistical Function posts</p>	<p>Normal replacement scale</p>	<p>Upgraded replacement pay scale granted w.e.f. 1.1.96 as per recommendations of the Fifth CPC</p>
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Rs.1400-2300	Rs.4500-7000	Rs.5000-8000
Rs.1600-2660	Rs.5000-8000	Rs.5500-9000
Rs.1640-2900	Rs.5500-9000	Rs.6500-10500

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5. SSS was in the statistical function posts located in 40 different Ministries/Departments/Organisations vide order dated 30.1.2002, which comprised of four grades:-

“ Statistical Investigator Grade-IV	Rs.5500-8000	1612 posts
Statistical Investigator Grade-III	Rs.5500-9000	0691 posts
Statistical Investigator Grade-II	Rs.6500-10500	1075 posts
Statistical Investigator Grade-I	Rs.7450-11500	0461 posts”.

6. Out of this, Grade IV and Grade-II were to be functional grades and Grade III and Grade-I as non-functional grades. On 12.2.2002 the rules governing SSS were notified. Thereafter, exercise of initial constitution of the service was undertaken. The grant of upgraded pay scale with effect from 1.1.1996 and subsequent constitution of the SSS and its operation with effect from 1.4.2004 has to be viewed together and not in isolation. The existing hierarchy in relation to the cadre mean restructured grade and if a new hierarchy has come into being with constitution of SSS, the financial upgradation would be allowed only in the restructured hierarchy. Necessary guidelines for grant of financial upgradation under the ACP with reference to SSS vide OM dated 25.6.2004 was granted in accordance with it the restructured hierarchy of SSS which even though came into force with effect from 12.2.2002 would be applicable for the purpose of ACP right from the inception of the Scheme. Therefore, the grant of financial upgradation, as per four grade structure of SSS right from the inception of the Scheme was a conscious decision taken by the Government and is an integral part to the decision to constitute SSS on the recommendation of the 5<sup>th</sup> Central Pay Commission.

7. In the rejoinder the applicant has reiterated his own case and controverted the allegations of the respondents.

8. We have heard the learned counsel for the parties and perused the relevant record.

9. At the outset, the learned counsel for the respondents pointing out an order of the Division Bench of this Tribunal dated 27.6.2005 in OA No. 351/2003 in the case titled

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**All India Association of Investigation of Natural Sample Survey Organisation Vs. Secretary, Ministry of Statistics and Programme Implementation and Another**

stated that the OM No.11011/6/2003-SSS dated 24/25.6.2004 issued by the Ministry of Statistics and Programme Implementation of the Government of India has been quashed and the case has been remanded to the concerned authorities for fresh decision in the light of the observations and directions of the Tribunal therein. It is submitted that in view of this order the relief claimed in sub-para (i) has become infructuous since the order dated 13.12.2004 was passed on the basis of the OM dated 24/25.6.2004 impugned herein. Learned counsel for the applicants thereupon did not press relief in clause (i) of para 8 of the OA.

10. As regards the merit of the case, the learned counsel for the applicants has cited two orders of this Tribunal, first in OA No. 1678/2004 in the case titled **Surendra Kumar Vs. The Secreary Ministry of Statistics and Programme Implementation** decided on 26.5.2005 and the second is in OA No. 2165/2004 in the case of **Radhey Shyam Vs. U.O.I. Others decided on 20.10.2005**. It is stated that both these orders covers the issue that arise for determination in the present case. It is submitted that in the case of Radhey Shyam (Supra) facts were exactly identical, therefore, a request has been made on behalf of the applicants that the present OA may be decided in terms of that order. Learned counsel for the respondents has not disputed that the facts of the present OA and that in the case of Radhey Shyam (Supra) were similar and identical and the present case is fully covered by that order.

11. This Tribunal in Radhey Shyam (Supra) agreeing with the ratio of law laid down in the case of Surendra Kumar (Supra), held that the benefit under the ACP Scheme was to be granted in the existing hierarchy as on that date, the applicants had become entitled to it and the administrative instructions that the financial upgradation would be granted to the applicants only in the restructured grade (vide OM dated 24/25.6.2004) was in contravention of the provision of the Scheme and, therefore, was not valid. Accordingly, the court had allowed the OA and passed the following order:-

“9. After considering the conditions for grant of financial upgradation under the ACP Scheme as also the judgment of the Full Bench and the Hon'ble High Court, it was held that the benefit under the ACP Scheme is to be granted in the existing hierarchy as on the date on which the applicant became entitled. It was further held that any administrative instructions that the financial upgradation would be granted to the applicant

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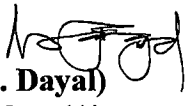
only in the restructured grade was clearly in contravention of the provisions of the Scheme and, therefore, was not valid as held by the Hon'ble High Court and the Full Bench of this Tribunal. The Government could have amended the Scheme instead of issuing administrative instructions contrary to the provisions of the Scheme."

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12. Since the present OA is fully covered by the decision of the Tribunal in the cases cited and we agree with the submission of the learned counsel for the applicants that the present OA may be decided in terms of the order in the case of Radhey Shyam (Supra).

13. Accordingly, it is directed that the applicants would be entitled to the grant of the financial upgradation with effect from 9.8.1999 in the scale of Rs.6500-10500 under the ACP Scheme with all consequential benefits. This order may be implemented within a period of 2 months from the date on which the certified copy of the order is received by the respondents. The OA stands decided in above terms.

No costs.

  
(N.D. Dayal)  
Member (A)

  
(M.A. Khan)  
Vice Chairman (J)

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