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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK
ORIGINAL APPLICATION NOS. 156,194,
196,197,205,211,540,585 OF 05 AND 44 OF 2008

Cuttack, this the 14th day of July, 2009

1. Tapan Kumar Nayak & Others (in O.A. No.156/05)
2. Dilip Kumar Satpathy & Others (in O.A.No.194/05)
3. Padma Lochan Lenka & Others (in O.A.No.196/05)
4. Gobind Chandra Sahu & Others (in O.A.No.197/05)
5. Santosh Kumar Mishra & Others (in O.A.No.205/05)
6. Kalpataru Parida & Others (in O.A.No.211/05)
7. Arunendu Dutta & Others (in O.A.No.540/05)
8. Nirmal Kumar Mishra & Others (in O.A.No.585/05) and
9. Rama Ballabha Khadanga & Others (in O.A.No.44/08) Applicants

Vs.

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?

(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER

(K. THANKAPPAN)
JUDICIAL MEMBER

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

**ORIGINAL APPLICATION NOS. 156,194,
196,197,205,211,540,585 OF 05 AND 44 OF 2008**

Cuttack, this the 14th day of July, 2009

CORAM:

Hon'ble Mr. Justice K. Thankappan, Member (J)

Hon'ble Mr. C.R. Mohapatra, Member (A)

In O.A. No.156/2005

1. Sri Tapan Kumar Nayak, S/o. Late Ramakanta Nayak, MIG-II-6/7.B.D.A. Phase-1, Chandrasekharpur, Bhubaneswar-751016, at present posted as Supdt. Central Excise & Customs, Cuttack Division, Cuttack.
2. Sri K.C. Panda, S/o. Late H.D. Panda, At/PO-Maraigaon, Dist-Keonjhar, at present posted as Supdt. Central Excise & Customs, Bhubaneswar-1.
3. Sri M.D. Ayuub, S/o. Late M.D. Yakub, CDA, Sector-8, Dist-Cuttack, at present posted as Supdt. Central Excise & Customs, Cuttack.
4. Sri Taraprasad Pattnaik, S/o. Durga Charan Pattnaik, At-Dhaulimuhan, PO- Brajamohanpur, Dist-Khurda, at present posted as Supdt. Central Excise & Customs, Balasore.
5. Sri Ramakanta Das, S/o. Late N.K. Das, At-Gajarajpur, P.O.-Debidole, Dist-Jagatsinghpur, at present posted as Supdt. Central Excise & Customs, Bhubaneswar-1.
6. Sri Chittaranjan Shastri, S/o Late R.K. Sashtri, At-Santhamadhava, P.O- Dist-Jajpur, at present posted as Supdt. Central Excise & Customs, Bhubaneswar-II.
7. Sri L.N. Mishra, S/o. Babaji Mishra, At-Kashimjagannathpur, P.O.-Khadipada, Dist-Puri, at present posted as Supdt. Central Excise & Customs, Bhubaneswar-I.
8. V.R. Rao, S/o. VAR Swyam, Gandhinagar, 6th Lane, Berhampur, at present posted as Supdt. Central Excise & Customs, Rayagada, Range-1.
9. Sri S.V. Raman, S/o. S.C. Rao, At/P.O./Dist- Jeypore, at present posted as Supdt. Central Excise & Customs, Jeypore.
10. Sri Gourang Ch. Roul, S/o-Late Padma Charan Roul, At-24/52, Gajapatinagar, Bhubaneswar-5, at present posted as Supdt. Central Excise & Customs, Bhubaneswar-1.

In O.A. No.194/2005

1. Sri Dillip Kumar Satpathy, S/o. Krishna Chandra Satpathy, At/PO-Pruthunathpur Sasan, PS-Badasahi, Dist-Mayurbhanj, at present

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- posted as Supdt. Central Excise & Customs, Bhubaneswar-II, C.R. Building, Rajaswa Vihar, Bhubaneswar, Dist-Khurda.
2. Sri Ajay Kishore Bal, S/O-Late Govind Chandra Bal, At/Po-Sardola, P.S. Tirtol, Dist-Jagatsinghpur, at present posted as Supdt. Central Excise & Customs, Bhubaneswar-II, C.R. Building, Rajaswa Vihar, Bhubaneswar, Dist-Khurda.
 3. Sri Pravash Chandra Mohapatra, S/O-Late Brundaban Mohapatra, At/Po-Gandhinagar, 5th Lane (East), Berhampur, Dist-Ganjam, at present posted as Supdt. Central Excise & Customs, Bhubaneswar Division, At/PO-Patia, Dist-Khurda.

In O.A. No.196/2005

1. Sri Padma Lochan Lenka, S/o Late Karunakar Lenka, At/Po-Padanipal, P.S.-Aul, Dist-Kendrapara, at present posted as Supdt. Central Excise & Customs, Bhubaneswar-1
2. Sri Gagan Behari Panda, S/O.Late Gopinath Panda, 62, Bapuji Nagar, Bhubaneswar, at present posted as Supdt. Central Excise & Customs, Cuttack Division, Cuttack.
3. Sri Swarup Ranjan Kar, S/o-Late Shyama Bandhu Kar, At-Mahamadia Bazar, PO-Chandinickouk, Cuttack, at present posted as Supdt. Central Excise & Customs, Bhubaneswar-II.
4. Sri Harihar Kandhua, S/o-Late Nilamani Kandhua, At-Bhubanpur, Po/Via-Balianata, Dist-Khurda, at present posted as Supdt. Central Excise & Customs, Cuttack-II Range, Cuttack.
5. Sri Sarat Kumar Choudhury, S/o-Late Damodar Prasad Choudhury, At/Po-Jejpore, Dist-Koraput, at present posted as Supdt. Central Excise & Customs, Khurda Range, Khurda.
6. Sri Prana Kishore Mohanty, S/o-Late D.C. Mohanty, anadaBhawan, Swargadwar Road, Puri, at present posted as Supdt. Central Excise & Customs, Bhubaneswar Division, Bhubaneswar-1.
7. Sri Purusottam Pani, S/o-Late Raghunath Pani, At/Po-Depur Sasan, P.s. Delang, Dist-Puri, at present posted as Supdt. Central Excise & Customs, Bhubaneswar-1.
8. Sri J. Kameswar Rao, S/o-Late J. Venkat Rao, Canal Street, P.O.Berhampur, Dist-Ganjam, at present posted as Supdt. Central Excise & Customs, Bhubaneswar.

In O.A. No.197/2005

1. Sri Govinda Chandra Sahu, S/o-Late Srutidhar Sahu, At/Po-Badagagua, Dist-Sundargarh., at present posted as Supdt. Central Excise & Customs, C/48, Sector-2, Rourkela, Dist-Sundargarh.
2. Sri Tapankumar Das., S/o-M.K. Das, At-Banglatola, Po-Panposh, Rourkela, Dist-Sundargarh, at present posted as Supdt. Central Excise & Customs, Rourkela.
3. Sri Basanta Kumar Pattnaik, S/o-Late Narendra Kumar Pattnaik, At/Po-Kujahala, Via-Sujanpur, Dist-Jajpur, at present posted as Supdt. Central Excise & Customs, Qr. No.C/81, Sector-6, Rourkela-2

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4. Sri Subhas Chandra Mohanty, S/O-Late K.M. Mohanty, At/Po- Bebarta Street, Paralakhemundi, Po/Via- Baliana, Dist-Gajapati, at present posted as Supdt. Central Excise & Customs, Qr. No.B/210, Sector-6, Rourkela.
 5. Sri L.Tirkey, S/O-Late Manish Prakash Tirkey, At/Po-Simdega, Dist-Jharkhand, at present posted as Supdt. Central Excise & Customs, Nayabazar, Rourkela.
 6. Sri Laxmidhar Panda, S/o-Late Ganeswar Panda, Saileshree Bihar, BBSR, Dist-Khurda, at present posted as Supdt. Central Excise & Customs, Berhampur Range, 2nd Lane, Brahma Nagar, Ganjam.
 7. Sri Lalit Kumar Mohanty, S/o-N.C. Mohanty, at present posted as Supdt. Central Excise & Customs, C/31, Sector-1, Rourkela.
 8. Sri Nikunja Bihari Mohanty, S/o. Late Bhikari Charan Mohanty, At-Khumari, Po-Devidwar, Dist-Jajpur, at present posted as Supdt. Central Excise & Customs, Qr. No.B/72, Sector-20, Rourkela-5
 9. Sri Bishnu Charan Sahoo, S/o-Sri Birbar Sahoo, At-Khamanga, PO-Ashram Patna, Dist-Jagatsinghpur, at present posted as Supdt. Central Excise & Customs, Qr. No.B/73, Sector-5, Rourkela.
 10. Sri Surya Narayan Naik, S/o-Late Bipin Behari Naik, At/Po-Chandatara, Dist-Balangir, at present posted as Supdt. Central Excise & Customs, C/3, Sector-5, Rourkela.
 11. Sri Bhubaneswar Sahu, S/o-Late charudhar Sahu, At/Po- Anchalguma, at present posted as Supdt. Central Excise & Customs, Titlagarh, Bolangir.
 12. Sri Niranjan Das, S/o-Late Chintamani Das, At-Grand Road, Puri, at present posted as Supdt. Central Excise & Customs, Belpahad Range, Jharsuguda.

In O.A. No.205/2005

1. Sri Santosh Kumar Mishra, at present working as Superintendent Central Excise & Customs, Cuttack Division, Cuttack.

In O.A. No.211/2005

1. Sri Kalpataru Parida, S/O-Late Duryodhana Parida, At/Po-Angarekha, Po- Sahira, Via-Pattamundai, Dist-Kendrapara, at present working as Superintendent Central Excise & Customs, Cuttack Division, Cuttack.
2. Sri Reshabheswar Pradhan, S/o- Late Raghunath Pradhan, At-Sahadev Bandupalli, Po-Bampur Dist-Angul, at present working as Superintendent Central Excise & Customs, Bhubaneswar-1,C.R. Building, Rajaswa Vihar, Bhubaneswar, Dist-Khurda.
3. Sri Rabindra Kumar Dash-1, S/o-Late Ghanashyam Dash, At-Bhubaneswar, PS/PO-Nimapara, Dist-Puri, at present working as Superintendent Central Excise & Customs, , Bhubaneswar-11, Commissionerate, Bhubaneswar.
4. Sri Rabindra Nath Ghosh, S/o-Late S.N. Ghosh, At-Budhithakurani Lane, Cuttack, at present working as Superintendent Central Excise & Customs, Bhubaneswar-1.

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5. Sri Rabindra Kumar Dash-II, S/o-Late Surya Mani dash, At/Po-Chhatish Debil, Via-Sujanpur, Dist-Jajpur, at present working as Superintendent Central Excise & Customs, Bhubaneswar-II.
 6. Sri Lakshmi Narayan Mohapatra, S/o- Late Mrutyunjya Mohapatra,534, Sahidnagar, Bhubaneswar, at present working as Superintendent Central Excise & Customs, Bhubaneswar (Chief Commissioner Cell)
 7. Sri Rama Sankar Pattnaik, S/o-Late Jagabandhu Pattnaik, At-Srinibaspur, Po/Ps-Banapur, Dist-Khurda, at present working as Superintendent Central Excise & Customs, Dhenkanal-II Range, Dhenkanal.
 8. Sri Suresh Kumar Nayak, S/o-Sri Nrusingha Charan Nayak, At/po-Talabandha, Via-Binjharpur, Dist-Jajpur, at present working as Superintendent Central Excise & Customs, Bhubaneswar-II Range, Patia, Bhubaneswar.
 9. Sri Rabindra Kumar Choudhury, S/o-Manmath Nath Choudhury, At-Port Road, Motiganja Bazar, PO-Motiganj, Dist-Balasore, at present working as Superintendent Central Excise & Customs, Bhubaneswar-1
 10. Sri Baikuntha Nath Mohapatra, S/o-Sri Sukadev Mohapatra, At-Kathiapada, Po-Kaduapada, PS/Dist-Jagatsinghpur, at present working as Superintendent Central Excise & Customs, Bhubaneswar-1

In O.A. No.540/2005

1. Sri Arunendu Dutta, S/o-Late Narendra Nath Dutta, at present working as Superintendent of National Academy of Customs Excise & Narcotics, Eastern Region, Plot No.27.CIT Scheme VIII (M) Bidhan Nagar, Kolkata-700067,
2. Sri Asit Kumar Mohanty, S/o-Late Jagananda Mohanty, At present Senior Intelligence Officer, In the Office of Director General, Central Excise Intelligence, Rourkela.
3. Sri Rajani Kanta Mohapatra, S/o-Late M. Mohapatra, At present Assistant Commissioner, Central Excise & Customs, Haladia Commissionerate, Kolkata.

In O.A. No.585/2005

1. Sri Nirmal Kumar Mishra aged about 52 years Son of late Sadashiv Mishra the Superintendent of Central Excise and Customs at Central Revenue Buildings, At/Po-Bhubaneswar, Dist-Khurda, at present working as Superintendent at-National Academy of Customs, Excise and Narcotics, Bandua (east) Mumbai-400042, State-Maharashtra. (On Deputation)

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In O.A. No.44/2008

1. Sri Rama Ballav Khadanga, S/o-Late Sadasiva Khadanga, Asstt. Commissioner, Central Excise Customs & Service Tax, Bhubaneswar-I, Headquartrs, Bhubaneswar.

By the Advocate(s)(1) M/s. A.K. Bose, P.K. Das, D.K. Mallik
(in respect of O.A. Nos. 156,194, 196,197,211,540, of 05 and 44 of 2008)

(2) M/s B.S. Tripathy, M.K. Rath, J. Pati, A.K. Mishra
(in respect of O.A. No 205/05)

(3) M/s G.K. Mishra, G. Mishra, A.K. Mishra
(in respect of O.A. No 585/05)

Vs.

1. Union of India represented by the Secretary to Govt. of India, Ministry of Finance, Department of Revenue, North Block, New Delhi-110011.
2. The Chairman, Central Board of Excise & Customs, Department of Revenue Ministry of Finance, North Block, New Delhi-110011.
3. The Commissioner, Central Excise & Customs, Bhubaneswar-I, Central Revenue Building, Bhubaneswar-751007.
4. The Commissioner, Central Excise & Customs, Bhubaneswar-II, Central Revenue Building, Bhubaneswar-751007.

..... Respondents

By the Advocate(s).....(1) Mr. U.B. Mohapatra, SSC
(in respect of O.A. Nos. 194, 196,197, 205, 540,585 of 05 and 44 of 2008)

(2) Mr. S.B. Jena, ASC
(in respect of O.A. Nos. 156 & 211/05)

(3) Mr. B.K. Mohapatra, ASC
(in respect of O.A. No.540/05)

O R D E R

HON'BLE MR. JUSTICE K. THANKAPPAN, MEMBER(J)

All these O.As. are filed by the aggrieved applicants challenging the same impugned orders dated 30.03.05 (Annexure 14 series) issued by the Deputy Commissioner, Central Excise & Customs, Bhubaneswar-II, (Respondent No 3). Since the point to be decided arises out of the same and similar facts and circumstances, all these O.As are being disposed of by this common order. For the sake of convenience and reference, the pleadings of the parties in O.A. 156/05 are only referred to.

2. In O.A. 156/05 the applicants are at present working as Superintendents of Central Excise and Customs. They are direct recruit Inspectors, Central Excise & Customs, of the years 1976 and 1977. The 3rd Central Pay Commission in its Report recommended two categories of Inspectors, viz. Inspector Ordinary Grade (OG) and Inspector, Selection Grade(SG) in the scale of Rs.425-800/- and Rs.550-900/- respectively. According to the applicants, the scale of pay of Inspector (OG) was upgraded to Rs.500 – 900/- w.e.f 01.01.80 as per the OM dated 27.08.87 issued by the Ministry of Finance. It is the case of the applicants that S/Sh. D Dip and S. Behera, who are junior to the applicants in the grade of Inspector being placed at Sl. No.79 and 77 respectively, had been wrongly appointed as Inspector (SG) w.e.f. 17.09.82, treating the same

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as a promotional post. While the matter stood thus, the 4th Central Pay Commission merged both the pay scales of Rs.500-900/- (OG) and Rs.550-900/- (SG) into a single scale of pay, i.e., Rs.1640-2900/- w.e.f. 01.01.1986 and in effect the Selection Grade got extinguished. It is the case of the applicants that after implementation of common pay scale of Rs.1640 -2900/- w.e.f. 01.01.86 in case of Inspectors, they ventilated their grievances with the Finance Ministry and Central Board of Excise and Customs to remove the anomaly, by filing representations to step up their pay at par with their juniors w.e.f. 01.01.86. However, the Ministry of Finance, after examining the matter in detail, as per letter dated 08.01.2001 emanating from File No.A-26017/48/2000 Ad.II (A), the Commissioner, Central Excise and Customs, Bhubaneswar, was intimated to step up the pay of the applicants w.e.f. 01.01.86 at par with their juniors who were appointed as Inspector (SG) prior to 01.01.86, i.e., the date w.e.f. which the Senior/Selection Grade was abolished; and it was clarified that the appointment in the Senior/Selection Grade was not a case of officiating promotion. Accordingly, the stepping up pay of the applicants was allowed at par with their juniors and arrears of pay and allowances were also disbursed to them. While the matter stood thus, after about 03 years and 07 months, the Dy. Commissioner, Central Excise and Customs, Bhubaneswar-II, issued letter dated 30.03.05 (Annexure-A/14 series) directing refixation of pay on Quo-Ante Status and recovery of certain amount to be specified by the DDO on the

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 grounds that the letter dated 08.01.2001, based on which such stepping up of pay was allowed to the applicants had not been issued by the Ministry. The said orders dated 30.03.05 are impugned in the O.A. and the applicants have sought for the following relief:-

- “ A) The office order issued by the Dy. Commissioner Central Excise and Customs, Bhubaneswar-II, vide Annexure-14 series of the Original Application be quashed declaring the same as illegal and not sustainable in the eye of law.
- B) And any other order may be passed or direction be given which deems just and proper.
- C) And the O.A. may be allowed with cost.”

3. The grounds urged by the applicants in support of their claim are as under:

I) Juniors to the applicants, who were not eligible for appointment to Selection Grade, having been promoted to the Selection Grade, their pay was fixed at a higher stage than the applicants and this created the anomaly.

II) There being no distinction between the Inspector (OG) and Inspector (SG) and common seniority list of both Inspector (OG) & Inspector (SG) having been maintained for promotion to the grade of Superintendent, with 08 years regular service as Inspector (OG) or Inspector (SG), as the case may be, there should not be any anomaly in the pay

drawn by junior and senior and on that score, the pay of seniors should be stepped up at par with his juniors.

III) Both the grades of Inspector (OG) & Inspector (SG) having been merged into a common cadre by virtue of the recommendations of 4th Central Pay Commission w.e.f. 01.01.86, the appropriate Ministry considered it proper to remove pay anomaly as a special case and accordingly, in exercise of powers conferred under FR-27, stepping up of pay at par with their juniors was allowed to the applicants as per their letter dated 08.01.01 issued by the Govt. of India, Ministry of Finance, Department of Revenue (Annexure-A/12)

IV) The impugned order seeking recovery of the arrears amount paid to the applicants and withdrawing the stepping up of pay has been issued without following the principles of natural justice.

V) The authority, which has issued the impugned order, is not competent to issue the same.

4. The Respondent-Department, per contra, have filed their counter opposing the prayers of the applicants. They have stated that prior to 01.01.86, i.e., from 01.01.1980 to 31.12.1985, there were two

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grades of Inspectors, i.e., Inspector (OG) and Inspector (SG) carrying the pay scale of Rs.500-900/- and Rs.550-900/- respectively, the Inspector (SG) being the promotional grade of Inspector (OG). The DPC having found some Inspector (OG) candidates belonging to UR/SC/ST, eligible for promotion to Inspector (SG), recommended their promotion subject to the availability of vacancies. It has been further submitted that the Inspector (SG) being the promotional grade of Inspector (OG) and some juniors belonging to the reserved category having been promoted to Inspector (SG), they have been obviously drawing higher pay than the applicants. There being no provision for maintaining separate seniority list of Inspector (OG) and Inspector (SG), notwithstanding promotion of juniors to Inspector (SG), the original seniority position is being maintained in tact. The Respondents have submitted that because of promotion of the juniors of the applicants to Inspector (SG) prior to 01.01.86, their pay was higher than the applicants as on 01.01.1986 and since two separate scales were merged into a single pay scale, i.e., Rs.1640-2900/- by virtue of 4th Central Pay Commission's recommendation, the pay anomaly could not be sorted out under FR.22 (a) (i) read with Govt. of India's decision No.22. The Respondents have submitted that the letter dated 08.01.01, based on which stepping up pay was allowed to the applicants, had never been issued by the Ministry.



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In this respect, it has been further submitted as under:-

"... the arrears have been allowed and payment was made on the basis of a fax copy of the Ministry letter F, No.26017/48/2000-AdIIA dated 08.01.2001. Payment of arrears on the basis of a fax copy of Ministry's letter without following the proper procedure was made at the instance on request of the applicants. This issue of allowing payment of arrears wrongly on the basis of a fax copy of Ministry letter is already under investigation ?"

With these submissions, the Respondents have prayed for dismissal of the O.A. being devoid of merit.

5. Applicants have filed rejoinder reiterating, more or less the same submissions as made in the O.A.

6. We have considered the submissions made by the parties and perused the supporting documents annexed to the O.A.

7. Admittedly, the dispute regarding anomaly in pay between juniors and seniors arose after the introduction of 4th Central Pay Commission, whereby w.e.f. 01.01.1986 the pay scales of Inspector (OG) and Inspector (SG), i.e., Rs.500-900 and Rs.550-900/- respectively, were merged into a single pay scale, i.e., Rs.1640-2900/-, which in effect obliterated the two distinct grades, i.e., Inspector (OG) and Inspector (SG). In this context, the following points are to be considered:-

a) Whether the anomaly in pay, as alleged, is an anomaly arising out of fixation of pay under FR 22; and

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 b) Whether the applicants being senior are entitled to step up pay at par with their juniors in the instant case.

8. Admittedly, of the applicants' juniors were promoted to Inspector (SG) prior to 01.01.1986 and the applicants had the knowledge of the same. Though the applicants have stated about the illegality in such promotion of their juniors, they are estopped from agitating the same in the present O.A. at this belated stage. Be that as it may, the applicants have not sought for any relief in that behalf in the instant O.A. It has also been admitted by the applicants that the anomaly in pay arose only due to promotion of their juniors to Inspector(SG). Therefore, unless and until this infirmity is removed, the junior is bound to draw higher pay than his senior. In other words, as long as seniors are not brought at par with their juniors on being promoted with effect from the date(s) their juniors were so promoted, it is but natural that the juniors would continue to draw higher salary than his seniors. But the fact remains, at no point of time, this supersession has ever been challenged by the applicants. However, by the introduction of 4th Central Pay Commission, both the Inspector (OG) and Inspector (SG) constituted a common cadre with a common scale of pay, i.e., Rs.1640-2900/- In this background, it is to be noted that the juniors to the applicants having availed of promotion to Inspector (SG), were in receipt of higher salary than the applicants in the pre-revised scale prior to 01.01.1986 and thus, in the common pay scale of Rs.1640-2900/-, as recommended by the 4th Central Pay Commission,

their pay was fixed at a higher stage than the applicants. The impression the applicants carry in their mind is that by virtue of upgradation of pay scale of Inspector (OG) from Rs.425-700/- to Rs.500-900/- w.e.f. 01.01.80, practically there was no difference between Inspector (OG) and Inspector (SG); both being the feeder grades for promotion to the next higher grade of Superintendent. But the fact remains, there was difference of Rs.50/- in the initial pay between Inspector (OG) and Inspector (SG). In other wards, Inspector (SG) carries Rs.50/- more in the initial scale than Inspector (OG), which difference can, by no stretch of imagination, be construed as "no difference" and it is only because of difference of Rs.50/- between Inspector (OG) and Inspector (SG), the pay of juniors, who had been promoted to Inspector (SG) over the heads of their seniors, was fixed at a higher stage than their seniors in the common pay structure, i.e., Rs.1640-2900/-. In this context, it is worthwhile to quote hereunder the relevant provisions contained in Notes 4 & 7 to sub-rule (1) of Rule 7 of CCS (RP) Rules, 1986 regarding removal of pay anomaly:-

"Note 4. – Where in the fixation of pay under sub-rule (1) pay of the Government servant, who, in the existing scale was drawing immediately before the 1st day of January, 1986, more pay than another Government servant junior to him in the same cadre, gets fixed in the revised scale at a stage lower than that of such junior, his pay shall be stepped up to the same stage in the revised scale as that of the junior.

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Note 7. — In case, where a senior Government servant promoted to a higher post before the 1st day of January, 1986, draws less pay in the revised scale than his junior who is promoted to the higher post on or after the 1st day of January, 1986, the pay of the senior Government servant should be stepped up to an amount equal to the pay as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior Government servant subject to the fulfillment of the following conditions, namely:

- (a) both the junior and senior government servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre.
- (b) the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical, and
- (c) the anomaly should be directly as a result of the application of the provisions of Fundamental Rule 22-C or any other rule or order regulating pay fixation on such promotion in the revised scale. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provisions of this Note need not be invoked to step up the pay of the senior officer.

The order relating to refixation of the pay of the senior officer in accordance with the above provisions should be issued under Fundamental Rule 27 and the senior officer will be entitled to the next increment on completion of his required qualifying service with effect from the date of refixation of pay.”

9. Having regard to what has been discussed above and having regard to the rules governing anomaly in pay between juniors and seniors, as quoted above, we hold that the alleged anomaly in pay does not arise due to application of FR 22, but is an outcome of promotion of juniors to Inspector (SG) over the head of their senior prior to 01.01.1986. Viewed from this angle, as long as promotion of juniors of

the applicants to Inspector (SG) holds good, the higher pay drawn by those so called juniors cannot be termed "anomaly in pay" while fixing the pay of juniors and seniors in the common scale of Rs.1640-2900/- under CCS (RP) Rules, 1986. The manner in which the applicants want redressal of their grievances amounts to granting promotion to Inspector (SG) with effect from the date their juniors were so promoted. Therefore, as held above, the alleged anomaly in pay is not an anomaly within the scope and meaning of the CCS(RP) Rules, 1986 and the applicants although are senior having acquiesced in the promotion of their juniors are bound to suffer.

10. As regards recovery of the amount paid to the applicants, the veracity of the issuance of letter dated 08.01.2001 based on which stepping up pay along with arrears was allowed to the applicants, as submitted by the Respondents, is under investigation. Be that as it may, the applicants are no way responsible for such lapse and therefore, the recovery of the amounts proposed to be made shall not be given effect to and accordingly, the directive contained in Annexure-A/14 series to that extent is struck down. Respondents are directed to complete the process of investigation and take such action against the misdemeanor, as deemed fit and proper, for whose lapse the Govt. exchequer has sustained loss by the issuance of a fabricated letter, the existence of which is under investigation.

11. With the above observation and direction, all the O.As.
are disposed of as above. No costs.


(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER

Kalpaswaran C.M.