

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 28/5 day of May 2005.

Original Application No. 299 of 2004.

Hon'ble Mr. K.B.S. Rajan, Member (J)

1. Lal Chand, S/o Sri Mata Din.
2. Kalpanath Prasad, S/o Late Chandrama Prasad.
3. Rajendra Kumar Chaubey, S/o late Ram Yas Chaubey,
4. Rama Nand Sharma, S/o Late Phudena Sharma.
5. Brahma Prasad, S/o Sri Jadulal Prasad.
6. Buddu Lal Barmaya, S/o Sri Prem Lal Barmaya. Bansraj, S/o Sri Ram Chandra.

...Applicants

By Adv : Sri S.Lal.

V E R S U S

1. Union of India through the Secretary, Govt. of India, Ministry of Defence, New Delhi.
2. The Director General, Ordnance Services Master General of Ordnance Branch, Army Headquarters, DHQ, P.O., New Delhi.
3. Officer In charge, Records, Army Ordnance Corps, Records Office, Trimulgherry, P.O. Secunderabad.
4. Commandant, Central Ordnance Depot (COD), Chheoki, Allahabad..

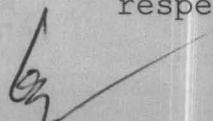
...Respondents.

By Adv : Sri Saumitra Singh.

O R D E R

The claim of the applicants as prayed for in the relief(s) column is as under:-

"(a) To issue a writ, order or direction in the nature of certiorari to quash the impugned orders (Annexure A-1, A-2, A-3 and A-4 to compilation No. 1) passed by respondent nos. 2,3 and 4 respectively.



(b) To issue a writ, order or direction in the nature of mandamus commanding and directing the respondents not to reduce the pay of the applicants and recover the amount paid in terms of arrears of re-fixation of pay by impugned order dated 16.2.2004 (Annexure A-4)

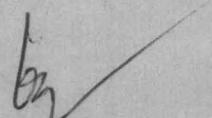
(c) To issue directions to the respondents to refund the recovered amount, if any, from the wages of the applicants, alongwith 18% p.a. interest."

2. The applicant, vide para 4.30 of the application contended as under:-

"That the Government letter dated 26 Dec. 2001 shows that Chargeman of Part II cadre and Sr. Chargeman of Part I and II cadres, drawing pre-revised pay of Rs. 1400-2300/- would be placed in the revised pay scale of pay of Rs. 5000-8000/- (and not in the scale of Rs. 4500-7000) which the respondents have done). Applicants have, therefore, become correctly entitled to the scale of Rs. 5000-8000/-, which shows that the move to place them on Rs. 4500-7000/- is incorrect and improper."

3. Consequently, they contend that the impugned order being in variance from the said order dated 26th December, 2001, the same cannot be held valid in view of the decision dated 20-02-2002 by the Principal Bench of the Tribunal in OA No. 2657/00.

4. Vide notification dated 9th October, 1997 by the Ministry of Defence, certain riders have been made for implementation of the replacement scale in respect of certain common categories of staff. The body of the notification under part 'B' thereof reads as under:-



"REVISED PAY SCALES FOR CERTAIN COMMON CATEGORIES OF STAFF:-

The revised scales of pay mention in column 4 of this part of the Notification for the posts mentioned in column 2 have been approved by the Government. However, it may be noted that in certain cases of the scales of pay mentioned in column 4, the recommendations of the Pay Commission are subject to fulfillment of specific conditions. These conditions relate inter-alia to changes in recruitment rules, restructuring of cadres, re-distribution of posts into higher grades etc. Therefore, in those cases, where conditions such as changes in recruitment rules etc. which are brought out by the Pay Commission as the rationale for the grant of these upgraded scales, it will be necessary for the Ministry of Defence to decide upon such issues and agree to the changes suggested by the Pay Commission before applying these scales to these posts w.e.f. 1.1.96. In certain other cases where there are conditions prescribed by the Pay Commission as prerequisite for grant of these scales to certain posts such as cadre restructuring, re-distribution of posts etc., it will be necessary for the Ministry of Defence to not only accept these preconditions but also to implement them before the scales are applied to those posts. It would, therefore, be seen that it is implicit in the recommendations of the Pay Commission that such scales necessarily have to take prospective effect and the concerned posts will be governed by the normal replacement scales until then."

5. In pursuance thereof, the Min of Defence had passed an order dated 11-11-1997 and on the basis of the said order the applicants have been placed in the revised pay scale of Rs 5,000 - 8000. While the situation was such, the Min of Defence introduced a four grade structure vide order dated 26th December, 2001 and the same was in agreement with the revised pay scale of chargemen as stated above. However, later vide the impugned order dated 10th December,



2003, the respondents have brought the scale of Rs 1400 - 2300 replaceable by the scale of pay of Rs 4,500 - 7,000/- and hence the applicants have filed this O.A.

6. The respondents have contested the case. According to them, the order dated 26th December, 2001 was not correctly passed and the impugned orders rectified the defects, vide reply to para 4.30 which is as under:-

"That in reply to the contents of paragraphs 4.30 of the original application, it is stated that the government letter dated 26-12-2001 relied upon by the applicant only conveys the decision taken by the Government earlier incorrectly. The incorrect decision taken earlier was therefore, rightly modified."

7. The matter has been heard. The parties were permitted to furnish written submission. In response, the applicants have filed the written submission and the same has been taken on record. The applicants have cited the following precedents:-

- (i) B. Aboobhakar & Ors. Vs. G.M. South Central Railway, Secunderabad & Ors. Reported in 2004 (1) A.T.J. 432 (Hyderabad Bench).
- (ii) K.B. Bhardwaj Vs. Union of India & Ors. Reported in 2002 (2) ATJ 477 (Lucknow Bench).

8. We have given our anxious considerations. The order dated 11-11-1997 (in pursuance of order dated 9-10-1997 referred to in the impugned order) had been fully discussed along with order dated 26-

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12-2001, in the order dated 20th Fe. 2002 by the Principal Bench in O.A. NO. 2657/2000 and the relevant portion of the judgment is extracted below:-

We had reserved the orders in the OA at the conclusion of the oral submissions. However, before the order could be pronounced, it was brought to our notice by the Shri G.D. Bhandari, learned counsel for the applicants that the Ministry of Defence have vide their order No.11 (13)97/D (Civ.I) dated 26.12.2001 issued fresh instructions, relating to the introduction of the Four Grade Structure for Technical Supervisory Staff in Defence Establishments. The matter was, therefore, placed once again FOR BEING SPOKEN , none was present on the said date i.e. 23.1.2002, however, a copy of the above letter was brought to our notice, which showed that the claim of the applicants for the grade of Rs.5000-8000/- had been accepted, though prospectively from 26.12.2000, with the actual benefits to arise after the restructuring and drafting of the Recruitment Rules was completed.

We have carefully deliberated upon the rival contentions and the examined the facts brought on record. We have also noted that another OA NO.1711/2000 is also pending consideration before another Bench here.

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However, as the position both in Law and in facts has been clearly delineated in the rival contentions and during the oral submissions, we are proceeding to decide this OA, without waiting for the disposal of OA 1711/2000.

While the applicants plead that their pay in the grades of Chargeman/Sr.Chargeman, fixed following the adoption of the recommendations of the Fifth Central Pay Commission, has been incorrectly and arbitrarily revised downwards from the scale of Rs.5000-8000/- to that of Rs.4500-7000/-, and that too, with retrospective effect and without notice, the respondents point out that nothing irregular or improper has been done and that the downward revision of the pay scale ordered in the case of applicants had been directed only to rectify the incorrect fixation of pay, earlier implemented.

For the determination of the above, it would be necessary to refer to certain basic facts. Paragraph 63.302 of the 5th Pay Commission relating to Army Ordnance Corps under the Department of Defence specifically states as below:-

"While our recommendations on technical supervisors as a common category would apply to technical supervisors who fall into the four grade structure, in this chapter we have considered the categories covered by the Part I and Part II cadre and categories, where the

four grades structure has been established but without the same pay scale. One of the important demands of technical supervisors in part I and part II cadres is that they should also be brought on to the four grade structure. We have considered this suggestion and in view of our proposal to merge the highly skilled grade II and highly skilled grade I, there may be no requirement to make a distinction between the two cadres. We, therefore, agree that the uniform four grade structure may be implemented in all organizations. As regards the manner in which technical supervisors in these organizations may be restructured, detailed recommendations for each organization are indicated below. Other organizations where there is a four grade structure but not presently covered under the general pattern of pay scales are also covered in the succeeding paragraphs."

AOC	EXISTING	PROPOSED	REMARKS
-----	-----	Foreman (Rs.2375-3750)	New grades to be introduced. Distribution of posts in ratio of 5:25:25:45
-----	-----	Asstt.F'man (Rs.2000-3500)	
Foreman (Rs.1600-2660) of Part I&II cadre.	Chargeman-I (Rs.1640-2900)		
Chargeman (1400-2300) of Part-II cadre and Sr.C'man (1400-2300) Of Part I&II cadres	Chargeman-II (Rs.1600-2600)		
EXISTING	PROPOSED	REMARKS	EME
Not existing	Foreman (Rs.2375-3750) 100% promotion	New grades to be introduced. Distribution of posts in ratio of 5:25:25:45	
Not existing	Asstt.Foreman (Rs.2000-3500) 100% promotion		
Foremen of Part II cadre	Chargeman-I (Rs.1640-2900)		

"Para 63.303 : As far as distribution of posts across the four levels is concerned, it is based on the consideration that in the AOC and EME posts may be distributed in the ratio of 45:25:25:5 for Chargeman II : Chargeman I : Asstt. Foreman : Foreman and in other

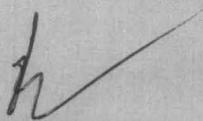


organizations the ratio of 35:25: 25:15 as recommended by us under the chapter on Workshop Staff may apply. We also recommended that the conversion to a uniform grade structure be accompanied by introduction of direct recruitment to the extent of 33-1/3% from amongst 3 year Diploma holders in Engineering/B.Sc at the level of Chargeman-II".

It is thus seen that the Pay Commission had recommended a Four Grade Structure for Technical Supervisory Staff in Defence Establishments and had also indicated the ratio in which the four grades and the posts were to be operated. Subsequently, Ministry of Defence had issued an order No.11/97-D (CIB-I) dated 11.11.1997 addressed to the Chief of Staff and all Inter Service Organizations wherein under sub heading (VII) the pay scales of Technical Supervisory and Workshop Staff have been shown below:

a)	Chargeman/	1400-40-1800-	5000-150-8000	54.38
	Chargeman 'B' /	50-2300		
	Chargeman (Technical			
	Grade II/Junior			
	Engineer Grade II			
	(Workshop)			
b)	Sr.Chargeman	1600-50-2300	5500-175-9000	54.38
	Chargeman 'A' /	60-2660		
	Chargeman			
	(Technical)			
	Grade I/Junior			
	Engineer			
	Gr.I Workshop			

In view of the above, Chargeman drawing the scale of Rs.1400-40-1800-50-2300 in the pre-revised scale are to be granted Rs.5000-150-8000/- and Sr. Chargeman drawing Rs.1600-2660 were to be given scale of Rs.5500-9000/-.



This has resulted in the fixation of pay of the applicants in the scale of Rs.5000-8000/- and that too after obtaining clearance from competent authorities. This was similar to what has been granted to Technical Staff in the EME who have also been given the same grade all w.e.f. 01.01.1996. The applicants were thereafter also granted increments in the scale of Rs.5000-8000/-. Only on a much later dated i.e. 3.7.2000, a direction is found to have been issued by the A.O.C. Record office to the effect that the matter regarding revised pay scale in respect of Chargeman Pt. II Cadre and Sr. Chargeman Pt. I and II cadre was still under consideration with Govt. of India and that the staff should be paid only in the scale of Rs.4500-7000/- and not Rs.5000-8000/- scale and if any payment has been made in scale of Rs.5000-8000/-, the excess amount so paid be recovered. The said letter further stated "No such case will be referred to this office, as it will not serve any useful purpose." Following this, the impugned order dated 10.11.2000 refixing the pay of the officers in the scale of Rs.4500-7000/- and ordering recovery has been issued. These facts are admitted by the respondents themselves. According to them, this is correct as AOC Records letter No.29860/Tech/Vol-79/CA-6 dated 3.7.2000 had indicated that the matter was

still being examined as some confusion has arisen in the implementation and that the pay of the applicants and those similarly placed should be brought down to the scale of Rs.4500-7000/-. It is seen that the Ministry of Defence' letter dated 11.11.1997 was being sought to be amended, on account of some audit objection with the directions that the Ministry's instructions of 11-11-1997 need not be accepted. The said letter has gone on to state that no further reference be made 'as it will not serve any useful purpose'. To put it mildly, to our mind, this indeed is a very strange observation. The Government's having accepted the recommendations of 5th Pay Commission, the expert body set up to consider revision of pay and other service conditions, and the Ministry's having issued directions for giving effect to the same vide its letter dated 11.11.1997, a sub-ordinate office like that of A.O.C (Records), cannot override Ministry's directions and on their own, order downward revision of the scale with retrospective effect, direct reduction in pay and order recovery. This was totally incorrect and clearly avoidable. If any rectification was felt necessary, the only authority who could have done the same, was the Ministry itself. There is nothing on record to indicate that orders for the downward revision of the pay has

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been issued by the Ministry. In the circumstances, the directions of the AOC (Records) office and its total acceptance by the respondents' organization cannot in any way be sustained in Law. It is true that originally the replacement scale of Rs.4,500-7,000/- was granted to those Chargeman and Sr. Chargeman, who were in the pre-revised scale of Rs. 1400-2300/-, but this has been changed under the directions of the Ministry of Defence' letter dated 11.11.1997 as well as Army Headquarters' letter dated 25.11.1997, fixing the revised pay scale of Chargeman/Sr.Chargeman at Rs.5000-8000/-. Therefore, the lowering of the said scale to Rs.4500-7000/- sought to be given effect to on the AOC (Records) office, directions on 3.7.2000 and the proposed recovery of amount allegedly paid in excess, cannot at all be endorsed.

We find that our above view stands fortified by the contents of the Ministry of Defence letter No. 11(13) 97 D (CIV.I) dated 26.12.2001. This letter makes it clear that the recommendations of the Vth Central Pay Commission, on the Four Grade Structure has been accepted and given effect to. The relevant order is reproduced below in full.



No.11(13)/97/D(Civ.I)
Government of India
Ministry of Defence
New Delhi, the 26th December, 2001

To,
The Chief of the Army Staff
The Chief of the Naval Staff
The Chief of the Air Staff

Subject : Recommendations of the Vth CPC
regarding introduction of four Grade Structure
for Technical Supervisory Staff in Defence
Establishments.

Sir,

The undersigned is directed to refer to the recommendations given by the Vth CPC in paras 54.45, 63.252, 63.302 and 63.303 of its report and to say that the Government have accepted the recommendations to introduce four grade structure for the Technical Supervisory category in Defence Establishments in the ratio of 35:25:25:15 for Chargeman Grade II, Chargeman Grade I, Assistant Foreman and Foreman respectively. Accordingly, the sanction of the President is conveyed the authorization of the revised pay scales and the grade structure as indicated in the Annexure for the respective categories. For AOC, EME and OFB (Non-Technical Category) the ratio will be as indicated in the Annexures, as per the specific recommendations of the Pay Commission for these organizations.

2. The existing cadre of Technical Supervisory Staff will be restructured by suitable upgradation and downgradation of the posts. If the revised number of posts is in excess of the existing strength of a particular grade, the difference will be deemed as newly sanctioned post in that grade. Similarly, if the revised number of posts in a grade is less than the existing strength, the number of posts equal to the difference will be treated as having been abolished in that grade. In case any of the existing employees cannot be adjusted within the newly introduced ratio, they will not be reverted and they shall hold the scale as personal to them till they wear out by promotion, retirement etc. However, the period of such retention of scale on personal basis shall not count for the purpose of eligibility for further promotion.

3. Direct recruitment should be introduced to the extent of 33-1/3 % from amongst three years diploma holders in Engineering/B.Sc. at the



level of Chargeman Grade.II, wherever, it is not already existing and the Recruitment Rules amended accordingly. Until the recruitment Rules (RRs) are amended, filling up of the post of Chargeman Gr.II through other streams shall not exceed 66-2/3% of the vacancies.

4. Recruitment Rules for the new grade (s) which are to be introduced in the respective organizations, should be framed and placement of individuals in that grade(s) be done only after individuals in that grade(s) be done only after fulfillment of the criteria as prescribed in the Recruitment Rules. Action should be taken by the concerned organization, in consultations with concerned administrative section in the Ministry and Integrated Finance for redistribution of the posts and framing of Recruitment Rules for all grades so as to have uniformity in the RRs in all the organizations, for ensuring anomalies-free implementation of the orders.

5. These orders will be effective from the date of issue. The actual benefit would, however, be admissible from the date of actual placement of the individuals in different grades on restructuring.

6. This issues with the approval of Defence (Finance/AG/PB) vide their I.D.No.933 AG/PB dated 26.12.2001.

Yours faithfully

Sd/-

(Piara Ram)

Under Secretary to the Govt. of India"

Sl. No.6 in the annexure to the above letter, relating to AOC where the applicant works is as below:-

Name of the Organisations	Existing Designation & Pay Scale & revised (Pre-revised)	Revised Designation & Paycale	Remarks
AOC	-----	(a) Foraman (Rs.7450-225 -11500) New grade to be Introduced	Posts in (a) (b) (c) & (d) in the preceding Column
	-----	(b) Asstt. Foreman (Rs.6500-200-10500) New grade to be introduced	will be distributed in the ratio of 5:25:25:45 respectively.

Foreman of (c) Chargeman Gr.I
Part I & II (Rs.5500-175-9000)
Cadres

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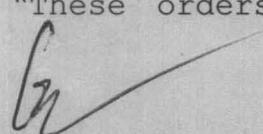
(Rs.1600-2600)

Chargeman of Part (d) Chargeman Gr.II
 II Cadre and Sr. (Rs.5000-150-8000)
 Chargeman of Part
 I & II cadres
 (Rs.1400-2300)

EME	-----	(a) Foreman (Rs.7450-225-11500) New grade to be Introduced	Posts in (a) (b) (c) & (d) in the Preceding column will be distributed in the ratio Of 5:25:25:45 respectively
*Asstt.Engineer (Rs.2000-3500)		(b) Asstt.Foreman (Rs.6500-200-10500) New grade to be Introduced	
Foreman of Part II Cadres (Rs.1600-2660)		(c) Chargeman Gr.I (Rs.5500-175-9000)	*The post of AE are to be taken into account
Sr.Chargeman of Part I & II cadres (Rs.1400-2300)		(d) Chargeman Gr.II (Rs.5000-150-8000)	while distributing the supervisory posts in the above ratio.

15. The above shows that the Chargeman of Part II cadre and Sr. Chargeman of Part I & II cadres, drawing pre-revised pay of Rs.1400-2300/- would be placed in the revised scale of pay of Rs.5000-8000/- (and not in the scale of Rs.4500-7000/- which the respondents have sought to do). All the applicants have there fore become correctly entitled to the scale of pay of Rs.5000-8000/-, which shows that the move to place them on Rs.4500-7000/- was incorrect and improper.

16. Only one aspect now remains to be decided upon and that relates to the date from the revised pay scale comes in to vogue. The latest letter of the Ministry of Defence dated 26.12.2001 states that "These orders will be effective from the date of



issue. The actual benefit, however, be admissible from the date of placement of the individuals in different grades on restructuring". The order thus makes it prospective in operation and that would have been endorsed in normal circumstances, but the position in this OA are slightly different. The latest orders of the Ministry have fixed the revised scale of pay of the Chargeman/Sr.Chargeman in part I & II as Rs.5000-8000/- which is nothing but the reiteration of what they had directed in their letter No.11/97-D (Civ.I) dated 11.11.1997, which have not been rescinded. The modification leading to the lowering of the scales had been ordered only by a subordinate formation i.e. the AOC (records) office' letter dated 3.7.2000 and not by the Ministry. As observed in para 13 (supra), this modification has no sanction in law and the revised pay scales of Rs.5000-8000/- as far as the applicants are concerned, have come in to being w.e.f. 1.1.1996 itself. The yahve also drawn the emoluments in the revised scales with annual increments also for three years. In that backdrop, postponing the adoption of the revised scales to some future date, after restructuring the cadres and drafting fresh RRs would in effect nullify the effect of the Pay Commission's recommendations, accepted and given effect in 1997, and now reiterated on 26.12.2001. **We are, therefore, of the considered view that the applicants are entitled to the revised scales w.e.f. 1.1.1996 itself and that**

the respondents' action by the impugned orders revising the same downwards and ordering the recovery of the amounts allegedly paid in excess, should be quashed and set aside.

17. We also note that respondents have raised an objection that the matters regarding fixation of pay are better left to the expert body fixed by the Government of India and it was not for the Tribunal to adjudicate on them as has been decided by the Hon'ble Apex Court in the case of State of MP Vs P. V. Hariharan (JT 1997 Vol.III SC 569). We are in full agreement with the same. However, in this case we are not passing any order as to particular scale or its relevance for a particular post but are only setting aside the wrong order of implementation issued by the respondents, contrary to the recommendations of the expert body i.e. 5th Central Pay Commission, duly accepted by the Government and directed for implementation by the Controlling Ministry of the respondents i.e. Ministry of Defence but thereafter sought to be modified by the respondents, a subordinate office. Interestingly Ministry of Defence have reiterated their earlier directions on 26.12.2001, putting the respondents clearly in the wrong. The tribunal can in the circumstances, properly and legally interfere with the incorrect action of the respondents. That is exactly what we have done.



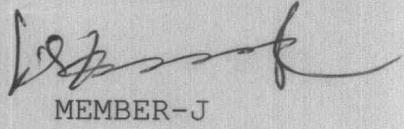
18. In the above view of the matter the application succeeds and impugned order, dated 3.7.2000 and 18.1.2000, directing the refixation of the pay of the applicant, revising it downwards for Rs.5000-8000/- to Rs.4500-7000/- and ordering recovery of the amount allegedly paid are quashed and set aside. Respondents shall, within three months from the receipt of a copy of this order, rectify their mistake and place the applicants in the correct pay scale of Rs.5000-8000/- w.e.f. 1.1.1996 and grant them all consequential monetary benefits. Interim order dated 19.12.2000 is made absolute. (Emphasis supplied)

9. From the above judgment it is clear that there is no infirmity in the order dated 26-12-2001 and the revised pay of Rs 5,000 - 8000 as replacement scale for Rs 1400 -2300 is payable right from 01-01-1996. In view of the above, as per the decision of the coordinate bench, there is no question of the replacement scale of the applicants being revised from the scale of Rs 5000 - 8000 to Rs. 4,500 - 7000. I respectfully strike a symphonic synchronizing syndrome to the order of the Principal Bench. The impugned order is thus illegal and hence quashed.

10. The OA succeeds. The respondents are directed to restore the pay scale of Rs 5000 - 8000 to the applicants instead of Rs 4,500 - 7000/- and release the difference in pay and allowance on this



score, within a period of four months from the date of receipt of the certified copy of this order. No costs.



MEMBER-J

GIRISH/-