

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/00826/2019

HYDERABAD, this the 15th day of April, 2021

Hon'ble Mr. Ashish Kalia, Judl. Member

Hon'ble Mr. B.V. Sudhakar, Admn. Member



K.S.Narayana Rao S/o Late Srinivas Rao
Aged 83 years, Retired Superintendent (Executive),
Group B Officer, National Sample Survey Organization
(NSSO), Field Operations Divisions, Ministry of
Statistics & Programme Implementation,
R/o HIG-II, Block-9, Flat No.3,
Near RTC Kalyanamantapam, Bagh Lingampally,
Hyderabad-500 044.

...Applicant

(By Advocate : Mr. E. Krishna Swamy)

Vs.

The Union of India rep by

- 1.The Deputy Director General (Admn),
National Sample Survey Organization,
Field Operations Division (Hqrs),
Sankhyiki Bhavan, A-Block, GPOA Building
At CBD, Sahdara, Near Karkardooma Courts,
Delhi 110 032.
- 2.The Pay and Accounts Officer,
Department of Statistics, Ministry of Statistics
& Programme Implementation, Room No.27,
4th Floor, Sardar Patel Bhavan,
New Delhi 110 001.
- 3.The Senior Accounts Officer,
Pay and Accounts Office, GOI,
Ministry of Statistics
& Programme Implementation, 6th Floor,
CGO Complex, 'A' Wing, Seminary Hills,
Nagpur 440 066.

....Respondents

(By Advocate : Mr. A. Radha Krishna, Sr. PC for CG)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:



2. The OA is filed questioning the impugned letter dt. 12.10.2018 and the revised PPO dt. 30.11.2017 and to declare that the applicant is eligible for revised basic pension of Rs.27,600/- w.e.f. 01.01.2016 in the VII CPC and for a consequential revision of pension with arrears.

3. Brief facts of the case are that the applicant has retired from service on 30.11.1993 in the post of Superintendent (Executive). The applicant was drawing a maximum pay of Rs.2900/- in the IV CPC in the scale of pay of Rs.1640-2900, which pay scale was identified with Rs.5500-9000 (V CPC) and was upgraded/ merged with the scale of pay of Rs.6500-10500/- w.e.f. 01.01.1996 vide OM dt. 13.11.2009. The pay scale was placed in PB-2 – Rs.9300-34,800/- with Grade Pay of Rs.4600/- w.e.f. 01.01.2006. The applicant retired with pay of Rs.2,900/- in IV CPC, which was revised to Rs.8,900/- from 01.01.2006 and Rs.55,200/- in VII CPC w.e.f. 01.01.2016.

The applicant claims that he is eligible for pension of Rs.27,600/- instead of Rs.26,800 as per rules and instructions governing the fixation of pension as per the various CPCs cited supra. Aggrieved that the pension has been fixed lower than the amount he is eligible, the OA is filed.

4. The contentions of the applicant are that he is eligible for the relief sought as per OM's dated 4.1.2019/ 9.7.2019 of the Department of Pension & Pensioners' Welfare (for short "**DOPPW**"). The 5th CPC report is in favour of the applicant's cause. Denial of the pension sought is violative of Articles 14, 16, 21 and 300 –A of the Constitution.

5. Respondents state that the pension of the applicant cannot be fixed based on the up-gradation of pay scale after his retirement and cited the OM dated 11.2.2009 issued by DOPPW as well as the judgments of the Hon'ble Apex Court in support of this contention. Further, the Hon'ble Apex court in SLP Diary No.20410 of 2010 (SLP No.16321 of 2018) stayed the order of the Hon'ble High Court of Delhi in WP (C) No.8113/2016 dt.14.09.2017 (Union of India & Ors v. Rajendra) on 3.7.2018, wherein similar relief was granted by the Hon'ble Delhi High Court citing the case of Ram Phal of ITBP. Besides, the OM dated 4.1.2019 has emphasized the grant of grade pay of Rs.4600 instead of Rs.4200 to the pre-2006 retirees who retired from the 5th CPC scale of Rs.6500-10,500 or equivalent scale and that the applicant has not retired in the said scale but retired in the pay scale of Rs.5500-9000. The fitment Table No.25 annexed to the DOPPW OM dated 9.7.2019 affirms this contention. The directions envisaged in the OMs dated 1.9.2008/11.2.2009 do not permit the benefit of up-gradation of posts subsequent to their retirement to pre-2006 retirees. The pension of the applicant has been fixed as 50% of pay as per 7th CPC. The judgment of the Hon'ble Ernakulam Bench of this Tribunal relied upon by the applicant is only a direction to await and abide by the judgment of the Hon'ble Apex Court in SLP (C) No.16321 of 2018, filed against the judgment of the Hon'ble High Court of Delhi dt.14.09.2017.



6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is in regard to fixation of the pension of the applicant as per the 7th CPC recommendation as Rs.27,600/- instead of Rs.26,800. Applicant claims that he has to be granted the pension sought as

per OM's dated 4.1.2019/ 9.7.2019 of the DOPPW. Respondents oppose the same by claiming that the applicant is ineligible for the relief sought since the pension of the applicant cannot be fixed based on the up-gradation of pay scale after his retirement and cited the OM dated 11.2.2009 issued by DOPPW in support of their contention, as well as the judgments of the Hon'ble Apex Court in (i) K.S. Krishna Swamy v U.O.I and Anr in CA No.2174 of 2016, (ii) U.O.I., Ministry of Railways v R. Sethumadhavan in CA No.3173 of 2018, (iii) Hon'ble Delhi High Court in Amrendra Nath Mishra in WP No. 6098/2018.



II. However, in the case of Sri Rajendra the Hon'ble Principal Bench has rejected a similar claim on 15.2.2016 and when the matter was carried over to the Hon'ble Delhi High Court, the Tribunal order was set aside citing the judgment in Ramphal of ITBP. The decision of the Hon'ble High Court of Delhi when challenged by way of SLP Diary No. 20410 of 2010 (SLP No.16321 of 2018), the Hon'ble Apex court stayed the order of the Hon'ble High Court of Delhi on 3.7.2018. The judgment of the Hon'ble Ernakulam Bench of this Tribunal relied upon by the applicant is a direction to the respondents to take a decision based on the decision of the Hon'ble Apex Court in SLP No.16321 of 2018 challenging the order of Hon'ble Delhi High Court dated 14.9.2017.

III. Similar issue fell for consideration before the Hon'ble High Court for the State of Telangana in WP No. 42297 of 2018, wherein the judgments of the Hon'ble Delhi High Court in ***Ram Phal v. Union of India*** (2017 (2) SLR 1982 Delhi) and ***Rajendra v. Union of India*** in WP (C) No. 8113 of 29016 were discussed including the grant of stay by the Hon'ble

Apex Court in Rajendra and delivered a judgment on 5.2.2020 which is extracted here under:



“3. The issue before the learned Tribunal was whether those retirees, who retired prior to 2006, would be entitled to the benefit of upgradation of posts subsequent to their retirement, and thus would be entitled to the upgradation of their pay scale, and re-fixation of the pay or not? The said issue was decided by the Delhi High Court in the case of Ram Phal v. Union of India¹, wherein the Delhi High Court had not only quashed the Office Memorandum dated February 11, 2009, which had denied such benefit to the pre-2006 retirees, but had also directed the respondents therein to give the benefit of the upgraded pay scale, and to re-fix the pension of the pre-2006 retirees.

4. The learned counsel for the petitioners submits that the judgment passed by the Delhi High Court in the case of Ram Phal (supra) is under challenge before the Hon'ble Supreme Court. However, the learned counsel frankly conceded, and in the opinion of this Court rightly so, that the judgment of Ram Phal (supra) has not been stayed by the Hon'ble Apex Court. But, the learned counsel submits that subsequently the Delhi High Court had decided the case of Rajendra v. Union of India & Ors by judgment dated 14.09.2017 in W.P(C) No.8113 of 29016, while relying on the judgment of Ram Phal (supra). In the case of Rajendra, the Delhi High Court had granted the benefit of the upgraded pay scale, and had directed re-fixation of the pension, but the said judgment has been stayed by the Hon'ble Supreme Court in Union of India & Ors v. Rajendra by order dated 03.07.2018 in SLP (Civil) Dairy No.20410/2018. Therefore, the learned counsel submits that the learned Tribunal is not justified in relying on the case of Ram Phal in order to grant the similar benefit to the applicant in the present OA.

5. On the other hand, the learned counsel for the applicant submits that admittedly, the judgment in the case of Ram Phal had never been stayed by the Hon'ble Supreme Court. Therefore, it continues to hold the field. Moreover, in Union of India v. Rajendra (supra), the Hon'ble Supreme Court has merely stayed the recovery of the amounts already paid to the respondent in the said SLP, Mr.Rajendra. Thus, the Hon'ble Supreme Court has not stayed the operation of the entire judgment of Rajendra (supra). Moreover, the learned counsel has relied on the case of the Pay and Accounts Officer, Archaeological Survey of India, Secunderabad and Ors v. L.L.Sudhakar Reddy (W.P.No.39884 of 2018 dated 31.01.2019), whereby a learned Division Bench of this Court had dismissed the writ petition filed by the petitioners (the same petitioners as presently), and had upheld the order of the learned Tribunal dated 27.02.2018, where the same benefit of upgraded pay scale, and the re-fixation of pension was allowed by the learned Tribunal. Therefore, according to the learned counsel, the present case is squarely covered by the case of L.L.Sudhakar Reddy (supra). Hence, the learned counsel has supported the impugned order passed by the learned Tribunal.

6. As mentioned above, the only issue before the learned Tribunal is whether the pre-2006 retirees are entitled to the upgradation of the pay scale, and the re-fixation of their pension or not? As noticed above, in the case of Ram Phal, the Delhi High Court has quashed the Office Memorandum issued by the petitioners denying such a benefit, and had

granted the benefit of upgradation of the pay scale, and the re-fixation of the pension. Undoubtedly, the said judgment of the Delhi High Court has not been stayed by the Hon'ble Supreme Court. Even the stay granted in the case of Rajendra (supra) is only limited to the recovery part of the judgment. Hence, the judicial thinking presently is that those who have retired prior to 2006 would indeed be entitled to the upgraded pay scale, and the re-fixation of their pension. A similar view has been expressed by the learned Coordinate Bench of this Court in the case of L.L.Sudhakar Reddy (supra). Therefore, even the present case is covered by the said judgment.



7. Hence, for the reasons stated above, this Court does not find any illegality or perversity in the order, dated 07.12.2017, passed by the learned Tribunal. Since this writ petition is devoid of any merits, it is hereby dismissed. The petitioner is directed to carry out the directions of the learned Tribunal within a period of two months from the date of receipt of the certified copy of this order. There shall be no order as to costs. Miscellaneous petitions pending, if any, shall stand closed."

When the said judgment of the Hon'ble High Court for the State of Telangana was carried before the Hon'ble Supreme Court vide Petition for Special Leave to Appeal(C) No.4815/2021, an order of stay was granted on 13.04.2021, as under:

"There will be stay of operation of the impugned order on a condition that there shall be no recovery of the amounts already paid. In case, any excess amount has been recovered the same shall be refunded within four weeks.

Tag with SLP© No. 16321/2018."

IV. However, respondents cited the judgments of the Hon'ble Apex Court in para 7 (I) above to support their contention that the benefit of up-gradation of scales cannot be extended to retired employees. The relevant paras of the Hon'ble Apex Court cited are extracted here under:

(i) K.S. Krishna Swamy v U.O.I and Anr (2006) 13 SCC 215

"The grievances raised in the two sets of appeals are the same. The basic question that arises for consideration is as to whether the Executive Instructions in the form of O.M. dated 11.5.2001 over-ride the O.M. dated 17.12.1998 and are null and void. In other words, as to whether the O.M. dated 11.5.2001 over-rides the earlier O.M. dated 17.12.1998 clarifying the Policy Resolution of the Government dated 30.9.1997.

The main thrust of the submissions of learned counsel for the appellants is that the O.M. dated 11.5.2001 over-rides the original O.M. dated 17.12.1998



and creates two classes of pensioners. We are unable to accept this contention. As noticed above, the recommendations of the 5th Pay Commission were accepted to the extent of Policy Resolution dated 30.9.1997. The aforesaid Policy Resolution was further clarified by issuing instructions in O.M. dated 17.12.1998, which were clarified by another Executive Instructions in O.M. dated 11.5.2001. It is well settled principle of law that recommendations of the Pay Commission are subject to the acceptance/ rejection with modifications of the appropriate Government. It is also well settled principle of law that a policy decision of the Government can be reviewed/ altered/ modified by Executive Instructions. It is in these circumstances that a policy decision cannot be challenged on the ground of estoppel. In the present case, the recommendations of the 5th Pay Commission were accepted by a Policy Resolution dated 30.9.1997 that the ceiling on the amount of pension will be 50% of the highest pay in the Government. The pension of all pre 1.1.96 retirees including pre-86 retirees shall be consolidated as on 1.1.1996, but the consolidated pension shall not be brought on to the level of 50% of the minimum of the revised pay of the post held by the pensioner at the time of retirement. The subsequent O.M. dated 17.12.1998 clarified the Policy Resolution dated 30.9.1997 by Executive Instructions in O.M. dated 17.12.1998 and further clarified in the form of O.M. dated 11.5.2001 clarifying the contents of Policy Resolution of the Government dated 30.9.1997. They are both complementary to each other. Both clarify the Government Policy Resolution dated 30.9.1997. The appellants are not aggrieved by the Executive Instructions in O.M. 17.12.1998. In our view, therefore, the contention of the appellant that the O.M. dated 11.5.2001 over-rides the original O.M. dated 17.12.1998, thereby creates two classes of pensioners is absolutely ill- founded and untenable.

It is common knowledge that an increase in the pay scale in any recommendation of a pay commission is a corresponding increase in the pay scale. In our view, therefore, Executive Instructions dated 11.5.2001 have been validly made keeping in view the recommendations of the Pay Commission accepted by the Policy Resolution of the Government on 30.9.1997, clarified by Executive Instructions dated 17.12.1998. The Executive Instructions dated 11.5.2001 neither over-ride the Policy Resolution dated 30.9.1997 nor Executive Instructions dated 17.12.1998 clarifying the Policy Resolution dated 30.9.1997. The Executive Instructions dated 11.5.2001 were in the form of further clarifying the Executive Instructions dated 17.12.1998 and do not over-ride the same.

Counsel for the appellants heavily relied on the Constitution Bench decision of this Court in [D.S. Nakara v. Union of India](#) (1983) 1 SCC 305 where this Court at Page 345 SCC observed that "liberalised pension scheme becomes operative to all pensioners governed by 1972 Rules irrespective of the date of retirement."

Nakara's case (supra) has been distinguished by this Court in *State of Punjab & Ors. v. Boota Singh & Anr.* (2000) 3 SCC 733; [State of Punjab & Anr. v. J.L. Gupta & Ors.](#) (2000) 3 SCC 736; [State of West Bengal and Anr. v. W.B. Govt. Pensioners' Association & Ors.](#) (2002) 2 SCC 179; and [State of Punjab & Ors. v. Amar Nath Goyal & Ors.](#) (2005) 6 SCC 754.

Nakara's case (supra) was a case of revision of pensionary benefits and classification of pensioners into two groups by drawing a cut off line and granting the revised pensionary benefits to employees retiring on or after the cut- off date. The criterion made applicable was "being in service and retiring subsequent to the specified date". This Court held that for being eligible for liberalised pension scheme, application of such a criterion is violative of [Article 14](#) of the Constitution, as it was both arbitrary and discriminatory in nature. It was further held that the employees who retired prior to a specified

date, and those who retired thereafter formed one class of pensioners. The attempt to classify them into separate classes/groups for the purpose of pensionary benefits was not founded on any intelligible differentia, which had a rational nexus with the object sought to be achieved. The facts of Nakara's case (*supra*) are not available in the facts of the present case. In other words, the facts in Nakara's case are clearly distinguishable.



In Indian Ex-Services League v. Union of India (1991) 2 SCC 104, this Court distinguished the decision in Nakara's case (*supra*) and held that the ambit of that decision cannot be enlarged to cover all claim by retirees or a demand for an identical amount of pension to every retiree, irrespective of the date of retirement even though the emoluments for the purpose of computation of pension be different. In K.L. Rathee v. Union of India (1997) 6 SCC 7, this Court, after referring to various judgments of this Court, has held that Nakara case cannot be interpreted to mean that emoluments of persons who retired after a notified date holding the same status, must be treated to be the same. In our view, therefore, the ratio in Nakara's case (*supra*) is not applicable in the facts of the present case. Lastly, it is contended that against the decision of the Delhi High Court, an SLP was dismissed by this Court on 8.7.2004 and, therefore, the doctrine of merger applies. It is not disputed that the SLP was dismissed in limine without a speaking order. This question has been set at rest by a three- Judge Bench of this Court in Kunhayammed & Ors. v. State of Kerala & Anr. (2000) 6 SCC 359, where this Court after referring to a two-Judge Bench, of this Court in V.M. Salgaokar & Bros. (P) Ltd. v. CIT (2000) 5 SCC 373 held at page 375 (para 22) SCC as under:

"22. We may refer to a recent decision, by a two- Judge Bench, of this Court in V.M. Salgaokar & Bros. (P) Ltd. v. CIT (2000) 5 SCC 373 holding that when a special leave petition is dismissed, this Court does not comment on the correctness or otherwise of the order from which leave to appeal is sought. What the Court means is that it does not consider it to be a fit case for exercising its jurisdiction under Article 136 of the Constitution. That certainly could not be so when appeal is dismissed though by a non-speaking order. Here the doctrine of merger applies. In that case the Supreme Court upholds the decision of the High Court or of the Tribunal. This doctrine of merger does not apply in the case of dismissal of a special leave petition under Article 136. When appeal is dismissed, order of the High Court is merged with that of the Supreme Court. We find ourselves in entire agreement with the law so stated. We are clear in our mind that an order dismissing a special leave petition, more so when it is by a non-speaking order, does not result in merger of the order impugned into the order of the Supreme Court."

Therefore, when the special leave petition is dismissed by the Supreme Court under Article 136 of the Constitution, the doctrine of merger is not attracted.

For the reasons aforesaid, the view taken by the Madras High Court that the clarificatory Executive Instructions in O.M. dated 11.5.2001 are an integral part of the O.M. dated 17.12.1998 clarifying the Policy Resolution of the Government dated 30.9.1997 and do not over-ride the original O.M. dated 17.12.1998 is correct law and it is, accordingly, affirmed. The view taken by the Delhi High Court that O.M. dated 11.5.2001 over-rides the original O.M. dated 17.12.1998 and creates two classes of pensioners does not lay down the correct law and is, hereby, set aside. The net result is that the Civil Appeal Nos. 3174 and 3173 of 2006, preferred by the pensioners, are dismissed and the Civil Appeal Nos. 3188, 3189 and 3190 of 2006, preferred by the employer Union of India, are allowed. The Judgment and

order of the Madras High Court dated 29.4.2005 is affirmed. The Judgment and Orders of the Delhi High Court dated 17.8.2005, 5.9.2005, 10.11.2005 and 3.8.2005 are set aside.

(ii) U.O.I, Ministry of Railways v R.Sethumadhavan in CA No.3173 of 2018:



"8. The grievance of the respondent is directed against the clarification dated 11th May, 2001 since the respondent felt the impact of the clarification on his pension. He, therefore, preferred an Original Application before the Central Administrative Tribunal for his rightful pension. The question raised by the respondent as indeed by some others was referred to a larger Bench of the Tribunal and the question referred reads as follows:-

"When, the pre-revised pay scale of Rs. 1400-2300 attached to the post of JE. II (TXR) in the Railways was revised to Rs. 5000-8000 (while the normal replacement pay scale for the pre-revised pay scale of Rs. 1400-2300 is Rs. 4500-7500) whether the pension admissible to the pre 01.01.1996 retirees should be based on the pay scale of Rs. 5000-8000 or should be restricted to that calculated on the basis of the pay scale of Rs. 4500-7000/-."

9. By an elaborate judgment and order dated 31st October, 2011 the Tribunal took the view that the respondent held the post of Train Examiner on the date of his superannuation and his pension had been correctly fixed on that basis. The replacement scale for the post of Train Examiner was Rs. 4500-7000 with effect from 1st January, 1996. It was held that the pension of the respondent could not be on par with the pay scale of a Junior Engineer Grade-II. The reference was answered accordingly.

10. While coming to this conclusion the Tribunal adverted to 20 or more decisions rendered by various Benches of the Tribunal, several High Courts and also few decisions of this Court. This is an indication of the contest in store for pensioners when a claim for pension is made against the State.

11. Be that as it may, the Tribunal eventually relied upon the decision of this Court in K.S. Krishnaswamy & Ors. v. Union of India & Anr. to dismiss the Original Application.

12. Feeling aggrieved by the judgment and order of the Tribunal, the petitioner preferred W.P. No. 13207 of 2013 in the Madras High Court. By the impugned judgment and order dated 2nd August, 2016 the High Court allowed the writ petition and quashed the order passed by the Tribunal. It is under these circumstances that the Union of India is before us.

13. We have heard learned counsel for parties and find that the Tribunal was right in relying upon the judgment and order passed by this Court in Krishnaswamy. In this decision, the very question that arose for consideration before the Tribunal and the High Court was dealt with, though with reference to some other posts of the Government of India. The question formulated by this Court in Krishnaswamy related to the scale of pay recommended by the 5th Central Pay Commission and the acceptance of the recommendations by the Government of India by a policy decision dated 30th September, 1997 and the Office Memorandum dated 17th December, 1998 clarified by the Office Memorandum dated 11th May, 2001. The basic question that arose for consideration was whether the Office Memorandum dated 11th May, 2001 overrides the Office Memorandum dated 17th December, 1998 clarifying the policy resolution of the Government of India dated 30th September, 1997.

14. While dealing with this question, this Court held in paragraphs 17 and 27 of the Report as follows:



“17. The main thrust of the submissions of learned counsel for the appellants is that the OM dated 11-5-2001 overrides the original OM dated 17-12-1998 and creates two classes of pensioners. We are unable to accept this contention. As noticed above, the recommendations of the Fifth Pay Commission were accepted to the extent of policy resolution dated 30-9-1997. The aforesaid Policy Resolution was further clarified by issuing instructions in OM dated 17-12-1998, which were clarified by another executive instructions in OM dated 11-5-2001. It is well-settled principle of law that recommendations of the Pay Commission are subject to the acceptance/rejection with modifications of the appropriate Government. It is also well-settled principle of law that a policy decision of the Government can be reviewed/altered/modified by executive instructions. It is in these circumstances that a policy decision cannot be challenged on the ground of estoppel. In the present case, the recommendations of the Fifth Pay Commission were accepted by a Policy Resolution dated 30-9-1997 that the ceiling on the amount of pension will be 50% of the highest pay in the Government. The pension of all pre-1-1-1996 retirees including pre-1986 retirees shall be consolidated as on 1-1-1996, but the consolidated pension shall not be brought on to the level of 50% of the minimum of the revised pay of the post held by the pensioner at the time of retirement. The subsequent OM dated 17-12-1998 clarified the Policy Resolution dated 30-9-1997 by executive instructions in OM dated 17-12-1998 and further clarified in the form of OM dated 11-5-2001 clarifying the contents of Policy Resolution of the Government dated 30-9-1997. They are both complementary to each other. Both clarify the government Policy Resolution dated 30-9-1997. The appellants are not aggrieved by the executive instructions in OM dated 17-12-1998. In our view, therefore, the contention of the appellant that the OM dated 11-5-2001 overrides the original OM dated 17-12-1998, thereby creating two classes of pensioners is absolutely ill-founded and untenable.

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27. For the reasons aforesaid, the view taken by the Madras High Court that the clarificatory executive instructions in OM dated 11-5-2001 are an integral part of the OM dated 17-12-1998 clarifying the policy resolution of the Government dated 30-9-1997 and do not override the original OM dated 17-12-1998 is correct law and it is, accordingly, affirmed. The view taken by the Delhi High Court that OM dated 11-5-2001 overrides the original OM dated 17-12-1998 and creates two classes of pensioners does not lay down the correct law and is, hereby, set aside.”

15. Unfortunately, the High Court has not even referred to this judgment while taking a decision in favour of the respondent. Since the issue is squarely covered by the decision of this Court in Krishnaswamy, the appeal must be allowed.

16. Yet another error made by the High Court is in assuming that the post of Train Examiner was re-designated as Junior Engineer Grade-II. There is nothing on record to suggest the re-designation. In fact the conclusion of re-designation is the sole basis on which the writ petition was allowed by the High Court and as mentioned above, we do not find any material on record to suggest the re-designation. Consequently, the entire basis of the decision of the High Court is erroneous, apart from the fact that the High Court did not advert to the decision of this Court in Krishnaswamy on the subject.

17. In the circumstances, we have no option but to set aside the impugned judgment and order of the Madras High Court and we do so accordingly. The appeal is allowed.

18. *In case any payments have been made to the respondent, there will be no recovery of these amounts.*

19. *A copy of this order be sent to the Secretary, Department of Personnel and Training of the Government of India."*

V. We also observe that the DOPPW, which is the nodal Ministry



to deal with pension, was not made a party to the OA and many of the decisions of the said Department have impacted the pension of the applicant. However, since the Ld. Counsel for the applicant prayed that the applicant is a senior citizen and that it would be difficult to get a reply from DOPPW by making it a party, we therefore, in the light of the legal principles laid down by the superior judicial fora cited supra, direct the respondents to take an appropriate decision in extending the relief sought, within a period of 6 months. The time period of 6 months is granted since the issue has to be processed in consultation with the different Ministries of the Govt. of India.

With the above direction the OA is disposed with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

evr