

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

OA 3918/2013  
With  
OA 4212/2013

New Delhi this the 15th day of September, 2015

**Hon'ble Mr. Justice Syed Rafat Alam, Chairman  
Hon'ble Mr. P.K. Basu, Member (A)**

OA 3918/2013

S/Shri

1. A.K. Thakur aged about 60-1/2 years  
S/o Shri A.D. Thakur presently  
Superannuated w.e.f. 31.08.2013  
While last posted as IDAS Cadre  
Gp 'A' Officer Asstt. Controller of Defence Accounts  
Under the Administrative Control of CGDA  
Delhi Cantt. Ministry of Defence
2. V.S. Aswal aged about 62 years  
S/o Late Shri K.S. Aswal presently  
Superannuated w.e.f. 31.12.2011  
Under the Administrative Control of CGDA  
Delhi Cantt. Ministry of Defence
3. T.K. Neogi aged about 59 years  
S/o Late Shri B.N. Neogi presently  
Working as I.D.A.S. Cadre Gp 'A'  
Officer Assistant Controller of Defence Accounts  
Posted in Area Accounts Office  
(Pay) Delhi Cantt. Under the  
Administrative Control of CGDA  
Delhi Cantt. Ministry of Defence
4. Jagat Singh Negi aged about 63-1/2 years  
S/o Late Shri R.S. Negi presently  
Superannuated w.e.f. 28.02.2010  
While last posted as IDAS Cadre Gp. "A"  
Officer Assistant Controller of Defence Accounts  
Posted in Area Accounts Office  
(Pay) Delhi Cantt. Under the  
Administrative Control of CGDA  
Delhi Cantt. Ministry of Defence
5. Suraj Prakash Bhandari aged about 62 years  
S/o Late Shri G.C. Bhandari presently  
Superannuated w.e.f. 30.09.2011

While last posted as IDAS Cadre Gp. "A"  
 Officer Assistant Controller of Defence Accounts  
 Posted in Area Accounts Office  
 (Pay) Delhi Cantt. Under the  
 Administrative Control of CGDA  
 Delhi Cantt. Ministry of Defence

6. Arun Kumar Nayar aged about 59-1/2 years  
 S/o Late Shri D.D. Nayar presently  
 Working as IDAS Cadre Gp. "A"  
 Officer Assistant Controller of Defence Accounts  
 Posted in IFA (Army) New Delhi under the  
 Administrative Control of CGDA  
 Delhi Cantt. Ministry of Defence
7. R.S. Tomar aged about 60-1/2  
 S/o Late Shri Ater Singh presently  
 Superannuated w.e.f. 28.02.2013  
 While last posted as Gp. "B"  
 Gazetted Officer **‘Senior Accounts Officer’**  
 While last posted in CDA (Army) Meerut Cantt.  
 Under the Administrative Control of CGDA  
 Delhi Cantt. Ministry of Defence
8. Sant Ram aged about 61-1/2 years  
 S/o Late Shri Deep Chand presently  
 Superannuated w.e.f. 30.03.2012  
 While last posted as Gp. "B"  
 Gazetted Officer Senior Accounts Officer  
 in CDA (Army) Meerut  
 Under the Administrative Control of CGDA  
 Delhi Cantt. Ministry of Defence
9. Ashok Kumar Anand aged about 61-1/2 years  
 S/o Late Shri Ram Rakha presently  
 Superannuated w.e.f. 31.01.2012  
 While last posted as Gp. "B"  
 Gazetted Officer as Senior Accounts Officer  
 in CDA (Army) Meerut Cantt.  
 Under the Administrative Control of CGDA  
 Delhi Cantt. Ministry of Defence
10. P.K. Kapoor aged about 59-1/2 years  
 S/o Late Shri M.L. Kapoor presently  
 Working as ACFA Group "A"  
 Gazetted Officer while posted in  
 Accounts Office Ordnance Factory Muradnagar  
 a Sub Office of PCDA (Factory)  
 Kolkata under the administrative control  
 of CGDA Delhi Cantt.  
 Ministry of Defence
11. Ami Chand Chaturvedi aged about 61-1/2 years  
 presently superannuated w.e.f. 31.07.2012  
 While last posted in Gp "B" Gazetted Officer  
 Cadre as Senior Accounts Officer in AAO Agra

Sub Office of CDA (Army) Meerut  
under the administrative control of CGDA  
Delhi Cantt. Ministry of Defence

12. A.K. Bhatia aged about 61-1/2 years  
S/o Late Shri L.K. Bhatia presently superannuated  
w.e.f. 30.06.2012  
While last posted in Gp "B" Gazetted Cadre  
Of Senior Accounts Officer in IFA HQ/Corps  
Mathura Sub Office of CDA (Army) Meerut  
under the administrative control of CGDA  
Delhi Cantt. Ministry of Defence

13. A.K. Bhatnagar aged about 58 years  
S/o Late Shri L.S. Bhatnagar presently  
Working in IDAS Cadre Gp "A" Gazetted  
Officer as Asstt. Controller of Defence Accounts  
in CDA (Jabalpur) under  
the administrative control of CGDA  
Delhi Cantt. Ministry of Defence

14. T.R. Jain aged about 59 years  
S/o Late Shri Jagdish Rai Jain presently  
Working as ACDA/Dy. IFA IDAS Cadre  
Gp. 'A' Gazetted Officer in the organization  
of PIFA (A/O) New Delhi under the  
administrative control of CGDA  
Delhi Cantt. Ministry of Defence

15. Kunwar Pal Singh aged about 72 years  
S/o Late Shri Karam Singh  
presently superannuated w.e.f. 31.08.2001  
while last posted as AAO in  
Gp 'B' Gazetted Officer in the Office of AAO  
GE (Army) RAO (MES) Jodhpur Sub Office  
of PCDA (SC) Poine under the administrative  
control of CGDA, Delhi Cantt.  
Ministry of Defence

(Through Shri V.P.S. Tyagi, Advocate)

**VERSUS**

1. The Union of India,  
(Through Secretary)  
Ministry of Defence,  
South Block, New Delhi-110001
2. The Financial Advisor-cum-Secretary  
Ministry of Defence, (FADS)  
South Block, New Delhi-110001
3. The Controller General of Defence Accounts  
Ulan Batar Marg,  
Palam, Delhi Cantt-110010

... Respondents

(Through Ms. Ritika Chawla, Advocate)

OA 4212/2013

Shri Brij Pal Singh aged about 59-1/2 years  
S/o Late Shri Baljit Singh presently  
superannuated on accord of VRS w.e.f. 31.10.2013  
while last posted as IDAS  
Cadre Gp 'A' Officer as Asstt. Controller of  
Defence Accounts in the organization of  
PCDA (SWC) Jaipur  
under the administrative Control of CGDA,  
Delhi Cantt., Ministry of Defence  
New Delhi-110010

....Applicant

(Through Shri V.P.S. Tyagi, Advocate)

**VERSUS**

1. The Union of India,  
(Through Secretary)  
Ministry of Defence,  
South Block, New Delhi-110001
2. The Financial Advisor-cum-Secretary  
Ministry of Defence, (FADS)  
South Block, New Delhi-110001
3. The Controller General of Defence Accounts  
Ulan Batar Marg,  
Palam, Delhi Cantt-110010

(Through Shri Ashok Kumar, Advocate)

## ORDER

### **Mr. P.K. Basu, Member (A) :**

Since the issue involved in both OAs 3918/2013 and 4212/2013 are the same they are being disposed of by a common order.

2. For convenience we take up the facts in OA 3918/2013. The applicants in this OA are officers belonging to Group 'A' and Group 'B' in the office of Controller General of Defence Accounts. Their basic prayer is that their pay and allowances should be stepped up at par with their juniors and similarly situated employees. As stated by the applicants,

the genesis of their claim arises from the fact that one Shri L. Narhari, who is junior to them, had been given higher pay scale. Thereafter, similarly placed persons as the applicants herein filed OA 260/2002 before the Madras Bench of the Tribunal and obtained favourable orders. In OA 260/2002, Shri L. Narhari was respondent no.7. The case had been filed by Assistant Accounts Officers (AAOs) because of their claim that they had been promoted as AAOs on a much earlier date than respondent no.7 but respondent no.7 was drawing a higher salary. It is stated that the order of the Madras Bench of the Tribunal was challenged in the Hon'ble High Court of Madras by filing Writ Petition No.20774/2003, which was dismissed vide order dated 27.11.2008. Thereafter the respondents filed SLP No.14167/2009 arising out of judgment and order dated 27.11.2008 of the Hon'ble High Court of Madras and the said SLP was also dismissed. Therefore, it is claimed that the order of the Tribunal in OA 260/2002 has attained finality. The applicants, therefore, claim that they should also be given the benefit of the order of the Madras Bench of the Tribunal in OA 260/2002 whereas the respondents have agreed to implement the directions contained therein in respect of the applicants in that OA only.

3. Regarding applicability of the aforesaid order of the Tribunal in OA 260/2002 to similarly placed persons who had not approached the Court, the applicants relied on:

- i) **Inderpal Yadav Vs. Union of India**, (1985) 2 SLR 248
- ii) **K.L. Shephard and others Vs. Union of India**, AIR 1988 SC 686

iii) **K.T. Veerappa and others Vs. State of Karnataka and others**, (2006) 9 SCC 406

iv) **State of Karnataka Vs. C. Lalitha**, (2006) 2 SCC 747

4. In these cases, it was held that service jurisprudence evolved by the Apex Court from time to time postulates that all persons similarly situated should be treated similarly; only because one person has approached the court that would not mean that persons similarly situated should be treated differently. In para 4.8 of the OA the applicants have stated that in **Ghulam Rasool Lone Vs. State of J & K and another**, (2009) 15 SCC 321, the Hon'ble Supreme Court has held “it is no way trite law, that where the Writ Petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of fact they are similarly situated to the other candidates who obtained the benefit of the judgment.” The learned counsel seems to have misread the judgment. In fact, ratio of the judgment is just the opposite. It is held that if similarly placed employees are guilty of delay and laches discretionary jurisdiction may be denied on that ground. The quotation by the applicants in the OA is from para16 of the judgment. The phrase used is “It is now a trite law....” and not “.....It is no way a trite law.....” as quoted by the applicants. That changes the whole meaning.

5. It has been stated that some other employees who had passed SAS Part II Examination prior to Shri L. Narhari and were promoted earlier than him as AAO had approached Bangalore Bench of the Tribunal through OA Nos.670/1999 and 832/1999 and that in those cases also,

Shri Narhari was impleaded as private respondent as in OA 260/2002. OA 260/2002 was allowed vide order dated 13.11.2002 and the respondents were directed to consider the case of the applicants in that OA for fixing their pay at par with Shri Narhari at the stage of AAO. The matter came up before the Hon'ble High Court of Madras in W.P. No.20774/2003 and the said Writ was dismissed. The Hon'ble High Court of Madras, while dismissing the Writ Petition, took note of the order passed by the Hon'ble Karnataka High Court dated 2.12.2004 in Writ Petition (C) No.5525/2001. The Writ filed before the Hon'ble Karnataka High Court was against the orders of the Bangalore Bench of the Tribunal in OA 670/1999 and OA 832/1999. These OAs had been allowed by the Bangalore Bench of the Tribunal granting similar relief and the Hon'ble Karnataka High Court dismissed Writ Petition (C) No.5525/2001. The judgment of the Hon'ble Madras High Court was challenged in SLP No.14167/2009 and the SLP was also dismissed by the Hon'ble Supreme Court. In parallel, the judgments of the Hon'ble Karnataka High Court in Writ Petition Nos.5523/2001, 6240/2001 and 6241/2001 were challenged in the Hon'ble Supreme Court of India in SLP Nos.24157-24159/2005 and the Hon'ble Supreme Court passed the following order:

“Delay condoned.

Having heard learned counsel for the parties, we are of the opinion that the respondents having retired and the difference in salary being Rs.35/- p.m., it is not a fit case for us to exercise our discretionary jurisdiction under Article 136 of the Constitution of India. The special leave petitions are dismissed. It is, however, made clear that the question of law shall remain open.”

6. The case of the applicants, therefore, is that since similarly placed persons who had claimed parity with Shri L. Narhari have been allowed such parity vide order of the Tribunal in OA 260/2002, upheld by the Hon'ble Madras High Court as well as the Hon'ble Supreme Court and since similar relief has been granted by the Bangalore Bench, as upheld by the Hon'ble Karnataka High Court in Writ Petition (C) No.5525/2001 and not interfered by the Hon'ble Supreme Court, there is no ground for the respondents now not to provide the same relief to the applicants in the present OAs, who are similarly placed solely on the ground that the benefit would be granted only to those who were applicants in the concerned OAs, especially in the light of the judgment cited by the applicants in Inderpal Yadav (supra) etc.

7. The learned counsel for the applicants also placed on record order dated 30.09.2014 of this Tribunal in OA 668/2012, **Tilak Ram and others Vs. Union of India and others**, which was filed by similarly placed persons, citing the order of the Madras Bench of the Tribunal in OA 260/2012 etc. and the said OA was allowed by this Tribunal. Similarly, reliance is also placed on order dated 8.10.2014 in OA 1012/2012, **S/Shri Raj Pal Dhruga and others Vs. The Union of India and others** on the same issue, which was allowed.

8. The respondents in their reply have produced a comparative statement of Shri L. Narhari versus 15 applicants showing their service history starting from the date of their appointment and promotions etc. (Annexure-R). It is stated that Shri Narhari joined the department on 24.01.1963 as UDC whereas all others joined the department much later. Therefore, it is argued that though the date of his promotion as

AAO may be later or the same vis-à-vis others, his pay as on 3.07.1995 became higher as a result of his length of service. It is argued that FR 22 read in conjunction with the DoP&T OM dated 04.11.1993 governs matters of stepping up of pay of senior in a pay scale to that of a junior and such stepping up can be only on fulfillment of the following conditions:

- “(a) both the junior and senior officer should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre.
- (b) The scales of pay of the lower and higher posts in which the junior and senior officers are entitled to draw pay should be identical.
- (c) The anomaly should be directly as a result of the application of FR 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advanced increments or any other account the above provisions will not be invoked to step up the pay of the senior officer.

9. The respondents had consulted Ministry of Law and Ministry of Finance and these Ministries turned down the proposal of stepping up of pay to the non-applicants of OA-260/2002 by observing that in terms of OM dated 4.11.1993, if a senior is appointed to a higher post later than the junior whereby he is in receipt of lesser pay than the junior, in such cases, senior cannot claim stepping up of pay at par with the juniors. It is argued that stepping up of pay as sought by the applicants is not maintainable as the judgments cited are distinguishable taking into account the relevant facts. It is argued that even the first principle laid

down under FR 22, as quoted above is not met as it is essential that the junior and the senior should belong to the same cadre. Whereas Shri Narhari was appointed on 24.01.1963 as UDC, the applicants were appointed in different cadres, which means that they became AAOs coming from different streams, thus not satisfying condition (a) above.

10. It was also vehemently argued by the learned counsel for the respondents that while dismissing the SLP No.24157-24159/2005, which had challenged the orders of the Hon'ble Karnataka High Court, the Hon'ble Supreme Court had specifically stated that "It is, however, made clear that the question of law shall remain open." It is thus argued that question of law still remains open and thus the orders of the Hon'ble High Courts of Karnataka and Madras should be treated as judgments in personam and not judgments in rem.

11. We have heard the learned counsel for the parties, gone through the pleadings available on record and perused the judgments cited.

12. It is seen from para 5 of the order in OA 260/2002 of the Madras Bench of the Tribunal that the question of entry grade had been raised before the Tribunal at that stage and the Tribunal had rejected this argument as follows:

"There is no use of referring to the entry grade and the seniority. Even a cursory reading of FR 22-C would show that the said provision envisages of only of the lower post and the higher post. It does not talk of any entry grade and comparison of the whole service period. Therefore this limb of the argument of the official respondents must fall."

13. The Hon'ble High Court of Madras in its judgment dated 27.11.2008 has primarily relied on the CAT Bangalore Bench order in OA 670/1999 and confirmation of that order by Karnataka High Court as also the CAT Chennai Bench order. It is seen that there is only a passing reference to FR (22) in the order of CAT Chennai Bench. In fact, the Tribunal had not even examined DoP&T OM dated 4.11.1993 which is the basis of claim for any stepping up of pay, along with FR (22). Moreover, the Hon'ble Supreme Court in SLP No.24157-24159/2005 has given a clear finding that the question of law is still open. Therefore, perhaps FR-22 read with the OM of 4.11.1993 can be re-examined in the light of the Hon'ble Supreme Court's judgment and the judgment by the Hon'ble High Court of Madras is not a judgment in rem and would apply only to the petitioner in that Writ. In this regard, the following decisions of the Hon'ble Supreme Court become relevant:

- i) **B. Shama Rao Vs. The Union Territory of Pondicherry**, (1967) 2 SCR pg 657 – Held, it is trite to say a decision is binding not because of its conclusion but in regard to its ratio and principle laid down therein;
- ii) **General Manager Northern Railways & anr. Vs. Sarvesh Chopra**, JT (2002) 2 SC 455 – Held, a decision of this Court is an authority for the proposition which it decides and not for what it has not decided or had no occasion to express an opinion; and
- iii) **State of U.P. & anr. Vs Synthetics and Chemicals Ltd. & anr.**, (1991) 4 SCC 139 – Held that precedents sub-silentio and without argument, without reference to the crucial words

of the rule and without citation of the authority are of no moment.

14. We notice from the charts annexed at Annexure 'R' that Shri Narhari had joined much before the applicants herein and had received, therefore, his increments and also the special pay etc. As pointed out by the learned counsel for the respondents, FR-22 makes it clear that if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments or any other account, the above provisions will not be invoked to step up the pay of the senior officer. As the respondents have pointed out that Shri Narhari was granted special pay of Rs.35/- per month for doing complex nature of work and this was added to his basic pay when his pay was fixed on 1.01.1986. He was again granted special pay of Rs.40/- per month with effect from 28.10.1986, which was raised to Rs.70/- with effect from 28.10.1987. Special pay of Rs.40/- was added to his pay when he was promoted as Senior Auditor with effect from 1.04.1987 in the pay scale of Rs.1400-2600/-. Taking into consideration of the emoluments of the basic pay of Rs.1950/- in Senior Auditor grade and special pay of Rs.70/- for passing SAS Part-II examination his pay was fixed at the stage of Rs.2180/- w.e.f. 19.03.1990 and Rs. 2240/- w.e.f. 1.04.1990 i.e. from the date of accrual of next increment in lower post. Shri Narhari was promoted as AAO w.e.f. 3.07.1995 and his pay was fixed in the pay scale of MO (viz. Rs.2000-60-2300-EB-75-3200) at the stage of Rs.2675/- w.e.f. 3.07.1995 and subsequently his pay was upgraded to the stage of Rs.8300/- w.e.f. 1.07.1996 after his electing the revised 5<sup>th</sup> CPC pay scale from the date of accrual of his next increment.

15. The applicants also relied on the judgment of the Hon'ble Delhi High Court in W.P. (C) 3435/2013, **The Union of India and others Vs. Kuldeep Kumar Sharma and others** dated 24.05.2013 in which the Hon'ble High Court held that the applicants would be entitled to stepping up of pay on notional basis from the date persons junior to them started receiving higher salary but actual amount to be paid to the respondents would be limited to the period commencing from the date one year preceding to when the Original Applications were filed by the respondents.

16. We find that the present case has to be strictly governed by the provisions of FR-22 and the OM of 4.11.1993.

17. It would be seen from the chart provided by the respondents at Annexure 'R' that before Shri Narhari and all the applicants became AAOs, they were promoted as SO (A) from various dates. Shri Narhari was promoted with effect from 9.03.1990 as SO (A) and all the applicants herein were promoted as such before that date. Therefore, they were all in the same post of SO (A) when they were considered for promotion as AAO through the examination. Thus, for the respondents to state that the applicants belonged to different cadres before their promotion as AAO, is incorrect. As per their statement, they were all SO(A)s, albeit from different streams and, therefore, belonged to same cadre before promotion, namely SO(A). Therefore, in our view, this is not a valid argument on the part of the respondents. Condition no.2 under FR-22 is also satisfied as the scale of the lower post i.e. SO (A) and higher post AAO in which they are entitled to draw pay are identical.

18. Now we come to condition no.3. FR 22-C has now been replaced by FR 22 (1) (a) (i), which is now GIO (1) below FR-22. The same is quoted below:

**“(1) Fixation of pay on promotion on or after 1-1-2006 –**  
In the case of promotion from one grade pay to another in the revised pay structure, the fixation will be done as follows :-

- (i) One increment equal to 3% of the sum of the pay in the pay band and the existing grade pay will be computed and rounded off to the next multiple of 10. This will be added to the existing pay in the pay band. The grade pay corresponding to the promotion post will thereafter be granted in addition to this pay in the pay band. In cases where promotion involves change in the pay band also, the same methodology will be followed. However, if the pay in the pay band after adding the increment is less than the minimum of the higher pay band to which promotion is taking place, pay in the pay band will be stepped to such minimum.
- (ii) In the case of promotion from PB-4 to HAG+, after adding one increment in the manner prescribed in Rule 9, the pay in the pay band and existing grade pay will be added and the resultant figure will become the basic pay in HAG+. This shall not exceed Rs.80,000/-, the maximum of the scale. For Government servants in receipt of NPA, pay plus NPA will not exceed Rs.85,000/-.”

19. What stepping up of pay, therefore, stipulates is that this anomaly should be directly as a result of application of FR 22-C and, therefore, it is clarified that if the junior has got advance increments and as a result his pay is higher on fixation of his pay on promotion on or after 1.01.2006, no stepping up is permitted. As explained by the respondents, Shri Narhari had received special pay, which was added to his pay during pay fixation.

20. In order to take a view in this matter, it is essential to get into the genesis of the concept of stepping up of pay. It is provided under item no.18 of Government of India's Orders after FR-22 as follows:

“(18) Removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior – (a) As a result of application of FR 22-C.[Now FR 22(I) (a)(1)].-In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1-4-1961 drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely :-

- (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;
- (c) The anomaly should be directly as a result of the application of FR 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay.

[G.I., M.F. OM No.F.2(78)-E.III(A)/66, dated the 4<sup>th</sup> February, 1966.]

(b) As a result of FR 22(I) (1) application in the revised scales of CCS (RP) Rules, 2008 – In cases, where a Government servant promoted to a higher

post before the 1<sup>st</sup> day of January, 2006, draws less pay in the revised pay structure than his junior who is promoted to the higher post on or after the 1<sup>st</sup> day of January, 2006, the pay in the pay band of the senior Government servant should be stepped up to an amount equal to the pay in the pay band as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior Government servant subject to the fulfilment of the following conditions, namely :-

- (a) both the junior and the senior Government servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre.
- (b) the pre-revised scale of pay and the revised grade pay of the lower and higher posts in which they are entitled to draw pay, should be identical.
- (c) the senior Government servants at the time of promotion have been drawing equal or more pay than the junior.
- (d) the anomaly should be directly as a result of the application of the provisions of Fundamental Rule 22 or any other rule or order regulating pay fixation on such promotion in the revised pay structure. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provisions of this Note need not be invoked to step up the pay of the senior officer.

Subject to the provisions of Rule 5, if the pay as fixed in the officiating post under sub-rule (1) is lower than the pay fixed in the substantive post, the former shall be fixed at the same stage as the substantive pay.

[Note 10 below Rule 7 of CCS (RP) Rules, 2008]"

21. The provisions of OM dated 4.11.1993 are available as item no.23 after FR-22 and provide as follows:

"23. Instances which do not constitute an anomaly for stepping up of pay with reference to juniors.- Cases for stepping up of the pay of seniors in a pay scale to that of juniors are generally considered if the following conditions are satisfied:-

(a) both the junior and senior officer should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;

(b) the scales of pay of the lower and higher posts in which the junior and senior officer are entitled to draw pay should be identical;

(c) the anomaly should be directly as a result of the application of FR 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments or on any other account, the above provisions will not be invoked to step up the pay of senior officer.

2. Instances have come to the notice of this Department requesting for stepping up of pay due to the following reasons:-

(a) where a senior proceeds on Extraordinary Leave which results in postponement of Date of Next Increment in the lower post, consequently he starts drawing less pay than his junior in the lower grade itself. He, therefore, cannot claim pay parity on promotion even though he may be promoted earlier to the higher grade;

(b) if a senior forgoes/refuses promotion leading to his junior being promoted/appointed to the higher post earlier, junior draws higher pay than the senior. The senior may be on deputation while junior avails of the ad hoc officiating/regular service rendered in the higher posts for periods earlier than the senior, cannot, therefore, be an anomaly in strict sense of the term;

(c) if a senior joins the higher post later than the junior, for whatsoever reasons, whereby he draws less pay than the junior in such cases, senior cannot claim stepping up of pay at par with the junior;

(d) if a senior is appointed later than the junior in the lower post itself whereby he is in receipt of lesser pay than the junior, in such cases also the senior cannot claim pay parity in the higher post though he may have been promoted earlier to the higher post;

(e) where a person is promoted from lower to a higher post, his pay is fixed with reference to the pay drawn by him in the lower post under FR 22 C and he is likely to get more pay than a direct appointee whose pay is fixed under different set of rules. For example, an UDC on promotion to the post of Assistant gets his pay fixed under FR 22C with reference to the pay drawn in the post of UDC, whereas the pay of Assistant (DR) is fixed normally at the minimum under FR 22-B (2). In such cases, the senior direct recruit cannot claim pay parity with the junior

promoted from a lower post to higher post as seniority alone is not a criteria for allowing stepping up;

(f) where a junior gets more pay due to additional increments earned on acquiring higher qualifications.

3. In the instances referred to in Para.2 above, a junior drawing more pay than the senior will not constitute an anomaly. In such cases, stepping up of pay will not, therefore, be admissible.

[G.I.,Dept.of Per.& Trg.,O.M.No.4/7/92-Estt.(Pay-I), dated the 4th November, 1993.]"

22. From the above, it will be clear that the question of stepping up of pay is not a general provision that on any promotion, if the junior draws higher salary than the senior, then his pay should be stepped up. First of all, it has to arise directly as a result of application of FR 22-C, now FR 22 (1) (a) (i). The 1993 OM makes clear the situations where no stepping up is permissible and it would be seen that if the junior is getting higher pay by virtue of grant of advance increments or on any other count (for example, in this case special pay), the above provisions of stepping up will not be applicable. This has also been made clear in 2008 CCS (Revised Pay) Rules where it clearly states that senior government servants at the time of promotion should have been drawing equal or more pay than the juniors. It has to be kept in mind that juniors do draw some times higher pay than the seniors due to historic factors such as having drawn more increments, special pay etc. These are not covered in 1993 OM.

23. In our view, therefore, the case of the applicants is not covered by FR-22 and OM dated 4.11.1993. Therefore, the orders of the Hon'ble High Courts of Madras and Bangalore would be restricted to the petitioners only in those cases and not *suo motu* apply to the

applicants in the present cases. The OAs are, therefore, dismissed. No costs.

( P.K. Basu )  
Member (A)

( Syed Rafat Alam )  
Chairman

/dkm/