

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.4390/2011

Reserved on: 04.10.2017
Pronounced on: 21.11.2017

FULL BENCH

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Shri Raj Vir Sharma, Member (J)
Hon'ble Mr. K. N. Shrivastava, Member (A)**

1. Mukesh Kumar son of Ratan Lal,
Resident of MIG 208, DDA Flats,
Metro Apartments, New Delhi-23
Working as Draughts Mam (Mechanical)
TT Cell, DGET, New Delhi.
2. Ms. Sunita Rani W/o Puran Chand Dudeja,
Resident of 1271, Sector 7 Extn., Gurgaon
Working as Sr. Draughts Man (Mechanical),
TT Cell, DGET, New Delhi. Applicants

(By Advocates: Mr. Vishwendra Verma and Ms. Shivali Singh)

Versus

1. Union of India through Secretary,
Ministry of Labour & Employment,
New Delhi.
2. Directorate General of Employment & Training,
Ministry of Labour & Employment,
New Delhi. Respondents

(By Advocate: Mr. Gyanendra Singh)

O R D E R

Justice Permod Kohli, Chairman :

This OA was dismissed vide order dated 02.04.2013 by a Division Bench of this Tribunal. Aggrieved of the order of dismissal,

the applicants preferred WP(C) No.4097/2014 before the Hon'ble High Court of Delhi. The Hon'ble High Court remanded the matter to this Tribunal vide its order dated 08.10.2015. The order of the Hon'ble High Court is reproduced hereunder:

“On 25.08.2015, parties had agreed that the matter may be remanded to the Tribunal for fresh hearing as two different views have been expressed by the learned Tribunal. Accordingly, the matter is remanded to the Tribunal for fresh hearing. We may notice that the Tribunal has dismissed the OA filed by the petitioner herein, but allowed OA No.1053/2013 on the same facts as pointed out by the counsel for the parties.

Parties to appear before the Tribunal on 05.11.2015. Since the pleadings are already complete, the Tribunal shall endeavour to dispose of the matter expeditiously.

The writ petition stands disposed of.”

On remand, the matter was placed before a Division Bench of the Tribunal headed by the then Chairman on 04.01.2016. The Hon'ble Bench was of the view that the OA was decided by a different Bench and thus directed the matter to be listed before the same Bench. The Bench comprising Hon'ble Mr. Sudhir Kumar, Member (A) and Hon'ble Shri V. Ajay Kumar, Member (J) heard the matter on 04.05.2016. The Bench was of the opinion that in view of the different views having been taken by two different Benches of this Tribunal, the matter needs to be considered by a larger Bench. Relevant order

of the Tribunal referring the matter to the larger Bench is reproduced hereunder:

“In this particular case, the matter has been remanded back for consideration by the Hon'ble Delhi High Court, stating in its order dated 08.10.2015 as follows:

“On 25.08.2015, parties had agreed that the matter may be remanded to the Tribunal for fresh hearing as two different views have been expressed by the learned Tribunal. Accordingly, the matter is remanded to the Tribunal for fresh hearing. We may notice that the Tribunal has dismissed the OA filed by the petitioner herein, but allowed OA No.1053/2013 on the same facts as pointed by the learned counsel for the parties.

Parties to appear before the Tribunal on 05.11.2015. Since the pleadings are already complete, the Tribunal shall endeavour to dispose of the matter expeditiously.

The writ petition stands disposed of.”

Since, as noted by the Delhi High Court, two different views have been taken by the two different Benches of this Tribunal, and the order passed in OA No.1053/2013 dated 31.07.2014, was passed without noticing the earlier order passed in the present OA No.4390/2011 on 02.04.2013, under the law as law laid down by the Hon'ble Apex Court, through its judgment in **Sub Inspector Rooplal & another v. Lt. Governor through Chief Secretary, Delhi & others**, (2000) 1 SCC 644, we refer the matter to be placed before the Hon'ble Chairman for constitution of a Larger Bench for deciding the law, as to which of the two conflicting orders, that passed in the present O.A. No.4390/2011 by us, or in OA No.1053/2013 later by a Coordinate Bench, is correct.

It is under these circumstances that the matter has been placed before this Full Bench as constituted by the Chairman on administrative side.

3. This OA has been filed by two applicants. The applicant No.1 was appointed as Draughtsman (Mechanical) at Advanced Training Institute, Kanpur vide office order dated 12.06.2001 in the pay scale of Rs.4500-125-7000. The applicant No.2 was appointed as Senior Draughtsman in the pay scale of Rs.5000-8000. It is alleged that the post of Draughtsman (Mechanical) and Senior Draughtsman (Mechanical) are identical and in the same pay scale. It is further stated that in some departments, the Draughtsmen are called as Senior Draughtsman. The applicants have referred to the recruitment rules of 1974, wherein the post of Draughtsman (Mechanical)/Senior Draughtsman (Mechanical) is shown at serial number 3. The original pay scale of Draughtsman was Rs.205-280 and the revised pay scale under 3rd, 4th and 5th Central Pay Commissions are as under:

3 rd Central Pay Commission	Rs.425-700
4 th Central Pay Commission	Rs.1400-2300
5 th Central Pay Commission	Rs.4500-7000

3. It is admitted case of the parties that the pay scales of the Draughtsmen working in CPWD were higher than the pay scales of Draughtsmen working in other departments. The applicants have referred to orders dated 13.03.1984, 19.10.1994 and 01.06.2001 (Annexures A-4, A-5 and A-6, respectively). At the time of passing of the order dated 13.03.1984, there were three categories of Draughtsmen, namely, Grade-I, Grade-II and Grade-III. On the basis

of an award of the Board of Arbitration, it was decided to extend the pay scales in the CPWD to all Government of India offices for Draughtsmen. Accordingly, the pay scales of all the three categories of Draughtsmen were revised in the following manner:

Post	Original Scale	Revised scale on the basis of the Award
Draughtsmen Grade-I	Rs.425-700	Rs.550-750
Draughtsmen Grade-II	Rs.330-560	Rs.425-700
Draughtsmen Grade-III	Rs.260-430	Rs.330-560

The aforesaid revision was subject to the condition that the recruitment qualifications are similar to those prescribed in the case of Draughtsmen in CPWD and those who did not fulfil the recruitment qualification would continue in the pre-revised scales. Subsequently, vide office memorandum dated 19.10.1994, the placement in the revised pay scales of Draughtsmen Grades I, II and III in offices/departments other than CPWD was further subjected to the following conditions:

(a) Minimum period of service for placement from the post carrying scale of Rs.975-1540 to Rs.1200-2040 (pre-revised Rs.260-430 to Rs.330-560)	7 years
(b) Minimum period of service for placement from the post carrying scale of Rs.1200-2040 to Rs.1400-2300 (pre-revised Rs.330-560 to Rs.425-700)	5 years
(c) Minimum period of service for placement from the post carrying scale of Rs.1400-2300 to Rs.1600-2660 (pre-revised Rs.425-700 to Rs.550-750)	4 years

4. The Fifth Central Pay Commission having been appointed in the meantime, the benefits of higher scales had not flown, as envisaged, to all personnel in various departments who had not completed the prescribed service in the applicable scales of pay. The matter was later considered by the National Anomalies Committee and the Draughtsmen in different departments other than CPWD who did not possess the prescribed qualifications, excluding those who had already derived benefits envisaged in office memorandum dated 19.09.1994, were ordered to be placed in the revised pay scales on completion of the prescribed minimum service vide office memorandum dated 01.06.2001. The said memorandum reads as under:

“Revision of pay scales of Draughtsmen

In pursuance of an award of the Board of Arbitration, Draughtsmen in Grades I, II and III in the Central Public Works Department in the III CPC pay scales of Rs.425-700, Rs.330-560 and Rs.260-430 respectively were placed in the higher pay scale of Rs.550-750, Rs.425-700 and Rs.330-560 respectively. Orders were also issued subsequently in this Department's O.M. No.F.5(59)-E.III/82, dated 13.3.1984 extending these scales of pay to Draughtsmen in all the Government of India offices notionally from 13.5.1982 and actually from 1.11.1983, subject to their recruitment qualifications being similar to those applicable in the Central Public Works Department. Following further consideration, orders were issued in this Department's O.M. No.13(1)-IC/91, dated 19.10.1994 extending the corresponding V CPC pay scales to even those not possessing the prescribed

qualifications, subject to the condition that they had instead rendered the length of service prescribed therein specifically for the purpose.

2. The Fifth Central Pay Commission having been appointed in the meantime, the benefits of the higher scales had not flown, as envisaged, to all personnel in various departments who had not completed the prescribed service in the applicable scales of pay. The Fifth Central Pay Commission had also further revised the scales of pay of the common category of Draughtsmen.

3. The Staff Side had invited attention to the anomalous situation that had arisen as a consequence in the National Anomalies Committee. They had raised the demand that the revised pay scales recommended by the Fifth Central Pay Commission should be extended to the Draughtsmen in all Central Government Offices, due weightage being given for the service rendered by personnel not possessing the prescribed qualifications in different departments as envisaged in this Department's O.M., dated 19.10.1994. Following considerations of this demand in consultation with the Staff Side, the President is now pleased to decide that Draughtsmen in different departments other than the Central Public Works Department who do not possess the prescribed qualifications and excluding those who have already derived the benefits envisaged in the OM, dated 19.10.1994, may be placed in the scales of pay recommended by the V CPC on completion of the minimum service (including service rendered in the corresponding pre-revised scales) as indicated below:

(a) Minimum period of service to be rendered for placement from the scale of Rs.3200-4900 (pre-revised Rs.975-1540) to the scale of Rs.4000-6000 (pre-revised Rs.1200-2040)	5 years
(b) Minimum period of service to be rendered for placement from the scale of Rs.4000-6000 (pre-revised Rs.1200-2040) to the scale of Rs.5000-8000 (pre-revised Rs.1600-	8 years

2660)	
(c) Minimum period of service to be rendered for placement from the scale of Rs.4500-7000 (pre-revised Rs.1400-2300) to the scale of Rs.5500-9000 (pre-revised Rs.1640-2900)	6 years

4. In determining the eligibility to be placed in the revised scales of pay, the service already rendered in the pre-revised scales will also be duly taken into account. Once the Draughtsmen in various Central Government Departments are placed in the applicable revised scales of pay, further promotions to the higher grades will be made only against available vacancies in such higher grades in accordance with the normal eligibility criteria prescribed in the Recruitment Rules.

5. These orders shall be applicable to such of those Draughtsmen in various Central Government Departments who had not derived the benefits envisaged in this Department's OM, dated 19.10.1994 as on 1.1.1996. The revised pay scales shall also be extended to them only on their fulfilling the revised eligibility criteria now prescribed in Paragraph 3 above.

6. Draughtsmen who have already been covered by the orders contained in the O.M.s, dated 13.3.1984 and 19.10.1994 shall be eligible to be placed only in the applicable revised scales of pay already approved for the common category of Draughtsmen in pursuance of the recommendations of the Fifth Central Pay Commission.

7. Ministries/Departments of the Government of India may also initiate immediate action, in consultation with the Department of Personnel and Training, to amend the Recruitment Rules in respect of the posts of Draughtsmen administered by them so that these conform to the recommendations of the Fifth Central Pay Commission."

5. Learned counsel for the applicants heavily relied upon office memorandum dated 01.06.2001 to claim the pay scale of

Rs.5500-9000. Earlier the applicants in this OA filed another OA No.1256/2011. This OA was disposed of vide order dated 01.04.2011 directing the Union of India and DGE&T to consider the representations of the applicants. Consequent upon the aforesaid order, the respondents have passed impugned order dated 18.08.2011 rejecting the claim of the applicants for placement in the pay scale of Rs.5500-9000. The relevant observations in the impugned order are as under:

“6. But as the specific recommendation of the 5th CPC in respect of D/Man of DGET has a precedence over the other recommendations of 5th CPC in respect of D/Man working in Department other than CPWD, the same cannot be applied to the D/Man of DGET. In view of this, the D/Man of DGET who were placed in the pre-revised scale of Rs.1600-2660/- in pursuance of the judgment of Hon’ble CAT, Chennai can only be granted the normal replacement scale of Rs.5000-8000/- as personal to them.

7. In view of above, Shri Mukesh Kumar & Smt. Sunita Rani cannot be granted a pay scale of Rs.5500-9000/-.

8. V Pay Commission recommended one cadre of Draughtsman Grade-III for DGET and accordingly, the recruitment rules for the Draughtsman Grade-III in the pay scale of Rs.4000-6000/- were framed. Hence, the question of granting designation of Sr. Draughtsman to Shri Mukesh Kumar does not arise.”

6. The contention of the applicants is that their case and that of one Dinesh Kumar Kaushik is on the same footing. OA No.1053/2013 filed by Dinesh Kumar Kaushik was allowed by this Tribunal vide judgment dated 31.07.2014, whereas the OA filed by

the applicants has been dismissed. The applicants accordingly seek the same relief as granted to Dinesh Kumar Kaushik in OA No.1053/2013. The Hon'ble High Court has also remanded the case to this Tribunal only on that basis. Thus, notwithstanding the various other aspects, it is deemed necessary to examine the judgment in case of Dinesh Kumar Kaushik. In the aforesaid case, the applicant Dinesh Kumar Kaushik was initially appointed as Junior Draughtsman in the pay scale of Rs.330-560, revised to Rs.425-700 in view of the orders passed by this Tribunal in OA No.245/1987. Draughtsmen Grades I, II and III in CPWD were placed in the higher pay scales. The applicant therein was working in DGET as Junior Draughtsman and was placed in the pay scale of Rs.1200-2040 w.e.f. 08.10.1993 (later revised to Rs.1400-2300). One G. Rajan filed OA No.351/2003 before the Madras Bench of the Tribunal claiming pre-revised scale of Rs.1600-2660 from 14.10.1998 with all consequential benefits. This OA was allowed by the Madras Bench, and on the basis of the judgment, the said G. Rajan was granted pay scale of Rs.5500-9000 (revised). The judgment of the Tribunal was affirmed by the Hon'ble High Court of Madras vide its order dated 20.03.2008 in writ petition No.5502/2004. This Tribunal vide its judgment dated 31.07.2014 passed in case of Dinesh Kumar Kaushik allowed the OA with the following observations/directions:

“6. In the face of the fact that the Hon’ble High Court of Madras has already decided the issue and accorded the revised pay scale of Rs.5500-9000, the respondents have no option but to abide by it. The OA is, therefore, allowed. Respondents will fix the applicant’s pay in pay scale of Rs.5500-9000 with all consequential benefits.”

From a perusal of the above, we find that this Tribunal allowed the aforesaid OA on the basis of the judgment in case of G. Rajan. We have also perused the judgment in case of G. Rajan decided by the Madras Bench vide judgment dated 21.10.2003. From a perusal of the aforesaid judgment, we notice that the same was based upon two earlier judgments of the Madras Bench of the Tribunal. The first judgment is dated 15.09.1999 passed in OA No.145/1997 filed by one Mr. Jawahar, who was granted pay scale of Rs.1600-2660 vide order dated 26.07.1993. The said Mr. Jawahar was Junior Draughtsman. Some employees working as Senior Draughtsmen filed another OA No.359/2002 claiming revised scale of Rs.5500-9000 effective from 01.01.1996 on the plea that they were already drawing pay scale of Rs.1600-2660. This OA was allowed merely on the basis of the earlier judgment passed in case of Mr. Jawahar. Later, Bangalore Bench of the Tribunal also allowed similar OA Nos.298 and 311/2002 vide order dated 01.07.2003 merely on the basis of the judgment in OA No.359/2002 of Madras Bench. G. Rajan’s case was also decided on the basis of the aforesaid judgments. Relevant observations in G. Rajan’s case are as under:

“6. Admittedly, Senior Draughtsman who are working had approached the courts and tribunals as directed above and were granted scale of pay of Rs.1600-2660 (pre-revised) from the date they were promoted. In the instant case, the applicant has assumed charge as Senior Draughtsman with effect from 14.10.1998 and therefore, he is entitled for the pay scale of Rs.1600-2660 from that date. Denying him this scale on the sole reason that he had not approached the Tribunal/court in this regard is arbitrary action and therefore, deserves to be set aside.

7. In view of the discussions, the applicant succeeds and the O.A. is allowed. Impugned order dt.18.10.2002 is quashed. The applicant is entitled to pre-revised pay scale of Rs.1600-2660 from 14.10.1998 and all other consequential benefits which flow to him thereafter. The respondents are directed to consider re-fixation of pay and payment of arrears accordingly within eight weeks from the date of receipt of a copy of this order. No costs.”

7. On consideration of the judgment in G. Rajan and Dinesh Kumar Kaushik's cases (*supra*), we find that various Benches of this Tribunal granted the benefit of pay scale of Rs.1600-2660 (pre-revised) merely on the basis of earlier judgments. We have noticed that none of the Hon'ble Benches examined the claims on the basis of the facts of the earlier judgments and the facts of these two cases, and merely followed the judgments. Thus, directions in G. Rajan (*supra*) and Dinesh Kumar Kaushik (*supra*) cannot be said to be ratio of the judgments. It was because of these reasons that we have examined various orders issued by the respondents for revision of the pay scales of various categories of Draughtsmen, the last one being dated 01.06.2001.

8. The counter affidavit filed by the respondents simply mentions that under the Fifth Central Pay Commission the Draughtsmen in DGE&T were to be placed in pay scale of Rs.4000-6000. It is stated that the applicant Mukesh Kumar who was transferred from ATI Kanpur to DGE&T HQ at his own request was to be treated as junior-most Draughtsman in the DGE&T HQ. He was placed in the pay scale of Rs.4000-6000 as per recommendations of the Fifth CPC (para 74.12) and subsequently vide office order dated 24.03.2004 he was placed in the pay scale of Rs.4500-125-7000, which was personal to him. It is, however, admitted that some of the Draughtsmen who had been granted the pay scale of Rs.1600-2660 under the Fourth CPC were placed in the pay scale of Rs.5000-8000 by virtue of the judgment of the Madras Bench of the Tribunal, and the replacement for the scale of Rs.1600-2660 in the Fifth CPC was Rs.5000-8000 and not Rs.5500-9000, which was erroneously granted to G. Rajan (supra).

9. As noticed by us, both the judgments in G. Rajan and Dinesh Kumar Kaushik's cases (supra) are based upon some earlier judgments, without discussing the basis for grant of pay scale of Rs.5500-9000. The learned counsel for the applicants has, however, laid emphasis and heavily relied upon the office memorandum dated 01.06.2001 reproduced hereinabove. We have carefully perused the

said memorandum. The Draughtsmen working in different departments other than CPWD were ordered to be placed in various pay scales on completion of prescribed minimum period of service. A Draughtsman in pre-revised scale of Rs.1200-2040 is entitled to be placed in the pay scale of Rs.4000-6000 on completion of five years of service, and a Draughtsman placed in the pay scale of Rs.4000-6000 is entitled to be placed in the revised scale of Rs.5000-8000 on completion of eight years of service, whereas a Draughtsman in pay scale of Rs.4500-7000 is entitled to be placed in the scale of Rs.5500-9000 on completion of six years of service. The applicant No.1 was appointed in the pay scale of Rs.4500-7000. Thus, he is entitled to be placed in the pay scale of Rs.5500-9000 only on completion of six years of service, as his case falls under para 3(c) of the office memorandum dated 01.06.2001. The applicant was appointed as Draughtsman vide order dated 12.06.2001 in the pay scale of Rs.4500-7000. Thus, he would be entitled to be placed in the pay scale of Rs.5500-9000 on completion of six years of service, i.e., from 12.06.2007.

10. Insofar as the applicant No.2 is concerned, in para 4.12 it is stated that the applicant was granted the pay scale of Rs.1600-2660 on 08.04.1997, and in the Fifth CPC the scale of the applicant was given as Rs.5000-8000, whereas to another Draughtsman/Sr.

Draughtsman Shri G. Rajan, the pay scale of Rs.5500-9000 was given. There is no other averment as to why applicant No.2 is entitled to pay scale of Rs.5500-9000. The applicant made a representation dated 26.12.2008 (Annexure A-11) claiming the pay scale of Rs.5500-9000 w.e.f. 01.01.1996 only on the basis of the judgment in G. Rajan's case.

11. Under the office memorandum dated 01.06.2001, a Draughtsman with eight years of service in the scale of Rs.4000-6000 (pre-revised Rs.1200-2040) is to be placed in the scale of Rs.5000-8000 (pre-revised Rs.1600-2660). The applicant No.2 has already been granted the benefit of the pay scale of Rs.5000-8000 pursuant to recommendations of the Fifth CPC.

12. We are of the considered view that the precedents relied upon by the applicants of G. Rajan and Dinesh Kumar Kaushik (*supra*) cannot be applied in view of office memorandum noticed above. However, the applicant No.1 is entitled to be placed in the scale of Rs.5500-9000 only with effect from 12.06.2007 on completion of six years in the scale of Rs.4500-7000. This OA is accordingly disposed of with the following directions:

The OA *qua* the applicant No.2 is dismissed. The order dated 18.08.2011 rejecting the claim of the applicant No.1 for placement in pay scale of Rs.5500-9000 is hereby set aside. The claim of the applicant No.1 for placement in the scale of Rs.5500-9000 with effect

from the initial appointment is rejected. The applicant No.1 shall be entitled to be placed in the pay scale of Rs.5500-9000 on completion of six years of service from the date of his appointment, i.e., w.e.f. 12.06.2007. Let the consequential order be issued and the benefits which the applicant may be found entitled to, be granted to him accordingly.

(K. N. Shrivastava) (Raj Vir Sharma) (Justice Permod Kohli)
Member (A) Member (J) Chairman

/as/