

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.NOS. 758/2002 & 20/2003

TUESDAY.....THIS THE 10th DAY OF JUNE 2003

MAY 2003

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN  
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

OA 758/2002

1. All India Federation of Customs & Central Excise Telecom Staff, Kochi represented by its Secretary General M.J.Thomas aged 54 years S/o late Joseph Mundolickal Supervisor (Communications) Central Excise & Customs, Central Revenue Buildings, I.S.Press Road, Kochi.18.
2. R.Sarachandran Pillai, 56 years, S/o late Raghavan Pillai Radio Operator (Central Excise & Customs) Central Revenue Building, I.S.Press Road, Kochi.18 residing at Rohini House, Kulasekharamangalam Po Vaikom, Kottayam Dist. ....Applicants

(By Advocate Mr.T.C.Govindaswamy)

V.

1. Union of India, represented by the Secretary to the Govt. of India, Ministry of Finance, Department of Revenue, New Delhi.
2. The Chairman, Central Board of Central Excise and Customs, New Delhi.
3. The Commissioner of Customs & Central Excise Central Revenue Building, IS Press Road, Kochi.18. ., Respondents

(By Advocate Mr. C.Rajendran, SCGSC)



.2.

O.A. 20/2003

N.V.Alex, aged 49 years S/o K.J.Vakkan,  
Radio Operator, Telecommunication Wing,  
Central Excise Headquarters Ofice,  
C.R.Building, I.S.Press Road,  
Kochi residing at Nanthicad House,  
Civil Station Ward,  
Alleppey.

...Applicant

(By Advocate Mr.T.C.Govindaswamy)

V.

1. Union of India, represented by the Secretary to Govt. of India, Ministry of Finance, Department of Revenue, New Delhi.
2. The Chairman, Central Board of Central Excise & Customs, New Delhi.
3. The Commissioner of Customs & Central Excise, Central Revenue Building, I.S.Press Road, Kochi.18.
4. The Secretary to Government of India, Ministry of Finance, Department of Expenditure, New Delhi. ....Respondents

(By Advocate Mr.C.B.Sreekumar,ACGSC (rep)

The applications having been heard on 16/4/2003 the Tribunal on 10.6.2003 delivered the following:

ORDER

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

Since common orders are under challenge and the dispute involved is identical both these cases were heard jointly and are being disposed of by this common order.

2. A nail sketch of the factual matrix can be drawn as under. The first applicant in OA 758 of 2002 is the All India Federation of Customs and Central Excise Telecom

Staff, Kochi represented by its General Secretary Shri M.J.Thomas and the second applicant therein is a Radio Operator and a member of the Federation. The first applicant Federation in this application represents the (a) Radio Operators (b) Supervisors (Communications-Operation Stream) (c) Communication Assistants (d) Cipher Operators and (e) Cipher Assistants Cadre in the Central Excise and Customs Departments. The applicant in OA 20/2003 is a Radio Operator, Telecommunication Wing of Central Excise, Kochi.

3. The Vth Central Pay Commission recommended revised pay scales to the categories of cadre to which the applicants in both these cases belong. The pre-revised scales and the revised scales recommended by the Commission to the different categories/cadre were as follows:

S.No.	Category/Cadre	Pre-revised scale	Revised scale recommended by the Commn.
1.	Radio Operator	1320-2040	4500-7000
2.	Supervisor (Communications)	1400-2300	5000-8000
3.	Communication Asst.	1400-2600	5500-9000
4.	Cipher Operator	1350-2200	4500-7000
5.	Cipher Assistant	1400-2600	5500-9000

4. The Government accepted the above recommendation and as per Part C of the 1st Schedule to the CCS (Revised Pay) Rules, 1997 (Annexure.A1) allowed the pay scales as recommended. The categories to which the applicants belong came under the caption Telecom Wing in Sl.No.XI dealing with "Ministry of Finance", these categories are in serial number 41 to 45. The revision of pay scales in respect of the

categories of staff to which the applicants belong was implemented by order dated 1st January, 1998 of the 1st respondent (Annexure.A3 in OA 758/2002). An order dated 31st August, 1998 (A4) was issued indicating the revised pay scales as recommended by the Pay Commission, accepted and implemented by the Government of India. Considering the recommendation of the Pay Commission the Recruitment Rules were amended and published in GSR 378(E) (Annexure.A5). The applicants and similarly situated were getting the pay scales as recommended by the Vth Pay Commission and implemented by the Government as per Annexures.A3 and A4. While so All India Association of Customs, Central Excise and Narcotics Electronic Maintenance Engineers and others filed OA 1244/01 before the Madras Bench of the Tribunal for a direction to the respondents to place the Radio Technicians, Technical Assistants and Senior Technical Assistants in the pay scale of Rs. 5000-8000, 5500-9000 and Rs. 6500-10500 respectively. The above application was disposed of by order dated 30.8.2002 (copy at A8) directing the Secretary, Ministry of Finance, Department of Revenue, New Delhi to reconsider the matter in the light of the judgment of the Principal Bench of the Central Administrative Tribunal in OA Nos. 1003 to 1005 of 2000 pronounced on 8.11.2000 and to pass an order within two months. Under the circumstances the impugned order dated 9th October, 2002 (A6) and 30th April, 2002 (A7) the in these cases were issued. By order dated 30th April, 2002 purportedly in modification of the notification GSR 569(E) dated 30th September, 1997 the entries at Serial Numbers 41

to 45 mentioned under the heading Telecommunications Wing of the Department of Revenue were deleted and as a consequence the posts which were placed at Serial Numbers 41 to 45 were given only the normal replacement pay scales corresponding to the applicable pre-revised pay scales. In the order dated 9th October, 2002 (Annexure.A6 in OA 758/2002) it was stated that the established parity in pay scales in the operational, maintenance and cipher stream in the department was disturbed by the recommendations of the Fifth Central Pay Commission upgrading the pay scales for the posts of Radio Operator under the operational stream under the erroneous impression that the prescribed minimum qualification for recruitment to the posts included Diploma in Radio Engineering and that with a view to set right the anomaly, restore the parity and not to compound the anomaly and disparity the order dated 30th April, 2002 has been issued and the existing incumbents in the Group C would be placed on the normal replacement scale and that no recovery of overpayment made upto 30.4.2002 be made. After issuing the impugned orders in this case in obedience to the direction in the judgment of the Madras Bench of the CAT in OA 1244/01 Annexure.A9 order dated 11th October, 2002 was issued rejecting the representations of the applicants therein stating that by issuing Annexure.A6 order dated 9th October, 2002 serial Nos.41 to 45 mentioned under the heading "Telecommunication Wing" of the Department of Revenue have been deleted and the status quo has been restored. The applicants challenge the legality, propriety and correctness of these orders Annexures.A6 and A7 in OA

758/2002 also Annexure.A5 and A6 in OA 20/2003 on various grounds. It is alleged in the application that the impugned orders having been issued without jurisdiction are void, ab initio, that the Joint Secretary who issued the order has no authority to issue the orders, that the recommendations made by the Pay Commission which is an independent body which were accepted and implemented by the Government cannot be anulled by an executive order and that the reasons stated for the impugned order are irrelevant, extraneous and insufficient to issue the impugned orders which would cause adverse civil consequences to the applicants. The applicants, therefore, pray that the impugned orders may be set aside with consequential benefits to them.

5. Reply statements have been filed in both these cases on behalf of the respondents raising the identical contentions. The impugned orders are sought to be justified on the ground that the 5th Central Pay Commission recommended upgraded pay scales to the post of Radio Operator in the operational stream under the erroneous impression that the prescribed minimum qualification for appointment to that post included diploma in Radio Technology while the qualification prescribed is only matriculation or a second class certificate in wireless proficiency. The established parity between the various wings of the same organization was disturbed by these and with a view to set right the anomalous situation the impugned order dated 30.4.02 was issued in partial modification of the notification GSR 569(E) dated 30.9.1997.

They also contend that the reliefs sought by the applicants in OA 1244/00 before the Madras Bench of the Tribunal was not denied because of the orders impugned in this case.

6. Although the impugned orders have been challenged on various grounds Shri Govindaswamy, learned counsel of the applicant confined his argument to only one ground namely that the order dated 30.4.02 (Annexure. A7 in OA 758/02) and Annexure.A5 (in OA 20/03) is without jurisdiction, null and void because Part C of the first schedule to CCS (Revised Pay) Rules issued by the President in exercise of the powers conferred by the proviso to Article 309 and Clause 5 of the Article 148 of the Constitution cannot be amended, substituted or subtracted from by an order issued by the Joint Secretary to the government of India. Shri Govindaswamy produced for our perusal a copy of the Gazette of India in which GSR 569(E) dated 30.9.97 was published, the caption of the notification being as follows:

"In exercise of the powers conferred by the proviso to article 309, and clause (5) of Article 148 of the Constitution and after consultation with the Comptroller and Auditor General in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following rules, namely....."

7. Shri Govindaswamy argued that GSR 569(E) being notification of a Rule by presidential order in exercise of powers under Article 309 and Clause (5) of Article 148 of the Constitution of India, any amendment thereto can be made only by a presidential order and an administrative or executive order issued repugnant thereto is unsustainable.

Shri C.Rajendran, learned counsel for the respondents on the other hand argued that what has been done is only deletion of certain entries in the schedule and not any amendment in the main Pay Rules and therefore, the argument of the learned counsel of the applicant that executive orders may not be issued deleting or substituting the schedule has no force or substance. Shri Govindaswamy, learned counsel of the applicant then referred us to two rulings of the Apex Court wherein it was considered whether a schedule is a part of a statute and held that the Schedule is part of the Act. We have gone through the rulings carefully. In AIR 1989 SC 516 (M/s Ujagar Prints etc. etc. v. Union of India and others) in paragraph 29 it was observed as follows:

"That apart, section 4 of Amending Act VI of 1980 has amended the relevant items in the schedule to the Additional Duties Act. The expressions 'produce' or 'manufacture' in Section 3(1) of the Additional Duties Act must be read along with the entries in the schedules.

In Att.Gen.V.Lamplough (1878) 3 Ex.D.214,229 it is observed:

"A schedule in an Act is a mere question of drafting, a mere question of words. The Schedule is as much a part of the statute, and in as much an enactment, as any other part."

Maxwell says (in interpretation of statutes 11th edn. p.156)

".....if an enactment in a schedule contradicts an earlier clause it prevails against it"

Bennion (in Bennion's Statutory Interpretation pp. 568-569) referred to the place of schedules in statutes observes:

"The schedule is an extension of the section which induces it. Material is put into a Schedule because it is too lengthy or

detailed to be conveniently accommodated in a section...."

A schedule must be attached to the body of the Act by words in one of the sections (known as inducing words). It was formerly the practice for the inducing words to say that the schedule was to be construed and have effect as part of the Act. (See e.g. Ballot Act 1872, S.28). This is no longer done being regarded as unnecessary. If by mischance the inducing words were omitted, the Schedule would still form part of the Act if that was the apparent intention."

".....The schedule is as much a part of the statute, and is as much an enactment, as any other part. (See also, to the like effect. Flower Freight Co.Ltd. V. Hammond (1963) 1 QB 275:R V. Legal Aid Committee No.1 (London) Legal Aid Area, ex.P.Rondel, (1967) 2 QB 482; Metropolitan Police Commr. V.Curran (1976)1 WLR 87)."

What appears, therefore, clear is that what applied to the main levy, applies to the additional duties as well. We find no substance in Contention (c) either."

8. In Aphali Pharmaceuticals Ltd. Vs. State of Maharashtra and others, AIR 1989 SC 2227 at para 30 it was observed by the Apex Court as follows:

"As Schedule in an Act of Parliament is a mere question of drafting. It is the legislative intent that is material. An Explanation to the Schedule amounts to an Explanation in the Act itself. As we read in Halsbury's Laws of England, Third Edition Vo.36 para 551: "To simplify the presentation of statutes, it is the practice for their subject matter to be divided, where appropriate, between sections and schedules, the former setting out matters of principle, and introducing the latter, and the latter containing all matters of detail. This is purely a matter of arrangement; and a schedule is as much a part of the statute, and as much an enactment, as is the section by which it is introduced." The schedule may be used in construing provisions in the body of the Act. It is as much an act of Legislature as the Act itself and it must be read together with the Act for all purposes of construction. Expressions in the Schedule cannot control or prevail against the express enactment and in case of any inconsistency between the schedule and the enactment the enactment is to prevail and if any part of the schedule cannot be made to correspond it must yield to the Act. Lord Sterndale

in Inland Revenue Commr. Vs. Gittus (1920) 1 KB 563 said:

"It seems to me there are two principles of rules of interpretation which ought to be applied to the combination of Act and Schedule. If the Act says that the schedule is to be used for a certain purpose and the heading of the part of the Schedule in question shows that it is *prima facie* at any rate devoted to that purpose, then you must read the Act and the schedule as though the Schedule were operating for the purpose and if you can satisfy the language of the section without extending it beyond that purpose, you ought to do it. But if in spite of that you find in the language of the Schedule words and terms that go clearly outside that purpose, then you must give effect to them and you must not consider them as limited by the heading of that part of the Schedule or by the purpose mentioned in the act for which the Schedule is *prima facie* to be used. You cannot refuse to give effect to clear words simply because *prima facie* they seem to be limited by the heading of the Schedule and the definition of the purpose of the Schedule contained in the act."

9. It can be seen that the Apex Court has in the above authorities held that a schedule in an Act is also part of the Act. Although GSR 569(E) is not an Act of the Parliament, it is a set of rules issued by the President of India in exercise of powers under proviso to Article 309 and Article 148 of the Constitution of India which has got statutory force. Therefore, the principle enunciated by the Apex Court in the above quoted rulings that Schedule to an Act is part of the Act very well apply to the Schedule in a Rule which has statutory force. It is well settled by now that the statutory rules shall not be amended by administrative or executive orders. The impugned order Annexure.A7 in OA 758/02 and A5 in OA 20/03 is an executive order issued by the Joint Secretary to the Government of

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India purportedly modifying what has been described as department's notification GSR 569(E) dated 30.9.97. As we have already stated GSR 569(E) dated 30.9.97 were Rules issued by the President in exercise of powers under Proviso to Article 309 of the Constitution of India and Art.148 of the Constitution and not a mere notification. Such a presidential Rule which has got statutory force if need be amended for any reason it could have been done only by another presidential order and not by an executive order. We therefore find that the impugned order dated 30.4.02 as invalid and inoperative. The impugned order dated 9.10.02 is based on the order dated 30.4.02. Therefore, the order dated 9.10.02 is also not sustainable.

10. The learned counsel of the respondents made a feeble attempt to argue that in Part C of Ist Schedule itself there is an inbuilt authority vested with the Government for amending the pay scales mentioned in the Schedule. He invited our attention to the preamble of Part C revised scales of pay for certain posts in Ministries and Departments and Union Territories which read as follows:

"The revised scales of pay mentioned in Column 4 of this part of the Notification for the posts mentioned in Column 2 have been approved by the Government. However, it may be noted that in certain Cases of the scales of pay mentioned in Column 4, the recommendations of the Pay Commission are subject to fulfillment of specific conditions. These conditions relate inter alia to changes in recruitment rules, restructuring of cadres, redistribution of posts into higher grades etc. Therefore, in those cases where conditions such as changes in recruitment rules, etc, which are brought out by the Pay Commission as the rationale for the grant of these upgraded scales, it will be necessary for the Ministries to decide upon such issues and

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agree to the changes suggested by the Pay Commission before applying these scales to these posts with effect from 1.1.1996. In certain other cases where there are conditions prescribed by the Pay Commission as prerequisite for grant of these scales to certain posts such as cadre restructuring, redistribution of posts etc. it will be necessary for the Ministries/Departments concerned to not only accept these pre-conditions but also to implement them before the scales are applied to those posts. It would, therefore, be seen that it is implicit in the recommendations of the Pay Commission that such scales necessarily have to take prospective effect and the concerned posts will be governed by the normal replacement scales until then."

What is quoted above would show that where the extension of the pay scales in certain cases required fulfilment of conditions, the scales would be extended on fulfilment and wherever amendments of the Recruitment Rules are required the Ministries have to decide the issue. However, we are not able to find any inbuilt provision there which empowers to amend any part of the Schedule by an executive order.

11. In the light of what is stated above, the applicants in these original applications are bound to succeed. The ~~are~~ applications ~~is~~ allowed and the impugned orders Annexure A6 and A7 in OA 758/02 and A5 and A6 in OA 20/03 are set aside with all consequential benefits to the applicants. The parties will bear their own costs.

Dated this the 10th day of June, 2003

Sd/-  
(T.N.T.NAYAR)  
ADMINISTRATIVE MEMBER

Sd/-  
(A.V.HARIDASAN)  
VICE CHAIRMAN

(S)