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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

C.P.No.213/2006 in
O.A. No. 1607/2004

New Delhi, this the 21st day of May, 2007

**HON'BLE SH. L.K.JOSHI, VICE CHAIRMAN (A)
HON'BLE SH. MUKESH KUMAR GUPTA, MEMBER (J)**

Shri H.C. Upreti & Ajay Saxena,
Investigators NSSO FOD) & Anr.

....Applicants

(By Advocate: Mrs.Prashanti Prasad)

Versus

1. Shri R.C. Panda,
Secretary,
Ministry of Statistics &
Programme Implementation,
Sardar Patel Bhawan, New Delhi
2. Shri K.V. Rao,
DG, Ministry of Statistics
Sardar Patel Bhawan, New Delhi
3. Shri A.K. Yogi,
DDG, Ministry of Statistics (FOD),
R.K. Puram, New Delhi

....Contemnors/Respondents

(By Advocate: Shri Rajesh Katyal)

ORDER

Hon'ble Sh. L.K.Joshi, Vice Chairman (A)

This petition has been filed for implementation of orders in O.A.1607/2004 & O.A.2030/2004 passed on 28.07.2005. The following orders were passed in the above OAs :

"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.

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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."

2. The respondents passed order No.12013/1/2004-SSS dated 02.08.2006 and No.11024/18/2004-SSS dated 10.08.2006. The impugned order No.12013/1/2004-SSS dated 30.06.2004 was modified by these two orders. The paragraphs 2(ii) and 2 (iv) of the order dated 30.06.2004 are as follows :

"2.(ii) The incumbents who are holding the posts included in SSS in the pay scale of Rs.6500-10500 on regular basis and absorbed and appointed to the Grade of Statistical Investigator Gr-I in the pay scale of Rs.7450-225-11500 shall be fixed in accordance with FR 22(I)(a)(1)

2.(iv) The incumbents who are holding the posts included in SSS in the pay scale of Rs.5000-8000 on regular basis and absorbed and appointed to the Grade of Statistical Investigator Gr-III (in the pay scale of Rs.5500-175-9000) shall be fixed in accordance with FR 22(I)(a)(1)."

3. Office Memorandum dated 02.08.2006, purportedly in compliance with the order of this Tribunal, amended these as follows :

"2.(ii) The incumbents who are holding the posts included in SSS in the pay scale of Rs.6500-200-10500 on regular basis and absorbed and appointed to the grade of Statistical Investigator Gr-I in the pay scale of Rs.7450-225-11500 shall be fixed in accordance with FR 22(i)(a)(2)

2.(iv) The incumbents who are holding the posts included in SSS in the pay scale of Rs.5000-150-8000 on regular basis and absorbed and appointed to the Grade of Statistical Investigator Gr-III in the pay scale of Rs.5500-175-9000 shall be fixed in accordance with FR 22(i)(a)(2)."

4. In the Office Memorandum dated 02.08.2006, paragraph 4 is as follows :

"4. This OM shall be effective from 1.4.2004 i.e. the date of absorption and appointment of the incumbents in SSS. The excess payment already made shall be recovered as per rule from the salary of the incumbents."

5. The learned counsel for the Applicants has contended that the Applicant became entitled to upgradation in higher pay scale under ACP Scheme on 09.08.1999 when the Scheme was introduced. As has been admitted by the Respondents in para 6 of their additional affidavit that the basic pay of the petitioner on 09.08.1999 was Rs.6350/-, on grant of ACP, his pay was fixed at

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Rs.6725/- w.e.f. 01.02.2000 i.e. the date of his increment. His basic pay on 31.03.2004 was Rs.7425/-. The learned counsel has argued that his pay in the non-functional grade of Statistical Investigator Grade-III in the pay scale of Rs.5500-9000/- should be fixed with reference to the pay on 31.03.2004 i.e. Rs.7425/-.

6. The learned counsel for the Applicants has vehemently contended that the Respondents' (non-petitioners) action in wiping of the benefits of ACP in pay fixation is not rational. It is argued that the non-petitioners cannot continuously harp on the fact that the petitioner has already got the advantage of upgradation under ACP Scheme. When the benefit of ACP Scheme was given to the petitioner, SSS was not even in existence. It is contended that there is nothing in the ACP Scheme which would prohibit the absorption of the petitioner in a service which is created as a result of re-structuring. In this context, our attention has also been drawn to the observations of a co-ordinate Bench during the course of hearing of this case on 21.09.2006 that "this O.M. (O.M. dated 29.08.2006) is clearly in violation of the directions of this court as well as respondents' own understanding reflected in their reply in O.A.1607/2004

....."

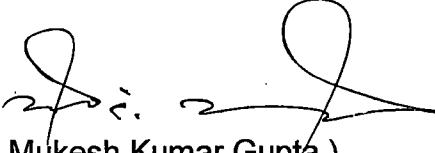
7. It has further been contended on behalf of the petitioner that under no rules could his pay be reduced from what it was before his absorption in new service created on restructuring. It is argued that in order No.A-20014/7/DR/03 dated 17.01.2007, the notional pay of the Applicant has been shown as Rs.7100/- on 01.04.2004. It is further stated in this order in paragraph 2 that "At the time of initial constitution of SSS, Shri Upreti was drawing the basic pay of Rs.7425/- as on 1.4.2004 in the pay scale of Rs.5500-9000/- as a consequence of grant of 1st ACP. As a result of the present re-fixation, he will suffer loss of basic pay and admissible allowances which will be recovered from him. The above re-fixation of pay is being done on his own request through the aforesaid contempt petition and is subject to post audit." It is contended that it is totally wrong to say that the refixation of pay is being done on the request of the petitioner. It is argued that the refixation is being done on the orders of this

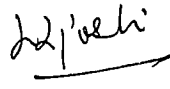
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Tribunal. It is further contended that in the refixation of pay the Applicant has been made to lose substantially by going back to the issue of increment in first ACP which is not at all germane to the issue of refixation in SSS. It is contended, therefore, that the non-petitioners/Respondents are not implementing the order dated 28.07.2005 in O.A.1607/2004.

8. The learned counsel for the Respondents has per contra argued that by order dated 28.07.2005, the Tribunal had only directed the Respondents to "re-examine" the entire matter while taking a decision to fix the pay of the Applicants in non-functional scales. It is contended that by issuing the orders dated 02.08.2006 and 10.08.2006, the Respondents have fully complied with the orders of the Tribunal.

9. We have perused the records of the case and we would like to reiterate our observations in the order dated 21.09.2006 passed during the course of hearing that the orders of the non-petitioners refixing the pay of the Applicants by order No. 11024/18/2004-SSS dated 10.08.2006 are unsatisfactory and not truly according to the letter and spirit of the directions of this Tribunal in O.A. No.1607/2004. However, there has not been wilful or deliberate disobedience of the orders of the Tribunal. We, therefore, dismiss the petition and discharge the notices with liberty, however, to the Applicants to take fresh appropriate steps under the law, if they so wish.


(Mukesh Kumar Gupta)
Member(J)


(L.K. Joshi)
Vice Chairman (A)

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