IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

1. ORIGINAL APPLICATION NO. 714/1996,
2. ORIGINAL APPLICATION NO. 740/1996, and
3. ORIGINAL APPLICATION NO. 854/96.

30, this the Friday day of May, 1997.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri M.R.Kolhatkar, Member(A).

1. Original Application No.714/96.

1. Subhash V.Malgi
2. S.D.Joshi
3. Prakash Pandit
4. R.V.Iyer
5. P.M.Mathure
6. S.R.Phadke
7. R.F.Chauhan
8. A.K.Bajpayee
9. A.V.Lagad
10. V.M.Shinde
11. N.B.Bhangre
12. M.Ramamoorthi
13. B.G.Lalla
14. G.S.Tare
15. N.B.Damodar
16. M.R.Rautrao
17. P.V.Phadtare
18. S.M.Tillu
19. K.J.George
20. J.B.Sen
21. S.M.Phanse
22. G.G.Nair
23. V.L.Lohakare
24. G.V.Gadkari
25. G.Ramkrishnan
26. N.G.Chandratre
27. A.L.Kamble
28. P.B.Marne
29. Siddique
30. V.V.Nirkhe
31. V.K.Gaikwad
32. M.Y.Ahire
33. Gujare
34. C.Worlikar
35. Konte
36. M.D.Sorte

..... Applicants.

37. L.Saibaba

38. Thomas,

(All the applicants are working as Accounts Stock Verifiers in the Mumbai Division, Central Railway).

C/o.Mr.Ramesh Ramamurthy,
Advocate High Court,
Bhagirath, 2nd Floor,
J.P.Nagar, Pahadi School
Road No.2, Goregaon (East),
Mumbai - 400 063. ... Applicants.

(By Advocate Shri M.S.Ramamurthy)

V/s.

1. Union of India through
the General Manager
Central Railway, CST,
Mumbai - 400 001.

2. The Secretary,
Ministry of Railways,
Railway Board, Rail Bhawan,
New Delhi - 110 001.

3. Financial Advisor & Chief
Accounts Officer,
Central Railway,
CST, Mumbai - 400 001.

4. The Executive Director,
Pay Commission, Railway
Board, Rail Bhawan,
New Delhi - 110 001. ... Respondents.

(By Advocate Shri V.S.Masurkar)

2. Original Application No.740/96.

1. Z.L.Patel
2. A.J.Wasekar
3. G.L.Meena
4. A.K.Sidhwa
5. D.M.Surti
6. M.S.Lalwani
7. B.P.Gupta
8. D.S.Soni
9. S.S.Iyer
10. S.S.Deshmukh
11. Dinesh Sheth
12. Rajesh Sharma
13. S.B.Lad
14. A.G.Jadhav
15. V.K.Lodha
16. S.T.Borse
17. A.S.Abhyankar ... Applicants.

...3.

18. P.M.Katdare. ... Applicants.

(Applicants are working with Western Railway,Mumbai as Stock Verifiers)

(By Advocate Shri G.S.Walia)

V/s.

1. Union of India through The General Manager, Western Railway, Churchgate, Mumbai - 400 020.

2. FA & CAO Western Railway, Headquarters Office, Churchgate, Mumbai - 400 020.

3. Secretary, Railway Board, Rail Bhawan, New Delhi - 110 001. .. Respondents.

(By Advocate Shri V.S.Masurkar)

3. Original Application No.354/96.

1. Devidas, N.T.

2. Hanumant Singh Chauhan

3. Punit Krishna Sharma,

(Applicants are working with Western Railway as Stock Verifiers all are working at Ajmer under the Respondents)

C/o. G.S.Walia, Advocate, High Court, 16, Maharashtra Bhavan, Bora Masjid Street, Fort, Mumbai - 400 001. ... Applicants.

V/s.

1. Union of India through the General Manager, Western Railway, Churchgate,Mumbai - 400 020.

2. FA & CAO, Western Railway, Headquarters Office,Churchgate, Mumbai - 400 020.

3. Secretary, Railway Board, Rail Bhavan, New Delhi - 110 001.

4. Dy. FA & CAO (S&C) Western Railway, Ajmer. ... Respondents.

(By Advocate Shri V.S.Masurkar).

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O R D E R

(Per Shri B.S.Hegde, Member(J))

The applicants have challenged the impugned order passed by the Respondents on 8.5.1996 which was addressed to all the General Managers of the Railways stating that the three additional increments granted to Accounts Stock Verifiers in the grade of Rs.1400-2600 for passing Appendix IV-A Exam will not be treated as part of the basic pay and will not be reckoned for calculating of Dearness Allowance etc. The applicants have also challenged the order dt. 25.7.1995 by which the respondents are not treating the advance increments as part of basic pay which was granted to them earlier in view of their order dt. 3.3.1989 and had treated it as additional increments in view of the decision taken in the PNM Meeting. Therefore, the learned counsel for the applicants Shri M.S.Ramamurthy vehemently urged that the respondents by an earlier order had granted them 'advance increments' and the same was treated as part of basic pay and they have been paid D.A. prior to 25.7.1995 and has now been withdrawn and they have been paid less emoluments by way of Dearness Allowance which they were drawing earlier, which is not sustainable in law.

2. The main contention of the learned counsel for the applicants Shri M.S.Ramamurthy is that the impugned order passed by the Respondents on 8.5.1996 is illegal, arbitrary, discriminatory and passed without any authority of law and that the impugned order which has the effect of reducing the pay of the applicants and entails severe civil consequences and the same has been passed without any notice to the affected persons/employees, is arbitrary and illegal. That once if the pay of a person

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is fixed after taking into account the said additional increments as part of basic pay, the Respondents have no authority whatsoever to again refix the pay of the applicants without notice. It is submitted that under F.R. 22-C, the Respondents have no power to review the fixation of pay once done in accordance with the Rules. The contention of the applicants is that prior to 25.7.1995 applicants have been paid Dearness Pay, afterwards they denied that benefit which is not in accordance with the Rules. That the said additional increments have to be treated as part and parcel of the pay of the applicants and cannot be excluded for the purpose of calculating D.A. or for any other purpose. Further the impugned order dt. 8.5.1996 runs contrary to the orders contained in the letter dt. 25.7.1995 wherein the said increments were directed to be treated as 'additional increments' and no qualifications whatsoever were set out in the said order whereby the benefit of the additional increment was excluded from the basic pay for calculating D.A. Since the additional increments have been always treated as part of basic pay for all purposes whatsoever and no restrictions was placed on the same. Therefore, the said impugned order issued by the Respondents is contrary to the settled principle. Further, it is urged that since the earlier order was passed with the approval of the President of India and therefore the impugned order is hit by the doctrine of Estoppel.

3. The counsel for the Respondents Shri V.S.Masurkar in reply submitted that the ad-interim relief can only be with regard to recovery of arrears and cannot be in the manner prayed for by the applicants because

most of the employees working as Stock Verifiers have accepted in principle that the policy decision of the Railway Board, therefore, the blanket stay may be modified in the interest of justice if not vacated at an early date. Considering the rival contention of the parties, the Tribunal vide its order dt. 14.1.1997 directed the respondents to furnish for our perusal the policy decisions taken by the department on 16.8.1995 and 22.5.1996 and the decision taken on file for issuing clarification dt. 8.5.1996 should be kept ready for the perusal of the Tribunal, and also the applicants counsel was ~~also~~ directed to file a detailed statement in respect of the applicants 'date of appointment', 'promotion', grade etc. before the next date with a copy to the counsel for the respondents, both these directions have been complied by the parites. While passing the interim order, the Tribunal thought it fit only for the purpose of recovery and not for any other purpose. As stated earlier, since the interim order was allowed to continue and the O.A. had not yet been admitted and since the pleadings were complete and with the consent of the parties, the matter was heard finally at the admission stage itself.

4. The respondents have denied the various contentions of the counsel for the applicants stating that the alleged impugned order issued by the respondents is nothing but continuation of the policy decision taken by the Railway Ministry on 25.7.1995. Further admittedly, the said policy decision is not under challenge by the applicants and therefore the O.A. is not sustainable. The applicants are challenging the Constitutional validity of the policy decision of the

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Railway Board's letter dt. 16.8.1995 and 22.5.1996 by way of present O.A. filed on 26.7.1996. That the applicants had sufficient time to make suitable representation against the order passed by the respondents, however, they did not choose to do so and straightaway approached the Court for getting the relief, thereby the applicants have not complied with the provisions of Section 20 of the Administrative Tribunals Act, 1985. The counsel for the respondents has also raised an objection that the joint application filed by the applicants are not maintainable and they have not made out any case for joint application. Since they have not made any representation with regard to their grievance and the applicants were promoted as Stock Verifiers on different dates starting from 1992 till 1995. Some of the applicants have been appointed prior to the change of policy decision i.e. 25.7.1995 and some have been promoted after the change of policy decision and therefore, the joint application filed by the applicants is not maintainable. Pursuant to the introduction of the IVth Pay Commission and in view of the demand raised by the recognised labour federations, the departmental anomalies committee considered various aspects and decided to grant 'three advance increments' on 3.3.1989 to Stock Verifiers on passing Appendix IV-A examination. Later, in Permanent Negotiating Machinery it was decided that the three advance increments granted under the Board's letter dt. 3.3.1989 to Stock Verifiers in the grade of Rs.1400-2600 for passing Appendix IV A examination should be treated 'additional increments' not to be absorbed in future increments which instructions

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were conveyed by letter dt. 25.7.1995. Sanctity of an instruction issued by government in consultation and in agreement with recognised labour federations have been upheld by the Calcutta Bench of the Central Administrative Tribunal in the case of Somnath Mukhopadhyay and Ors. V/s. Union of India in O.A. No.1840/86 decided on 30.9.1991. The Railway Board took only a policy decision by its letter dt. 25.7.1995, thereby directed the Zonal Railways that if any amount is paid to an employee over and above whatever is due to him, but if any error has crept in, the Administration is competent to rectify the error and take remedial steps. It is further submitted, from the Rules, that under no stretch of imagination advance increments/additional increments can be treated as part of pay and the Definition of Pay has already been enumerated above, and it is not the intention of the department to treat the incentive as part of basic pay at any point of time.

5. In the Rejoinder, the applicants have reiterated that the comparison of the Appendix II-A and III-A with Appendix IV-A is misleading, because on passing Appendix II-A and III-A examinations, the employees get promotion, whereas, on passing Appendix IV-A examination which does not involve any promotion or any re-fixation of pay under the normal rules. It is also submitted that the citation referred to in support of their contention is not relevant because

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there is no mistake in the case and thus there is no question of its rectification. The decision taken by the respondents on 25.7.1995 is set at rest of any controversy. Therefore, the clarification issued by the Respondents by order dt. 8.5.1996 cannot upset the settled decision, even assuming that the respondents are empowered to do so, the said decision can be invoked only prospectively and not retrospectively.

Original Application No.740/96.

6. The issue raised in this O.A. is similar to the issue raised in O.A. No.714/96. Heard Shri G.S.Walia, counsel for the applicants and Shri V.S.Masurkar, counsel for the respondents.

7. In this O.A. interim relief granted on 26.7.1996 was to apply only to the applicant and not to others. Subsequent to the order of the Tribunal dt. 14.1.1997 the applicants have not filed any statement in respect of the applicants' 'date of appointment', 'promotion', 'grade', etc. Though the impugned order was passed on 22.7.1995, the applicants have filed the O.A. on 24.7.1996 straight away without making any representation. The main contention of the applicants in this O.A. is that the Board's letter dt. 25.7.1995 by which three advance increments were granted to Stock Verifiers in the grade of Rs.1400-2600 for passing Appendix IV-A examination are to be treated as 'additional increments', that they are not to be absorbed in future increments. The learned counsel for the applicants submitted that many colleagues of the applicants who were working as Stock Verifiers have retired after enjoying the benefits of pay and retiral benefits, the same is denied to the applicants.

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Accordingly, we directed the learned counsel for the applicants to furnish the list of pensioners who had retired and to whom increments had been added to the basic pay, but nothing has been furnished by the counsel for the applicants. The counsel for the Respondents have furnished the details of applicants appointments etc. in which we find applicant at Sl.No.3 has not passed the relevant exam. Though an objection has been raised by the counsel for the respondents for joint application, on the submission made by the learned counsel for the applicants on 26.7.1996 that the matter does not relate to pay fixation, but it relates to reduction of pay and that an identical matter viz. O.A. No.714/96 has been listed before the D.B. to day, accordingly the matter was transferred to D.B. for consideration. Though the applicants counsel did not furnish any list, the Respondents counsel have furnished the list of Stock Verifiers by which we find that they have been appointed between 1992 to 1995, some were appointed after Railway Board's decision, others prior to change of policy decision. We are unable to accept the contention of the counsel for the applicant, that the issue of impugned order is without any application of mind, therefore, the said order is mala fide, arbitrary and violative of fundamental rights. However, it is noticed that the change of policy is not a change of condition of service and as such cannot be challenged by filing the O.A. without challenging the Constitutional validity of the change of policy. The plea of the Respondents is same as that of O.A. No.714/96 and in support of their contention they cited the Principal Bench decision stating that if any amount is paid to an employee over and above

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whatever is due to him due to some error, the Administration is competent to rectify the error and take remedial steps.

8. The learned counsel for the applicants contended that they were getting Dearness Allowance in accordance with the letter dt. 3.3.1989, since 1.1.1986 and the said letter was issued with the sanction of the President and the respondents are not authorised to modify the same without the sanction of the President and further without prior notice, it is not permissible for the respondents to deny the benefit already granted to them. In support of his contention he relied on the decision of the Single Bench of Ahmedabad Bench in P.S.Bapat V/s. Union of India (1989 11 ATC 521) in which it was held that "once the benefits are sanctioned by the orders of the President, it can be revoked only by the order of the President, even administrative orders which involve civil consequences must be made consistently with the rules of natural justice and opportunity should be granted to the person who is going to be adversely affected by them". The counsel for the applicants submitted that in the above case the respondents had taken a plea that the Government is competent to issue order for recovery of the amount paid irregularly in excess for the period between 1.9.1979 to 3.11.1981, the said plea has not been accepted by the Tribunal. Therefore, he submits, that the facts of this case is similar to the one referred to above, thereby the impugned order passed by the respondents is not legal and is not sustainable and the same is required to be quashed.

9. In this connection, the learned counsel for the

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Respondents drew our attention to the relevant rules viz. Rule 123 which clearly states that the Railway Board has full powers to make rules of general application to Group 'C' and Group 'D' railway servants under their control. Rule 1303 refers to 'Pay' : It does not include the present incentive offered to the employees. Therefore, the solitary decision cited by the learned counsel for the applicants does not apply to the facts of this case, the same is distinguishable.

10. It is an admitted fact, that it is a policy decision taken by the Railway Board from time to time, nowhere it is stated that the advance or additional increments is part of the basic pay. In the result, and for the reasons stated above, we do not see any merit in the O.A. the same is liable to be dismissed. Insofar as the recovery is concerned, if they have already been paid the Dearness Allowance prior to the impugned order, the same is not liable to be reimbursed. After the impugned orders if they are getting the Dearness Allowance by virtue of interim order, since we are dismissing the O.A. the interim order automatically stands cancelled, whereby the applicants will not get any benefit after passing of the interim order.

Original Application No.854/96.

11. Heard Shri G.S.Walia for the applicant and Shri V.S.Masurkar, counsel for the respondents.

12. The issue raised in this O.A. is identical to the one raised in O.A. Nos. 714/96 and 740/96.

13. The Respondents had raised a plea that the applicant is working at Ajmer Division and therefore this Tribunal has no jurisdiction to entertain this O.A. This matter was considered by the Tribunal

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and vide order dt. 4.10.1996 it was clarified that since a part of cause of action had arisen at Bombay the applicant is entitled to file the O.A. at Bombay in view of Rule 6 of the Central Administrative Tribunal (Procedure Rules) 1987. Therefore, the contention of the respondents has not been accepted. The second contention raised in this application is that the matter pertains to a Division Bench, but the learned counsel for the applicant took the order from the Single Bench when the Division Bench was duly available on 30.8.1996. What the counsel ought to have mentioned to the Court was that an identical matter is before the Division Bench to day and hence the matter should be referred to the Division Bench for consideration, instead he obtained an ex parte interim order by a Single Bench, which clearly mentions about identical order passed in the O.A. No.740/96. In this O.A. also the policy decision of the Railways has not been challenged by the applicant and no representation has been made pursuant to the policy decision of the respondents dt. 25.7.1995 and 8.5.1996 respectively. The issue raised in this O.A. has been elaborately dealt with in O.A. No.714/96 and the same need not be repeated here again. Any amount of Dearness Allowance paid prior to 8.5.1996 shall not be recovered. However, the same cannot be continued by virtue of ex-parte interim orders obtained by the applicants after 8.5.1996 in view of the change in the policy of the department, if the amount was wrongly paid and cannot be allowed to continue. The applicants are not entitled to gain any undue advantage by virtue of the ex-parte interim order and the respondents are empowered to recover the same from the applicants who have been paid after 8.5.1996.

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14. We have heard the elaborate arguments of the counsel for both the parties and carefully perused the pleadings and case laws cited by the counsel. The short point for consideration is whether Dearness Allowance was admissible on Additional/Advance increments granted to Stock Verifiers for passing Appendix - IV-A examination and whether the same can be reckoned for pensionary purposes. It is apparent that there is no distinction in the terminology of 'advance increment' and 'additional increment'. So far as the 'advance increment' is concerned the same will be reduced and it is to be adjusted against future increments, whereas the 'additional increment' will not be merged in the pay. Nowhere it is conceded by the respondents that the increments will be treated as part of the basic pay. The question of payment of Dearness Allowance would arise if the incentives given to the employees is treated as part and parcel of the basic pay and not otherwise. The mere fact of granting of 2 or 3 increments does not mean that it is merged with the pay, if it is to be merged with the pay, the respondents would have made it clear in their order itself. Chapter III of the Indian Railway Establishment Code statutory Rule 1302 is equivalent to F.R. 17, similarly Rule 1303 is equivalent to F.R. 9 which stipulates that additional increment cannot be treated as pay. Incidentally, the applicants are Group 'C' employees and not to be appointed by the President of India. The mere fact that the Circular is issued with the approval of the President of India does not mean that the sanction of the President is required in terms of the Rules. The Railway Board is the highest authority in issuing the Circulars/Corrigendum and framing the Rules

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insofar as the applicants are concerned. During the course of hearing, we asked the learned counsel for the applicants whether he would be able to furnish the details of the retiral benefits received by the employees who retired prior to 8.5.1996 and whether they have been paid additional increment as part of pay and pension. None of the applicants have furnished any such information as desired by the Tribunal. Therefore, in our view, whether it is 'advance increment' or 'additional increment' the same has not been treated as part of the basic pay, therefore, the decision taken by the respondents denying the Dearness Allowance appears to be just and proper.

15. It is further noticed that most of the applicants have been appointed during the period of 1992-95 and they have passed the Appendix IV-A examination during that period. Due to change in policy and the revision of pay scale on the basis of the recommendation of the Pay Commissions the Respondent department had taken appropriate remedial steps in issuing directions from time to time. If any one has been paid Dearness Pay by mistake, it is open to the Competent Authority to rectify the same on a subsequent date. There is no doubt that it is a policy decision of the department and not any hasty decision taken by any particular authority as contended by the applicants. The decision has been taken with the consultation of the A.I.R.F., recognised Union and therefore, we do not see any reason to interfere with the policy decision taken by the department.

16. In this connection, it would be desirable to set out certain background relevant to the present case. In all these three O.As. common question arise from certain correspondence relating to a policy

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decision of the Department viz. 3.3.1989, 25.7.1995 and 8.5.1996. Since identical issue is involved in all these O.As., we are inclined to dispose of all these O.As. at the admission stage itself by passing a common order.

17. Pursuant to the direction given by the Tribunal to the Respondents to furnish the decision taken on the file for receiving the clarification dt. 8.5.1996 for our perusal, they have furnished the same and on a perusal of the same we are satisfied that the decision taken by the respondent Department is in accordance with the policy decision and not contrary to any Rules. The Federation raised a demand regarding waival of overpayment due to mis-interpretation of advance increment as additional increment by some of the Zonal Railways and Production Units was under consideration and accordingly asked vide their letter dt. 23.11.1994 to Zonal Railways and Production Units to furnish requisite information as regards number of cases where advance increments were not absorbed in future increments and also the amount of recoveries involved. The replies has been received from Zonal Railways and Production Units and the department decided the issue on the basis of principle involved. Thereby, it was decided to place the matter before the PNM Meeting and to take a final decision in view of the following factors :

a) The scheme has been in existance since 1974 barring a short gap of 2-3 years (1987-89).

b) It was revived in 1989, wherein a different terminology was used.

c) Increments sanctioned in the past (during 1974-87) were not to be absorbed in the future increments, these being treated as additional increments.

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d) Increments, sanctioned after 1989 are to be absorbed against future increments, these being treated as Advance increments. However, Zonal Railways/Production Units continue to treat these as additional increments and these have not been absorbed against future increments, barring in RCF.

e) Nothing is available on the file to show whether in the year 1989, it was a conscious decision taken by the Board to switch over from "additional increments" to "advance increments" or the different terminology was used loosely.

f) The scheme is peculiar to Railways and is not available in other Ministries and Departments.

18. That the payment of incentive to Stock Verifiers cropped up with the award of Board of Arbitration constituted under the Joint Consultative Machinery. Further, it is stated that the demand for revision of scale of pay of Stock Verifiers in the Accounts Department on the Railways from 210-380 to 210-475 was referred to the Board of Arbitration who gave their award on 11.10.1973. The Board of Arbitration recommended the scale of Rs.210-10-290-15-320-EB-15-350-20-450-25-475. On passing Appendix IV examination, they will be given two additional increments in addition to the normal increment on confirmation. The above award of the Board of Arbitration was accepted by the Railway Board and instructions were issued vide Board's letter dt. 5.11.1974 revising the scale applicable to the posts of 'Stock Verifiers' from Rs.210-380 to Rs.210-475 w.e.f. 1.1.1973. It was also decided in the said letter that on passing Appendix IV examination, the Stock Verifiers will be given two additional increments in the scale of Rs.210-475 in addition to normal increment on confirmation, the normal date of increment will, however, remain the same. Subsequently,

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instructions have been issued under Board's letter dt. 9.3.1978 indicating that the benefit of two additional increments shall be made admissible to Stock Verifiers in the revised scales of pay of Rs.425-700 on their passing Appendix IV examination. The pay scale of Staff Verifiers had also subsequently been revised w.e.f. 1.1.1973 from Rs.425-700 whereas posts of Sub-Heads which was the feeder grade remained in the scale of Rs.425-700. In the IIIrd Pay Commission's scales of pay when the Sub-Head was promoted as Stock Verifiers, applicants were given the benefits of fixation of pay under FR 22-C and in addition, two increments were also granted on passing Appendix IV examination. When the recommendation of the IVth Pay Commission came into force w.e.f. 1.1.1986 both Sub-Head and Stock Verifiers had been placed in the same scale i.e. Rs.1400-2600. Accordingly, the Board vide letter dt. 3.3.1989 decided to increase the incentive from two to three advance increments on passing Appendix IV examination. The terminology used for incentive increment in Board's letter dt. 3.3.1989, however, clarified the incentive increments as 'advance increments', whereas in the orders issued for grant of incentive increments for passing Appendix IV examination in the Third Pay Commission, scales of pay had clearly mentioned increments in the form of 'additional increments', the normal increments being admissible on the due date. The matter was thereafter, reviwed in the context of an item raised in the PNM Meeting with All India Railwaymen Federation and it was decided by the Board's letter dt.25.7.1995 to treat the 'advance increments' as 'additional increments'. With this clarification, the labour Federation got satisfied and closed the item. After

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issue of above instructions, references had been received by the Board from some of the zonal Railways seeking clarification whether Dearness allowance was admissible on the additional increments granted to Stock Verifiers for passing Appendix IV examination and whether the same may be reckoned for pensionary purposes. All these references have been examined in detail in Board's Office and clarification was issued to the Zonal Railways on 8.5.1996 clarifying that the three additional increments granted to Stock Verifiers in the grade of Rs.1400-2600 for passing Appendix IV-A examination will not be reckoned for calculating Dearness Allowance in view of the following considerations :

i) In Revised Pay Scales effective from 1.1.86, all the allowances and retirement benefits are being reckoned only on the Basic Pay as defined in FR 9(2)(a)(i) and no other additions to pay are being reckoned for these purposes. The definition of pay - Indian Railway Establishment Code Vol. II - 1987 Edition reads as follows :-

"1303 -(F.R.9)(21)(a) 'Pay' - 'Pay' means the amount drawn monthly by a Government servant as :
(a) the pay other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity or to which he is entitled by reason for his position in a cadre ; and
(b) Overseas pay, special pay and personal pay; and
(c) any other emoluments which may be specifically classified as pay by the President."

ii) The Board vide its letter dt.25.11.1986 has clearly spelt out that in the case of railway servants who elect or are brought on the revised scales of pay, dearness

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allowance shall be calculated on basic pay as defined in FR 9(21)(a)(i).

iii) For Accounts staff, there are other departmental exams like Appendix II(A) and Appendix III(A) besides Appendix IV(A) exam and the incentive granted (Qualification Pay) on passing these exams Appendix II(A) and Appendix III(A) is not treated as part of pay but as a separate element and does not count for DA and other purposes.

iv) Further Additiona/Advance increment granted in the form of incentives for acquiring higher qualifications granted for such purposes as passing Hindi Examination, for acquiring higher speed in Stenography and increments granted under the 'Family Welfare Scheme' are, as per the extant rules, not being reckoned for grant of DA and other purposes. It has been clearly specified vide Board's letter dt. 27.10.1989 that the additional increments granted to railway employees for acquiring higher speed in stenography do not count as pay for allowances and as emoluments for pension and gratuity.

19. Considering the pros and cons of the matter, the Competent Authority considered the demand of A.I.F.R. and to treat this as 'additional increments' not to be absorbed against future increments. It is also noticed that it does not make any difference between additional increment and advance increment and seems to permit earlier two additional increments which have been given earlier to advance increments instead of two additional increments not to be absorbed in future increments and not as advance increments to be absorbed in future increments. This decision was taken with the consent of the AIRF and the employees were satisfied with the said decision of the department.

20. Apart from these interpretational issues, the Circulars give rise to a policy issue of substantial importance. In the present case, there is a supervening public interest and we are of the opinion, that it is not mandatory for the department to give prior notice before modifying the incentive given to Stock Verifiers. Further, it is noticed that it is not a

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Presidential Notification and, therefore, the government can change the policy according to administrative exigencies. Therefore, we are afraid that we cannot accept the contention of the applicants that since the earlier Circular was issued with the sanction of the President subsequent modification will have to be issued by the sanction of the President. These orders did not authorise the authentication of Service Rules for they are made by the President and not as the Head of the Union of India. Authentication could only be of executive orders and instructions but not Rules, since Rules were legislative in character. Therefore, under Article 309 powers could not be delegated or entrusted to any other authority. Keeping in view of the aforesaid provision, it can be said that the order issued by the Respondents in 1989 was neither issued under Article 77 or under Article 309 of the Constitution, therefore, even the modification effected by the department subsequently without the authentication or sanction of the President that by itself does not vitiate the order of the Respondents.

21. In the result,we do not find any merit in the above three Original Applications and the same are hereby dismissed. Insofar as the recovery is concerned, if they have already paid Dearness Pay/ Allowance prior to the impugned orders the same is not liable to be reimbursed.After the impugned orders, if they are getting the Dearness Pay/Allowance by virtue of the interim order of the Tribunal, since we are dismissing the O.As. the interim orders automatically stands cancelled, whereby the applicants will not

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get any benefit after passing of the interim orders. With the above observations the O.As. are disposed of at the admission stage itself with no order as to costs.

(M.R.KOLHATKAR)
MEMBER(A)

(B.S.HEGDE)
MEMBER(J).

B.