

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO.3160 OF 2012

New Delhi, this the 21<sup>st</sup> day of April, 2016

CORAM:

**HONBLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

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R.N.Srivastava,

Designation: K.B.O. (Retired on 31.7.2012),

From Government of India Press,

Minto Road, New Delhi 2

Residence: 849 Laxmi Bai Nagar,

New Delhi 110023

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Applicant

(By Advocate: Shri Sudershan Rajan)

Vrs.

1. Union of India & ors

Through the Secretary,

Ministry of Urban Development,

Nirman Bhavan,

New Delhi

2. Director, Directorate of Printing, B-wing, Nirman Bhavan,

New Delhi

3. The Manager,

Government of India Press,

Minto Road,

New Delhi 2

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Respondents

(By Advocate: Ms. Avnish Kaur)

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**ORDER**

The Tribunal had dismissed the O.A. as being devoid of merit,

vide its order dated 31.3.2014, which is reproduced below:

õIn this Original Application, the applicant has prayed for the following relief:

õa. To direct the Respondents to release the pensionary benefits/terminal benefits to the applicant on the basis of his salary taken at Grade Pay of Rs.5400/-.

- b. Direct Respondents to pay interest to the applicant on the delayed payment.ö

2. Brief facts of applicants case run thus: Applicant was initially appointed as Mono Operator on 3.5.1973 in pay scale of Rs.380-560/- which was revised to IVth CPC pay scale of Rs.1320-2040/-. As letter press technology was scrapped to keep up with the technological advancement, applicant and others were appointed as Key Board Operators (Offset) on regular basis w.e.f. 20.12.1989 in pay scale of Rs.1400-2300/-, vide order dated 20.12.1989 (Annexure A-2). Thereafter, Key Board Operators were re-designated as DTP Operators.

2.1 Consequent upon introduction of ACP Scheme (Annexure A-3), the applicant was granted 1st financial upgradation with effect from 9.8.1999 in the pay scale of Rs.5000-8000/- and 2nd financial upgradation in the pay scale of Rs.5500-9000/- with effect from 1.12.1999 (subsequently revised to Rs.6500-10500) under the ACP Scheme. He was also granted 3rd financial upgradation in the Grade Pay of Rs.5400/- with effect from 1.9.2008 under the MACP Scheme.

2.2 On a reference being made, the Department of Personnel & Training advised that the scales of pay of Rs.5000-8000/ and Rs.5500-9000/- might be given to the DTP Operators, who had been deployed from the post of Lino/Mono Operators, under the ACP Scheme after completion of 12/24 years of service as 1st and 2nd upgradations and that the service rendered by such redeployed DTP Operators in the post of Lino/Mono Operators would count for computing the total service rendered subject to fulfilling other conditions of ACP Scheme and accordingly, O.M. dated 28.4.2003 (Annexure A-5) was issued to all Heads of Presses/Branches.

2.3 Respondent no.3, vide O.M. dated 13.1.2012 (Annexure A-6), gave notice to the applicant and other Key Board Operators to the effect that financial upgradations under ACP Scheme and MACP Scheme had been awarded to them erroneously, which was detected by the Pay & Accounts Office (Prg.), Ministry of Urban Development (respondent no.1) and called upon them to submit their representations, if any, within 7 (seven) working days, against the proposed corrections to be carried out as per the statement enclosed with the said O.M. dated 13.1.2012.

2.4 It appears from copy of the representation dated 5.6.2012 (Annexure A-1, page 19) that instead of submitting representation against the O.M. dated 13.1.2012 (Annexure A-6), applicant made application dated 25.1.2012 to respondent no.2 to furnish him the documents which formed the basis of the said notice dated 13.1.2012 and also submitted a reminder thereto on 6.2.2012. Thereafter when his Grade Pay was reduced from Rs.5400/- to Rs.4600/- and he was paid salary for the month of May 2012 on the basis of his reduced Grade Pay of Rs.4600/-, applicant submitted another representation dated 6.7.2012 (Annexure A-1, page 23) stating that he was to retire on superannuation on 31.7.2012, his Grade

Pay should be restored to Rs.5400/- and his pension calculated accordingly.

2.5 Applicant and others filed OA No.2430 of 2012 assailing the said O.M. dated 13.1.2012. The Tribunal,, vide its order dated 25.7.2012 (Annexure A-7), disposed of the said O.A. with the following observation and direction:

õ4. We have heard the learned counsel for the applicants. We have also perused the aforesaid Corrigendum. It is seen that the respondents themselves submitted that the reference to OA No.16/2010 was wrong. Therefore, the documents 1 & 2 mentioned above are no more relevant. However, the respondents may give copies of the documents sought by the applicants at S.No.3,4,5,6 and 7 above to them as early as possible. On receipt of them, thereafter, they shall submit their replies to the Respondent No.3, which in turn shall consider them and take appropriate decision under intimation to them. Till such time, the impugned order dated 13.01.2012 shall not be given effect to. In case, the orders so passed by the respondents are against the interest of the applicants, they are at liberty to challenge them through appropriate proceedings, if so advised. There shall be no order as to costs.õ

2.6 On attaining the age of superannuation, applicant retired from service with effect from 31.7.2012. At the time of superannuation, the applicant was being paid salary in PB-2 with Grade Pay of Rs.4600/-, though, according to the applicant, he was rightly placed in PB-2 with Grade Pay of Rs.5400/- until April 2012.

2.7 After retirement and apparently after the disposal of the aforesaid O.A. by the Tribunal, applicant submitted a representation dated 13.8.2012 (Annexure A-1) to respondent no.3 alleging non-payment of terminal benefits, such as, pension, gratuity, leave encashment, etc. till that date and claiming calculation of his retirement dues in a proper manner.

2.8 In the O.A. it has mainly been contended by the applicant that in the light of the order dated 25.7.2012 passed by the Tribunal in OA No.2430 of 2012, he was entitled to pensionary benefits calculated without giving effect to the O.M. dated 13.1.2012 whereby his Grade Pay was reduced from Rs.5400/- to Rs.4600/-.

3. Respondents have filed a counter reply resisting the claim of the applicant. In the counter reply, it is stated by the respondents that applicant and others submitted their representations on 8.10.2012 in compliance with the Tribunals order dated 25.7.2012 passed in OA No.2430 of 2012. After considering the said representations, respondent

no.3 issued order on 20.11.2012, on the basis of which pay of the applicant and others was re-fixed. The pension case of the applicant was again sent to the Pay & Accounts Officer (Ptg.), New Delhi and pension was released to the applicant, vide Pension Payment Order dated 19/21.12.2012 in which it was shown that the applicant was getting pay in PB-2 with Grade Pay of Rs.4800 at the time of his retirement.

4. In the rejoinder reply, the applicant has stated that payment of pension by the respondents taking his Grade Pay of Rs.4800/- instead of Grade Pay of Rs.5400/- is bad and illegal. In support of his claim, the applicant has filed copies of Government of India Press, NIT, Faridabad, office order dated 25.5.2003 (Annexure RA/1), Government of India Press, Faridabad, office order dated 15.2.2008 (Annexure RA/2), the noting of the functionaries of the DoP&T on 3.4.2003 (Annexure RA/3), the noting of the functionaries of the DoP&T on 23.8.2011 (Annexure RA/4), statement showing grant of ACP/MACP to several Key Board Operators in the Government of India Press, Minto Road (Annexure RA/5). The other averments contained in the rejoinder are more or less the same as in the O.A.

5. I have carefully perused the records and heard the learned counsel appearing for the parties. During oral arguments, the learned counsel appearing for the applicant produced a copy of the order dated 10.10.2013 passed by the Tribunal in OA No.4008 of 2012 (I.D.Sharma and 10 others v. Union of India and others) which has also been perused.

6. As already noted, the relief claimed by the applicant in the present O.A. is to direct the respondents to release the pensionary benefits to him on the basis of his pay with Grade Pay of Rs.5400/- and to pay him interest on the delayed payment of retirement benefits. The applicant has admitted in the O.A. and representation dated 5.6.2012 (Annexure A-1) that his Grade Pay was reduced from Rs.5400/- to Rs.4600/- which he came to know from his salary slip for the month of May 2012. Thus, on the date of his retirement, he was admittedly getting salary on the basis of Grade Pay of Rs.4600/-. As per rule, retirement benefits are paid on the basis of the pay drawn by a Government servant on the date of retirement. The applicant appears to have made representation dated 5.6.2012 (Annexure A-1) to respondent no.3 for restoring his Grade Pay of Rs.5400/-, which was granted to him by way of 3rd financial upgradation under the M.A.C.P. with effect from 1.9.2008. He has not filed copies of the orders issued by the respondents whereby 2nd and 3rd financial upgradations were granted to him. The only document produced by the applicant is an order dated 15.4.2002 (Annexure A-3) whereby he was granted 1st financial upgradation in the pay scale of Rs.5000-8000/- with effect from 20.12.2001 under the A.C.P. Scheme.

7. The other aspect of the matter is that respondent no.3, vide O.M. dated 13.1.2012 (Annexure A-6), had given notice to the applicant and other Key Board Operators to the effect that financial upgradations

under the ACP Scheme and MACP Scheme had been awarded to them erroneously and called upon them to submit their representations, if any, within 7 (seven) working days, against the proposed corrections to be carried out as per the statement enclosed with the said O.M. dated 13.1.2012. So far as the applicant is concerned, the statement enclosed with the said O.M. as corrected vide corrigendum issued by the respondent no.3 on 30.5.2012 states as follows:

Name of the Employee	Financial upgradations already granted against promotion, appointment, ACP and MACP as recorded in service books of concerned employees	Corrections/rectifications are to be carried out.
Sri R.N.Srivastav	<p>1)03-05-1973 =Initially appointed in the post of Mono Key Board Operator in pay scale 380-560.</p> <p>2)20-12-1989 = Promoted to the post of Key Board Operator in the pay scale of Rs.1400-2300 and pay was fixed under FR 22-C.</p> <p>3)09-08-1999 =1st Financial upgradation under ACPS and pay was fixed in the pay scale of Rs.5000-8000. Revised 5500-9000 w.e.f. 18-5-07.</p> <p>4)01-12-1999= 2nd financial upgradation under ACPS and pay was fixed in the pay scale of Rs.5500-9000 revised 6500-10500 w.e.f. 18-5-07.</p> <p>5)01-09-2008 = 3rd financial upgradation under MACP in the Grade Pay of Rs.5400/-</p>	<p>1)03-05-1973=Initially appointed in the post of Mono Key Board Operator in pay scale 380-560.</p> <p>2)20-12-1989=Promoted to the post of Key Board Operator in the pay scale of Rs.1400-2300 and pay was fixed under FR 22-C.</p> <p>3)09-08-1999=2nd Financial upgradation under ACPS in the pay scale of Rs.5000-8000. Revised 5500-9000.</p> <p>4)01-09-2008=3rd financial upgradation under MACPS and pay was fixed in the grade pay of Rs.4600/-.</p>

Instead of submitting representation against the said O.M. dated 13.1.2012 (Annexure A-6) within the stipulated time, the applicant asked for some documents. Thereafter, he along with other Key Board Operators approached the Tribunal in OA No.2430 of 2012 assailing the said O.M. dated 13.1.2012 (ibid). The Tribunal, vide order dated 25.7.2012 (Annexure A-7), disposed of the said O.A. with direction to the respondents to give copies of documents sought by applicant nos. 3,4,5, 6 and 7 and consider the representations to be made by the applicants. The Tribunal also directed that till such time, the impugned order dated 13.1.2012 shall not be given effect to. As stated by the respondents in their counter reply, in compliance with the direction of this Tribunal, the applicants in the said O.A., which included the present applicant, had submitted representations 8.10.2012 and the respondents after considering the said representations, issued order dated 20.11.2012, whereafter the pay of the applicant and others was re-fixed and the applicant was granted

Grade Pay of Rs.4800/-. Accordingly, pension case of the applicant was again sent to the Pay & Accounts Officer (Ptg.), New Delhi and pension was released to the applicant, vide Pension Payment Order dated 19/21.12.2012 (Annexure VI to the counter). The applicant has not filed copy of the representation made by him against the O.M. dated 13.1.2012 in compliance with the order dated 25.7.2012 passed by the Tribunal in OA No.2430 of 2012. Therefore, this Tribunal is not in a position to examine as to whether the respondents have duly considered the contentions raised by the applicant in his representation made against the O.M. dated 13.1.2012 and whether there is any perversity in the findings arrived at by the respondents while granting Grade Pay of Rs.4800/- to the applicant. That apart, the grievance of the applicant with regard to reduction of his Grade Pay from Rs.5400/- to Rs.4600/-, as raised by him in the present O.A., also does not survive in view of the admitted fact that the applicant has in the meantime been granted Grade Pay of Rs.4800/- and his P.P.O. has been issued on the basis thereof on 19/21.12.2012.

8. During oral arguments, the learned counsel appearing for the applicant invited my attention to various pleadings and documents filed by the applicant and submitted that the applicant was rightly granted 3rd financial upgradation in the Grade Pay of Rs.5400/- under the MACP Scheme with effect from 1.9.2008 and the respondents should not have reduced the same to Rs.4800/- which adversely affected his pension and other retirement benefits.

9. As already noted, the applicant has not filed copies of the orders issued by the respondents whereby 2nd and 3rd financial upgradations were granted to him and also the copy of the representation made by him against the O.M. dated 13.1.2012 in compliance with the direction of this Tribunal in OA No.2430 of 2012. The only document produced by the applicant is copy of an order dated 15.4.2002 (Annexure A-3) whereby he was granted 1st financial upgradation in the pay scale of Rs.5000-8000/- with effect from 20.12.2001 under the A.C.P. Scheme. In the absence of specific averments and relevant documents, as aforesaid, it is found difficult to go into the question of correctness of the decision taken by the respondents granting Grade Pay of Rs.4800/-, vide order dated 20.11.2012 (ibid) and express any opinion with regard to merit or otherwise of the claim of the applicant in the present O.A. However, after going through the O.M. dated 28.4.2003 (Annexure A-5) issued by the respondent no.2 conveying the clarification issued by the DoP&T in the matter of grant of financial upgradations to the redeployed DTP Operators like the applicant, and also the statement enclosed with the O.M. dated 13.1.2012 (Annexure A-6), I find no infirmity in the decision of the respondents in finalizing the pension case taking the applicants Grade Pay of Rs.4800/- on the date of retirement.

10. The Government of India Press, NIT, Faridabad, office order dated 25.5.2003 (Annexure RA/1); Government of India Press, Faridabad, office order dated 15.2.2008 (Annexure RA/2); the noting of

the functionaries of the DoP&T on 3.4.2003 (Annexure RA/3); the noting of the functionaries of the DoP&T on 23.8.2011 (Annexure RA/4), statement showing grant of ACP/MACP to several Key Board Operators in the Government of India Press, Minto Road (Annexure RA/5), to which reference has been made by the applicant, do not in any way go to improve the case of the applicant in as much as those were issued before the order dated 20.11.2012 was issued by the respondents after considering the representations against the O.M. dated 13.1.2012(ibid). It is also not the case of the applicant that errors were not corrected by the said Unit Heads after following due procedure, as ordered by the competent authority.

11. The contention of the applicant that in the light of the order dated 25.7.2012 passed by the Tribunal in OA No.2430 of 2012, he was entitled to pensionary benefits calculated without giving effect to the O.M. dated 13.1.2012 is untenable, because there was no such direction contained in the Tribunal's order that in the applicant's case his pensionary benefits should be calculated without giving effect to the O.M. dated 13.1.2012. The context in which the Tribunal gave a direction that the impugned order dated 13.01.2012 shall not be given effect to is totally different from what has been conceived by the applicant.

12. The learned counsel for the applicant during oral arguments submitted that the present O.A. may be disposed of in line with the order dated 10.10.2013 passed by the Tribunal in OA No.4008 of 2012 (**I.D.Sharma and others v. Union of India and others**). The learned counsel appearing for the respondents also agreed to the said submission. With a view to considering the above submission, it would be appropriate to quote the order dated 10.10.2013(ibid):

*“The applicants filed the present OA questioning the impugned order dated 20.11.2012 wherein the respondents have rejected the claim of the applicants for granting MACP benefits, which was originally granted and withdrawn later.*

**2. Now, the respondents have filed a short counter affidavit stating that the applicants are entitled for the relief claimed by them.**

**3. In view of the stand taken by the respondents, the O.A. is allowed, and the respondents are directed to pass appropriate speaking and reasoned orders on the claim of the applicants within eight weeks from the date of receipt of a copy of this order. No order as to costs.”**

In the instant case, the applicant has prayed for a direction to the respondents to release the pensionary benefits/terminal benefits on the basis of Grade Pay of Rs.5400/- and to pay interest on delayed payment, and the respondents have filed a detailed counter resisting the claim made

by the applicant. In view of this, the submission of the learned counsel is untenable.

13. In the light of the above discussions, I hold that the Original Application is devoid of merit. Accordingly, the O.A. is dismissed. No costs.ö

2. Being aggrieved by the Tribunal's order dated 31.3.2014, *ibid*, the applicant had filed Writ Petition (Civil) No. 7705 of 2014. The Hon'ble High Court disposed of the said Writ Petition, vide its judgment dated 21.8.2015, which is reproduced below:

ö1. Aggrieved by the order passed by the Central Administrative Tribunal dated 31.03.2014 has led to the filing of the present writ petition. Counsel for the petitioner submits that the petitioner along with 11 others who were similarly placed had filed an O.A. before the Central Administrative Tribunal (being O.A. No. 2430/2012) wherein O.M. dated 13.01.2012 was assailed. The O.A. was disposed of by an order of the learned Tribunal dated 25.07.2012. The learned Tribunal had allowed the O.A. No. 2430/2012 by granting an opportunity to the petitioners to submit their representations after the documents were supplied to them and also directed the respondents to pass a speaking order. Leave was granted to the petitioners to assail the speaking order if the same was passed against them. The speaking order was passed against the petitioners which led to the second round of W.P.(C) 7705/2014 Page 2 of 4 litigation. Since in the meanwhile the petitioner had superannuated on 31.07.2012, he filed a separate O.A. while the 10 other petitioners filed a separate O.A. It is the case of the petitioner that he is identically placed as the other petitioners who filed a separate OA. Counsel further submits that the submission made before the Tribunal has been noticed in Para 12 of the impugned order that the O.A. filed by the 10 others being O.A. No. 4008/2012 titled as I. D. Sharma & Ors. Vs. Union of India was allowed. The petitioner claimed parity. Para 12 of the impugned order reads as under:

*“12. The learned counsel for the applicant during oral arguments submitted that the present O.A. may be disposed of in line with the order dated 10.10.2013 passed by the Tribunal in O.A. No. 4008/2012 (I.D. Sharma and Others Vs. Union of India and Others). The learned counsel appearing for the respondents also agreed to the said submission. With a view to considering the above submission, it would be appropriate to quote the order dated 10.10.2013 (ibid):*

*1. The applicants filed the present OA questioning the impugned order dated 20.11.2012 wherein the respondents have rejected the claim of*



*the applicants for granting MACP benefits, which was originally granted and withdrawn later.*

**2. Now, the respondents have filed a short counter affidavit stating that the applicants are entitled for the relief claimed by them.**

*3. In view of the stand taken by the respondents, the O.A. is allowed, and the respondents are directed to pass appropriate speaking and reasoned orders on the claim of the applicants within eight weeks from the date of receipt of a copy of this order. No order as to costs."*

2. Mr. Rajan submits that after noticing that both the petitioners and the respondents were in agreement that the petitioner would be entitled to the same order passed by the Central Administrative Tribunal on 10.10.2013, the O.A. of the petitioner was dismissed in the following manner:

*"In the instant case, the applicant has prayed for a direction to respondents to release the pensionary benefits/terminal benefits on the basis of Grade Pay of Rs.5400/- and to pay interest on delayed payment, and the respondents have filed a detailed counter resisting the claim made by the applicants. In view of this, the submission of the learned counsel is untenable. In the light of the above discussions, I hold that the Original Application is devoid of merit. Accordingly, the O.A. is dismissed. No costs."*

3. Mr. Rajan, submits that the impugned order is devoid of any reasons as to why the petitioner should not have been granted the same relief as granted in the case of I.D. Sharma and Others Vs. Union of India and Others more particularly when the respondent had conceded before the Central Administrative Tribunal.

4. Heard. Having regard to the stand taken by the respondent before the CAT as noted above, we deem it appropriate to remand the matter back to the learned Tribunal as the order does not disclose the reasons of dismissal of the O.A. Since the pleadings are already complete in the O.A., we hope that the matter would be disposed of within a period of one month by the learned Tribunal.

5. List before the learned Tribunal on 14th September, 2015.ö

3. On 31.3.2016, I heard Mr.Sudershan Rajan, the learned counsel appearing for the applicant, and Ms.Avnish Kaur, the learned counsel appearing for the respondents.

4. On 31.3.2016, during the course of hearing, Mr.Sudershan Rajan, the learned counsel appearing for the applicant, filed copies of the pay slip for the month of September 2014 issued to one Mr. Rajinder Prasad, and the letter dated 6.2.2015 issued by the Pay & Accounts Office (PTG), Ministry of Urban Development & Poverty Alleviation, New Delhi, to the Pay & Accounts Officer, Central Pension Accounting Office, Ministry of Finance, Government of India, New Delhi 110066, regarding revision of pension of one Mr.Vinay Kumar. Referring to the aforesaid pay slip, and the letter dated 6.2.2015, Mr.Sudershan Rajan, the learned counsel appearing for the applicant, submitted that the applicant in the present case is similarly placed as Mr.Rajinder Prasad and Mr.Vinay Kumar who were granted Grade Pay of Rs.5400/-, and, therefore, the respondents should be directed to release the pensionary/terminal benefits to the applicant on the basis of Grade Pay of Rs.5400/-.

5. Since the typed copies of the purported Pay Slip for the month of September 2014 in respect of Mr.Rajinder Prasad, and the letter dated 6.2.2015 issued by the Pay & Accounts Office(PTG), Ministry of Urban Development & Poverty Alleviation, New Delhi, to the Pay & Accounts Officer, Central Pension Accounting Office, Ministry of Finance, Government of India, New Delhi, regarding revision of pension of Mr. Vinay Kumar, were filed by Mr.Sudershan Rajan, the learned counsel appearing for the applicant, only on 31.3.2016, and that too, without serving

copies thereof on Ms.Avnish Kaur, the respondents did not get an opportunity to give their comments on the same.

6. In the order dated 10.10.2013 passed in OA No.4008 of 2012 (*L.D.Sharma and others Vs. Union of India and others*), it was clearly observed by the Tribunal that the respondents had filed a short counter affidavit stating that the applicants were entitled for the relief claimed by them in the O.A. In the instant case, the respondents had filed a counter reply resisting the claim of the applicant. Thus, the submission made by Mr.Sudershan Rajan, the learned counsel appearing for the applicant, before the Honøble High Court, that the respondents had conceded the applicant's claim is not borne out by the record. Ms. Avnish Kaur, the learned counsel appearing for the respondents, submitted that no instruction was received by her from the respondents to give consent for passing of an order similar to the one passed by the Tribunal in *I.D.Sharma & Ors. Vs. UOI & Ors (supra)*. Section 22(2) of the Administrative Tribunals Act, 1985, mandates that the Tribunal shall decide every application made to it on a perusal of documents and written representations filed by the parties, and after hearing such oral arguments as may be advanced. Furthermore, if a concession made by a counsel is contrary to the pleadings and/or written representation of the party represented by him/her, the Tribunal is not bound to act upon the same, while deciding the application made to it in accordance with law.

7. However, considering the totality of the facts and circumstances of the case, and keeping in mind the judgment dated 21.8.2015 passed by the

Honble High Court of Delhi in W.P. ( C ) No. 7705 of 2014, I think that the ends of justice would be met, if the O.A. is disposed of with a direction that in the event the applicant makes a representation claiming release of his pensionary/terminal benefits on the basis of his salary with Grade Pay of Rs.5400/-, and payment of interest thereon, the respondents shall consider and take a decision on the applicant's representation by passing a speaking and reasoned order within six months from the date of receipt of the same. The applicant is free to furnish copies of the aforesaid pay slip for the month of September 2014, and the letter dated 6.2.2015 issued by the P.A.O (Ptg.), Ministry of Urban Development & Poverty Alleviation, New Delhi, to the Pay & Accounts Officer, Central Pension Accounting Office, Ministry of Finance, Government of India, New Delhi, along with his representation. Ordered accordingly.

8. With the above observation and direction, the O.A. is disposed of. No costs.

**(RAJ VIR SHARMA)**  
**JUDICIAL MEMBER**

AN