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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 797 OF 1996

Cuttack, this the 8th day of July, 1999

Ramanath Jena                      .....                      Applicant

Vrs.

Union of India and another .....                      Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes.*
2. Whether it be circulated to all the benches of the  
Central Administrative Tribunal or not? *NO.*

(G.NARASIMHAM)  
MEMBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN *8.7.99*

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN  
AND  
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Ramanath Jena, aged about 54 years, son of late Baraju Jena, at present working as Higher Selection Grade-II Clerk, Office of the Chief Post Master General, Orissa Circle, Bhubaneswar, District-Khurda .....Applicant

Advocates for applicant - M/s Ganeswar Rath  
S.N.Mishra  
S.R.Mohanty  
Ashok Panda

Vrs.

1. Union of India, represented through  
Secretary-cum-Director General, Posts,  
Dak Bhawan, New Delhi.
2. Chief Post Master General,  
Orissa Circle, Bhubaneswar-751 001,  
District-Khurda ..... Respondents

Advocate for respondents - Mr.S.B.Jena,  
A.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 8.8.1995 at Annexure-6 and the order dated 27.3.1996 at Annexure-10. The second prayer is for a declaration that the order dated 22.7.1993 is absolute and the last prayer is for a declaration that the order of recovery from the pay of the applicant due to wrong fixation of pay, in pursuance of Annexures 6 and 10 is illegal.

2. The applicant's case is that he was originally appointed as L.D.C. under the respondents on 11.8.1969 and was promoted to the post of U.D.C. on 20.9.1976. Government of India in their order dated 17.12.1983 (Annexure-1) introduced a scheme known as Time Bound One Promotion Scheme (TBOP Scheme) under which all officials belonging to basic grade in Groups C and D to which there is direct recruitment either from open market or by means of limited competitive examination from lower cadres and who have completed sixteen years of service in that grade will be placed in the next higher grade. Subsequently, in order dated 10.11.1991 (annexure-2) another scheme known as Biennial Cadre Review Scheme (BCR Scheme) was introduced with effect from 1.10.1991 in which incumbents of the existing post would be enabled to draw pay in the higher scale on completion of twenty-six years of service subject to the conditions laid down in the Scheme. The TBOP and BCR Schemes were introduced for Group-C staff of administrative offices (Circle Offices) in letter dated 22.7.1993 (annexure-3) and these Schemes came into force for Group-C staff in Circle Offices with effect from 26.6.1993. As per the detailed instructions laid down in the order dated 22.7.1993 at Annexure-3 the posts of LDC (Rs.950-1500) and UDC (1200-2040) in the Circle Offices will be abolished except to the extent of LDCs and UDCs who opt to remain in the existing scale and an equal number of posts of Postal Assistants (CO) would be created. The remaining posts held by persons who do not opt for the new Schemes will remain as such but will be converted as Postal Assistants (CO) as and when the concerned LDCs/UDCs cease to hold those posts. All the LDCs and UDCs were required to

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furnish, within one month, their option under FR 23 which once exercised shall be final. It is further laid down that existing officials who do not opt for old scales would be considered for grant of first promotion in the higher scale of Rs.1400-2300/- if they have completed sixteen years of service as LDC or as LDC and UDC or as Postal Assistants/Sorting assistants and UDC and then for second promotion in the next higher scale of Rs.1600-2660/- on completion of twenty-six years of service. Their pay on grant of promotion under TBOP Scheme and BCR Scheme will be fixed under FR 22(I)(a)(1). The applicant's case is that having joined as LDC on 11.8.1969 he had completed sixteen years of service as LDC and UDC put together on 10.8.1985 and since he did not opt to remain in the old scale of UDC, he was brought over to the new scale of Rs.975-1660/- of Postal Assistant (CO) on 26.6.1993. He was then considered for first promotion to the next higher scale of Rs.1400-2300/- under TBOP Scheme. The pay of the applicant as UDC was Rs.1640/- in the scale of Rs.1200-2040/- as on 26.6.1993 and his pay was fixed at Rs.1660/- in the scale of Rs.975-1660/- of P.A.(CO). Then he was promoted to the next higher scale of Rs.1400-2300/- under TBOP Scheme and his pay was fixed at Rs.1720/-. His date of next increment was fixed on 1.6.1994. On 1.6.1994 his pay was increased from Rs.1720/- to Rs.1760/-. The applicant would have normally been eligible for the second promotion under BCR Scheme after completion of 26 years of service on 11.8.1995. But as he belonged to SC community and as there was short-fall in the representation of SC community, he was considered for second promotion and was approved for promotion to the next higher scale of Rs.1600-2660/- with effect from 12.10.1994. The order of his next promotion giving him the scale of Rs.1400-2300/- is at Annexure-4.

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The order of his second promotion to the scale of Rs.1600-2660/- is dated 10.10.1995 and is at Annexure-5. After his promotion in the scale of Rs.1600-2660/- with effect from 12.10.1994 his pay was fixed initially at the old scale at Rs.1800/- as on 1.6.1995 after his increment and was finally fixed at Rs.1900/- in the scale of Rs.1600-2660/- with the next increment as on 1.6.1996. Director-General, Posts, in his letter dated 8.8.1995 (Annexure-6) issued clarification with regard to fixation of pay of persons who were getting promotion under TBOP and BCR Schemes. Altogether eighteen points of doubt were clarified serially in this letter. But in the present case we are concerned only with two of the points. In the first point of doubt it was mentioned that as per the scheme pay of officials who have opted for PA(CO) cadre will be fixed under FR 22(I)(a)(1). The doubt is whether pay of such officials who are to be promoted in the scale of Rs.1400-2300/- or Rs.1600-2660/- on attaining 16 and 26 years of service respectively should be directly fixed from the existing basic pay drawn in LDC/UDC scale or should the pay be fixed first in the scale of PA(CO), i.e., Rs.975-1660/- and then be fixed in the higher scale. By way of clarification it has been explained in this letter that the pay of such officials who opt for PA(CO) cadre will be fixed directly into the corresponding scale depending on the number of years of service. In other words, those who have put in less than sixteen years of service, their pay will be fixed in the scale of PA(CO), i.e., Rs.975-1660/-; pay of officials with more than sixteen years but less than 26 years of service will be fixed in the scale of Rs.1400-2300/-; and pay of officials with more than 26 years of service will be fixed in the

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scale of Rs.1600-2660/-. The second doubt was whether the officials who have completed 26 years on the date of implementation of the scheme will be given two simultaneous fixations, one to Rs.1400-2300/- and then another to Rs.1600-2660/-. By way of clarification it was explained that two fixations should not be done and the pay will be fixed only once in the corresponding scale for which the officials qualify on the basis of their length of service. The applicant has stated that on 8.2.1996 another clarification was issued which is at Annexure-7. In this clarification it was laid down that UDCs who have not become eligible for promotion under TBOP or BCR Scheme on the basis of length of service of sixteen years or 26 years respectively, but their juniors have been promoted on the ground of length of service under the Schemes, such senior UDCs will be promoted to the next higher scale to which their juniors have been promoted with effect from the date of promotion of their juniors. In order to comply with the instruction at Annexure-7 regarding promotion of senior persons whose juniors have got higher scale even though the seniors have not completed the required length of service for promotion, respondent no.2 issued order dated 27.3.1996 at Annexure-10 in which it was ordered that the applicant's pay is to be fixed afresh directly in the BCR scale of Rs.1600-2660/- with effect from 26.6.1993 as his juniors have been promoted to the same scale with effect from 26.6.1993. This order is said to have superseded the orders at Annexures 4 and 5. It is to be noted here that the applicant has enclosed Annexure-4 again as Annexure-8. These two Annexures 4 and 8 are the same. It is stated that Annexure-10 has not been communicated to the applicant. It is further stated that the order at Annexure-10 has been implemented from October 1996 and pay of the applicant has

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been fixed at Rs.1700/- as on 26.6.1993 and at Rs.1850/- as on 1.6.1996, the next date of increment being 1.6.1997 and according to the fresh pay fixation the departmental authorities have ordered recovery of pay according to this fresh fixation. The applicant has come up with the prayers on the ground that by way of clarification issued at Annexure-6 the departmental authorities have gone against the terms laid down in the original Scheme and this is not permissible. It is also stated that no reasonable opportunity has been given to the applicant against reduction of his pay from Rs.1950/- to Rs.1900/- in the salary for the month of October 1996 and without communicating any order of recovery an amount of Rs.3500/- is sought to be recovered. Therefore, the applicant has come up in this petition with the prayers referred to earlier.

3. By way of interim relief on 22.11.1996 it was ordered that there shall be no recovery as per Annexure-6 till the final disposal of the OA. This stay order has continued till date.

4. Respondents in their counter have stated that the applicant was initially recruited in Group-D cadre on 1.5.1962 and was promoted to LDC cadre on 11.8.1969 and to UDC cadre on 20.9.1976. As LDC and UDC he was working in the office of Chief Post Master General, Orissa Circle, Bhubaneswar. TBOP and BCR Schemes were extended to Group-C staff of Circle Offices in letter dated 22.7.1993 of Director-General of Posts which is at Annexure-3. While implementing the above order in respect of the applicant his pay was fixed in the following manner. His basic pay in the UDC Scale Rs.1200-2040/- was Rs.1640/- as on 26.6.1993, the date when these two Schemes came into force. His pay

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was initially fixed in PA(CO) Cadre in the scale of Rs.975-1660/- at the level of Rs.1660/-. Thereafter his pay was fixed in the scale of Rs.1400-2300/- in TBOP Scheme at Rs.1720/- with the date of next increment falling on 1.6.1994. The respondents have pointed out that on 26.6.1993 there were two fixations of pay, one in PA(CO) cadre and the other in TBOP Scheme. The petitioner was approved for next higher scale of Rs.1600-2660/- with effect from 12.10.1994 in order dated 10.10.1995 at Annexure-5. The applicant opted for fixation of his pay in the scale of Rs.1600-2660/- with effect from 1.6.1995. Accordingly, from 12.10.1994 to 31.5.1995 his pay was Rs.1800/- in the BCR Cadre and his pay was fixed on 1.6.1995 in the scale of Rs.16600-2660/- at the stage of Rs.1900/- with the next date of increment falling on 1.6.1996. Subsequently, in pursuance of Director-General of Posts' letter dated 8.2.1996 giving promotion to seniors who had not completed sixteen or twenty-six years of service but whose juniors had completed the requisite number of years of service and had got the next higher scale, the applicant was approved for promotion to BCR scale of Rs.1600-2660/- with effect from 26.6.1993 as some of his juniors were promoted to that scale on the same date. This order was issued on 27.3.1996 at Annexure-10 of the OA. With reference to the Scheme at Annexure-3 different Circles raised various issues and doubts which were clarified in letter dated 8.8.1995 (Annexure-6). It was clarified in this letter that the pay of officials who have opted for PA(CO) cadre should be fixed directly in the corresponding scale depending upon number of years of service. It was also clarified that there would not be more



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than one fixation of pay. In view of this, it became necessary to re-examine the pay fixation of the applicant. The respondents have stated that after receipt of Directorate's clarificatory letter dated 8.8.1995 the applicant opted for fixation of pay with effect from 1.9.1993 and therefore his pay was re-fixed as per the clarification and his option for higher scale of pay with effect from 1.9.1993 in the following manner. His pay as UDC in the scale of Rs.1200-2040/- on 26.6.1993 was Rs.1640/-. Therefore, his pay under BCR Scheme in the scale of Rs.1600-2660/- for the period from 26.6.1993 to 31.8.1993 was Rs.1650/-. As per his option for higher scale from 1.9.1993 his pay was fixed at Rs.1750/- in the scale of Rs.1600-2660/- and accordingly his pay became Rs.1800/-, Rs.1850/- and Rs.1900/- as on 1.9.1994, 1.9.1995 and 1.9.1996. Due to correct fixation of pay as per clarification issued in Directorate's letter dated 8.8.1995, an amount of Rs.3520/- was found to have been paid in excess to the applicant and as such it was required to be recovered from the pay of the applicant. The respondents have further stated that the applicant is already being paid the pay as fixed as per the clarification dated 8.8.1995 from October 1996. The respondents have further stated that the applicant is governed by the Scheme at Annexure-3 in which TBOP and BCR promotions are allowed to Group-C staff in the Circle Office and the Schemes at Annexures 1 and 2 introducing TBOP and BCR Schemes for operative staff are not relevant for the applicant's case. For the operative staff TBOP and BCR promotions are made effective from 30.11.1983 and 1.10.1991. But the staff of administrative offices were allowed these promotions with effect from 26.6.1993. There are also other differences. For operative offices, these two schemes are applicable to the basic grades in Groups C

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D whereas for the administrative offices the Scheme at Annexure-3 is applicable only to Group-C staff. There is also difference in reduction in sanctioned posts. As regards the non-communication of the order, the respondents have stated that the applicant has already submitted his option for fixation of pay with effect from 1.9.1993. This was also recorded in his Service Book and as the applicant has given his option, the question of not communicating the order to him does not arise. The respondents have also stated that the clarification dated 8.8.1995 is only with reference to the scheme at Annexure-3 applicable to the administrative offices and not with reference to the Schemes at Annexures 1 and 2. On the above grounds, the respondents have opposed the prayers of the applicant.

5. We have heard Shri Ganeswar Rath, the learned counsel for the petitioner and Shri S.B.Jena, the learned Additional Standing Counsel for the respondents and have perused the records.

6. The admitted position is that at the first instance the applicant's pay was fixed thrice, initially in the scale of Rs.975-1660/- which was the basic scale for PA(CO), then in the next higher scale of Rs.1400-2300/- under TBOP Scheme, and thereafter in the scale of Rs.100-260/- under BCR Scheme with effect from 12.10.1994. The second admitted position is that by 26.6.1993 when the Schemes of these two promotions came into force, the applicant had already completed sixteen years of service but had not completed 26 years of service. Thus, initially he was given only one promotion to TBOP Scale of Rs.1400-2300/-. He would have completed 26 years of service on 11.8.1995. But because he belonged to SC community and there was shortfall in the SC representation quota, he was given BCR promotion with effect from 12.10.1994 and his pay

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was fixed again in the scale of Rs.1600-2660/- with effect from 12.10.1994. The subsequent one time fixation has been done again admittedly on the basis of clarification dated 8.8.1995 issued by Director General of Posts.

7. Learned counsel for the petitioner has prayed for quashing the order dated 8.8.1995 at Annexure-6. As earlier noted in this order clarification was issued with regard to 18 points. Most of these points do not concern us in this OA and therefore, this prayer of the applicant for quashing Annexure-6 must be understood, in the present context, to mean a prayer to quash the clarification regarding one time fixation of pay and not the clarifications relating to the other points. It has been submitted by the learned counsel for the petitioner that paragraph 3.6 of the circular at Annexure-3 clearly lays down that the existing officials who do not opt to remain in the old scales of LDC and UDC, would be considered for grant of first promotion in the higher scale of Rs.1400-2300/- if they complete or have completed sixteen years of service as LDC or as LDC and UDC taken together and then for second promotion to the next higher scale of Rs.1600-2660/- after completion of 26 years of service. It has been argued by the learned counsel for the petitioner that paragraph 3.6 specifically provides for two fixations of pay and therefore the clarification which laid down that there will be only one fixation goes against the circular at Annexure-3 and the respondents cannot be allowed in the guise of issuing a clarification to take away benefit which has been sought to be given in paragraph 3.6 of the circular at Annexure-3. We have considered this contention carefully. But we are unable to read the above

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meaning as urged by the learned counsel for the petitioner in paragraph 3.6 of the circular at Annexure-3. On a plain reading it appears that after an LDC or UDC opts to come over to the new scheme and if he has completed sixteen years, then he would be given the next scale of Rs.1400-2300/- and his pay should be fixed in that scale. If, on the other hand, he has completed 26 years of service by that time, then he would come over to the scale of Rs.1600-2660/- under the BCR Scheme. Paragraph 3.6 does not specifically provide that even for those who have completed 26 years of service by the time the scheme came into force on 26.6.1993, there would be two fixations of their pay under both the promotional scales. It is also the admitted position that if pay of a person who has completed 26 years of service by the time the schemes came into force is fixed twice in the two promotional scales, then he would get some additional benefit by way of higher fixation. If it was intended to give this benefit to those who had completed 2 years of service or are otherwise eligible, as in the case of the applicant, by the time the scheme came into force with effect from 26..1993, then paragraph 3.6 would have specifically provided for the same. In the absence of any such provision in paragraph 3.6 we are unable to read the above meaning in this paragraph. This being so, the clarification issued by the Director General of Posts in Annexure-6 that there will be one fixation depending upon the length of service of the concerned persons cannot be said to be in violation of paragraph 3.6 of the main scheme. The prayer of the petitioner that Annexure-6 should be quashed is therefore held to be without any merit and is rejected.

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8. The second ground urged by the learned counsel for the petitioner is that the second pay fixation

has been done and an amount of Rs.3520/- has presumably been ordered to be recovered from the applicant without affording him any opportunity to show cause. The applicant has stated that the order of recovery has not been served on him. The respondents have pointed out in paragraph 13 of their counter that after receipt of the clarification dated 8.8.1995 the applicant opted to avail the pay with effect from 1.9.1993 instead of from 26.6.1993. As such the applicant was aware of the clarification and on that basis he gave his option to get the promotional scale of Rs.1600-2660/- from 1.9.1993 and there was no necessity for issuing a showcause notice to him. In support of his contention the learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of K.I.Shephard and others v. Union of India and others, AIR 1988SC 686, in which several English decisions and also the earlier decisions of the Hon'ble Supreme Court in the case of State of Orissa v. Dr.(Miss) Binapani Dei, AIR 1967 SC 1269, and the case of A.K.Kraipak v. Union of India, AIR 1970 SC 150 have been discussed. The position of law is now well settled that even when a State agency acts administratively rules of natural justice would apply. Rules of natural justice generally require that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed so that they may be in a position to make representation. In this case the applicant had adequate notice of the clarification issued on 8.8.1995 and on the basis of that clarification he had opted for getting the higher scale of Rs.1600-2660/- from 1.9.1993 and as such it is clear that no further notice to the applicant was necessary to be given in this case. This contention of the

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learned counsel for the petitioner is therefore held to be without any merit and is rejected.

9. In view of the above, we hold that the clarification dated 8.8.1995 that once an LDC/UDC opts to come into new scheme, his pay has to be fixed directly in the scale to which he will be entitled to go is valid and cannot be questioned. In other words, once an LDC/UDC chooses to come over to the PA(CO) cadre and if by the effective date he had less than sixteen years of service his pay has to be fixed in the scale of PA(CO), i.e., Rs.975-160/-. If he has completed 16 years and has not completed 26 years of service, then his pay has to be straightaway fixed in the <sup>TBOP</sup> /scale of Rs.1400-2300/-. If, however, he has completed 26 years of service or is otherwise eligible, as in the case of the applicant, to be considered for the BCR scale, his pay has to be fixed directly in the BCR scale of Rs.1600-2660/-.

10. The respondents in paragraph 4(e) of their counter have indicated how the pay of the applicant has been fixed on the basis of the clarification as also on the basis of his option to get the BCR scale from 1.9.1993, and we find that this has been correctly done. In view of this, the prayer of the applicant to quash Annexure-6 is held to be without any merit and is rejected.

11. The last prayer of the applicant is for quashing Annexure-10. This order dated 27.3.1996 was issued basing on the subsequent clarification dated 8.2.1996 which is at Annexure-7 wherein it was noted that some of the UDCs who were senior before the implementation of the TBOP and BCR Schemes were not promoted because they had not completed the requisite period of 16 or 26 years of service but their juniors got promoted to the higher scale because of longer length of service in the appropriate grade. In

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this circular dated 8.2.1996 it was provided that such senior UDCs also should be given the higher scale from the date their immediate juniors went over to the next higher scale. On this basis the applicant became eligible to get the BCR scale with effect from 26.6.1993 because some of his juniors had completed 26 years of service and had gone over to BCR scale and therefore, in order dated 27.3.1996 at Annexure-10 the applicant was placed in the BCR scale of Rs.1600-2660/- with effect from 26.6.1993. The applicant has prayed for quashing of this Annexure which is his order of promotion to BCR scale from 26.6.1993. He had himself opted to get the BCR scale from 1.9.1993 and therefore he cannot now claim that his promotion order should be quashed. This prayer is also held to be without any merit and is rejected.

12. The only question which remains for consideration is whether the amount of Rs.3520/- should be recovered from the applicant. In this case we see that the order that if a junior has been given higher scale because he had completed the requisite length of service, then persons who are his senior should also get that scale even though they had not completed the requisite period of service, came only on 8.2.1996 and that is how the applicant's pay came to be fixed directly in the BCR scale of Rs.1600-2660/- because of his entitlement to get this scale from 26.6.1993 due to promotion of his juniors to this scale. Prior to issuing of this circular dated 8.2.1996, the applicant was promoted to the TBOP scale of Rs.1400-2300/- with effect from 26.6.1993 in order dated 10.11.1993 (Annexure-4) because at that time he had completed sixteen years but had not completed 26 years of service. He got the next higher BCR scale with effect from 12.10.1994 in order dated 10.10.1995 at Annexure-5 because of SC quota even



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though by that time he had not completed 26 years of service. Thus, giving him two scales, the first one from 26.6.1993 and the second one from 12.10.1994 was perfectly alright by the time these orders were issued. Accordingly, the applicant's pay was fixed in these two scales and he drew his pay in the promotional scales. Subsequent order of promotion on the basis of promotion of juniors came only on 8.2.1996 and thereby the applicant became entitled to go into the BCR scale of Rs.1600-2660/- with effect from 26.6.1993. Thus, before issuing of the order dated 8.2.1996 the earlier fixations of pay of the applicant in the two scales separately from two different dates cannot be said to be incorrect. Later on because of the circular dated 8.2.1996 he became entitled to get BCR scale straightaway from 26.6.1993 and that is how his pay came to be fixed finally directly in the BCR scale of Rs.1600-2660/-. Under these circumstances, when the applicant drew the higher scale of Rs.1400-2300/- from 26.6.1993 till 11.10.1994 and again the next higher scale of Rs.1600-2660/- from 12.10.1994 till the issuing of the circular dated 8.2.1996, the excess amount drawn by him cannot be recovered from him because at that time he drew the amounts in these two scales and he was entitled to two separate pay fixations in these two scales. The above analysis is however subject to the one condition that while fixing his pay in the scale of Rs.1400-2300/- with effect from 26.6.1993 the respondents had originally fixed his pay in the scale of Rs.975-1660/- at Rs.1660/- taking into account his pay of Rs.1640/- in the UDC scale which was Rs.1200-2040/-. Actually it should have been fixed at Rs.1650/-. Whatever it may be, once by the time the applicant's pay was fixed in the scale of Rs.1400-2300/- and again from a later date in the scale of Rs.1600-2600/- on the basis of circulars then existing and

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accordingly he drew the amounts, his becoming entitled to the BCR scale of Rs.1600-2660/- with effect from 26.6.1993 by virtue of the subsequent circular dated 8.2.1996 would not entitle the respondents to recover the amount already paid to him legally and validly. In view of this, we hold that the amount of Rs.3520/- is not legally recoverable from the applicant . Order of recovery, if any, is accordingly quashed.

13. In the result, the Original Application is disposed of in terms of the observations and direction given above but without any order as to costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

(SOMNATH SOM)

VICE-CHAIRMAN

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