

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Reserved on 21.05.2014.

Pronounced on 10th July, 2014.

**Original Application No.34/2012
Alongwith
Original Application No.254/2009**

**Hon'ble Shri Navneet Kumar, Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)**

(Original Application No.34/2012)

1. V.K. Awasthi S/o Shri Jay Narain Awasthi aged about 37 years R/o Village & P.O. Malauli, District Barabanki.
2. Dildar Singh S/o Man Singh aged about 35 years R/o II-77, GSI Colony, Sector 'Q', Aliganj, Lucknow.
3. Jawahar Singh Tomar S/o Late J.S. Tomar aged about 40 years R/o II-08, GSI Colony, Sector 'Q', Aliganj, Lucknow.
4. Sanjeev Nautiyal aged about 43 years S/o Late H.M. Nautiyal R/o II-30, GSI Colony, Sector 'Q', Aliganj, Lucknow.

-Applicant.

By Advocate: Sri A. Moin.

Versus.

1. Union of India through Secretary, Ministry of Mines, Govt. of India, Shastri Bhawan, New Delhi.
2. Director General, Geological Survey of India, 27 Jawahar Lal Nehru Road, Kolkatta.

-Respondents.

By Advocate: Sri S.K. Singh.

Alongwith

Original Application No.254/2009

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1. V.K. Awasthi aged about 34 years S/o Shri Jay Narain Awasthi R/o Village & P.O. Malauli, District Barabanki.
2. Loli Ram aged about 55 years S/o Shri Rag Ram.
3. Ram Samujh aged about 58 years S/o Jagmohan.
4. B.P. Patil aged about 56 years S/o Shri Pandu Rang Gi Patil.
5. G.D. Choudhary aged about 56 years S/o Shri S.G. Choudhary.
6. Mohan Singh aged about 53 years S/o Shri Lazman Singh.
7. P. Bhimayya aged about 55 years S/o Shri Padani Chandra.
8. Balbir Singh, aged about 56 years S/o Shri Mukind Singh.
9. S.N. Yadav aged about 57 years S/o Shri Ram Autar SYadav.
10. Pratap Singh aged about 55 years S/o Shri Kushal Singh.
11. Dinesh Chandra Aged about 42 years S/o Shri Ram Sanehi.
12. D.S. Kalsarpe aged about 56 years S/o Shri Sonba Devij Kalsarpe.
13. Raghbir Singh aged about 58 years S/o Shri Manchand.
14. Vaidya Raj aged about 43 years S/o Shri Bechai Ram.
15. V.P. Sharma aged about 40 years S/o Shri Moti Lal Sharma.
16. P.C. Narang aged about 40 years S/o Shri Shanti Lal Narang.
17. S.K. Dixit aged about 41 years S/o Shri K.K. Dixit.
18. M.K. Tiwari aged about 39 years S/o Shri S.K. Tiwari.
19. J.R. Shgarma aged about 56 years S/o L:ate Duni Chand.
20. Ram Kishan aged about 57 years S/o Shri Vijay Chand.
21. B.B. Joshi aged about 59 years S/o Late Trilochan Joshi.
22. Chandri Hansdah aged about 40 years S/o Shri Dhana Charan Hansdah.
23. S.S. Rana aged about 54 years S/o Late Khem Singh Rana.
24. Jagan Nath aged about 57 years S/o Late Dobe Ram.
25. Nandan Singh aged about 54 years S/o Late Mohan Singh.

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26. J.S. Tomar aged about 38 years S/o Shri Jatiya Singh Tomar.
27. Gopal Singh aged about 56 years S/o Late Ram Nath.
28. Akshay Lal aged about 38 years S/o Shri Paras Ram.
29. Sanjeev Nautiyal aged about 41 years S/o Late Harsh Mohan Nautiyal.
30. Govind Singh aged about 53 years S/o Shri Lachman Singh.
31. Kishan Ram S/o Sher Ram aged about 52 years R/o Village Boraagar, Post Office, Jarapani District-Pithoragarh.
32. Mohd. Bashir aged about 55 years S/o Shri Md. Musthafa.
33. S.K. Pal aged about 35 years S/o Shri Raja Ram.
34. Hemant Kumar Giri aged about 32 years S/o Shri Meku Lal Giri.
35. Md. Imran aged about 45 years S/o Shri Aditya Prasad Singh.
36. Pramod Kumar Singh aged about 36 years S/o Shri Aditya Prasad Singh.
37. RAvinder Prasad aged about 29 years S/o Shri Chhote Lal.
38. Dildar Singh aged about 33 years S/o Shri Man Singh.
39. Garibullah aged about 44 years Shri Md. Bashir.
40. Sreelesh T. aged about 33 years S/o Late Thyagarajan.
41. Md. Sajid aged about 32 years S/o Mohd. Shakir.
42. Sushil Kumar aged about 30 years S/o Shri Ram Adhare.
43. Ajeet Prasad aged about 33 years S/o Shri Ram Chhabila.
44. Khem Singh aged about 37 years S/o Shri Guman Singh.
45. R.C. Satsangi aged about 59 years S/o Late Mangal Prasad.
46. J.N. Horo aged about 39 years S/o Sri Pator Horo.
47. K.S.L. Srivastava aged about 59 years S/o Late Radhika Lal.

All working under the Respondent No.4.

-Applicant.

By Advocate: Sri A. Moin.

Versus.

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1. Union of India through Secretary, Department of Mines, Shastri Bhawan, New Delhi.
2. Director General, Geological Survey of India, 27 Jawahar Lal Nehru Road, Kolkatta.

-Respondents.

By Advocate: Sri S.P. Singh.

O R D E R

By Ms. Jayati Chandra, Member (A)

As the facts of both the case are common in nature as such, both these OAs are disposed of by a common order treating the O.A.No.34/2012 as leading case.

2. Relief clause in O.A.No.254/2009 is as follows:-

“(i). to quash the impugned order dated 16.4.2009 passed by Respondent No.3 also contained in Annexure A-1 to the O.A.

(ii). To direct the respondent No.1 to upgrade the pay scale of Drilling Assistants/Applicants from Rs.3200-4900/- to Rs.4000-6000/- (pre-revised) w.e.f. 1.1.1996 with all consequential benefits.

(iii). To direct the respondents to pay the cost of this application.

(iv). Any other order which this Hon’ble Tribunal deems just and proper in the circumstances of the case bed also passed.”

3. Relief clause in O.A.No.254/2009 is as follows:-

“(a). to quash the impugned Notification dated 29.12.2011 issued by Respondent No.2 as contained inn Annexure A-1 to the O.A. so far as it pertains to the Engineering Stream Group ‘B’ (NG) and ‘C’ by which the Head Mechanics of the Mechanical Stream have been redeployed and redesignated as Drilling Assistant (Engineering Grade 1) in grade Rs.4000-6000/- Rs.5200-20200/- with grade pay of Rs.2400/- with all consequential benefits.

(b). to restrain the respondents from finalizing the Recruitment Rules for the post of Drilling Assistant

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and Junior Technical Assistant (Drilling) as contained in Annexure A-11 to the OA during the pendency of the claim of the applicant for upgrading/revision of their pay scales from Rs.3200-4900/- to Rs.4000-6000/- as per the proposals for the Respondents themselves.

- (c). to direct the respondents to promote the applicants as Junior Technical Assistants (D) Grade Rs.5000-8000/- as done in respect of persons similarly circumstanced upon the applicants attaining the eligibility as per the list annexed as Annexure A-7 to the O.A. without insistence of the applicants forming the feeder cadre of grade Rs.4000-6000/- and the impugned Notification dated 29.12.2011 as contained in Annexure A-1 to the OA and the Recruitment Rules as contained in Annexure A-11 to the OA within the specified time.
- (d). to pay the cost of this application.
- (e). Any other order which this Hon'ble Court deems just and proper."

4. The facts of the two cases are that the applicants No.1 to 45 of O.A.No.254/2009 are working as Drilling Assistants in the Drilling Division (to be known as DA (D) henceforth) in the grade of Rs.3200-4900 and 46,47,48 are working as Junior Technical Assistant (JTA-D) in the grade of Rs.5000-8000 (subject to decision on the pay scale involved). There appears to be a clerical error in OA as there is no applicant No.48.

5. As per the Recruitment Rules (RR) the post of Junior Technical Assistant (D) were to be filled up from amongst the Drilling Assistant (D) after completing the requisite years of service and on the basis of seniority-cum-merit prior to 2001. By means of the Recruitment Rules dated 18.05.2001, it was provided that the post of Junior Technical Assistant (D) in the earlier grade of Rs.4500-7000 are to be filled up by promotion from Drilling Assistants working in the grade of Rs.4000-6000.

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But, as there was no change in the grade of Drilling Assistant (D), which remained at Rs.3500-4900m these Recruitment Rules could not be given effect to. The Resp.No.2 made a recommendation to Resp.No.1 that the post of Drilling Assistant (D) be upgraded to the grade of Rs.4000-6000 in order to harmonise them with the Recruitment Rules, and also be harmonise them with the same scale drawn by Head Mechanics (H.M.) in the E&T Mechanical Division. This proposal was kept pending by Resp.No.1 from 2002 onwards despite various follow up action including the recommendation of a Committee as disclosed in letter dated 01.12.2005 (Annexure-6) of O.ANo.35/2012.

6. Meanwhile, by and order dated 06.03.2003 (Annexure-3) the grade of Junior Technical Assistant (D) was further enhanced to Rs.5000-8000 w.e.f. 01.01.1996. A proposal for step by step rationalization of the feeder cadre of DA (D) was forwarding letter dated 11.06.2003 (Annexure-5). However, nothing happened. In view of the technical anomaly whereby no DA(D) in the grade of Rs.4000-6000 as required under Recruitment Rules dated 18.05.2001 being available an administrative decision was taken at the level of Resp.No.2 that promotion may be made from existing grade of Drilling Assistant (D) to the post of Junior Technical Assistant (D), if other conditions of Recruitment Rules were fulfilled as per letter No__/A-12018/1/99-19A (Vol.IV) dated 19.09.2002 (Annexure-4) (Subject to the decision in matter of pay.

7. The applicants have produced a list of 22 persons (Annexure-7) who were directly promoted from the post of

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Drilling Assistant (Rs.3200-3900) to Junior Technical Assistant (D) in the grade/scale of Rs.5000-8000 between the years 2002 to 2011. While the matter of revision of the pay scale of Drilling Assistant (D) was pending, an order dated 16.04.2009 was issued for merger of seniority of Drilling Assistants and the cadre of Head Mechanics of Engineering and Transport Work Shop Stream. Such a proposal was sought to be made as the result of decision to redeploy the surplus staff of the Engineering division. In terms of G.O.'s dated 30.11.1963 and 06.02.1969 (Annexure-13) such surplus staff should have been given bottom seniority. But, by the fact of Head Mechanics post being in the pay scale of Rs.4000-6000 and that of Drilling Assistant (D) in the scale of Rs.3200-4900, the legitimate apprehension was that the H.M.s would be placed higher in the seniority list above the Drilling Assistant (D). Hence, an interim order was obtained from this Tribunal on 08.06.2009 in O.A.No.254/2009 by which status-quo as on date to the proposed merger was to be maintained. This order is still valid today.

8. But, the respondents by Notification dated 29.12.2011 has gone against the interim stay order and have restructured the various posts in the Engineering Division and merged them with that of Drilling Assistants. The Head Mechanic posts has been re-designated as Drilling Assistant Grade-I in the scale of Rs.4000-6000 (Rs.4000-6000 revised to Rs.5200-20200 with grade pay of Rs.2400) and the applicants correctly designed as DA (D) named as Drilling Assistants' (Engineering) Grade-II in the pay scale of Rs.3200-4900 (now revised to Rs.5200-20200 with grade pay of

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Rs.4200). Thus, the Head Mechanics have been placed above the Drilling Assistants in flagrant violation of the stay order dated 08.06.2009. The respondents had further issued a draft RCR Rules of Drilling Assistants and Junior Technical Assistant (D) through Circular dated 19.04.2011. The applicants had given their strong objection by letter dated 02.05.2011 (Annexure-11 and 12). By this action, not only have the respondents violated the interim order, but the proposed action in trying to introduce an intermediate grade of Drilling Assistant Grade-I and changing the nomenclature of the applicants to Drilling Assistant Grade-II is bad in the eyes of law as it amounts to changing the service conditions by the way of denying them the promotional avenues which were part of the service condition when the applicants were appointed.

9. Such an action is also discriminatory between the Drilling Assistants, who are already promoted as Junior Technical Assistant (D) and those who are working in the present grade. It is also pertinent to mention that by order dated 21.01.2010 (Annexure-15) a decision was taken by Respondent No.2 to continue with the system of promoting Drilling Assistants from the scale of Rs.3200-4900 to Junior Technical Assistant in the scale of Rs.5000-8000 till the Recruitment Rules are amended or the post of Drilling Assistants/ Head Mechanics are merged.

10. The respondents have filed their Counter Affidavit by which they have accepted the factual position with regard to the pay scales of Junior Technical Assistant and Drilling Assistant and also the Recruitment Rules

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dated 18.05.2001. Further, they have admitted that the proposed merger of Drilling and Mechanical stream of G.S.I. is only prospective and will have the effect only after amendment of the Recruitment Rules, The respondents have no intention to disregard the stay order dated 08.06.2009 as it is clear from the Notification (CA-1) dated 14.07.2009 in which it has been clearly mentioned that separate order will be issued for merger of posts of Head Mechanics and Drilling Assistants.

11. The proposal of upgradation of pay scale of drilling Assistants from Rs.3200-4900 to Rs.4000-6000 was sent to the Ministry of Mines by Resp.No.2 by letter dated 11.06.2003 but Resp.No.1 informed by letter dated 15.1.2007 (SCA-2 in O.A.No.254/2009) to them that in view of the constitution of the 6th Pay Commission, all proposals relating to upgradation and /or anomaly arising out of the 5th Pay Commission were sent to the 6th Pay Commission. Hence, no decision could be taken with regard to amendment of pay scales etc.

12. The Tribunal had stayed the issue of the merged seniority of Head Mechanics and Drilling Assistants. No such list has been issued yet. The Notification dated 29.12.2011 is issued as per the Cabinet approval obtained on 25.10.2011 on the composite recommendation made by High Powered Committee regarding distribution of revised manpower strength of Engineering Stream according to existing hierarchy of grade pay.

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13. As of now promotions in both the streams are taking place separately as per existing Recruitment Rules and seniority list is maintained separately.

14. The applicants have filed Rejoinder, Supplementary Rejoinder to the Supplementary Counter Affidavit filed by the respondents reiterating the crux of the issue as discussed above. During the course of heard the learned counsel for the applicant drawn our attention to the provision of Section-19 (4) of Administrative Tribunal Act, 1985 which states that "where an application has been admitted by a Tribunal under sub section (3), every proceedings under the relevant service rules as to redressal of grievances in relation to the subject matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules." Therefore, any order passed thereafter is in clear violation of said provision. Similarly, they have cited the ruling of Hon'ble Andhra Pradesh High Court in K. Venkata Raju vs. Govt. of A.P. Revenue (Endts.-I) reported in 1999 (4) ALD-291 in support of their contention that action of the respondents suffers from illegality inasmuch as the action was based on ignoring the said provision.

15. We have heard the learned counsel for both the parties and seen the records.

16. It is clear that basically the controversy arose from the revision in the Recruitment Rules dated 18.05.2001 by which the feeder post for promotion to the post of

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Junior Technical Assistant (D) was shown as Drilling Assistants in the pay scale of Rs.4000-6000 when there was no such scale in the cadre of Drilling Assistants. A proposal to upgrade the pay scale to harmonise with the Recruitment Rules was made by the Respondent No.2 etc. to Respondent No.1, who for reason of their own did not take any decision by the way of either acceptance or rejection till all proposals/anomologies became the subject matter of resolution by the 6th Pay Commission. The applicants of O.A.No.254/2009 approached this Tribunal against the impugned order dated 16.04.2009 which reads as follows:-

"The seniority/gradation list of the present incumbents of all posts of Drilling stream and E&T Workshop stream as on date may be collected from all the Regional Offices/Wings/ Training Institute of GSI etc. by Fax and in E. Mail of Director (Geo-data), i.e. sujit.rajan.sengupta@gsi.gov.in within next 2 (two) days and thereafter the merged seniority of equal ranks of said streams may be prepared on urgent basis. It should contain the details of consequential effects in the matter of maintaining common seniority, promotions, date of retirement etc. This work may kindly be directly attended to by Shri D. Sen, Sr. Administrative Officer and Shri M.K. Bharti, Administrative Officer, Section 16A of CHQ (this office). It would be appreciated if the consolidated information/materials are made ready by 21.04.09 by Shri D. Sen, Sr. Adm. Officer."

17. The Tribunal passed the following order on 08.06.2009 which reads as follows:-

".....respondent No.3 is directed to maintain status quo as of today in respect of the impugned order dated 16.04.2009 (Annexure A-1)."

18. It is clear from the above order that only Resp.No.3 in O.A.No.254/2009 was restrained from taking any action. Respondent No.3 is directed to maintain status quo as in respect of the impugned order dated

J. Chaudhury

16.04.2009 (Annexure-1). There is no restrain order either against Respondent No.1 (Secretary Ministry of Mines) or Respondent No.2.

19. Also the stay was granted against the merger of “seniority of equal rank of the said streams” (i.e. Drilling stream and E&T Workshop).

20. There is no stay order against any kind of proposal/decision for any kind of administrative exercise undertaken to rationalise staff structure either wholly or in part. Such an exercise may involve creation/abolishing of post of different cadres. This may have the effect of merger, but may also mean abolishing of certain posts and creation of certain other posts on which the same set of persons may be deployed/employed etc. *The restriction clause as stated in Section-19 (4) of the Administrative Tribunal Act, 1985 states that* “where an application has been admitted by a Tribunal under sub section (3), every proceedings under the relevant service rules as to redressal of grievances in relation to the subject matter of such application pending immediately before such admission shall abated. In this particular case the controversy arises from lack of service rules granting promotion form the pay scale of Rs.3200-3900/- to the next higher scale and from the prayer to change the same scale to Rs.4000-6000 to align with Recruitment Rules.

21. The subject matter of this OA is akin to creation, abolishing of posts and the pay scales etc. which is a matter of executive policy as held by the Hon'ble Supreme Court in ***The Commissioner, Corporation of Madras vs. Madras Corporation Teachers' Mandram & Ors.***

J. Chandra

(1997) SCC-253 and the Tribunal have no authority to direct the creation or abolish post (which may include the merger of vacant posts available or prescribe the qualification for the same in terms of para-4 of the order which reads as follows:-

"Para-4.....It is well settled legal position that it is well settled legal or executive policy of the Government to create a post or to prescribe the qualifications for the post. The Court or Tribunal is devoid of power to give [such] direction."

The Hon'ble High Court of Allahabad in the case of ***State of U.P. and Another Vs. Dr. Prem Behari Lal Saxena (AIR 1969 Allahabad 449)*** observed the following:-

36. I think it is beyond dispute that the creation of an office must be attributed to the exercise of the sovereign power of the State. And so it has been said that "every sovereign Government has within its own jurisdiction the right and power to create whatever public offices it may regard as necessary to its proper functioning and its own internal administration and to abolish such offices as it may deem superfluous." 42 Am Jur 902 Para 31. The power to create an office generally includes the power to modify or abolish it. The two powers have been described as essentially the same. These are principles well settled and are valid whether the question arises in India, the United Kingdom or the United States or indeed wherever organised Government recognising the sovereignty of the State holds sway. The creation of a post and its abolition are essentially matters of administrative policy and expediency related to the needs of Governmental administration. They are matters which properly fall within the exclusive domain of State policy. Public offices are created for the purpose of effecting the end for which Government has been instituted, which is the common good, and not for the profit, honour or private interest of any one man, family or class of men: Ibid 881 Pr. 3. The creation of a post is not to be decided by considerations personal to an individual aspiring to employment as a civil servant. So also, the question of abolishing a post falls to be decided by considerations of Governmental need rather than the private interest of the incumbent in employment.

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22. The Hon'ble Supreme Court in ***Avas Vikas Sansthan vs. Engineers Association (2006) 4 SCC-132*** has clarified that for the sake of streamlining the administration and to make it more efficient government might be required to make alterations in the staffing pattern of the services. Such an exercise may involve either increasing or decreases in posts or abolition of posts. This would include inter-alia increasing or decreasing the steps in the hierarchy of posts. The applicant has not produced any statutory provision/Rules etc. to demonstrate that the Respondent No.1 had no right to undertake an exercise to streamline the staffing pattern of certain branches of the G.S.I. or that the Notification dated 29.12.2011 suffers from illegality. The Notification has been issued after the approval of the Cabinet. Their only averment is that the said notification violates the interim order dated 08.06.2009 which as has been discussed in para 17,18 & 19 above was neither extend to Respondent No.1 and 2 nor to any comprehensive exercise undertaken.

23. Further, the applicants have prayed for direction to continue with the existing administrative decision to promote Drilling Assistants directly to the post of Junior Technical Assistants as has been done since 2002 in line with the decision taken by Respondent No.2. The operative portion of the decision reads as follows:-

“It has been gathered that the promotion of Drilling Assistants to the post of JTA (Drilling) in the scale of Rs.4500-700/- as per revised Recruitment Rules in not being considered by the Regions on the pretext that the revised notified R/Rules inter-alia stipulates the feeder grade for promotion to JTA (Drilling) to be Drilling Assistant in the pay scale of Rs.4500-6000/-

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whereas the present scale of the Drilling Assistant is 3200-4900/-

In this connection it is hereby informed that promotion to the post of JTA (Drilling) has to be considered in terms of notified R/Rules and the promotion to be affected accordingly subject to fulfillment of all other criteria in this regard. The department has already taken up the matter for revision of scale of Drilling Assistants of G.S.I. with the Ministry from the present pay scale of Rs.3200-4900/- to 4000-6000/-. However while giving promotion to such Drilling Assistants a mention to be effect that the promotion is subject to the final decision of the Ministry may be incorporated in this office memorandum.

This issues with the approval of the Director General, Geological Survey of India.”

24. It is clear that such a decision has been made against the Recruitment Rules. Such an action cannot be sought to be either validated or perpetuated by an order direction from this Tribunal as an administrative order cannot override the statutory rules. However, it is not denied by the respondents that from 2002-2011 promotions have been given to certain D.As. (D) directly from the pay scale of Rs.3200-4900 to that of J.T.A.s in the pay scale of Rs.5000-8000 in direct violation of the Revised Recruitment/Rules specially as the matter of their pay fixation is still not final. It is purely by the way of obiter-dicta, we observe that in the interest of avoiding further litigations the respondents would be well advised to take suitable action to regularize and legalize all such orders.

25. We now come to issue of what rights of the applicants have been violated by the said notification and the proposed Recruitment & Procedure. The applicants have filed these OAs against the proposed/notified move as they are of the belief that their right of promotion to Junior Technical Assistant (D) will be severely curtailed.

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No doubt promotion is a normal incidence of service. This provision increases efficiency by reducing stagnation at the same level. Earlier the applicants were moving from the pay scale level of Rs.3200-4900 to Rs.4500-8000. But, by introduction of Recruitment Rules 2001, there was a change in that the upward movement by way of promotion would be Rs.4000-6000 to Rs.4500-8000. Only that here was no such scale available to the Drilling Assistants. One does not know whether such an omission was the result of an inadvertent/typographical error or reflective of a larger proposal to introduce two pay scales in the level of DA (D) that is Rs.3200-4900/- and Rs.4000-6000/-. Be that as it may the applicants initially sought the intervention of this Tribunal by the way of O.A.No.254/2009 in which the relief's claimed were to quash the order dated 16.04.2009 and for a direction to upgrade the pay scale of the DAs from Rs.3200-4900 to Rs.4000-6000. Such a relief by the way of a direction to determine the pay scale of a particular post does not be within the jurisdiction of this Tribunal in terms of the rule laid down by **Hon'ble Supreme Court in the case of The Commissioner, Corporation of Madras vs. Madras Corporation Teachers' Mandram & Ors. (Supra)** and the other of **Hon'ble High Court of Allahabad in the case of State of U.P. and Another Vs. Dr. Prem Behari Lal Saxena (Supra)**.

26. The occasion for such a relief has been subsumed in the subsequent decision to have a wider restructuring of the various posts and cadres belonging to various streams. The applicants have filed the second O.A.No.34/2012 seeing the quashing of Notification dated 29.12.2011 by which their service conditions stand

J. Chandrasekhar

altered by merger of two streams of Drilling & Engineering. In the case of **Govt. of T.N., and Another vs. S. Arumugham and Others (1998) 2 Supreme Court Cases 198** has held:-

“Para-10:

The Tribunal itself came to the conclusion that combining all the departments and having a common seniority list was neither justified nor feasible. But, it has given direction for a different kind of allocation and a different scheme. These directions pertain to policy matters. The Tribunal ought not to have directed the Government to change its policy. The Government has a right to frame a policy to ensure deficiency and proper administration and to provide suitable channels of promotion to officers working in different departments and offices. In Indian Rly. Service of Mechanical Engineers ' Assn v. Indian Rly. Traffic Service Assn. this Court reiterated that the correctness of a policy should not be questioned by the Tribunal. The appellants in their affidavit before the Tribunal have given in detail the history of these provisions and the jurisdiction for these provisions in the interests of efficiency and proper administration. The Tribunal cannot substitute its own views for the views of the Government or direct a new policy based on the Tribunal's view of how the allocation should be made. The three groups which have been formed as far back as in 1977 for the purposes of allocation consist of offices performing different functions and having different prospects and different avenues of promotion. They cannot be equated for the purpose of Article 14 or 16. In the case of Govind Dattatray Kelkar v. Chief Controller of Imports & Exports this Court held that the concept of equality in the matter of promotion can be predicated only when promotes are drawn from the same source. If the preferential treatment of one source in relation to the other is based on the difference between the two sources, the recruitment can be justified as legitimate classification. This reasoning directly applies in the present case. Therefore, the scheme does not violate Articles 14 or 16, nor is it arbitrary. The quota which should be fixed or the allocation which should be made for the purpose of deputing offices to the Tamil Nadu Revenue Subordinate Service is basically in the domain of the executive. Unless there is a clear violation of any provision of the Constitution, the Tribunal ought not to have given directions for formulating a new policy and a different quota.”

J. Chandran

27. In a similar case of ***Union of India Vs. Syed Mohd. Raza Kazmi 1992 (2) SLR 355 (SC)*** the question of the Tribunal passing a direction to an employer regarding rights of a group of employees in an pay anomaly situation was examined and the Hon'ble Supreme Court held as following:-

"Para-12.

Now the short question is whether there is any injustice suffered by the respondents which can be remedied by the Tribunal or the Court. The respondents no doubt have a grievance that, though promoted to a grade higher than the Upper Division Clerks, they are being considered for promotion as Head Clerks only in accordance with their seniority in the cadre of Upper Division Clerks. This creates two types of anomalies. One is that a UDC (who has not qualified as TA) can become HC earlier than one who has, by virtue of his seniority as UDC. The second is that a senior UDC, who qualifies as a TA much latter than a UDC junior to him can become HC earlier, thought, as TA, he would be junior to the latter.

.....It is for the department to decide on policies of promotion which will be consistent with the interests of all employees belonging to various cadres. It is not for the Administrative Tribunal or for the Courts to interfere with this and to dictate the avenues of promotion which the department should provide for its various employees. The courts cannot, we think, direct that TAs should be made a direct feeder post to HCs superior to UDCs....."

28. In view of what has been stated above, we do not find any merit in both these O.As. and the same are liable to be dismissed and accordingly dismissed. Interim orders passed in the O.As. stand vacated. Parties to bear their own costs.

J. Chandra
(Ms. Jayati Chandra)
Member (A)

Amit/-

Navneet Kumar
Member (J)