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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.375 OF 2004
WITH
O.A.No.385 OF 2004

New Delhi, this the 6th day of July, 2005

HON'BLE SHRI SHANKER RAJU, MEMBER (J)
HON'BLE SHRI S.K. MALHOTRA, MEMBER (A)

O.A. No.375 OF 2004

1. Nasib Singh,
S/o Shri Narayan Singh,
Chargeman Pt.II,
Ordnance Depot,
Shakur Basti,
Delhi.
R/o C/o Shri Anil Kumar,
V & P.O. Mundka,
(Near Bus Stand)
Delhi-110041.
2. Jaidev Singh,
Chargeman Pt.II.
3. Awadh Bihari,
Chargeman Pt.II.
4. Madan Lal,
Chargeman Pt.II.
5. Dharam Nath,
Chargeman Pt.II.
6. Chander Shekher,
Chargeman Pt.II.
7. Satya Narayan Mehto,
Chargeman Pt.II.
8. Surinder Singh,
Chargeman Pt.II.
9. Mukhitayar Singh,
Chargeman Pt.II.
10. Vinod Kumar,
Chargeman Pt.II.
11. Prakash Kumar,
Chargeman Pt.II.

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12. Parveen Kumar,
Chargeman Pt.II.
13. Tirath Singh,
Chargeman Pt.II.
14. Moti Lal,
Chargeman Pt.II.
15. Nihal Singh,
Chargeman Pt.II.
16. Sohan Singh,
Chargeman Pt.II.
17. Ram Sunder,
Chargeman Pt.II.
18. Bis Ram,
Chargeman Pt.II.
19. Jai Bhagwan,
Chargeman Pt.II.
20. Krishan Kumar,
Chargeman Pt.II.
21. Charan Singh,
Chargeman Pt.II
22. Shiv Ram,
Chargeman Pt.II
23. Bhambir Lal,
Chargeman Pt.II
24. Piaray Lal,
Chargeman Pt.II
25. Shyam Babu,
Chargeman Pt.II
26. Ram Chander,
Chargeman Pt.II
27. Tej Bhan,
Chargeman Pt.II
28. Piarey Lal,
Chargeman Pt.II
29. Ranjit Singh,
Chargeman Pt.II
30. Om Parkash,
Chargeman Pt.II

31. Raghubir Singh,
Chargeman Pt.II
32. R.K. Paul,
Chargeman Pt.II
33. Smt. Shanta Devi,
Chargeman Pt.II
34. Kesho Ram,
Chargeman Pt.II
35. Sukh Lal,
Chargeman Pt.II
36. Choutha Ram,
Chargeman Pt.II
37. Basant Lal,
Foreman Pt.II
38. Abdul Ghani,
Foreman Pt.II
39. Kishan Lal,
Foreman Pt.II

.....Applicants.

(All working in Ordnance Depot, Shakur Basti, Delhi)

(By Advocate : Shri G.D. Bhandari)

VERSUS

Union of India, through

1. The Secretary,
Ministry of Defence,
Government of India,
New Delhi.
2. The D.G., Ordnance Services,
Master General of Ord. Branch,
Army Headquarters, DHQ, PO,
New Delhi.
3. The OIC Records,
Army Ordnance Corps,
Records Office,
Trimulgherry PO,
Secunderabad-580 015.
4. The Commandant,
Ordnance Depot,
Shakur Basti,
Delhi.

.....Respondents.

(By Advocate : Shri S.M. Arif)

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O.A.No.385 OF 2004

1. A.U. Sheikh,
Sr. Chargeman Pt-II,
P. No.6966814.
2. B.K. Tyagi,
Sr. Chargeman Pt-II,
P. No.6967501
3. Mohd. Shammi,
Sr. Chargeman Pt-II,
P. No.6967462
4. K.C. Sharma,
Sr. Chargeman Pt-II,
P. No.6967444.
5. Om Prakash,
Sr. Chargeman Pt-II,
P. No.28002.
6. Jeevan Rai Singh,
Sr. Chargeman Pt-II,
P. No.27675.
7. Ram Chander,
Sr. Chargeman Pt-II,
P. No.27676.
8. Chander Bhan,
Chargeman Pt-II,
P. No.27678.
9. Kishan Chand,
Chargeman Pt-II,
P. No.27821.
10. A.C. Dey,
Chargeman Pt-II,
P. No.27800.
11. M.L. Das,
Chargeman Pt-II,
P. No.27971.
12. L.M. Ghosh,
Chargeman Pt-II,
P. No.27972.
13. Bal Kishan,
Sr. Chargeman Pt-II,
P. No.6967539.

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14. M.L. Shaha,
Sr. Chargeman Pt-I,
P. No.6967734.
15. B.B. Kohli,
Sr. Chargeman Pt-I,
P. No.6967876.
16. Satyavan Singh,
Sr. Chargeman Pt-I,
P. No.6968390.
17. Parkash Mohan,
Sr. Chargeman Pt-I,
P. No.6968104.
18. Syed Nizamuddin,
Sr. Chargeman Pt-II,
P. No.6967540.
19. Hari Kishan Meena,
Sr. Chargeman Pt-II,
P. No.6967360.
20. Rajesh Kumar,
Sr. Chargeman Pt-II,
P. No.6868723.
21. Anil Kumar,
Chargeman Pt-II,
P. No.6967966.
22. Ranjit Singh,
Chargeman Pt-II,
P. No.6967998.
23. S.K. Mandal,
Chargeman Pt-II,
P. No.6968106.
24. R.K. Sen,
Chargeman Pt-II,
P. No.6968147.
25. Ishwar Singh,
Chargeman Pt-II,
P. No.6968168.
26. B.L. Nirvan,
Chargeman Pt-II,
P. No.6967668.
27. Prem Chand,
Chargeman Pt-II,
P. No.6967668.



28. M.M. Khan,
Chargeman Pt-II,
P. No.28170.
29. A.K. Biswas,
Chargeman Pt-II,
P. No.28173.
30. R.P. Mehto,
Sr. Chargeman Pt-II,
P. No.6966540.
31. J.S. Nagi,
Foreman Pt-II,
P. No.6965643.
32. S.B. Chakraborti,
Foreman Pt-II,
P. No.6966556.

.....Applicants.

(By Advocate : Shri G.D. Bhandari)

VERSUS

Union of India, through

1. The Secretary,
Ministry of Defence,
Government of India,
New Delhi.
2. The D.G., Ordnance Services,
Master General of Ord. Branch,
Army Headquarters, DHQ, PO,
New Delhi.
3. The OIC Records,
Army Ordnance Corps,
Records Office,
Trimulgherry PO,
Secunderabad-580 015.
4. The Commandant,
Ordnance Depot,
Shakur Basti,
Delhi.

.....Respondents.

(By Advocate : Smt. Avinash Kaur)

ORDER**Mr. Shanker Raju, Hon'ble Member (J):**

This is a common order in both the OAs, which are founded on same set of facts, involving common question of law.

2. In OA-375/2004 applicants, Chargemen Part-I and Senior Chargemen, have assailed respondents' order dated 5.9.2003, where on introduction of four grade structure for Technical Supervisor staff in Army Ordnance Corps cancelled orders dated 23.9.2003 by issuing order dated 7.10.2003, lowering the pay scale of applicants and vide order dated 10.12.2003 the grant of enhanced replacement scale will be prospective in effect.
3. In OA-385/2004 applicants are also Chargemen Part-I and Senior Chargemen aggrieved with the identical impugned orders, referred to above. It is not disputed that the V Central Pay Commission's recommendations have been accepted by the Government on 23.9.97 and vide order dated 18.12.2000 on the ground of arrears OA-2657/2000 filed by applicants was allowed on 20.2.2002 by the Tribunal by setting aside order dated 18.11.2000 and directing re-fixation of pay in the pay scale of Rs.5000-8000 w.e.f. 1.1.1996 with grant of consequential monetary benefits. The above directions have been complied with by an order dated 7.3.2003 in respect of Foreman Part-I and Chargemen re-fixing the pay from 1.1.1996 and disbursing the arrears. However, the earlier orders have been modified on 5.9.2003 changing the date of implementation from 14.6.2002 but by an order dated 23.9.2003 orders issued earlier re-fixing

the pay were cancelled over-ruling the decision of the Tribunal vide order dated 10.12.2003.

4. Basically, learned counsel for applicants raises an issue to the effect that an arena covered by judicial decision cannot be over-turned or infiltrated by an executive instruction. In the above conspectus it is stated that once the re-fixation has been done as per the approval by the President, any subordinate authority is without jurisdiction to take a contrary view.

5. It is further stated that since the judgment has attained finality and had not been appealed against the same holds the field.

6. These arguments have been vehemently opposed by the learned counsel for respondents Shri S.M. Arif and Ms. Avnish Kaur. It is contended that a policy decision of restructuring dated 26.12.2001 led to issuance of above impugned orders. Ministry of Defence clarified vide letter dated 10.12.2003 that the introductory portion of Part 'C' of notification dated 30.9.97 certain conditions are pre-requisite for grant of pay scale. Since restructuring of the cadre in respect of TSS in AOC is yet to be implemented these pay scales would be prospective.

7. On careful consideration of the rival contentions of the parties it is trite law, as held by the Apex Court in **Anil Ratan Sarkar v. State of W.B.**, (2001) 5 SCC 327 that an administrative instruction/order cannot infiltrate on an arena covered by the judicial orders with the following observations:

"24. This Circular however stands challenged before the learned Single Judge who was pleased to quash the same upon acceptance of the contentions of the writ petitioners, the appellants herein. The learned Single Judge categorically recorded that the petitioners being Graduate Laboratory Instructors,

the question of further classifying the does not and cannot arise and upon reliance of the annual report as noticed above quashed and set aside the circular. The State Government however being aggrieved went before the appellate court and the Appellate Bench however allowed the appeal and opined that the Government Order dated 26-12-1994 cannot be said to be arbitrary or contrary to the decision of this Court, since it is clearly stated therein that Graduate Laboratory Instructors shall continue to enjoy the teaching status. The High Court, however, has failed to appreciate the role of teaching status. The High Court, however, has failed to appreciate the role of physical Instructors in the matter of fixation of pay scale in terms of the order of this Court and it is on this count a definite statement has been made even before this Bench that there are existing two definite classes of Physical Instructors, one being qualified and another being unqualified, but there is no factual support thereof. Surprisingly, the basis of the order of this Court thus clearly fell into an error. Needless to say that in the event there was some documentary support vis-à-vis the stand of the respondent State as regards the existence of two definite grades of Physical Instructors Obviously the Government Order issued in December 1994 could not have been found fault with - since the same would have been in consonance with the order of this Court. But there being no factual support therefore, we are not in a position to record our concurrence with the submissions of Mr.Reddy as regards the justifiability or making Group B salary available even after conferment of teaching status as upheld by the Appellate Bench of the High Court. The conferment of status as a teacher runs counter to fixation of pay scale of Group B employees since all the other teachers of the government and non-government colleges are placed in the category of teachers. A teacher cannot possibly be allowed a pay scale of a non-teaching post. The same is a contradiction in terms and we need not dilate thereon. The criterion of fixation of pay scale is dependent upon the placement of the person concerned - in the event the placement is in a teaching post obviously one expects to get a pay scale fixed for a teacher and not for a non-teaching member of the staff. Apparently the High Court has not dealt with the issue in this perspective and thus clearly fell into an error in categorizing a teacher with a non-teaching pay scale. The circular clearly authorizes the Graduate Laboratory Instructors of non-government colleges to continue to have the teaching status but decries the financial benefits therefore! Would the same be not an arbitrary exercise of powers or can it be any stretch be suggested to be otherwise rational and indiscriminatory. This Court at an earlier occasion

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unequivocally upheld the reasoning of the learned Single Judge in the earlier writ petition as accepted by the Appellate Bench and in the wake of such a finding of this Court question of decrying a pay scale which is otherwise available to another teacher (in this case the Physical Instructor) does not and cannot arise more so by reason of the earlier order of this Court. Administrative ipse dixit cannot infiltrate on to an arena which stands covered by judicial orders."

8. Moreover, a Full Bench decision of the Tribunal in **R.**

Jambukeswaran and Ors. V. Union of India & Ors., 2004

(2) ATJ 1 (CAT) held that a judicial pronouncement cannot be over-turned by issuing an administrative order.

9. If one has regard to the above, once the decision in Rajbir Singh's case has been implemented with the approval of the President, any order passed either changing the re-fixation in the pay scale or the cut off date would certainly be without jurisdiction as it infiltrates on the arena covered by the judicial pronouncement which has attained finality.

10. In the result, for the foregoing reasons, OAs are allowed. Impugned orders are set aside. Respondents are directed to restore applicants all consequential benefits and resultant arrears of pay from 1.1.1996 within a period of three months from the date of receipt of a copy of this order. No costs.

Let a copy of this order be placed in the case file of OA-

385/2004.

(S.K. Malhotra)
Member (A)

(Shanker Raju)
Member (J)

'San.'