

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

Original Application No.1483 of 2003.

Allahabad, this the 10/2 day of Feb., 2006.

Hon'ble Mr. K.B.S. Rajan, J.M.

1. S.B.Singh s/o Late Shri Shanker Singh
R/o 180/c/1 Rajrooppur, Allahabad.
2. S.K.Srivastava, s/o Late Shri Ram Naran Lal
R/o 1085/204/c Hanuman Mandir, 60 Feet Road,
Rajrooppur, Allahabad.
3. J.B.Singh s/o Late Shri Kedar Singh,
R/o 506 Rajrooppur, Allahabad.

...Applicant.

(By Advocate : Sri S.K. Singh
Versus

1. Union of India through the Secretary
Ministry of Defence (Finance) New Delhi.
2. Financial Advisor Ministry of Defence
(Finance)
New Delhi.
3. Controller General of Defence Accounts,
West Block-V, R.K. Puram, New Delhi.
4. Chief Controller of Defence
Accounts (Pension)
Draupati Ghat, Allahabad.

...Respondents.

(By Advocate : Sri M.B Singh)

O R D E R

By Hon'ble Mr. K.B.S. Rajan, J.M. : -

O.A. No.1483 of 2003 and Contempt Petition
No.135/03 have been filed by three applicants namely
Shri S.B. Singh s/o Late Shri Shanker Singh, S.K.
Srivastava s/o Late Shri Ram Narain Lal and J.B.
Singh s/o Late Shri Kader Singh (herein to be
referred to as applicants - address of the

applicants are given in the OA). The OA has been filed by the applicants against order dated 10.9.2003 and 12.9.2003 passed by respondent No.4 namely Chief Controller of Defence Accounts , Allahabad. Applicants through this OA have prayed for quashing of the impugned orders and to issue directions to respondents to grant special pay of Rs.35 p.m. to them w.e.f. 1.5.86 i.e. the date for which their juniors were allowed the benefit of special pay scheme, to award cost of the application and issue any other order/direction as the Hon'ble Tribunal may deem fit and proper in the circumstances of this case.

2. The OA in question has been filed mainly on the following grounds :-

- (1) That the applicants are fully eligible and satisfy all the conditions for grant of special pay as compared to the juniors who were granted special pay while working in the same office and without undertaking any transfer.
- (2) That there was nothing adverse in their service record.
- (3) That special pay scheme was meant for those senior Auditors who were discharging the same duties and responsibilities and hence were entitled to benefit of special pay.
- (4) Applicants were discriminated vis-à-vis their colleagues in as much as they were directed to opt for transfer if they worked to get the benefit of the scheme. This was violative of Article 14 of the Constitution of India.



(5) The action of respondents to allow the benefit of special pay to seniors and even to juniors ignoring the persons in between is unfair, bad in law and against the principles of natural justice.

(6) It is a settled law that a junior cannot be considered for promotion or for any other financial benefit, ignoring the claim of seniors in that grade.

(7) That even respondent No.4 i.e. Chief Controller of Defence Accounts (Pension), Allahabad, has conceded that applicants were covered by the official----- on the subject contained in letter dated 5.5.84 and 31.5.1995.

(8) Applicants are covered by first category of para 8 of order dated 20.1.2003 passed by Hon'ble Central Administrative Tribunal, Allahabad Bench, and the respondents could not have rejected the claim of the applicants by ignoring this portion.

3. The applicants had earlier moved this Tribunal and had sought the relief mentioned above and the Tribunal, on going through the entire facts and circumstances of the case as well as on examination of order dated 20.10.95, specially paragraph 'C' of the said order, held as under :-

"8. A perusal of this paragraph makes it clear that it was intended to grant the benefit of special pay to senior most auditors /SGAs who had become eligible for the said benefit as on 10.7.86 and 13.9.86. We find from para 23 of the counter reply filed by the respondents that grant of special pay to 140 senior most select6ion grade Auditors falling between Roster 58 to 2040 was under sympathetic consideration of the Ministry of Finance, Department of Expenditure. The respondents have also mentioned in paragraph 11 of the counter reply that seven persons had given their option for transfer in response to Memo dated 4.7.86. This category alongwith category of those

who were earlier not entitled to special pay as on 10.7.86 but became entitled to special pay on account of order dated 20.10.95 were those entitled to be considered for grant of special pay on vacancies, which remained (to be filled up) after grant of special pay w.e.f. 1.5.86 before the juniors falling between Sl. No.2041 to 3062 were grant special pay.

9. It is not known whether the applicants to any of the above two categories. In case they belonged to any of the above two categories they shall individually bring the fact to the notice of respondent No.4, by means of representation and the respondents shall consider their claims under the scheme applicable to those falling between Sl. No.1 to 2040 for grant of special pay w.e.f. 10.7.86."

4. Accordingly, the three applicants filed their representation in support of their case with respondent No.4 and respondent No.4 on careful consideration of their case rejected their claims on the following grounds :-

- (i) that they have not specified the category to which they belonged , as per CAT order dated 20.1.2003.
- (ii) They also refused to accept the benefit of special pay of Rs.35 /p.m. for attending work of more important and complex nature due to involvement of their transfer.

5. While rejecting their individual representation, respondent No.4 also observed :-

" Now, therefore, the undersigned after considering the representation in details in accordance with the direction of the CAT Allahabad order dated 20.1.2003 has come to the conclusion that the special pay of Rs.35/ p.m. cannot be granted to him in terms of Headquarters office letters AN/XIV/14102/III/Vol.II dated 5.5.84 and AN/XII/11100/Spl. Pay/Vol.IV



dated 31.5.95 as he does not fall in any of the two categories mentioned in CAT order dated 20.1.2003."

Being aggrieved by the impugned order of respondent No.4 applicants have filed this OA, on the ground stated above.

6. The respondents have opposed the OA on the following grounds :-

- (1) That the scheme for grant of special pay of Rs.35/- per month to Auditors attending to work of a complex and more important nature in terms of Ministry of Finance, Department of Expenditure O.M. No.F-7 (52)E III/78 dated 5.5.79 was introduced in the Defence Accounts Department w.e.f. 1.5.84 vide Headquarters letter No.An/SIV/14102/III/Vol II dated 5.5.84.
- (2) That the broad guidelines, that were to be kept in view, while implementing the scheme were as follows :-
 - (i) The number of special pay posts should not exceed 10% of the total posts in the total cadre of Auditors and SGA grade.
 - (ii) The criterion of 10% was to be applied to main office and sub-office separately.
 - (iii) That it was necessary to identify the post carrying discernible duties and responsibilities of a complex nature.
 - (iv) That annual Review for this purpose was to be carried out.
 - (v) That the senior most eligible persons were to be accommodated in the same office where the posts were available. The persons of lower seniority were to be offered posts in officer at other stations or in other organizations at the same or different station, strictly in order of seniority.
 - (vi) That if any such eligible junior person was unwilling to go on transfer, he was to express his unwillingness in writing. The cases of such persons declaring a special pay post on account of involvement of transfer was to be reviewed on 1st May of every year.



- (vii) That if an eligible person declined the offer of a special pay post at different station, which involved transfer, the next eligible person was to be offered the post.
- (viii) That eligible persons, who were already in receipt of special pay by virtue of their appointment as Cashiers, supervisors and to other posts carrying another special pay, were not intended to special pay of Rs.35/ p.m.
- (ix) In situation, were no qualifying post existed for senior SGAs, they were to be transferred to that station/organization were special pay post existed provided he/she/or they had given option to move out of the station where they were originally posted.

7. Respondents have further stated in their counter affidavit dated 28.3.2004, which is as under :

"That for implementation of the scheme for grant of special pay of Rs.35/ pm to Auditors attending to work of a complex and more important nature a list of 2040 senior most SGAs from Roster No.1 to 2040 was initially received in office of answering respondent vide Headquarters letter No.AN/XII/11100/SPL. PAY/Vol.II dated 9/10.5.1984. Out of 2040, 319 individuals pertained to the office of answering respondent. Out of 319, 32 individuals were ineligible for grant of special pay due to various reasons. Out of remaining (319-32) 287, only 127 individuals were granted special pay w.e.f. 1.5.84 due to 10% restriction as per CGDA letter dated 5.5.84 vide part-II office order No.817 dated 13.6.84, No.1300 dated 18.8.84 and No.1339 dated 24.8.84. An option from remaining 160 SGAs

including the applicants regarding acceptance of their transfer to difference controller's office was called for under our letter No.GX/0325/II/AN-1 dated 20.6.84. In response to our letter dated 20.6.84, 151 senior auditors/SGAs including the applicants expressed their unwillingness for transfer to other stations. Respondents have further stated " that the grant of special pay to 287 individuals was reviewed in May 85 as per Para 2.6 of Headquarters letter No.AN/XIV/14102/III/Vol-II dated 5.5.84 . Out of 287, 21 individuals were receiving higher of special pay and remaining 266, 120 Sas/SGAs were granted special pay of Rs.35/- pm w.e.f. 1.5.85 vide Part-II O.O. (office order) No.841 dated 22.5.85 for one year. An option from remaining 146 including the applicants was again called for vide our circular No.GX/0325/IIAn-II dated 27.5.85. Out of 146 Auditors/SGAs, 141 Auditors/SGAs including the applicants had given their option to forgo their claim of special pay for a period of one year due to involvement of their transfer to different stations. The position in this regard was also intimated to Headquarters office under our letter No.GX/0325/II/AN-1 dated 24.10.85; that the grant of special pay to 266 individuals with effect from 1.5.86 was further reviewed. 119 SGAs against 266 SGAs were granted special pay to Rs.35/- w.e.f. 1.5.86 vide part-II office order No.932 of 26.6.86 and option from remaining 147 eligible SGAs who could not be granted due to 10% restriction was

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called for vide our memo No.GX/0325/II/AN-1 dated 4.7.86. Out of 147 SGAs, 140 Auditors/SGAs including the applicant declined in writing to accept transfer to other stations. A list of 140 SGAs including applicants who decline to other of appointment were sent to Headquarters office vide our No.GX/0325/II/AN-1 dated 4.7.86; that consequent on the recommendations of the IVth pay commission, the higher functional grade was introduced in the organized Accounts service and the scheme for grant of special pay of Rs.35/- PM to SGAs/Auditors in the department was withdrawn by the Govt. under their letter No.O.M. No.15 (1) IC/86 dated 13.9.86 and as such the grant of special pay of Rs.35/- PM was discontinued."

8. Subsequently, it was found that a total number of 2034 authorized posts could not be filled on account of three main reasons :

- (1) Refusal of appointment due to involvement of their transfer.
- (2) Certain SGAs were already in receipt of higher rate of special play while employed on posts like cashier, supervisory duties etc. and
- (3) Due to retirement, death, resignation and deputation's of senior most SGAs as on the date of implementation of the scheme.

9. In order to fill up these 2034 unfilled posts, the authorities decided to go down in the seniority roster of SGAs by authorizing additional 1000 numbers in the roster of SGAs appointed in the grade up to 22.6.1981. falling between 2041 to 3062. However, while making the selection it was made imperative in the office order in question that the

conditions laid down under CGDA's letter under reference were to be strictly complied with. Accordingly, 95 SGAs falling between rosters Nos. 2041 to 3062 were granted special pay of Rs.35/- P.M. subsequently.

10. The cases of these three applicants were falling between roster points 588 to 2040 and as such could not come within the zone of consideration. Accordingly, they were also denied the benefit of pay protection on promotion subsequently vis-à-vis other SGAs who were granted special pay of Rs.35/- per month.

11. The applicant then filed an OA No.575 of 1997 before this Hon'ble Tribunal praying for grant of special pay @ Rs.35/- per month for attending work of more important and complex nature. The OA in question, as pointed out earlier, was decided on 20.1.2003 with certain directions to the respondents, Tribunal, while deciding the issue, examined at length para 'C' of office order dated 20.10.95 which read as under :-

"Cases of senior most Auditors/SGAs appearing in the list from Sl.No. 1 to 2040 who were not earlier eligible to the benefit of the grant of special pay as on 1.5.84 or the date on which complex nature of duties due to the reason that they were already drawing the higher rate of special pay, cashier, deputation allowance etc. and have subsequently become eligible for the said benefit as on 10.7.86 but before 13.9.86."



12. Impugned judgment of this Tribunal reads as under " A perusal of this paragraph makes it clear that it was intended to grant the benefit of special pay to senior most Auditors/SGAs who had become eligible for the said benefit as on 10.7.86 and before 13.9.86. The respondents have also mentioned in paragraph 11 of the counter reply that seven persons had given their option for transfer in response to Memo dated 4.7.86.

13. This category along with category of these who were earlier not entitled to special pay as on 10.7.86 on account of order dated 20.10.95 had become entitled to be considered for grant of special pay. Since it was not known whether applicants belonged to any of these categories, the applicants were directed to represent their case to the respondent No.,.4 with a further direction to respondents to reexamine their case in light of the above and to take an appropriate decision."

14. Respondent No.4 vide his order No.AN-I/CAT/OA-575/97 rejected the claim of applicants on the ground that the case of applicants fell in neither of the two categories specified in the impugned order of CAT .

15. The applicant and respondents were heard through their respective counsels and were also directed to file their written submissions. In their written submission they have only reiterated

the arguments advanced in the OA and the counter affidavit respectively filed on behalf of their respective clients.

16. I have carefully considered the facts of the case and submissions made by the respective counsels on behalf of the applicants as well as respondents. Applicants in the OA have prayed for quashing the order dated 10.9.2003 and dated 12.9.2003 of the respondents, on the grounds mentioned on pre pages. They have also filed a contempt application against the respondents for willfully and deliberately flouting the orders dated 20.5.2003 of this Hon'ble Tribunal. On a careful consideration of the entire facts and circumstances of this case, we have came to the conclusion that neither the contempt petition nor the OA 1483 of 2003 is maintainable in law, in view of the following.

17. We find that this Hon'ble Tribunal examined the full facts and circumstances of this case and arrived at the following conclusion :-

"We have carefully perused the contents of order dated 20.10.95 (Annexure-A-14, paragraph 'C' of the said order (which) runs as follows:- (cases of31.5.95)

"The applicants have mentioned that a scheme of special pay of rs.35/- p.m. to 10% of the cadre of Auditors in Defence Accounts Department including Selection Grade Auditors was launched on 5.5.84 and posts to the extent of 10% were identified in ache office. Since the posts were located in different offices, options were obtained from the Auditors regarding their acceptability of Transfer in the event their turn come on the basis of seniority



for grant Special Pay. Those who opted for transfer were to be conferred the benefit of Special Pay in order of their seniority. The Auditors were granted Special Pay under the scheme in 1984, 1985 and 1986. It was, however, found that all the posts carrying Special Pay could not be filled up from amongst the Auditors who were covered under the scheme in the first instance. Therefore, it was decided to extend the scheme to the Special Grades Auditors appointed up to 22.6.81. But before the benefit could be conferred upon them, the scheme of Special Pay was withdrawn by order dated 13.9.86. Due to persistent demand from the Auditors identified subsequently for grant of Special Pay, the respondents, by order dated 31.5.95, decided to fill up the remaining unfilled posts from amongst the Auditors identified subsequently with effect from 10.7.86 on the date from which they were employed whichever was later. It was found difficult to implement the scheme under order dated 31.5.95 and hence by order dated 20.10.95, the conditions of identifying 10% posts in each office and acceptance of transfer were waived. It is claimed that 88 officials belonging to the category of Auditors/SGAs, who were junior to the applicants, were granted Special Pay under relaxed conditions. The applicants through these applications have claimed the benefits of the relaxed condition.

18. We have heard the arguments of Shri S.K. Singh for the applicants and Sri M.B. Singh for the respondents.

19. Counsel for the applicant contended that on account of charge in conditions, which were applied to the Auditors/SGAs identified earlier to person junior to applicants, they were benefited in grant of Special Pay of Rs.35 P.M. and stated drawing more pay of the time of pay fixation under the Scale recommended by the 4th pay commission. His contention is that all those who were identified initially should have been considered for grant of

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Special Pay after the conditions were changed on account of order dated 20.10.95.

20. We have carefully perused the contents of order dated 20.10.95 (Annexure-A-14, paragraph 'C' of the said order runs as follows :-

"Cases of senior most Auditors/SGAs appearing in the list from Sl.No.1 to 2040, who were not earlier (in receipt of special) pay as on 1.5.84 or the date on which they were employed on complex nature of duties due to the reasons that they were already drawing the higher rate of Special Pay, Cashier allowance, deputation allowance etc. and have subsequently become eligible for the said benefit as on 10.7.86 but before 13.9.86. Such cases are required to be reviewed by CDAs and forwarded to Headquarters office along with detailed statement of each case with specific recommendations for examinations at this Hqrs. In terms of para 5 (iv) of our Circular dated 31.5.95.

21. A perusal of this paragraph makes it clear that it was intended to grant the benefit of Special Pay to senior most Auditors/SGAs who had become eligible for the said benefit as on 10.7.86 and before 13.9.86. We find from the para 23 of the counter reply, filed by the respondents, that grant of special pay to 140 senior most selection Grade Auditors falling between Roster No.588 to 2040 was under sympathetic consideration of the Ministry of Finance, Department of Expenditure. The respondents have also mentioned in paragraph 11 of the counter reply that seven persons had given their option for transfer in response to Memo dated 4.7.86. This category alongwith category of those who were not

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entitled to special pay but become entitled to special Pay as on 10.7.86 on account of order dated 20.10.95, were those entitled to be considered for grant of Special Pay on various which remained after grant of Special Pay w.e.f. 1.5.86 before the juniors falling between Sl.No.2041 to 3062 were granted Special Pay.

22. It is not known whether the applicants belonged to any of the above two categories. In case they belonged to any of the above two categories, they shall individually bring the fact to the notice of respondent No.4 by means of representation and respondents shall consider their claims under the scheme applicable to those falling between Sl.No. 1 to 2040 for grant of Special Pay w.e.f.10.7.86....."

23. From the above decision, it clearly transpires that this Hon'ble Tribunal has not arrived at any positive finding or decision as regards the case of applicants for grant of special pay to the applicants or for stepping up of their pay was concerned. As per decision of the Tribunal, the following two categories of Auditors were covered by the office order of CGDA dated 20.10.95.

1. Seven applicants who had given their options for transfer in response to memo dated 4.7.86 if restriction of ten persons contained in earlier order and who had not so far been allowed the benefits of the scheme.
2. Applicants who were earlier not entitled to special pay but become eligible/entitled to special pay as on 10.7.86.

24. Respondents in their counter affidavit have clarified that after identification of duties of a complex and more important nature in case of Auditors and SGAS, a list of 2040 SGAs from Roster No.I to 2040 were taken up for consideration, on the basis of seniority, for the grant of special pay. Out of this 319 SGAs pertained to the office of respondent No.4. Out of this 319, 32 individuals eligible for grant of special pay. Out of the remaining 287, only 127 individuals, were granted Special Pay w.e.f. 1.5.84 due to 10% restriction as per CGDA's letter dated 5.5.84. An option for acceptance for transfer to different station from remaining 160 SGAs including the applicants involved in OA under consideration, was called for vide letter dated 20.6.84. The applicants alongwith Auditors 151 Senior Auditors expressed their unwillingness for transfer to other station. It is needless to mention that the Special Pay Posts of selection grade Auditors had were filled at both the Headquarters as well as other subordinate formation, subject to 10% of the cadre strength of such Auditors at each station.

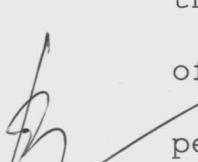
25. According to respondents when the position was again reviewed in May 1985, an option from 146 including the applicants was again called for vide letter dated 27.5.85. Out of 146 Auditors/SGAs 141 Auditors/SGAs including the applicants involved in the OA had given their option to forego their claim

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of Special Pay for a period of one year "due to involvement of their transfers to different stations. "When the position was again reviewed in light of official instructions, on 1.5.86. Out of 147 SGAs, 140 Auditors/SGAs including the applicants declined the offer of Special Pay in writing in view of transfer involvement of other stations.

26. It is clear that the first category covered these 7 SGAs, who were eligible but could not get the benefit of Special Pay due to some reasons. The applicants are clearly not covered by the second category as they had already become eligible to Special Pay on 20.6.84. Moreover when an option was called from them for their posting on transfer to a Special Pay Post to a different station, they declined the offer thrice. Hence if the respondent No.4, rejected the claim of the applicants, he had committed no contempt of Govt. whatsoever and his decision was fully in accordance with law and the decision of this Hon'ble Tribunal.

27. As regards the applicants, this Hon'ble Tribunal has only directed reconsideration of the case of applicants in case they fell in either of these categories. The answering respondent No.4, reconsidered their case and rejected the prayer of the applicants as their case did not fall in either of the low categories mentioned above. The contempt petition consequently fails and merits dismissal and is accordingly dismissed.



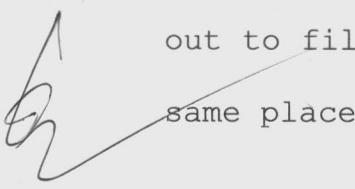
28. As regards, OA 1483 of 2003, I am of the opinion that the same is not maintainable, at all, in law. Applicants were extended the benefit of Special Pay during 1984, 1985 and 1986 as discussed above. When they themselves abdicated, abnegated and abandoned their right to special pay in response to repeated officers made by the Government to that effect, they cannot invoke the same at this stage. Government has practised no discrimination whatsoever in their case and looking to the fact and circumstances of this case it can be said that there was no lack of sympathy to their cause on the part of the Government to their cause. But the Government seems helpless in face of the cold logic of law. Even the courts perceive law as on embodiment of all wisdom and will not normally like to transgress the boundaning laid down by law in such situation while deciding a case of such nature. The case of the applicants was referred by them to Ministry of Finance for sympathetic consideration, but the Ministry of Finance as a matter of policy, recorded the following decision thereon. (As per Annexure III MOI Deptt of Finance Expenditure O.M.E.-III-A Branch).

"The matter has been examined in this Ministry. Under normal principles if an employee refuses promotion for whatsoever reasons, including the fact that promotion involves transfer, the employee is barred for promotion for some time and his juniors are promoted in the meanwhile. If subsequently his junior is promoted at the same station(viz. without involving transfer) the senior cannot claim for promotion or higher or equal pay then the junior. On the same

consideration, if an employee had refused to accept posting to a post carrying a Special Pay of Rs.35/- on the consideration that it involved transfer, he has no claim to compare himself with the junior who accepted the posting to such a post with a without involvement of transfer. Accordingly, it is not possible to agree to the proposal of Ministry of Defence to step up the pay of the senior who refused, for whatever reasons, to accept appointment to a post carrying Special Pay."

29. Government are empowered to take policy decisions in respect of their staff for smooth functioning of Administration. A court of law will not normally interfere in matters relating to policy decisions of the Government unless the same infringed the fundamental Rights of a citizen, guaranteed under the constitution of India

30. Since, all the incumbents to the post could not have been adjusted at the same station, Government as a matter of policy was compelled under the exigencies of the situation to seek an option for transfer from the Junior SGAs so that the vacancies at various stations in the field could be filled in for smooth functioning of Administration, obviously, has been taken in public interest and hence they cannot be blamed for any discrimination whatsoever. Moreover, this decision was based on the principle of seniority. These who were senior most, as per the policy, were to be retained at the headquarters, and those who came next in seniority were to move out to fill in the vacancies at other station in the same place or in the other place in the field .



31. It has been settled by the Hon'ble Supreme Court of India that Equality under Article 14 of the constitution means 'Equality among equals'. There were many other SGAs who declined the offer of Special Pay post as it involved transfer liability along with the applicants. They have also been denied the benefit of special pay on a par with the applicants. Hence, the question of any discrimination in the case of applicants in the matter, on the part of the Government, does not arise.

32. In the case of B.L. Somayajulu and others Vs. the Telecom Commission and others, 1997 (2) SLJ 134 (SC) para 19.1 the apex court has laid down the following conditions for stepping up of pay of an employee.

"19.1 (A) Pay stepping up can be granted only when there is a provision in law in that behalf and only in accordance with that.

- (B) A claim for stepping up can be made only on the basis of a Legal Right and not on pervasive notions of equity or equality, unrelated to the context of statutory law.
- (C) Pay stepping up of every claim must be based on an enforceable Legal Right. A right arises by conferment and not by comparison.
- (D) Pay stepping up of - Held a jurisdiction in equity does not inhere in the Tribunal.

33. It is clear in the case of the applicants that it in fact they who have abandoned their claim for a higher post as the same involved a transfer liability. In view of Ministry of Finance, Deptt of Expenditure OM under reference on the preceding pages, which was a policy decision of that Ministry,

Government is unable to accede to their request.

Moreover, it is the applicants who have abandoned their rights. Government has done no injustice whatsoever to them. There is no denial or infringement on the applicant's right of equality under Article 14 or equal opportunity before law, in the matter of employment under Article 16 of the Constitution of India. The O.A. ~~and the contempt~~
~~Application in question, therefore, are~~ ^{is} devoid of
~~bz~~ merit and ~~are~~ accordingly dismissed. No costs.


Member-J

RKM