

कै.प्र.भ. (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत निःशुल्क प्रति

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

O.A. Nos. 63/2003 & 64/2003

Date of decision: 05.07.2007

Hon'ble Mr. Kuldip Singh, Vice Chairman,

Hon'ble Mr. R.R. Bhandari, Administrative Member.

1. Devendra Prakash, S/o late Shri Nand Lal Ji aged about 57 years, R/o Gali No. 1 Rampura, Lalgarh, Bikaner (Rajasthan), Presently working on the post of Mechanic in the office of Field Station Investigation of Locust, Bikaner (Rajasthan)
2. Satish Kumar, S/o Shri Giri Lal Ji aged about 36 years, R/o 3 CH 38 Pawanpuri, Bikaner (Rajasthan), Presently working on the post of Mechanic in the office of Locust Warning Organisation Rani Bazaar, Bikaner (Rajasthan)
3. Ram Singh, S/o late Shri Hazari Raj Ji aged about 51 years, R/o Sewa Ram Sadan Ist Polo Plot No. 7 A Paota Jodhpur (Rajasthan), Presently working on the post of Mechanic in the office of Locust Sub Station, Paota B Road, Jodhpur (Rajasthan)
4. Ramesh Chandra Panwar, S/o late Shri Jagdamba Lal Ji aged about 46 years, R/o Nagrio Ka Bas Pipali Ka Chowk Jodhpur (Rajasthan), Presently working on the post of Mechanic in the Office of Locust Sub Station Paota B Road, Jodhpur (Rajasthan)
5. Tej Singh S/o late Shri Ugam Singh Ji aged about 45 years, R/o AFRI, Residence Complex, Plot No. 729, Qtr. No. VIII Type III Basani 2nd Phase Jodhpur (Rajasthan), Presently working on the post of Mechanic in the office of Locust Sub Station Paota B Road, Jodhpur (Rajasthan)
6. Prithavi Singh S/o Shri Kalyan Singh Ji aged about 37 years, R/o Kanatho Ka Bas Gawa Sursagar Jodhpur (Rajasthan), Presently working on the post of Mechanic in the office of Locust Sub Station Paota B Road, Jodhpur (Rajasthan)
7. Har Phool S/o Late Chokha Ram Ji aged about 59 years, R/O C/o Agrendra Kumar, Baldev Nagar, Uttarai Road, Barmer, Rajasthan, Presently working on the post of Mechanic in the office of Locust Warning Organisation, Uttarai Road, Barmer, (Rajasthan)
Raj Karan S/o late Shri Jeevan Singh Ji aged about 498 years, R/O House No. 29, Gulab Nagar C Behind RTO office, BJS Colony, Jodhpur (Rajasthan), Presently working on the post of Mechanic in the office of Locust Sub Station Paota B Road, Jodhpur (Rajasthan).

:Applicants in O.A. No. 63/2003.

**COMPARED &
CHECKED**

Banwari Lal Sharma S/o late Shri Chote Lal Sharma aged about 46 years, R/o House No 23/76 Chopasani House Boardad Pal Road, Jodhpur Rajasthan Presently working on the post of Chargeman in the office of Locust Sub Station Paota B Road, Jodhpur (Rajasthan).

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: applicant in O.A. No. 64/2003.

Rep. By Mr. S.K. Malik, & Mr. Dayaram: Counsel for the applicants in both the OAs.

VERSUS

1. Union of India through the Secretary Ministry of Agriculture, Department of Agriculture and Cooperation, Krishi Bhawan, New Delhi
2. The Plant Protection Advisor to the Government of India, Directorate of Plant Protection Quarantine & Storage, NH VI, Faridabad, (Haryana)
3. Under Secretary to the Government of India, Ministry of Agriculture, Department of Agriculture and Cooperation, Krishi Bhawan, New Delhi.
4. Secretary to the Government of India, Ministry of Finance, (Department of Expenditure) South Block, New Delhi.

: Respondents.

Rep. By Mr. M. Godhara proxy counsel for
Mr. Vinit Mathur : Counsel for the respondents in both the OAs

ORDER

Per Mr. Kuldeep Singh, Vice Chairman.

Since the issue involved and the relief claimed are identical in both these OAs, they were heard together and are being disposed of by this common order.

2. The facts have been taken from O.A No. 63/2003. All the applicants in this O.A are working as Mechanics and the applicant in O.A. No. 64/2003 is working as Chargeman under the respondents.

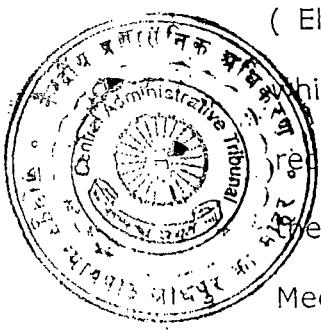
All of them were seeking upgradation of their pay on the basis of report of the Anomaly Committee, which had been set up after the recommendations of the 5th Pay Commission. All the applicants in O.A 63/2003 are working in the pay scale of Rs. 4000-6000 and they are seeking upgradation to the pay scale of Rs. 4500-7000 and the applicant in O.A. No. 64/2003 is presently working on the pay



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scale of Rs., 4500-7000 and he is seeking upgradation to the pay scale of Rs. 5000-8000. The applicants state that despite the fact that the Anomaly Committee had recommended the pay scale as prayed for by the applicants, vide the impugned order, the respondents have turned down the request of the applicants. The applicants have pleaded that they have been discriminated in spite of the fact that the recommendations of the Anomaly Committee has been accepted by the respondents and no reason has been adduced for rejecting their request i.e. to the pay scale of Rs. 4500-7000 in respect of the applicants in O.A. No. 63/2003 and Rs. 5000-8000 in respect of the applicant in O.A. No. 64/2003. They have prayed that the respondents be directed to grant the pay scale as prayed for by the applicants.

3. The respondents are contesting the O.A by filing a detailed reply. The respondents have stated in their reply that the 5th Pay Commission had recommended the pay scale of Rs. 4000-6000 to the post of Mechanics and Rs. 4500-7000 to the post of Chargeman. The respondents have given the reason as to why the recommendations of the Anomaly Committee had not extended to the applicants. i.e. the posts of Chargeman, Mechanic and Mechanic (Electrical) can be filled by Direct Recruitment only under 'failing which' clause and as such the posts are not covered by the relevant recommendations of the 5th Pay Commission. It is also stated that the post of CTM (Rs. 4000-6000) is a feeder post for promotion to Mechanic and prior to 1.1.96 the post of CTM and Mechanic were in the pre-revised scale of Rs. 1200-1800 and Rs. 1320-2040 respectively and the nature of anomaly which has been mentioned

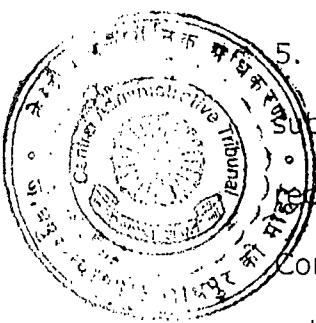


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by the anomaly committee was not their in the case of the applicants. Further the Department of Personnel and Training has also observed that these posts are isolated posts which have parity with other non-technical posts in different Ministries/Organised services. The respondents have stated that their action is neither arbitrary nor discriminatory and there is no violation of Art. 14 and 16 of the Constitution of India. The respondents have therefore prayed for the dismissal of the OAs.

4. We have heard the learned counsel for both the parties and gone through the records and pleadings very carefully. The learned counsel appearing for the applicants had submitted that though the Anomaly Committee constituted by the Government of India is an expert body and their recommendations ought to have been accepted by the departments and there are judicial pronouncements that Courts and Tribunals should not substitute their opinion in granting of particular pay scale to a particular post to that of the expert committee, however, this Tribunal can give a direction to the respondents to upgrade the pay scale as prayed for in view of the fact that the Anomaly Committee had already recommended the upgraded scale for the pay scale which the applicants are holding.

5. On the contrary, the learned counsel for the respondents submitted that it is for the Government to accept or reject the recommendations of the Pay Commission and that of the Anomaly Committee and they are merely advisory in nature. It is also submitted by the respondents that the request of the applicants were considered by the respondents in consultation with the



Department Personnel and Training and Ministry of Finance and therefore there is no scope for giving any direction by this Tribunal to the respondents to grant the upgraded scale of pay as prayed for by the applicants. The learned counsel for the respondents also referred to an order of the Principal Bench in the case of Arun Dutt Sharma and others vs. Union of India and others (O.A. No. 77/2004 decided on 11.03.2004) wherein a similar controversy had arisen. It appears that Mechanic (Electrical) had prayed for upgradation of pay scale to that of Rs. 5000-8000 on the basis of report of the Anomaly Committee. The Principal Bench had rejected the said O.A by relying on the judgement of the Apex Court in the case of State of Haryana and anr. Vs. Haryana Civil Secretariat Personal Staff Association [(2002) 6 SCC 72], wherein the Apex Court came heavily on this Tribunal holding that it is not for this Tribunal to fix the pay scales. The relevant portion reads as under:

"10. It is to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter, several relevant factors, some of which have been noted by this Court in the decided case, are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay. It is also to be kept in mind that the priority given to different types of posts under the prevailing policies of the State Government is also a relevant factor for consideration by the State Government. In the context of the complex nature of issues involved the far-reaching consequences of a decision in the matter and its impact on the administration of the State Government, Courts have taken the view that ordinarily courts should not try to delve deep into administrative decisions pertaining to pay fixation and pay parity. That is not to say that the matter is not justiciable or that the courts cannot entertain any proceeding against such administrative decision taken by the Government. The courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government while taking the decision has ignored factors which are material and relevant for a decision in the matter. Even in a case where the court holds the order passed by the Government to be unsustainable then ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order. The Court should avoid giving a declaration granting a particular scale of pay and compelling the Government to implement the same. As noted earlier, in the present case, the High Court has not even made any attempt to compare the nature of duties and responsibilities of the two sections of employees, one in the State Secretariat and the other in the



Central Secretariat. It has also ignored the basic principle that there are certain rules, regulations and executive instructions issued by the employers which govern the administration of the cadre"

(emphasis supplied)

The Principal Bench had further observed that only in cases where hostile discrimination is there, the Court may give certain directions, otherwise it is not possible for the Tribunal to grant or fix particular scale of pay to a particular group of employees.

6. In these cases also though the Anomaly Committee had recommended upgraded scale of pay the respondents have not accepted the said recommendations for reasons which have been properly disclosed by them in the reply. Further the applicants have failed to convince us that there was any hostile discrimination while accepting the recommendations of the Anomaly Committee. It was also argued that the impugned order is a non-speaking order as no reasons have been given and in view of the judgement of the Apex Court in **M.S. Gill's** case the respondents cannot give reasons in counter affidavit.

7. In our view this contention has no merits because Annex. A/1 is not an order. It is merely an inter-departmental communication. It is not addressed to the applicants as an order. So the judgement in **M.S. Gill's** Case does not apply to the present facts of the case.



As the Hon'ble Apex Court time and again held that it is not for the Courts/Tribunals to fix a particular scale of pay to a particular category of employees and it is only for the expert bodies to recommend upgradation of pay to employees and it is for the

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government to accept or reject the same. Though the anomaly Committee had recommended upgraded scale of pay, the Government for the reasons best known to it did not accept the same.



In view of the above discussions, there is no merit in these O.A.s and the same are hereby dismissed. No costs.

Sd/-

[R.R.Bhandari]
Member(A)

Sd/-

[KULDIP SINGH]
VICE CHAIRMAN

CERTIFIED TRUE COPY
Dated ... 3/12/71

शास्त्रीय प्रशासनिक अधिकरण
Section Office (Judi.)
शास्त्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
जोधपुर नगरी, जोधपुर
Jodhpur Bench, Jodhpur.

Part II and III destroyed
in my presence on 4/6/07
under the supervision of
section officer (J) as per
order dated 26/3/07

Section officer (Record)

Ree
Am
S. K. Malik
Adv
17/10/07

G. J. D.