

RESERVED

Central Administrative Tribunal Lucknow Bench Lucknow

Original Application No. 582/2005

Lucknow, this the 7th day of February, 2012.

HON'BLE JUSTICE SHRI ALOK KUMAR SINGH, MEMBER (J)

HON'BLE SHRI S. P. SINGH, MEMBER (A)

1. A. K. Tripathi, aged about 54 years, S/o K.K. Tripathi, R/o B-174/1 RDSO Colony, Manak Nagar, Lucknow-11.
2. T. N. Chaurasia, aged about 57 years, S/o Late G. P. Chaurasia, R/o 220 Samar Vihar, Alambagh, Lucknow-5.
3. D. K. Agarwal, aged about 55 years, S/o S.S. Agarwal, R/o 192, Samar Vihar Colony, Lucknow-5.
4. R. K. Bagchandani, aged about 51 years, S/o Late J.U. Bagchandani, R/o 1539, Sector-I, LDA colony, Kanpur Road, Lucknow-12
5. R.S. Vishnoi, aged about 48 years, S/o Late Shiva Ram, R/o B-145/1, RDSO Colony Manak Nagar Lucknow-11.
6. Manjeet Singh, aged about 52 years, S/o Late Hardayal Singh, R/o C-6, Sindhu Nagar, Lucknow.
7. G. C. Varma, aged about 45 years, S/o S.D. Varma, R/o B 152/1 RDSO Colony, Manak Nagar, Lucknow-11.
8. T.U. Krishnan, aged about 46 years, S/o C.K. Nair, R/o B 101/2 RDSO Colony, Manak Nagar, Lucknow-11.
9. Ms. Sadhana Srivastava, aged about 43 years, D/o Late R. N. Srivastava, R/o 43, Manas Vihar Near Kurmanchal Nagar, Lucknow-16.
10. Ms. Ajit Kaur, aged about 44 years, D/o Late S. N. Singh, R/o C-51/4 RDSO Colony, Manak Nagar, Lucknow-11.
11. Rashid Akhtar, aged about 41 years, S/o Late, Md. Enayet Ullah, R/o C-128/4 RDSO Colony, Manak Nagar, Lucknow-11.
12. Rajeev Kumar, aged about 40 years, S/o S. P. Sharma, R/o B-150/4 RDSO Colony, Manak Nagar, Lucknow-11
13. B. Shahi, aged about 45 years, S/o Late R. K. Shahi, R/o B 46/1 RDSO Colony, Manak Nagar, Lucknow-11.

14. R.C. Rahate, aged about 41 years, S/o Late C. S. Rahate, R/o B-39/2 RDSO Colony, Manak Nagar, Lucknow-11.

15. Roop Singh, aged about 41 years, S/o Late Vishanya Ram, R/o B-100/4 RDSO Colony, Manak Nagar, Lucknow-11.

16. S.S. Sidar, aged about 36 years, S/o G.S. Sidar, R/o B-95/2 RDSO Colony, Manak Nagar, Lucknow-11.

17. V. Bhattacharya, aged about 34 years, S/o Late N.G. Bhattacharya, R/o C-116/1 RDSO Colony, Manak Nagar, Lucknow-11.

18. R.C. Srivastava, aged about 44 years, S/o Late K.K. Tripathi, R/o B-174/1 RDSO Colony, Manak Nagar, Lucknow-11.

19. K.K. Talreja, aged about 37 years, S/o Late K.K. Telreja, r/o B-171/1 RDSO Colony, Manak Nagar, Lucknow-11.

20. Sudhir Kumar Srivastava, aged about 37 years, s/o Late V. K. Srivastava, R/o 3/442, Vishal Khand-3, Gomti Nagar, Lucknow-10.

21. S.F. H. Rizwi, aged ababout 37 years, S/o S. K.H. Rizwi, R/o Shansha Building, Nakhas, Lucknow.

22. P.K. Bala, aged about 38 years, S/o Late H.N. Bala, R/o B 168/4 RDSO Coplony, Manak Nagar, Lucknow-11.

23. D.K. Gaur, aged about 35 years, S/o P.C. Gaur, R/o B-81/4 RDSO Colony, Manak Nagar Lucknow-11.

24. R. K. Vijay, aged about 36 years, S/o J.P. Vijavergiya, R/o B-68/4 RDSO Colony, Manak Nagar, Lucknow-11.

25. Ms. Rakhi Rani, aged about 30 years, D/o S. Thakur, R/o B-160/2 RDSO Colony, Manak Nagar, Lucknow-11.

26. P. K. Barnwal, aged about 33 years, S/o Late Triveni Parsed Barnwal, R/o C-24/2 RDSO Colony, Manak Nagar, Lucknow-11.

27. S. K. Srivastava, aged about 35 years, S/o K. P. Srivastava, R/o B-134/4 RDSO Colony, Manak Nagar, Lucknow-11.

28. A.S.G. Rao, aged about 35 years, S/o Late G.R. Allewar, R/o B-146/1 RDSO Colony, Manak Nagar, Lucknow-11.

29. Bharat Prasad, aged about 36 years, S/o Vishwanath Tiwari, R/o B-67/1 RDSO Colony, Manak Nagar, Lucknow-11.

30. P.K. Tiwari, aged about 35 years, S/o Vishwananth Tiwari, R/o B-139/1 RDSO Colony, Manak Nagar, Lucknow-11.

31. Amrish Kumar, aged about 30 years, S/o Deep Chandr, R/o -183/4 RDSO Colony, Manak Nagar, Lucknow-11.

32. Rakesh Kumar, aged about 32 years, S/o Shri C. L. Prasad, R/o B- 160/4 RDSO Colony, Manak Nagar, Lucknow-11.

33. Manoj Kumar Gupta, aged about 28 years, S/o Late Kedar Nath Gupta, R/o B-45/4 RDSO Colony, Manak Nagar, Lucknow-11.

34. Sanjau Ranjan, aged about 30 years, S/o Dwarika Nath, R/o B-159/4 RDSO Colony, Manak Nagar, Lucknow-11.

35. Shailesh Oraon, aged about 33 years, S/o Ramdeni Oraon, R/oB-138/2 RDSO Colony, Manak Nagar, Lucknow-11.

Applicants

By Advocate Sri R. C. Saxena.

Versus

- 1.** Union of India, Ministry of Railways, Railway Board, Rail Bhawan, New Delhi through its Secretary.
- 2.** Railway Board, Rail Bhawan, New Delhi through its Secretary.
- 3.** Director General, Research Designs & Standard Organisation, Manak Nagar, Lucknow.

Respondents

By Advocate Sri S. Verma.

ORDER

By Hon'ble Sri S. P. Singh, Member (A)

The applicants are working in Group 'C' category of M&C Directorate of Research Designs Standard Organisation (RDSO). They have instituted this O.A. seeking quashing of the order dated 25.7.2005 contained in Annexure No.1 and also seeking a direction to the respondents to allow the benefit of recommended pay scales by the Fifth Pay Commission and accepted by the Government of India (Cabinet) i.e. Rs. 6500-10500/- in case of JRAs and Rs. 7450-11500/- in case of SRAs w.e.f. 1.1.1996 along with arrears and interest as per the recommendations of the Fifth Pay Commission and accepted the Government of India .

- 2.** The applicants have given their respective service particulars in a chart annexed to this O.A. as Annexure-2. They belong to Group C

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category of scientific staff of Metallurgy and Chemical (M&C) Directorate of Research Designs and Standards Organization (RDSO). The applicants have filed this O.A. claiming the scale of pay Rs.6500-10500/- as JRAs and Rs. 7450-11500/- as SRAs. based on recommendations of Fifth Pay Commission, (Annexure-3) without any modification, alteration or exception to be effective from 1.1.1996. Further they have impugned order dated 25.7.2005 issued by respondent No. 2(Annexure-1) altering effective date of implementation on the basis of an unconnected, arbitrary and ill-conceived notion of change of status of RDSO as Zonal Railway which is totally irrelevant and no way connected in the matter of allowing pay scales as recommended by the Fifth Pay Commission. The applicants have annexed the relevant recommendations of the Fifth Pay Commission for Group 'C' and Group 'D' post in RDSO including post existing in Group 'C' Scientific/Technical staff of (M&C) Directorate of RDSO(Annexure-3). They have also attached (as Annexure-4) notification.No. 50(1)/IC/97 of Ministry of Finance, Government of India Memo dated 1.8.97 called as Central Civil Services (Revised Pay) Rules 1997. Annexure 5 is notification issued by Ministry of Railways, Government of India called Railway Services (Revised Pay) Rules 1997. These rules have been issued by the President under the powers conferred by proviso Article 309 of the Constitution. Notification by Ministry of Railways dated 16.10.1997 (Annexure 6) notifying schedule of revised scales of pay under the Railway Services (Revised Pay) Rules 1997 was also annexed.

It has been further pleaded on behalf of the applicants that the Railway Board issued the order dated 23.7.2001(Annexure 12 to the O.A.) wherein Ministry of Railways advised DG/RDSO to implement the recommendations of Fifth Pay Commission by substituting the revised grades concerning CRAs, SRAs and JRAs of M&C Directorate in the schedule of pay scales notified earlier by notification dated

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16.10.1997 (Annexure-6). As can be seen therein category of CRAs was merged here with the category of Assistant Research Officer (ARO) in the scale of Rs. 7500-12000/-. The copy of order dated 23.7.2001 is available at Annexure-12. By this notification dated 23.7.2001 (Annexure-12), revised scales were allotted to Metallurgy and Chemical Directorate for Junior Research Assistant/Senior Research Assistant/Chief Research Assistant by inserting item No. at Serial No.23 in Annexure 'B' of the schedule appended to notification dated 16.10.1997 (Annexure 6 of O.A.). It is further pleaded that the scales which have been notified by Railways from time to time as mentioned above, beginning with the Railway Board's order dated 16.10.1997 i.e. Annexure 6 of the O.A. as amended and 27.3.2001 i.e. Annexure-12 of the OA were implemented w.e.f 01.01.1996 and consequently arrears of salary paid to them w.e.f. 1.1.1996 in the revised/replacement scales applicable to the post. The applicants of M&C Directorate were aggrieved and sent their representations from time to time. These representations in this regard are enclosed as Annexure 7 and 8 respectively. Later applicants were further aggrieved by the Railway Board's order dated 9.3.2004 (Annexure 13 of the O.A) order dated 2.4.2004 i.e. RBE No. 74/2004 wherein, Railway Board's order dated 9.3.2004 was clarified. Later representations are at Annexure-9, Annexure 10 and Annexure-11 in the O.A. It is contended that these orders issued by Railway Board are highly arbitrary and against the recommendations of Fifth Pay Commission and also against the scales notified by the Government of India. It is further contended that Railway Board is not empowered to reverse the decision of Government of India as mentioned above. Applicants are therefore before this Tribunal seeking quashing of order dated 25.7.2005 (Annexure-1) and also seeking direction to the respondents to allow the benefit of recommended pay scales by Fifth Pay Commission w.e.f. the relevant date along with interest @ 12% per annum.

3. From the other side, it has been pleaded that the recommendations of Fifth Central Pay Commission are only suggestions/recommendations and the Ministry of Railways/Government of India reserves the right to further examine equations of job evaluation of the post or equation of pay determination or determination of pay scales in the light of various relevant factors/parameters and implement such recommendations with necessary amendments/ modifications in the recommended pay scales or the replacement scales, or to prescribe another suitable pay scale to any of employees or post and further to decide the date of implementation of such recommendations. In this connection, it was further pleaded by respondents that Ministry of Finance Memo dated 1.8.1997 (Annexure-4) of the OA vide which the recommendations of the Fifth CPC had been accepted by Government of India with or without modifications. In Rule 1 and 2 of the Memorandum explanatory available at page 28 of the O.A. it has been categorically observed that:

“Rule 1-This rule is self-explanatory.

Rule2-...the rules are applicable to all persons under the rule making control of the President serving in Departments paid from Civil Estimates. They do not apply to the employees under the Ministry of Railways and Civilian Personnel paid from Defence Services Estimates, for whom separate rules will be issued by the ministries concerned.....”

The Railway Board vide their letter No. PCV/97/I/11/2 dated 21.4.1998 allotted the revised pay scale of 5000-8000 to Junior Research Assistant (JRA) of the Metallurgy and Chemical Directorate of RDSO working in existing grade of Rs. 1400-2300. A copy of the Railway Board order is enclosed as Annexure CR-1. This revised scale was appropriately inserted in schedule notified earlier on 16.10.1997 and 19.11.1997 at part 'B' of the said schedule under Railway Services (Revised Pay) Rules 1997.

Since the Ministry of Railways did not accept the recommendations of the Fifth Pay commission regarding status of RDSO and had decided

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to change the status of RDSO from a attached office of the Railway Board to that of a Zonal Railway, vide its notification No. 2002/E&R/3400/16 dated 11.10.2002 published in Gazette of India (Extraordinary) on 16.10.2002 (copy at Annexure- CR-3) declared the Research Designs and Standards Organisation (RDSO), Lucknow an "Attached Office" of Ministry of Railways, to be a Zonal Railway with its headquarters at Lucknow w.e.f. 01.01.2003. It was also notified that the Research Designs & Standards Organisation will continue to discharge its duties of Technical Advisor to the Ministry of Railways. It was done on recommendations made by a expert committee so constituted to effect change of RDSO to Zonal Railway/Production Unit structure for smooth restructuring of RDSO, non technical and technical sides based on the necessary data/ information made available to the committee including memorandum of demand submitted by the RDSO Officers Association/Ministerial staff regarding redesignation and revised pay scales for various posts under RDSO. The said committee also considered inter alia the recommendations of Fifth Central Pay Commission regarding revision of scales of JRA/SRA and CRA categories of RDSO. It was in this context that the revised scales to JRA(M&C)/SRA(M&C) were given the enhanced pay scales as per the notification dated 9.3.2004 No. RBE No. 55/2000 which is enclosed as Annexure 13 to the O.A.

In view of what has been stated in foregoing paras, a tabular presentation of existing and revised scales from time to time is given below for ready reference:-

S N	Rly.Bd.'s letter	Category for which revised pay scale given	Pay scales as per IV CPC	Revised Pay scales as per V CPC
1	PCV/97/1/RSRP/1 dated 16.10.1997 (Ann.6 of OA) read with notification of even No. dated 8.10.1998 (Ann. 5 of O.A.)	<u>JRA(M&C)</u> <u>SRA(M&C)</u>	<u>1400-2300</u> <u>1640-2900</u>	<u>4500-7000</u> <u>5500-9000</u>
2	PC-V/97/1/RSRP/1 dt 21.4	<u>JRA(M&C)</u>	1400-2300	5000-8000

	1998 (Ann.CR-1 of Counter reply.).			
3	PC-V/97/1/RSRP/1 dt 23.7.2001 (Ann-12 Page-82 of OA).	<u>JRA(M&C)</u> <u>SRA(M&C)</u> <u>CRA(M&C)</u>	<u>1400-2300</u> <u>1640-2900</u> <u>2000-3200</u>	<u>5500-9000</u> <u>6500-10500</u> <u>7500-12000</u> after merger with ARO Gr. 'B'Gazetted.
4	PC-V/97/1/11/2 dt 09.03.2004 (Ann.13,Page-84 of OA) read with letter dated 02.04.2004.	<u>JRA(M&C)</u> <u>SRA(M&C)</u>	<u>1400-2300</u> <u>1640-2900</u>	<u>6500-10500</u> <u>7450-11500</u>
5	PC-V/97/1/11/2 dt.21.12.2005(Ann.CR-2).	The date of effect of the aforesaid letter dated 09.03.2004 was antedated to 1.1.2003 i.e. the date from which RDSO was declared Zonal Railway.		

It has been also pleaded on behalf of the respondents that CRA category was merged in ARO scale Rs. 7500-12000 Group 'B' Gazetted in terms of the Railway Board's letter No. PC-V/97/1/11/2 dated 23.7.2001 read with Railway Board's letter dated 8.1.2002 and then CRAs were given proforma fixation w.e.f. 1.1.96 in the pay scale of Rs. 7500-12000. However, Group 'B' status and actual pay in the higher scale of ARO was given from the date of actual placement after the selection i.e. 20.2.2002. Several persons filed **O.A. 239/2003- (I.S. Gupta and Others Vs Union of India and others)** before Lucknow Bench of this Tribunal claiming that the post of CRA be treated as merged with the Group 'B' post of ARO w.e.f. 1.1.96. In the order dated 8.9.2004 passed in the aforesaid OA, it was observed inter alia therein that the post of CRA stood merged with Group 'B' post of ARO w.e.f. 23.7.2001 i.e., from the date of issuance of the Railway Board's letter No. PV-V/97/I/II/2 dated 23.07.2001 and the applicants therein would be entitled to any arrears of pay and allowances w.e.f. 23.7.2001 subject to other conditions mentioned in the order. It was also contended by the respondents that according to the above judgment and order of this Tribunal dated 8.9.2004, Fifth Pay Commission recommendations shall be effective from the date on which they are accepted/notified by the Government of India/ Ministry of Railways and not necessarily, w.e.f.

01.01.1996 as recommended by Fifth Central Pay Commission. In this connection, Hon'ble Supreme Court also held in its judgment dated 23.11.2006 passed in Civil Appeal No. 3174/2006- **K.S. Krishnaswamy vs. Union of India** which is available at Annexure SCR-1 that "it is well settled principle of law that the recommendations of Pay Commission are subject to the acceptance/rejection with modifications of appropriate Government. It is also well settled principle of law that a policy decision of Government can be reviewed/alterd /modified by Executive Instructions. It is in these circumstances that policy decision can not be challenged on the ground of estoppel."

4. Supplementary counter and supplementary rejoinder reply were also filed later in this O.A.

5. We have heard the counsel for the parties and perused the written submissions given by them and also the case laws relied upon by them in this regard to assess the rival contentions.

6. The various notifications issued by Ministry of Railways notifying schedule of revised pay/replacement scale are all issued under Railway Services (Revised Pay) Rules 1997. Applicants had clearly understood the relevant rules and thereafter had drawn revised pay/scales as included in the schedule contained in the said Railway Services (Revised Pay) Rules, 1997. In para 1 of O.A., applicants had fairly conceded that they had been paid revised pay/scale including arrears as per notifications dated 16.10.1997, 23.07.2001 and 09.03.2004. In entire O.A., nowhere they had pointed out any violation of provisions/rules framed under proviso to Article 309 of Constitution of India called Railway Services (Revised Pay) Rules, 1997 which came into being only after implementation of recommendation of Fifth Pay Commission as would be obvious from what is stated below:-

(i) After giving careful consideration to the recommendations of Fifth Pay Commission in respect of civilian employees of the Central

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Government in Groups 'A', 'B', 'C' 'D' as also those in All India Services, the Ministry of Finance accordingly issued notification No. 50(1)/IC/97 dated 01.08.1997 in respect of civilian employees of Central Government in Groups 'A', 'B', 'C' and 'D' including All India Services etc. These rules are called Central Civil Services (Revised Pay) Rules, 1997. These rules were notified by Central Government in exercise of powers conferred the proviso to Article-309 of Constitution of India and Clause V of Article-148 of the Constitution of India. In Rule 2, of the Memorandum explanatory to the Central Services (Revised Pay) Rules 1997(Page 38 of OA), it was explained that these rules lay down the categories of employees to whom the rules are applicable. The categories of employees excluded under Rule-2 as mentioned above are also clearly indicated. These rules are applicable to all persons under the rule making control of President of India serving in departments **paid from civil estimates**. They do not apply to the employees under the **Ministry of Railways** and Civilian personnel paid from **defence service estimates** for whom separate rules were to be issued by the Ministries concerned. These rules also do not apply to Extra Departmental Agents in the Department of Posts and Department of Telecommunications. These rules are annexed as Annexure - 4 to the O.A.

(ii) Accordingly, in exercise of powers conferred by the proviso to Article 309 of the Constitution of India, the Ministry of Railways (Railway Board), Government of India issued notification RBE No.133/97 dated 8.10.1997 after approval by the President of India published as GSR 584(E) in Part 2, Section 3 (1) of Gazette of India (Extraordinary) which is annexed as Annexure No. 5 to the O.A. These Rules are called Railway Services (Revised Pay) Rules 1997 and are effective from 1.1.1996. These rules are applicable to categories of Railway servants who are specified in the list notified vide the said notification dated 8.10.1997. The drawal of pay by the Railway employees in the revised scale of Fifth Pay

Commission was subject to the procedure laid down under Rule-5 of the said rules notified by Railways. The employee was given an option to elect to continue to draw pay in the existing scale until the date on which he earns next or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale. Under First Schedule, notified with reference to Rule 3 and 4 of the Railway Services (Revised Pay) Rules 1997, revised pay scales for the post carrying present scales in Group 'D' 'C' 'B' 'A' were notified except where posts for which different revised scales are to be notified separately, and that included posts for employees working in the following offices of-

- (1) Railway Board Secretariat,
- (2) **Research, Designs & Standards Organisation,**
- (3) Railway Staff College, Vadodara,
- (4) Railway Rates Tribunal, Chennai
- (5) Railway Claims Tribunal, New Delhi,
- (6) Rail Movements (Coal),
- (7) All Railway Recruitment Boards,
- (8) Indian Railway Institute of Signal Engineering & Telecommunication, Secunderabad,
- (9) Indian Railway Institute of Civil Engineering, Pune,
- (10) Indian Railway Institute of Electrical Engineering, Nasik,
- (11) Indian Railway Institute of Mechanical and Electrical Engineering, Jamalpur,
- (12) Centre of Advanced Maintenance Technology, Gwalior.

In Memorandum explanatory to Railway Services (Revised Pay) Rules 1997 so notified as above in respect of all categories of Railway employees irrespective of their designations were permitted to draw replacement scales notified in First schedule of aforesaid notification dated 8.10.1997 according to the option/deemed option exercised by the Railway employee on the basis of the existing scales of pay except those who are covered by S. No. 13(S-14) which is applicable only to Group 'B'

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officers of Railways in present scale Rs. 2375-75-3050-100-3750. These rules are annexed as Annexure 5 to the O.A. However, posts in RDSO and other entities mentioned above were exempted as separate notifications were issued by the Ministry of Railways covering posts for different revised scales were accepted and notified.

(iii) Further Railway Services (Revised Pay) Rules 1997 were accordingly notified through RBE 138197 on 16.10.1997 giving schedules of revised scales of pay in two parts viz. Annexures 'A' and 'B' showing the revised scales of pay applicable to the various categories of Railway employees in Group 'D' 'C' 'B' and 'A' were notified with the rider that notification for Group "A" and "B" where higher replacement scales are to be given will be issued separately. The schedule had the sanction of the President as stated in Revised Scales of pay notified as above Annexure-6 to the O.A.

Sl.No.	Post	Present Scales(Rs.)	Revised scale
1	2	3	4

RDSO

14. **Research Assistant(Other than Metallurgy and Chemical etc.)**

- (i) Junior Research Assistant (other than M&C 1400-40-1800-50-2300 5000-150-8000 C Dte.)

15. **Design Staff**

- (i) Junior Design Assistant 1400-40-1800-50-2300 5000-150-8000
(ii) Senior Design Assistant 1600-50-2300-60-2660 5500-175- 9000

Note1:-Recommendations of the Fifth Pay Commission on pay scales for other specified categories are under examination. Pending decision, the normal replacement scales as in the First Schedule would apply.

As stated above, in terms of Rule 5 of the Railway Services (Revised Pay) Rules, 1997, Railway servants are required to exercise their option in the format appended as Second Schedule to the above Rules. The sequence of action to be taken after receipt of option is also indicated in Railway Services (Revised Pay) Rules 1997.

7. Meanwhile, not agreeing with the recommendations of Fifth Pay Commission of retaining the nature of RDSO as a Research Organisation, Ministry of Railways had constituted a committee to effect

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the changeover of RDSO to Zonal Railways/Production Units structure in a smooth manner and to work out modalities of restructuring of RDSO. Accordingly Government of India vide notification No. 2002/E&R/3400/16 dated 11.10.2002 (CR-3) published in the Gazette of India(Extraordinary) on 16.10.2002 declared RDSO Lucknow an "Attached office" of Ministry of Railways to be a Zonal Railway with its HQs at Lucknow w.e.f. 01.01.2003. Railway Board accordingly accepted revised grades of Rs. 6500-10500 for JRAs and Rs. 7450-11500 for SRAs vide Railway Board order dated 9.3.2004 i.e. Annexure 13 read with letter dated 2.4.2004 and the Railway Board's letter dated 21.12.2005 i.e. (Annexure CR-2) annexed with counter affidavit based on recommendations of the said expert committee.

8. The learned counsel for the applicant relied on the following case laws:-

- (i) **Central Government SAG (S-29) Pensioners Association Vs. Union of India-** O.A. No. 655/2010 decided by Principal Bench of CAT on 1.11.2011. This is a case in which the applicants were pre-2006 retirees who were claiming pension at par with post 2006 retirees based on the recommendations of VI Central Pay Commission, which became effective from 1.1.2006. This pertains to the pensioners who were covered under recommendations made by VI CPC. There is no mention whether any expert committee studied the problem relating to Pensioners Association before changing the modified parity/formula adopted by the Government. Here in O.A. 655/2010 it appears that the principle of modified parity as recommended by Fifth Pay Commission and accepted by VI Pay Commission and also accepted by the Central Government was modified in the clarification. The respondents in this case have interpreted minimum of pay in the pay band. Facts of the cited case are

distinguishable from facts of this O.A. as can be seen from matter stated in foregoing paras. There is no clarification regarding pay band involved in present O.A. The employees of RDSO were also drawing salary in the replacement scales notified in this regard.

- (ii) **S.V.P. Halakatti And J. Vara Prasada Rao Vs. Government of India and Others-** O.A. No. 80 of 1987, decided on 1st January, 1989: In the cited case, the applicants have been given lower pay scale than what has been accepted by the Government. The Central Administrative Tribunal, Hyderabad Bench found that there is a ground of equal pay for equal work and held that grant of lower pay scale was invalid. In the present O.A., one can see from the facts and circumstances mentioned above that no case has been made out regarding equal pay for equal work nor employees are being given any lower pay scale than what has been accepted by Government of India Ministry of Railways. The employees in present O.A. are already drawing their salary in notified revised scales.
- (iii) **Gopal Chandra De and Others Vs. Union of India and Others** O.A. 601 of 1987, decided on October 7, 1988: In the cited case, applicants were working as Zoological Assistants, Museum Assistants and Sr. Gallery Assistants under the Zoological Survey of India. The Government did not accept the recommendation of the expert committee set up by the department and the case was referred to the 4th Central pay Commission. The orders of the Government and the reference to the IV Pay Commission were challenged in cited O.A. The facts are clearly distinguishable from the facts of the present case of RDSO employees.
- (iv) **C.V. Nair Vs. Union of India and Others-**O.A. No. K 553 of 1988, decided on 12.12.1990. In the cited case, the Tribunal stated the established principle of law that a Court or a Tribunal should not normally interfere with implementation of the recommendations

of the Pay Commissions which should be better left with administrative wisdom and executive policy but where there is an obvious discrimination in acceptance of the recommendations of the Pay Commissions or expert bodies, the Tribunal has to step in, to remove discrimination. The facts of the case are regarding fixation of seniority to the promotee officers according to the weightage of service rendered by the promotee officers in the feeder grade. It was held by the Tribunal to be permissible. However, Government employee can withdraw the benefit when the promotion quota is increased. The facts stated in the foregoing paras in the present O.A. are clearly distinguishable from facts of cited mentioned above.

(v) **State of Mizoram and another Vs. Mizoram Engineering**

Service Association and Another- 2004 Supreme Court Cases

(L&S) 857: In the cited case Mizoram Engineering Service was not an organised service and there were no recruitment rules for the post of engineers belonging to engineering service in the state. Therefore, the anomalies arising out of fixation of pay in individual cases, resulted into to the discrimination some cases because of the fact that the incumbents /holders of the posts were drawing special pay while some were not drawing special pay. It was held by the Apex Court that there was no justification for finding the higher scale to a particular individual and deny the same to the others. The facts of cited case are clearly distinguishable from the facts mentioned in the present O.A.

(vi) **P.P. Mehdiratta and Others Vs. Union of India-O.A.** 243 of 1986

decided on 13.3.1987. All the four applicants in the cited case were working as Artisans on the shop-floor of the Ghaziabad Workshop of the Signals and Telecommunications Department (S&T) of the Northern Railway till they were shifted to the Production Control Organization (PCO) within the same workshop.



There was earlier a case made out by these applicants regarding their existing scales of pay prior to Third Pay Commission that they should have been placed in the higher grade and accordingly, revised pay scale were accordingly given to them. The facts are clearly distinguishable from the present case.

- (vii) **M. L. Dhusia and Others Vs. Union of India and Another-O.A.** 490 of 1990, decided on 13.3.1992. The case in the cited O.A. is regarding merger of the post of Assistant Archivists, Grade II with the post of Assistant Archivists Grade I and grant the revised pay scale of Rs. 1640-2900 w.e.f. the date of implementation of recommendations of the IV Pay Commission. The facts are clearly distinguishable from the present case.

9. Learned counsel for the respondents submitted that the applicants have already drawn their pay in the replacement scales along with arrears in terms of Railway Board circular dated 21.4.1999, 23.7.2001 and 21.12.2005.

10. He has relied upon the judgment of the Apex Court in case of **K.S. Krishnaswamy vs. Union of India** (Civil Appeal No. 3174 of 2006) decided on 23.11.2006. It was held that it is well settled principle of law that recommendations of the Pay Commission are subject to acceptance/rejection with modifications of the appropriate Government. It is also well settled principle of law that a policy decision of the Government can be reviewed/altered/modified by Executive Instructions. It is in these circumstances, that policy decision can not be challenged on the ground of estoppel.

11. In **State of West Bengal and Ors. Vs. West Bengal Minimum Wages Inspectors Association and Others (2010) 5 SCC 225**, the Apex Court has given very clear ruling on 'equal pay for equal work'. Determination of pay parity is an executive function to be carried out by expert bodies and burden to prove disparity in pay is on employee

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claiming parity. Court would interfere only where Government decision is patently irrational, unjust or prejudicial. Relevant paras are extracted below:-

"18. The principles relating to granting higher scale of pay on the basis of equal pay for equal work are well settled. The evaluation of duties and responsibilities of different posts and determination of the pay scales applicable to such posts and determination of parity in duties and responsibilities are complex executive functions, to be carried out by expert bodies. Granting parity in pay scale depends upon comparative job evaluation and equation of posts.

19. The principle "equal pay for equal work" is not a fundamental right but a constitutional goal. It is dependent on various factors such as educational qualifications, nature of the jobs, duties to be performed, responsibilities to be discharged, experience, method of recruitment, etc. Comparison merely based on designation of posts is misconceived. Courts should approach such matters with restraint and interfere only if they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to any particular section of employees.

20. The Burden to prove disparity is on the employees claiming parity-vide State of U.P. v. Ministerial Karamchari Sangh; Associate Banks Officers' Assn. vs. SBI; State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.; State of Haryana v. Tilak Raj; SC. Chandra v. State of Jharkhand and U.P. SEB v. Aziz Ahmad.

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It was further held as under:-

"The principal "equal pay for equal work" is not a fundamental right but a constitutional goal. It is dependent on various factors such as educational qualifications, nature of the jobs, duties to be performed, responsibilities to be discharged, experience, method of recruitment, etc. comparison merely based on designation of posts is misconceived. The principles relation to granting higher scale of pay on the basis of equal pay for equal work are well settled. The evaluation of duties and responsibilities of different posts and determination of the pay scales applicable to such posts and determination of parity in duties and responsibilities are complex executive functions, to be carried out by expert bodies. Granting parity in pay scale depends upon comparative job evaluation and equation of posts. The burden to prove disparity is on the employees claiming parity. Courts should approach such matters with restraint and interfere only if they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to any particular section of employees."

12. The Constitution Bench of the Apex Court has already settled the nature and the scope of the Railway Board's power to make rules in the case of **V. S. Vadera Vs. Union of India**. This has also been relied upon in the case of **Union of India Vs. Pushpa Rani (2008) 2 SCC**

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(L&S) dealing with restructuring undertaken by Railways and applicability of reservation therein.

“20. In view of the pronouncement of the Constitution Bench, there cannot be any doubt that the Railway Board and General Managers are empowered to frame rules for regulating the recruitment and conditions of service of the employees.”

13. The Apex Court ruled in the case of State of **M.P. Vs. Ramesh Chandra Bajpai (2009)13 SCC 635** that similarity in designation or nature or quantum of work is not determinative of equality in the matter of pay scales. Discrimination on account of equal pay for equal work is a positive concept of equality. It cannot be invoked for perpetuating illegality.

“15. In our view, the approach adopted by the Learned Single Judge and the Division Bench is clearly erroneous. It is well settled that the doctrine of equal pay for equal work can be invoked only when the employees are similarly situated. Similarly in the designation for nature or quantum of work is not determinative of equality in the matter of pay scales. The Court has to consider the factors like the source and mode of recruitment/appointment, qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesale identity between the holders of two posts.”

14. From discussions in the foregoing paras, it is clear that O.A. is misconceived right from the beginning. One can easily see that Government of India/Ministry of Railways have introduced revised/replacement scales as given in Annexure- 4, Annexure-5 and Annexure-6 under proviso to Article 309 of the Constitution of India by framing proper rules namely:

- (i) Central Services (Revised Pay) Rules 1997 to be applied to Civilian Central Government employees paid from civil estimates.
- (ii) Railway Services (Revised Pay) Rules 1997 applicable to all categories of Railway servants except for the posts where employees are working in organisation like RDSO etc. where different revised scales were notified separately vide Railway Board's letters mentioned above. In fact, employees working in Railways including the applicants have

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already been paid revised/replacement scales as notified including the arrears in accordance with the provision of Railway Service (Revised pay Rules) 1997. No specific violation of any provisions of Railway Services (Revised Pay) Rules 1997 have been pointed out by the applicants. On the other hand, they have drawn the revised pay scales under these rules from the dates notified by the Ministry of Railways including the arrears in this regard. Therefore, as said before the applicants have already been drawn various replacement scales sanctioned to them from time to time along with the arrears from due dates either under the option category or under the deemed option category under Rule 5 about Railway Services (Revised Pay Rules) 1997. It is also true that further enhancement of pay scales was introduced for the employees of RDSO on recommendations of an expert committee so constituted for smooth transition of RDSO from the status of an attached office of the Railway Board to a Zonal Railway of RDSO being declared so by a separate notification. As stated above, Railway Board is fully competent to do so and there is no illegality or infirmity involved.

15. The impugned order dated 12.9.2005 read with the order of the Railway Board dated 25.7.2005 have therefore been implemented after proper study by the expert committee and this Tribunal does not find any illegality or infirmity considering the facts and circumstances mentioned in foregoing paras.

16. In view of the legal position and discussions above, this Tribunal does not find any scope to interfere with the orders passed by Railway Board in this regard and we do not find any illegality or infirmity in issuing of the order dated 12.9.2005 read with the order dated 25.7.2005. It is further noticed that employees including applicants had already drawn the enhanced scale in accordance with Railway Board's notifications dated 12.09.2005 read with notification dated

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25.7.2005. Therefore, O.A. is without merit and is liable to be dismissed.

17. The O.A. is accordingly dismissed. No order as to costs.

S.P. Singh
7.2.12
(S. P. Singh)

Member (A)

Alok Kumar Singh
7.2.12
(Justice Alok Kumar Singh)

Member (J)

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