

**CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

O.A. NO. 405/1996

This the 12/15 day of October, 2001.

**HON'BLE SHRI S. L. JAIN, MEMBER (J)**

**HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)**

1. S.B.Gaikwad
2. N.D.Chambhar
3. L.D.Tarade
4. K.R.Navalkunde  
(Office Superintendent Gr.-I,  
Office of Chief Engineer,  
Southern Command, Pune-411001).
5. N.Gopinathan,  
Office Superintendent Gr.-II;  
Office of C.W.E.,  
Pune-411001.
6. R.Sridharan,  
Office supdt. Grade-II;  
Office of Garrison Engineer (South),  
Pune-411001.
7. R.S.Zarkar
8. K.S.Shetty
9. M.R.Hinge  
(Office Supdt. Grade-II,  
Office of Chief Engineer  
Southern Command,  
Pune-411001).
10. C.Raman Unni  
Office supdt. Grade-I,  
Office of Chief Engineer,  
Southern Command,  
Pune-411001.
11. M.P.R.Nair  
Office Supdt. Gr.-II,  
Office of Chief Engineer,  
Southern Command,  
Pune-411001.
12. T.Gopalan Kutty,  
Office Supdt. Grade-I,  
Office of Chief Engineer,  
Southern Command,  
Pune-411001.

13. N.Audi Seshan  
Office supdt. Grade-II,  
Office of Chief Engineer,  
Southern Command,  
Pune-411001.
14. S.B.Kanchan, OS Gr.-II
15. P.Krishna Rao, OS Gr.-II
16. S.Sreedharan, OS Gr.-I
17. C.P.Shinde, OS Gr.-II
18. P.P.Borole, OS Gr.-II
19. K.J.John, OS Gr.-I
20. V.Kasi, OS Gr.-II  
(Office of Chief Engineer,  
Pune zone, Pune-411001).
21. K.C.Behanan, OS Gr.-II,  
G.E.N.D.A., Khadakwasla,  
Pune.
22. K.Sankaran, OS Gr.-I,  
C.W.E., Kirkee,  
Pune-411001.
23. S.D.Sonawane, OS Gr.-I,  
C.W.E., Pune-411001.
24. A.D.Kamble, OS Gr.-II
25. S.V.Sangle, OS Gr.-II  
(C.W.E., Pune-411001).
26. B.B.Kurane, OS Gr.-I,  
G.E.(I), R&D, Pashan,  
Pune.
27. K.S.Nambiar, OS Gr.-II,  
G.E.(P), R&D,  
I.A.T. Girinagar,  
Pune-411023.
28. P.Radhakrishna Pillai,  
Office Supdt., Grade-II,  
G.E.N.D.A., Khadakwasla,  
Pune-411023.
29. N.M.Sable,  
Office Supdt. Gr.-I/AO-II,  
C.W.E., Kirkee,  
Pune-411003.
30. Mrs. Thangamma Thankappan,  
Office Supdt. Gr-II,  
G.E.(P), FY, Kirkee,  
Pune-411003.

31. D.B.Ambre, OS Gr.-II,  
Office of S.T.E. (SC),  
Pune-411001.

... Applicants

( By Shri S.P.Saxena, Advocate )

-versus-

1. Union of India through  
Secretary, Ministry of Defence,  
DHQ PO, New Delhi-110011.
2. Engineer-in-Chief,  
Army Headquarters,  
Kashmir House, DHQ PO,  
New Delhi-110011.
3. Garrison Engineer (South),  
Pune-411001.
4. Chief Engineer,  
Southern command,  
Pune-411001.
5. Chief Engineer, Pune Zone,  
Pune-411001.
6. Commander Works Engineer,  
Pune-411001.
7. Garrison Engineer (I),  
R&D, Pashan, Pune-411008.
8. commander Works Engineer,  
Kirkee, Pune-411003.
9. Garrison Engineer (C),  
Kirkee, Pune-411003.
10. Garrison Engineer (CME),  
Kirkee, Pune-411003.
11. Garrison Engineer (P),  
(FY), Kirkee, Pune-411003.
12. Garrison Engineer (P),  
R&D, I.A.T., Girinagar,  
Pune-411025.
13. Garrison Engineer,  
N.D.A., Khadakwasla,  
Pune-411023.

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14. Superintendent of Technical Engineer,  
Southern Command,  
Pune-411001: ... Respondents

( By Shri R.K.Shetty, Advocate )

O R D E R

Hon'ble Shri V.K.Majotra, Member (A) :

The applicants are aggrieved by the action of the respondents in not according them the scale of Rs.2000-3200 recommended by the Fourth Central Pay Commission (4th CPC) for one level of category of Office Superintendent (OS) in the MES although duties and responsibilities for both levels of OS are similar. According to the applicants they had been working as UDCs/stenographers and on promotion were designated as OS Grade-II. According to the applicants, although as per the recommendations of the 4th CPC there ought to have been only one level and integrated cadre of OS, the respondents have created two levels of OS Grade-I and OS Grade-II unnecessarily. Instead of the scales of Rs.1400-2300 and Rs.1600-2660 for these two levels of OS, the scale of Rs.2000-3200 should have been made applicable for OS in MES. The applicants have sought a direction to the respondents for placement of applicants in the scale of Rs.2000-3200 w.e.f. 1.1.1986 or from the date they were promoted to OS grade with all consequential benefits.

2. In their counter reply, the respondents have contended that the 4th CPC had not recommended only one pay scale for clerical supervisors. The respondents have complied with the directions of the 4th CPC in creating

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scales of Rs.1400-2300 for OS Grade-II and Rs.1600-2660 for OS Grade-I. The respondents have claimed that government have a right to restructure/alter the structure of any organisation under it and as such have the right to create or abolish any post as it may deem fit. They have further stated that the 4th CPC had not recommended the scale of Rs.2000-3200 for OS Grade-I/Grade-II in MES. Therefore, the demand of the applicants, according to the respondents, is illogical and untenable.

3. We have heard the learned counsel of both sides and considered the available records.

4. The learned counsel of the applicants relied on the judgment of the Hon'ble Supreme Court in the case of P.Savita v. Union of India, 1 LLJ 1986 (SC) 79 in which it has been held that if the employees are similarly placed and discharge same and similar duties, then prescription of two separate scales for such category of employees is violative of Articles 14 and 16 of the Constitution. The Supreme Court also directed placement of employees of the cadre of draughtsmen in one common scale instead of two scales. The learned counsel further relied on the recommendations of the Devanath Committee which recommended only one level of clerical supervisors in the MES. The learned counsel stated that whereas both levels of OS are feeder cadre to the promotion post of administrative officer grade-II, both levels of OS could be placed in a single scale of Rs.2000-3200 without any difficulty as status and not pay scales determine the hierarchical order.

5. The learned counsel of the respondents referring to the recommendations of the 4th CPC contended that it did not recommend abolition of two-level structure for OS. He contended that though duties of UDC and LDC are similar, the post of UDC exists for providing promotional avenue to the LDCs. Similarly, even if the duties of OS level-II and level-I are substantially similar, the higher level has been provided for to accord incentive and promotional avenue for the incumbents of OS level-II. Even otherwise, according to the learned counsel, there is a qualitative difference in discharge of the functions of the two levels of OS. Therefore, there cannot be any objection to the provision of two levels of OS. The learned counsel further maintained that revision of pay scales and restructuring of cadres, i.e., involving creation or abolition of posts, is a policy matter falling within the functions of the Executive. The learned counsel pointed out that in the light of the decision of the Hon'ble Supreme Court in **Mallikarjuna Rao v. State of AP**, AIR 1990 SC 1251 wherein it is specifically stated that the courts cannot usurp the functions assigned to the executive under the Constitution; the Tribunal cannot interfere with the present matter. He also relied on the decision of this Tribunal in the case of **N.K. Francis v. Deptt. of Atomic Energy**, 1999 (3) CAT AISLJ 347, wherein it was held that even if there is similarity in the name of work of two groups, the same is not sufficient to give them equal pay scales. The relevant part of the recommendations

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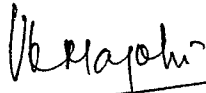
of 4th CPC relating to office staff working in organisations outside the secretariat is reproduced below :

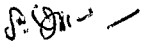
"11.33. Recruitment in these organisations is mostly at the level of lower division clerk (LDC). There is no direct recruitment at higher levels except in a few organisations where upper division clerks (UDC) are recruited directly. The pay scales of LDC and UDC are common for all offices. There are about 26000 clerical supervisory posts in 15 designations and 16 different pay scales. The posts in these organisations are generally classified as group C non-gazetted. In the central secretariat the clerical supervisory post is at the level of section officer. It has been suggested that pay scales at supervisory levels of clerical staff should be the same in all offices of Government of India. We find that there is considerable difference in educational qualifications, levels of recruitment and methods, duties and responsibilities of the posts between these organisations. While we do not find it possible to recommend parity in the pay scales, we are of the opinion that there is need for bringing some uniformity in the scales of pay below the level of Rs.650-1200 and also in the designations of supervisory level posts in offices outside the central secretariat. Government may review the position keeping in view the present levels, duties and responsibilities of the posts in supervisory level and other relevant factors. The three standard levels of supervisory posts may be in scales of Rs.1400-2300, Rs.1640-2900 and Rs.2000-3200 with suitable designations. Until then, the scales of pay recommended in chapter 8 may apply. The supervisory accounts staff in these organisations are dealt with separately."

We see that the 4th CPC had recommended three scales of pay for three standard levels of supervisory posts. In our view, whereas the posts of LDC and UDC are not supervisory levels, the post of OS certainly is. The respondents have created two levels of supervisory posts of OS in MES and adopted the scales of Rs.1400-2300 and Rs.1640-2900. They have neither created the third level supervisory posts nor adopted the third pay scale of Rs.2000-3200 for any level of

supervisory posts for the office staff outside the secretariat. We find that the 4th CPC had not recommended one pay scale for supervisory clerical levels. The CPC is an expert body entrusted with the specific job of assessing the duties and responsibilities of various posts and various cadres and recommending pay scales and cadre structures. Government are within their rights to consider and adopt the recommendations of the CPC. In the present case, if the government have not adopted the recommendations of the Devanath Committee and have taken a policy decision for restructuring of the supervisory clerical levels in the MES and prescription of respective pay scales, this Tribunal is not in a position to interfere with them.

6. Having regard to the above discussion, we do not find any infirmity with the pay scales adopted by the government for Office Superintendents in the MES w.e.f. 1.1.1986. Accordingly, this OA is dismissed being devoid of merit. No costs.

  
( V.K. Majotra )  
Member (A)

  
( S.L. Jain )  
Member (J)

/as/