

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-1607/2004

With

OA-2030/2004

MA-1744/2004

New Delhi this the 28th day of July, 2005.

Hon'ble Shri Shanker Raju, Member(J)
Hon'ble Shri S.A. Singh, Member(A)

OA-1607/2004

1. Harish Chandra Upreti,
House No. B-4/13,
Sadatpur Colony,
Street No.2,
Karawal Nagar Road,
Delhi-94.

2. Rakesh Singh,
1289/III, N.H.4,
Faridabad,
Harynana.

3. All India Association of Investigators
through its General Secretary,
NSSO (FOD), Level No. 4-7,
East Block No.6,
R.K. Puram,
New Delhi.

....Applicants

(through Mrs. Prasathi Prasad, Advocate)

Versus

1. Union of India through
its Secretary,
Ministry of Statistics & P.I.,
Sardar Patel Bhavan,
New Delhi.

2. Additional Director General,
NSSO (FOD), Level 5-7,
East Block, R.K. Puram,
New Delhi.

.... Respondents

(through Sh. Rajesh Katyal, Advocate)

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OA-2030/2004
MA-1744./2004

1. Ajay Saxena,
 Sr. Investigator,
 NSSO (FOD)
 2nd Floor, CGO Complex,
 Sanjay Place,
 Agra(UP) 282003.
2. Rakesh Kumar Thapliyal,
 Sr. Investigator,
 NSSO (FOD)
 CGO Complex,
 NH IV, Faridabad-121001. Applicants

(through Mrs. Prasanthi Prasad, Advocate)

Versus

1. Union of India through
 its Secretary,
 Ministry of Statistics & P.I.,
 Sardar Patel Bhavan,
 New Delhi.
2. Addl. Director General,
 NSSO (FOD), Level 5-7,
 East Block, R.K. Puram,
 New Delhi. Respondents

(through Ms. Jasbir Kaur, proxy for Sh. Tiger Singh, Advocate)

O R D E R

Hon'ble Shri Shanker Raju, Member(J)

An identical question of law raised in these OAs is grounded on same set of facts, hence OAs are disposed of by this common order.

2. Applicants in OA-1647/200, who are working as Field Investigators in FDO Division represented through an Association, have assailed respondents' order dated 09.06.2004 and Office Memorandum

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dated 30.06.2004 where on promotion to a non-functional grade, their pay has been sought to be fixed under FR 22(1)(a)(1).

3. In OA-2330/2004 applicants, who are Field Investigators, have assailed the orders of fixation of pay on promotion to non-functional grade under FR 22(1)(a)(1).

4. It is no more res integra that on a challenge by the All India Association of Investigators in OA-351-2003 to the restructuring whereby subordinate Statistical Services (Group-C) Rules 2002 and 4 tier structure including two functional and non functional scales have been upheld but for the purpose of grant of ACP, by an order dated 27.06.2005 in OA-1845/2004 and OA-2770/2003 observed that promotion to a non functional cannot be treated as a regular promotion. For the purpose of grant of ACP, matter has been remanded back to the department for reconsideration.

5. Learned counsel of the applicants stated that after constitution of SSS, respondents by an order dated 21.05.2004 laid down duties and responsibilities of each grade including Grade-IV, Grade-III, Grade-II and Grade-I of Statistical Investigators and it is stated that the duties and responsibilities so laid down are inter-changeable and for want of any definite assignment of higher duties and responsibilities from function to non-functional scale, the same cannot be treated as promotion for the purpose of application of FR 22(1)(a)(1) and in that event placing reliance on O.M. dated 22.05.1989 of Department of Personnel & Training that

when an amendment to the post does not involve assumption of duties and responsibilities of greater importance, pay is to be fixed under FR 22(a)(2).

6. Learned counsel has relied upon a decision of the Principal Bench in **Surender Kumar Vs. The Secretary & Ors.** (OA-1678/2004) decided on 26.05.2005 where placement in non-functional post has been found to be a promotion.

7. In the above conspectus, it is stated that the orders issued by the respondents are not legally tenable as executive instructions and statutory rules have been violated and these instructions, which are in conflict with the FR 22(a)(ii), cannot be sustained in law.

8. On the other hand, respondents' vehemently opposed the contentions and stated that once the validity of SSS has been upheld, non-functional scales are held valid and movement in the grades would be promotion. As regards orders cited by the applicants, it is stated that those pertained to grant of ACP.

9. It is further stated that SSS Rules have not specified any duties and responsibilities for the grade of SSS, as such possibility of some incumbents in non-functional grade being assigned duties in the lower functional grade cannot be awarded.

10. The only ground to resist is that even two grades are non-functional, but once seniority is fixed and these constitute feeder

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promotion to the functional post, the same would be treated as promotion and as such FR 22(1)(a)(1) has application.

11. On careful consideration of the rival contentions of the parties, FR 22(1)(a)(1) and FR 22(a)(2) are reproduced:-

"FR 22.(1) The initial pay of a Government servant who is appointed to a post on a time-scale of pay is regulated as follows:-

(a)(1) Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty-five only, whichever is more.

Save in cases of appointment on deputation to an ex-cadre post, or to a post on ad hoc basis, the government servant shall have the option, to be exercised within one month from the date of promotion or appointment, as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage of the time-scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be refixed in accordance with this rule on the date of accrual of next increment in the scale of the pay of the lower grade or post. In cases where an ad hoc promotion is followed by regular appointment without break, the option is admissible as from the date of initial appointment/promotion, to be exercised within

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one month from the date of such regular appointment:

Provided that where a Government servant is, immediately before his promotion or appointment on regular basis to a higher post, drawing pay at the maximum of the time-scale of the lower post, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post held by him on regular basis by an amount equal to the last increment in the time-scale of the lower post or rupees twenty-five, whichever is more.

(2) When the appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time-scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis;

Provided that where the minimum pay of the time-scale of the new post is higher than his pay in respect of post held by him regularly, he shall draw the minimum as the initial pay;

Provided further that in a case where pay is fixed at the same stage, he shall continue to draw that pay until such time as he would have received an increment in the time-scale of the old post; in cases where pay is fixed at the higher stage, he shall get his next increment on completion of the period when an increment is earned in the time-scale of the new post;

On appointment on regular basis to such a new post, other than to an ex-cadre post on deputation, the Government servant shall have the option, to be exercised within one month from the date of such appointment, for fixation of his pay in the new post with effect from the date of appointment to the new post or with effect from the date of increment in the old post."



12. If one has regard to the above, when a government servant is appointed to a post which does not involve assignment of duties and responsibilities of greater importance to the post, FR 22(1)(a)(1) has no application and the same would not be a promotion and in strict sense, FR 22(a)(2) would have application.

13. In **Surendra Kumar's** case (supra) while dealing with the ACP, the following observations have been made:-

“17.....The learned counsel for the respondents has also submitted that the applicant had given option to join the SSS and accordingly the applicant and others who have exercised their option in favour of joining the SSS, were appointed in the restructured Grade-I SSS, i.e. Rs. 7450-11500 w.e.f. 1.4.2004 and this will amount to promotion which will offset the applicant's claim for first financial upgradation in the ACP Scheme. The argument is not tenable. It is the case of the respondents pleaded in the counter-affidavit that the 5th Central Pay Commission has recommended higher replacement scale of pay to the Statistical Investigator Grade-I and Statistical Investigator Grade-II. The recommendation was not for promoting the existing incumbents of the post of Senior Investigator Grade-I nor has any order of the government been reproduced to show that it was not grant of higher pay scale in accordance with the recommendation of the 5th Pay Commission but was promotion from the post of Senior Investigator to the post of Statistical Investigator Grade-I. The appointment of the applicant to the post of Statistical Investigator Grade-I in SSS in exercise of the option exercised by him does not amount to his promotion within the meaning of the Scheme.....”

14. If one has regard to the above, the observation is clear to the effect that appointment to S.I. Grade-I does not amount to promotion.

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15. As regards assignment of duties and allocation of work is concerned, the following is the decision:-

"Sub: Work allocation among different grades of Statistical Investigators in FOD.

The issue of allocation of work to the field cadres in the light of the creation of Subordinate Statistical Service (SSS) has been under the examination of this Division for quite sometime, in view of specific technical requirements of FOD in connection with conduct of various surveys, culminating in collection of quality data. It has now been finalized in consultation with the field representatives, in such a manner that the ongoing activities of FOD are carried out smoothly. Accordingly, the data collection work as well as supervision (including field inspection and scrutiny) and management of NSROs/SROs, which hitherto was entrusted to the Superintendents, Assistant Superintendents and Investigators in different grades of Sub-ordinate Statistical Service.

2. The broad duties and the responsibilities of each grade are as follows:

- a) Generally the primary data collection work in respect of Socio-economic Surveys, RPC, MCPC shall be with Grade IV Statistical Investigators. UFS shall be entrusted to Statistical Investigators Grade III.
- b) Senior most Investigators in Grade III available in the NSROs/SROs will take up scrutiny/inspection/supervision in respect of Socio-economic Surveys at 1st level. However, if there is shortage of Statistical Investigators Grade III at any place this work shall be entrusted to Statistical Investigator Grade II.
- c) Statistical Investigator Grade II shall be entrusted with the work of Agricultural Statistics (ICS) and Industrial Statistics (ASI). They shall also supervise the work of

Statistical Investigator Grade III and Grade IV in Price Collection (RPS/MCPC) and Urban Frame Survey as per requirements.

d) Statistical Investigator Grade I shall be the incharge of the SROs/NSROs and they will be responsible for the quality of data including scrutiny, inspection supervision and technical co-ordination of all schemes. However, in case of Socio-Economic Surveys, they will be entrusted with the second level scrutiny/supervision. The management functions in the NSROs/SROs shall be entrusted to senior most Statistical Investigator Grade I/II available in each office.

e) The ad-hoc Superintendents, who are presently functioning as in-charge of NSROs/SROs before the implementation of the Sub-ordinate Statistical Service and who could not be inducted into Statistical Investigator Grade I of Sub-ordinate Statistical Service, will continue to function as in-charge of NSROs/SROs, till regular Grade I Statistical Investigators are posted. Similarly, senior most Assistant Superintendent who could not be inducted in Grade II may be entrusted with the supervision of SE work. In extreme case of exigencies, they can be entrusted with the work of crop cutting experiments.

3. It may, however, be kept in mind that the posting/transfer of Statistical Investigators in different offices by the Sub-ordinate Statistical Service Cadre will be done according to posts allotted to different offices in two grades i.e. Grade IV/ III and Grade II/ I. It could be possible that in a particular SRO/ NSRO there may not be adequate number of field staff in different grades in order to take up the work as indicated above. In such cases, the work will have to be managed according to broad guidelines given above, with the idea that as far as possible, primary work will be done by the junior officials whereas the senior officials may have to be allotted with the work of supervision etc.

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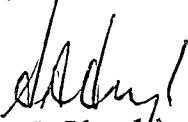
however, all such arrangements may be purely guided by the interest of the Organization and efforts should be made to complete the work of different surveys as per the targets having provision for inspection/ supervision/ scrutiny/ etc."

16. If one has regard to the above, these are inter-changeable among the grades. We do not see any definite assumption of duties and responsibilities of higher nature of assignment to the charge from functional scale to non-functional one. The condition precedent for invoking FR 22(1)(a)(1) is assumption of duties and responsibilities of higher nature, which is lacking. Accordingly, decision of the respondents to invoke fixation of pay under FR 22(1)(a)(1) through their O.M. is certainly in violation of FR as well as DoP&T O.M. dated 22.05.1989.

17. It is trite law that any administrative instruction or executive order cannot supplant the rules and cannot be in conflict with it.

18. In the light of the above discussion, Original Applications are partly allowed. Impugned orders are set aside. However, the respondents are at liberty to re-examine the entire matter, in the light of our observations while taking a decision to fix the pay of the applicants in non-functional scales, by passing a detailed and speaking order within six months from the date of receipt of a copy of this order.

19. A copy of this order be placed in the court files of both the Original Applications.


(S.A. Singh) —
Member(A)

/vv/


(Shanker Raju)
Member(J)
28/7/2005