

Reserved
(On 06.03.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

This the 28th day of March, 2018

Original Application No. 1446 of 2012

Hon'ble Mr. Justice Dinesh Gupta, Member – J

1. Indrajeet (Employee No. 11110) S/o Munni Lal, Presently working as SSE Drawing Office-Jig & Tool D.L.W., Varanasi.
2. V.S. Sharma (Employee No. 11109) S/o Lal Chand, Presently working as SSE Drawing Office-Jig & Tool D.L.W., Varanasi.
3. Harishankar (Employee No. 10995) S/o Late Heera Lal, Presently working as SSE Drawing Office-Jig & Tool D.L.W., Varanasi.
4. Kamlesh Kumar Sharma (Employee No. 11415) S/o Sharda Prasad Sharma, Presently working as SSE Drawing Office-Jig & Tool D.L.W., Varanasi.
5. S.N. Singh Indrajeet (Employee No. 11831) S/o Shivrat Singh, Presently working as JE Drawing Office-Jig & Tool D.L.W., Varanasi.
6. Ajoy Kumar (Employee No. 12014) S/o Ram Lakhan Pandit, Presently working as JE Drawing Office-Jig & Tool D.L.W., Varanasi.
7. Gopal Kumar (Employee No. 12080) S/o Late Mahendra Panjiyar, Presently working as JE Drawing Office-Jig & Tool D.L.W., Varanasi.
8. Shankar Kumar (Employee No. 12771) S/o Jagat Narain, Presently working as JE Drawing Office-Jig & Tool D.L.W., Varanasi.
9. Vinay Kumar (Employee No. 12094) S/o Ram Baran Singh, Presently working as JE Drawing Office-Jig & Tool D.L.W., Varanasi.
10. Surendra Kumar (Employee No. 12062) S/o Ram Nath, Presently working as JE Drawing Office-Jig & Tool D.L.W., Varanasi.
11. Durga Prasad Singh (Employee No. 12066) S/o Sundar Singh, Presently working as JE Drawing Office-Jig & Tool D.L.W., Varanasi.
12. Ajay Chaudhary (Employee No. 12087) S/o Purnmasi Ram, Presently working as JE Drawing Office-Jig & Tool D.L.W., Varanasi.

13. Rajnish Kumar Jha (Employee No. 16098) S/o Bideshwar Jha, Presently working as JE Drawing Office-Jig & Tool D.L.W., Varanasi.
14. Kamlesh Kumar (Employee No. 16101) S/o Lalan Ram, Presently working as JE Drawing Office-Jig & Tool D.L.W., Varanasi.
15. Shyam Kumar (Employee No. 16113) S/o Bahadur Ram, Presently working as JE Drawing Office-Jig & Tool D.L.W., Varanasi.
16. Ravi Shankar Sharma (Employee No. 13355) S/o Late Shankar Ram, Presently working as JE Drawing Office-Jig & Tool D.L.W., Varanasi.
17. Manoj Kumar (Employee No. 11664) S/o Shyam Lal, Presently working as JE Drawing Office-Jig & Tool D.L.W., Varanasi.
18. Naveen Kumar (Employee No. 11250) S/o Arvind Kumar, Presently working as SSE Drawing Office-Design D.L.W., Varanasi.
19. Ashok Kumar Srivastava (Employee No. 11302) S/o Ram Prasad Lal, Presently working as SSE Drawing Office-Design D.L.W., Varanasi.
20. Awadhesh Kumar (Employee No. 10783) S/o Shivanath Ram, Presently working as SSE Drawing Office-Design D.L.W., Varanasi.
21. Rahul Pandey (Employee No. 11249) S/o R.P. Pandey, Presently working as SSE Drawing Office-Design D.L.W., Varanasi.
22. Ram Pyare Ram (Employee No. 11732) S/o Late Antu Ram, Presently working as SSE Drawing Office-Design D.L.W., Varanasi.
23. Ashraf Ali (Employee No. 11730) S/o Late H.A. Samad, Presently working as SSE Drawing Office-Design D.L.W., Varanasi.
24. Pradeep Kumar (Employee No. 12073) S/o Durga Prasad Saxena, Presently working as SSE Drawing Office-Design D.L.W., Varanasi.
25. J.S. Gunjiyal (Employee No. 15839) S/o Bheem Singh Gunjiyal, Presently working as SSE Drawing Office-Design D.L.W., Varanasi.
26. Jitrai Marandi (Employee No. 16093) S/o Late Raisen Marandi, Presently working as SSE Drawing Office-Design D.L.W., Varanasi.
27. Umesh Chand Diwakar (Employee No. 12008) S/o Jugal Kishore, Presently working as SSE Drawing Office-Design D.L.W., Varanasi.
28. Ranvijay Singh (Employee No. 12081) S/o Ram Shankar Singh, Presently working as JE Drawing Office-Design D.L.W., Varanasi.
29. Brijesh Kumar Niranjana (Employee No. 12069) S/o Ram Singh Niranjana, Presently working as JE Drawing Office-Design D.L.W., Varanasi.

30. Jagdish Mahto (Employee No. 12079) S/o Lohna Mahato, Presently working as JE Drawing Office-Design D.L.W., Varanasi.
31. Sachindra Kumar Mishra (Employee No. 12486) S/o Shyam Mani Mishra, Presently working as JE Drawing Office-Design D.L.W., Varanasi.
32. A.K. Singh (Employee No. 12587) S/o Virendra Kumar Singh, Presently working as JE Drawing Office-Design D.L.W., Varanasi.
33. Jitendra Singh Yadav (Employee No. 15483) S/o Shankar Yadav, Presently working as JE Drawing Office-Design D.L.W., Varanasi.
34. S.K. Maurya (Employee No. 15472) S/o Panna Lal Maurya, Presently working as JE Drawing Office-Design D.L.W., Varanasi.
35. Sandip Kumar Gupta (Employee No. 15486) S/o Govind Prasad Gupta, Presently working as JE Drawing Office-Design D.L.W., Varanasi.
36. S.K. Chaurasia (Employee No. 15499) S/o R.C. Chaurasia, Presently working as JE Drawing Office-Design D.L.W., Varanasi.
37. Manoj Kumar (Employee No. 16884) S/o Santosh Baboo Gupta, Presently working as JE Drawing Office-Design D.L.W., Varanasi.
38. N.D. Shrotri (Employee No. 11260) S/o Damodar Das, Presently working as SSE Drawing Office-Design D.L.W., Varanasi.
39. Vandana Verma (Employee No. 16886) S/o Ram Dayal Verma, Presently working as JE Drawing Office-Design D.L.W., Varanasi.
40. Anil Kumar Mishra (Employee No. 12065) S/o Ram Krishna Mishra, Presently working as JE Drawing Office-Design D.L.W., Varanasi.
41. Umesh Kumar (Employee No. 10785) S/o S.B. Bhagat, Presently working as SSE Drawing Office-Design D.L.W., Varanasi.
42. P. Narsimhulu (Employee No. 03474) S/o Late P.G.C. Rao, Presently working as SSE Drawing Office-Design D.L.W., Varanasi.
43. Gama Ram (Employee No. 10801) S/o Ganesh Ram, Presently working as SSE Drawing Office-Design D.L.W., Varanasi.
44. Shri Ram Ram (Employee No. 10996) S/o Sattu Ram, Presently working as SSE Drawing Office-Design D.L.W., Varanasi.
45. Suresh Viswakarma (Employee No. 11414) S/o Balkrishna Viswakarma, Presently working as SSE Drawing Office-Design D.L.W., Varanasi.
46. Hrishikesh Pandey (Employee No. 11251) S/o R.N. Pandey, Presently working as SSE Drawing Office-Design D.L.W., Varanasi.

47. A.K. Singh (Employee No. 11731) S/o R.A. Singh, Presently working as SSE Drawing Office-Design D.L.W., Varanasi.
48. Ram Randhir Singh (Employee No. 12006) S/o Suresh Prasad, Presently working as SSE Drawing Office-Design D.L.W., Varanasi.
49. Nalnish Ojha (Employee No. 12059) S/o G.N. Ojha, Presently working as JE Drawing Office-Design D.L.W., Varanasi.
50. Ashfaq Ahmad (Employee No. 12085) S/o Mohd. Tahir Ansari, Presently working as JE Drawing Office-Design D.L.W., Varanasi.
51. Ram Sajeevan (Employee No. 12061) S/o Dukhi Ram, Presently working as JE Drawing Office-Design D.L.W., Varanasi.
52. Ajay Kumar Vishwakarma (Employee No. 12479) S/o Shevdutt Vishwakarma, Presently working as JE Drawing Office-Design D.L.W., Varanasi.
53. R.N. Kaushal (Employee No. 12560) S/o Bhrigu Nath, Presently working as JE Drawing Office-Design D.L.W., Varanasi.
54. Utpalendu Dutta (Employee No. 15477) S/o Late P. Datt, Presently working as JE Drawing Office-Design D.L.W., Varanasi.
55. N.K. Srivastava (Employee No. 15482) S/o P.S. Lal, Presently working as JE Drawing Office-Design D.L.W., Varanasi.
56. Adil Hussain (Employee No. 15454) S/o Akhtar Husain, Presently working as JE Drawing Office-Design D.L.W., Varanasi.
57. Sanjay Kumar (Employee No. 15465) S/o Sita Ram Singh, Presently working as JE Drawing Office-Design D.L.W., Varanasi.
58. Banarai Ram (Employee No. 16909) S/o Baboo Nandan, Presently working as JE Drawing Office-Design D.L.W., Varanasi.
59. Raj Kumar (Employee No. 16908) S/o Ram Chandra, Presently working as JE Drawing Office-Design D.L.W., Varanasi.
60. Kamal Kant Sharma (Employee No. 16890) S/o Munni Lal Sharma, Presently working as JE Drawing Office-Design D.L.W., Varanasi.
61. Ram Baboo Singh (Employee No. 16891) S/o Ram Bahadur Singh, Presently working as JE Drawing Office-Design D.L.W., Varanasi.
62. S.K. Pal (Employee No. 12516) S/o Late B.R. Pal, Presently working as JE Drawing Office-Design D.L.W., Varanasi.
63. Heera Chand Meena (Employee No. 16898) S/o C.K. Meena, Presently working as JE Drawing Office-Design D.L.W., Varanasi.

64. Naresh Kumar Sharma (Employee No. 11997) S/o Late Nageshar Sharma, Presently working as SSE/Elect/Design Drawing Office-Design D.L.W., Varanasi.
65. Ram Dayal Singh (Employee No. 11990) S/o Nari Nath, Presently working as SSE/Elect/Design Drawing Office-Design D.L.W., Varanasi.
66. Vivek Kumar Srivastava (Employee No. 11989) S/o Late G.C. Shrivastava, Presently working as SSE/Elect/Design Drawing Office-Design D.L.W., Varanasi.
67. Raghvendra Singh (Employee No. 15606) S/o Late R.B. Singh, Presently working as SSE/Elect/Design Drawing Office-Design D.L.W., Varanasi.
68. Om Prakash (Employee No. 16230) S/o Shivjor Ram, Presently working as SSE/Elect/Design Drawing Office-Design D.L.W., Varanasi.
69. Arvind Kumar Rahi (Employee No. 16092) S/o Late Sundar Ram, Presently working as SSE/Elect/Design Drawing Office-Design D.L.W., Varanasi.
70. Tairas Xaxa (Employee No. 16089) S/o Late Premchand Xaxa, Presently working as SSE/Elect/Design Drawing Office-Design D.L.W., Varanasi.
71. Satyendra Kumar Pandey (Employee No. 11996) S/o Rama Shankar Pandey, Presently working as SSE/Elect/Design Drawing Office-Design D.L.W., Varanasi.
72. Pradeep Kumar (Employee No. 12984) S/o Fayanth, Presently working as SSE/Elect/Design Drawing Office-Design D.L.W., Varanasi.
73. Girija Shankar (Employee No. 12561) S/o Late Ram Lakhan, Presently working as SSE/Elect/Design Drawing Office-Design D.L.W., Varanasi.
74. Smt. Vimla Devi (Employee No. 16565) W/o Rishi Deo Ram, Presently working as SSE/Elect/Design Drawing Office-Design D.L.W., Varanasi.
75. Prashant (Employee No. 15627) S/o Shiv Prakash Lal, Presently working as SSE/Elect/Design Drawing Office-Design D.L.W., Varanasi.
76. Rakesh Kumar (Employee No. 15464) S/o Jangi Lal, Presently working as JE/Elect/Design Drawing Office-Design D.L.W., Varanasi.
77. S.N. Yadav (Employee No. 15492) S/o Paramhans Yadav, Presently working as JE/Elect/Design Drawing Office-Design D.L.W., Varanasi.
78. Chandra Kant Shukla (Employee No. 16077) S/o B.N. Shukla, Presently working as JE/Elect/Design Drawing Office-Design D.L.W., Varanasi.
79. Dharendra Kumar Singh (Employee No. 15464) S/o Late Jhuri Singh, Presently working as

- JE/Elect/Design Drawing Office-Design D.L.W., Varanasi.
80. Ghanshyam Yadav (Employee No. 16102) S/o Shri Ram Yadav, Presently working as JE/Elect/Design Drawing Office-Design D.L.W., Varanasi.
 81. Akhilesh Kumar Yadav (Employee No. 13351) S/o Vinod Kumar Yadav, Presently working as JE/Elect/Design Drawing Office-Design D.L.W., Varanasi.
 82. Brahmadev Kumar Madhukar (Employee No. 13362) S/o Laxmi Mahato, Presently working as JE/Elect/Design Drawing Office-Design D.L.W., Varanasi.
 83. Ashutosh Kumar Pandey (Employee No. 13119) S/o Ram Shankar Pandey, Presently working as JE/Elect/Design Drawing Office-Design D.L.W., Varanasi.
 84. Shrikant Vishwakarma (Employee No. 13329) S/o Ramayan Vishwakarma, Presently working as JE/Elect/Design Drawing Office-Design D.L.W., Varanasi.
 85. Rajesh Kumar (Employee No. 15493) S/o Yadunandan Prasad, Presently working as JE/Elect/Design Drawing Office-Design D.L.W., Varanasi.
 86. Sanjay Kumar (Employee No. 12162) S/o Sakal Deep Prasad, Presently working as SSE/Elect/Design Drawing Office-Design D.L.W., Varanasi.
 87. Sampoorna Nand Jaiswal (Employee No. 13114) S/o Jagdish Prasad, Presently working as JE/Elect/Design Drawing Office-Design D.L.W., Varanasi.
 88. Ashutosh Kumar Singh (Employee No. 15184) S/o Ilaka Singh, Presently working as SSE/Design Drawing Office-Design D.L.W., Varanasi.
 89. S.K. Kulshreshtha (Employee No. 00780) S/o Sushil Kumar, Presently working as SSE/Design Drawing Office-Design D.L.W., Varanasi.
 90. Bharat Prasad (Employee No. 11734) S/o Nebu Lal Gupta, Presently working as SSE/Design Drawing Office-Design D.L.W., Varanasi.
 91. S.C. Yadav (Employee No. 12070) S/o Kallu Ram, Presently working as JE/Design Drawing Office-Design D.L.W., Varanasi.
 92. Mahendra Kumar Verma (Employee No. 12068) S/o Ram Adhar, Presently working as JE/Design Drawing Office-Design D.L.W., Varanasi.
 93. Chandra Shekhar Singh (Employee No. 15484) S/o Vidya Singh, Presently working as JE/Design Drawing Office-Design D.L.W., Varanasi.

94. Nanhe Lal (Employee No. 12086) S/o Soman Chaukidar, Presently working as JE/Jig & Tool Drawing Office-Design D.L.W., Varanasi.
95. Vikram Singh (Employee No. 15495) S/o Ramji Singh, Presently working as SSE/Design Drawing Office-Design D.L.W., Varanasi.

... Applicants

By Adv: Shri Pankaj Misra.

V E R S U S

1. Union of India Ministry of Railways (Railway Board) Rail Bhawan, New Delhi through its Secretary.
2. Chief Mechanical Engineer, Diesel Locomotive Works Varanasi.

... Respondents

By Adv: Shri Anil Kumar.

O R D E R

By Hon'ble Mr. Justice Dinesh Gupta, Member (J)

The applicant has filed the present Original Application u/s 19 of the Administrative Tribunals Act, 1985 with the following reliefs:-

- i) Issue a suitable order or direction directing the respondents to pay Special Pay to the applicants who are working in the Drawing Office of the Production Control Organisation as are being paid to the other incumbents working in various Sections of Production Control Organisation under the respondent No. 2 and further continue to pay Special Pay to the applicants from month to month as and when it becomes due.
- ii) Issue any other suitable order or direction directing the respondents to pay arrears of special pay of the applicants as have been paid to the incumbents in other

section of the production control organization under the respondent No. 2.

iii) Any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in view of the facts and circumstances of the case.

2. The brief facts emerging from the O.A. are that the Indian Railway is the biggest organization of the Govt. of India. The services under the Indian Railways have been divided in various Department and one of the major Departments of the Indian Railway is Mechanical Department.

2.1 The Services in the Mechanical Department is provided in Mechanical Code under para 119 which deals with the Production Control Organization (in short PCO).

2.2 The Production Control Organisation is divided into following categories:-

- a) Pre-planning;
- b) Drawing Office;
- c) Planning;
- d) Production Control;
- e) Progress Office;
- f) Inspection.

2.3 The drawing office of the production control organization has been further sub-divided into three categories namely i) Drawing Office- Design ii) Drawing Office-Plant, iii) Drawing office-Jig & Tool.

2.4 All the applicants are working in Drawing Office-Jig & Tool and plant in the Drawing office.

2.5 Respondent No. 1 issued a letter dated 23.9.1978 (Annexure A-3) wherein it has been stated that the staff of Jig and Tool and Design office of Diesel Locomotive Works who have no lien on the shop floor cannot be extended the benefit of Special Pay/PCO Allowance.

2.6 It is stated that the said letter is wholly incorrect, arbitrary and discriminatory because for the appointment in the Mechanical Branch under para 119 of Mechanical Code the requisite qualification is degree/diploma in Mechanical or electrical branch for all the post prescribed under the PCO. It is further submitted that mode of recruitment or selection for all these posts mentioned in para 2.2 above are same and after selection an incumbent can be placed in any of the above said categories.

2.7 The employees of Drawing Design and Jig and Tool who are working in shop floor and also given PCO allowances/special pay. The employees of Drawing Design and Jig & Tool who are working in other offices of PCO are getting PCO allowance/special pay. The applicants are frequently used to visit to shop floor in connection with Production and for which they are issued gate pass and employees while visiting shop floor are also provided safety equipments and services of

employees working in Design Section of PCO are interchangeable.

2.9 General Manager vide letter dated 10.8.1978 sent a detailed recommendation explaining the work performed in various section of the PCO and requested for special pay to them.

2.10 The applicants have approached the respondent No. 2 vide representation dated 11.5.2006 through proper channel for payment of PCO allowance being part and parcel of PCO.

2.11 Respondent No. 2 vide letter dated 16.4.2004 requested the respondent No. 1 that staff working in Drawing Section of PCO may also be covered for PCO allowance/special pay.

2.12 In reply to letter dated 8.9.2006 of respondent by which he has sought clarification, again respondent No. 2 vide letter dated 8.8.2007 requested the respondent No. 1 that the work performed by the Design office , Jig & Tool Supervisors akin to employees of shop floor as they are required to go to workshop in shop floor and therefore, their activities should be considered similar to PCO area and PCO allowance be given to them also.

2.13 Having not received any suitable reply the applicants have no option but to make representation directly to the respondent No. 1 on 14.3.2012 but in spite of expiry of more than six months, they have not received

any reply. As such applicants have filed the present O.A. for direction directing the respondents to pay Special Pay to the applicants who are working in the Drawing Office of the Production Control Organisation.

3, Notices were issued to the respondents who in turn filed the counter reply through which it is stated that Diesel Locomotive Works (In short DLW) is a production unit of Indian Railway. There are two different set up called workshop area (shop floor) which is directly linked with production activities and PCO (in short PCO) are which is indirectly linked with production activities.

3.1 There is different seniority groups in Mechanical Engineering and Electrical Engineering cadre. These various seniority groups in Mechanical Engineering Cadre are Fitter, Machinist, Welder, Tool Maker, Mill Wright, Mechanical Design and Jig & Toll and in Electrical cadre i.e. Electrical and Electrical Design.

3.2 In the afore mentioned seniority Groups in Mechanical Engineering Department, the lien of Fitter, Machinist, Welder, Tool Maker and Mill Wright and in Electrical Engineering Department lien of only electrician is available in shop floor. The cadres of Mechanical Design, Jig & Tool and Electrical Design do not have lien in Shop Floor, hence it cannot be said to be directly linked with the Production process. Even there is no similarity in recruitment procedure. The post of Junior

Engineer, Grade Pay Rs. 4200/- in Mechanical Design, Jig & Tool Design and Electrical Design is filled 100% by direct recruitment only. Whereas in the Mechanical Engineering Department (Fitter, Machinist, Welder, Tool Maker, Mill Wright) and Electrical Engineering Department (Electrician Trade) the post of Junior Engineer is , Grade pay Rs. 4200/- is filled by 50% by direct recruitment , 25% by Intermediate Apprentice Mechanic and remaining 25% by departmental selection.

3.3 The Supervisors working in the Shop Floor are getting incentive bonus @ 15% of basic pay or as a fraction of sectional earning and on their posting in PCO area, they are getting 15% (JE) & 7.5% (SSE) as PCO allowance.

3.4 Para 119 of the Indian Railway Code for Mechanical Department (1991) which is in vogue at present, is not relevant in the context of issue of PCO allowance.

3.5 Regarding grant of PCO allowances, the matter has been examined several times and clarified vide Railway Board's letters dated 23.9.1978, 9.7.2008, 21.1.2009 that Staff of Jig & Tool and Design Office who have no lien on the shop floor cannot be extended the benefit of special pay. As such they are not entitled for any incentive, PCO allowance or special pay as per existing instructions of Railway Board which has also got statutory force. Thus , the O.A. is liable to be dismissed.

4. Rejoinder reply is filed by the counsel for applicant through which he has reiterated the facts as stated in the O.A. and denied the contents of the counter reply.

5. Heard the learned counsel for applicants Sri Pankaj Misra and learned counsel for respondents Sri Anil Kumar and perused the pleadings available on record.

6. Counsel for applicants has reiterated the facts as stated by them in the O.A. and submitted that merely refusal of grant of special pay to the applicants by the respondents on earlier occasions will not disentitle the applicants for legal action against respondent No. 1 who never decided the representations of the applicants. Counsel for applicants submitted that since the respondents have never decided their representation, they have right to file the O.A. and earlier decision taken by the Railway Board in similar circumstances on other representations cannot deprive the right of the applicants to challenge unfair practice prevailing in the Diesel Locomotive Works. Counsel further submitted that said decision of Railway Board dated 21.1.2009 cannot be challenged by the applicants because firstly the said decision was not taken on the representations of the applicant and secondly they cannot challenge the said decision on the ground of limitation because as per Section 21 of the AT Act, limitation period of that order has already expired. Counsel further submitted that the

respondents cannot take the benefit of earlier decisions since the controversy has yet decided by any competent court/Tribunal. Therefore, the present O.A. cannot be thrown on the ground of earlier decisions of the Railway Board. Counsel further submitted that since the respondents has not taken into consideration the grounds taken by the applicants in their representation and respondents have not taken any decision on the representation of the applicants, as such they have rightly approached for their redressal before this Tribunal. Counsel for applicants has also filed written submissions.

7. Counsel for respondents submitted that applicants are similarly placed employees who continuously approached the respondents department for their grievances in respect of payment of special pay but there are constant decisions of the Railway Board not to allow the special pay to the persons who are working in the non-production department. Counsel for respondents further referred to the decision taken by the respondents long back in 1978 and further in 2008 and thereafter in 2009. It is further submitted that no order of the respondents was ever challenged by any of the applicants or similarly placed employees at any point of time and these orders have taken shape of final order. Even the last order of 2009 which the applicants themselves

admitted that they cannot challenge the same as the limitation period of that order has already expired. Since the applicant or similarly situated employees have not challenged any orders and these orders have taken the shape of final order, now they cannot ask the Tribunal to take a decision against the order already passed by the respondents. Counsel further submitted that grant of special pay to the applicants or other similarly placed persons are the matter of policy and the same cannot be decided by the Tribunal.

8. Court is unable to accept the contentions raised by the learned counsel for the applicants.

9. Admittedly, this question of payment of special pay has already been decided by the respondents from time to time and there is a constant view of respondents department that the same cannot be allowed to the applicants. These orders were never challenged by the applicants in any of the court. Even today, the applicants have not challenged the order dated 21.1.2009 in the present O.A. Until or unless these orders are set aside by the competent court of law, the same are binding on the applicants and other similarly situated employees. If argument of the applicants are taken as granted, then there will be no end of sending representations. Admittedly, the applicants are the employees of DLW and there are thousands of employees and in every few

months a bunch of employees can file representation and ask the respondents to decide the same. If the decision goes against them another bunch will come forward and move a representation and ask the respondents to decide the same and there will be no end of sending representations and taking decisions. Since it is a policy decision, the Tribunal has not clothed power to give direction to the respondents to reconsider their policy decision. It is only for the Superior Court who can give such type of direction as held by the Hon'ble Apex Court in the case of **Delhi Development Authority, New Delhi and another Vs. Joint Action Committee Allottee of SFS Flats and others reported in 2007 (14) Scale 507.**

The Hon'ble Apex Court has observed as under:-

"59. An executive order termed as a policy decision is not beyond the pale of judicial review. Whereas the superior courts may not interfere with the nitty gritty of the policy, or substitute one by the other but it will not be correct to contend that the court shall like its judicial hands off, when a plea is raised that the impugned decision is a policy decision. Interference therewith on the part of the superior court would not be without jurisdiction as it is subject to judicial review.

60. Broadly, a policy decision is subject to judicial review on the following grounds :

- (a) if it is unconstitutional;
- (b) if it is dehors the provisions of the Act and the Regulations;
- (c) if the delegatee has acted beyond its power of delegation;
- (d) if the executive policy is contrary to the statutory or a larger policy.

10. Counsel for applicants by way of written submission though admitted that they have not challenged any order which clearly prohibit for grant of special pay to the applicants and similarly placed persons as in the past, thus Court is of the view that since the applicants have not challenged the earlier orders even in this O.A. and they simply want that Tribunal should consider their grievance and direct the respondents to reconsider their policy which is not permissible.

11. In view of the above, since the matter relates to policy decision, no such direction can be given to the respondents to reconsider their policy. Accordingly, O.A. lacks merit and deserves to be dismissed. Accordingly, O.A. is dismissed. No order as to costs.

(Justice Dinesh Gupta)
Member (J)

HLS/-