

**Central Administrative Tribunal
Principal Bench**

OA No.3809/2010
MA No.2039/2010
MA No.2931/2010
With
OA No.2217/2013
MA No.1176/2013

Order Reserved on: 10.11.2017

Pronounced on: 13.12.2017.

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)

OA No.3809/2010

1. Hemant Kumar Vashisht,
S/o Lt. Sh. Kundan Lal Sharma,
R/o House No.522,
Vill. & P.O. Mitraon,
New Delhi-110043.
2. Sunil Kumar Jain,
S/o Sh. Attar Singh Jain,
R/o C-240, Prashant Vihar,
New Delhi.
3. Bharat Bhushan,
S/o Sh. Ram Chander
R/o House No.363,
Main Bazar, Bhadurgarh (Haryana).
4. A.D.Bahuguna,
S/o Sh. P.D.Bahuguna,
R/o House No.263/1,
B.L.Marg, Dehradun.
5. Govind Ram,
S/o Lt. Sh. Dewan Chand
R/o B-2/2216, Vasant Kunj,
New Delhi-110070.
6. Ram Prasad (Retd.),
S/o Sh. Kali Ram,

R/o 1498, Sector 5,
R.K.Puram,
New Delhi.

7. Rohtash Singh (Retd.),
S/o Sh. Mangtu Ram,
R/o Vill & P.O. Jharsa, Gurgaon,
Haryana.
8. A.K.Jain,
S/o Lt. Sh. A.P.Jain,
R/o T-3/8, Survey Colony,
EC Road, Dehradun.
9. Hakim Ali,
S/o Sh. Rahtu Khan,
R/o House No.100, Gali No.3,
Kachi Colony,
Kaujur, Delhi.
10. Ram Kishan,
S/o Sh. Harhjas Ram,
R/o 721/22, DDA Flats,
Kalkaji, New Delhi.
11. I.S.Dahiya,
S/o Lt. Sh. Sada Ram,
R/o 137, lancer Road,
Mall Road, New Delhi.
12. Nathi Singh,
S/o Late Sh. Nannoo Ram,
R/o 878, Sector 5,
R.K.Puram, New Delhi.
13. M.S.Kalota,
S/o Sh. Daya Ram,
R/o House No.83, Kalish Nagar,
Ambala City.
14. Sham Lal Makhija (Retd.),
S/o Lt. Sh. Mangat Ram,
R/o C-506, JVT Garden,
Chhattarpur Ext.,

New Delhi.

15. S.K. Nema (Retd.)
S/o Lt. Sh. S.R.Nema,
R/o 317, Sanjeevani Nagar,
Jabalpur.
16. S.C.Verma (Retd.),
S/o Lt. Sh. K.P.Verma,
R/o LIG (B), 650,
Dhanwantari Nagar,
Jabalpur.
17. Vijay Singh,
S/o Lt. Sh. R.K.Singh,
R/o MIG 569,
Dhanwanti Nagar,
Jabalpur.
18. S.C.Sooden (Retd.),
S/o Lt. Sh. K.N.Sooden,
R/o 304, Ankur Apartment,
South Civil Lines,
Jabalpur.
19. J.P.Namdeo (Retd.),
S/o Lt. Sh. Nathulal Namdeo,
R/o 324/3, State Bank Colony (Single Storey),
Ukhri Road,
Jabalpur.
20. Bharat Lal,
S/o Lt. Sh. Jaman Ram,
R/o Bodyguard,
Canal Road,
Dehradun-248001.
21. Manish Kamboj,
S/o Lt. Sh. A.S.Kamboj,
R/o H.No.613,
Rajender Nagar,
Street No.4, Lane 9,
Kaulgarh Road,
Dehradun-248001.

22. Prem Singh,
S/o Lt. Sh. Bihari Lal,
R/o 209, Siddharya Vihar Kandoli,
Dehradun-248001.
23. Vijay Kumar Bhardwaj,
S/o Lt. Sh. H.R.Bhardwaj,
R/o 165/301, Dobhalwala,
Kalidas Road,
Dehradun-248001.
24. Ajit Singh,
S/o Sh. Balbir Singh Jain,
R/o House No.3, Tapovan Enclave,
Dehradun-248001.
25. D.P.Kukreti
S/o Lt. Sh. Neshvilla Road,
Dehradun-248001.
26. H.P.Uniyal,
S/o Lt. Sh. J.P.N.Uniyal,
R/o 6/111, New Cantt Road,
Dehradun-248001.
27. Satyendra Singh
S/o Lt. Sh. Sansar Singh,
R/o Villo Chandroli,
P.O.Singla,
Dehradun-248001.
28. R.C.Raturi,
S/o Lt. Sh. M.D.Raturi,
R/o H-150, Hathibarkala Estate,
Dehradun-248001.
29. Surender Singh,
S/o Lt. Sh. Pratap Singh,
R/o 248, Karanpur,
Dehradun-248001.
30. Ram Prakash,
S/o Sh. Kishan Dutt Sharma,

R/o T-III, 45 Survey Estate,
Hathibarkala,
Dehradun-248001.

31. Namgal Lama,
S/o Sh.Chhring,
R/o Clement Town,
Dehradun-248001.
32. Shiv Singh,
S/o Sh. Dev Singh,
R/o C-317, EWS MDDA Colony,
Dalanwala,
S/o Sh.Chhring,
R/o Clement Town,
Dehradun-248001.
33. A.K.Gupta,
S/o Sh. L.P.Gupta,
R/o T-III-46, HBK Estate,
S/o Sh.Chhring,
R/o Clement Town,
Dehradun-248001.
34. Milan Kumar,
S/o Lt. Sh. Balbir Singh,
R/o 71/48, Neshvilla,
Hathibarkala,
Dehradun-248001.
35. Anil Kumar Verma,
S/o Jugal Kishore,
R/o 50, Hill View Colony,
Indira Nagar,
Dehradun-248001.
36. Kirpal Singh,
S/o Lt. Sh. Daulat Singh,
R/o T-III/9, GBO Family Line,
17 E.C.Road,
Dehradun-248001.
37. Amrit Singh,
S/o Lt. Sh. Avtar Singh,

R/o F-11, HBB Colony,
Dehradun-248001.

38. D.M.Fancon,
S/o Lt. Sh. M.C.Jyrwa,
R/o 17, E.C.Road,
Dehradun-248001.
39. Chander Mohan,
S/o Sh. Ram Mohan,
R/o 101, Karanpur,
Dehradun-248001.
40. Vinod Kumar Arora,
S/o Lt. Sh. Dalip Chand,
R/o 320, Karanpur,
Dehradun-248001.
41. Atul Nautiyal
S/o Lt. Sh. R.K.Nautiyal,
R/o 130/5, Nav Vihar Colony,
Chukkuwala,
Dehradun-248001.
42. Mohinder Singh,
S/o Sh. Harchand,
R/o 597A, Sector 32A,
Chandigarh.
43. Naresh Kumar Sharma,
S/o Sh. Om Prakash Sharma,
R/o 607, Sector 32A,
Chandigarh.
44. Surinder Singh
S/o Sh. Kukhtiar Singh,
R/o 557, Sector 32A,
Chandigarh.
45. V. Nageswara Rao,
S/o Sh. V.Lakshmana Rao,
R/o H.No.1-40/12/1,
Raj Nagar Colony,
Uppal, Hyderabad-39.

46. Y.N.P.Prabhakar,
 S/o Sh. Y.Trivikrama Rao,
 R/o 87-G, Janapriya Enclave,
 L.B.Nagar,
 Hyderabad-68.
47. B. Venkateshwara Rao,
 S/o Sh. B.Sriramaiah,
 R/o Plot No.23, Road No.1,
 Anantha Saraswati Nagar,
 East Anand Bagh, Malkaj Giri,
 Hyderabad-47.
48. K.Balakrishna Murthy,
 S/o Sh. K.R.N.Murthy,
 R/o H.No.4-2/1, Street No.9,
 Snehapuri Colony,
 Hyderabad.
49. V.V.R.Ramakanth,
 S/o Sh. V.Raja Rao,
 R/o III/29, Survey Colony,
 Uppal Hyderabad-39.
50. Pradip Kumar Sen,
 S/o Sh. S.V.Sen,
 R/o Quarter No.8, Type III,
 GSI Complex, Phule Nagar,
 Alambi Road, Pune-6.
51. Sh. Tahil,
 S/o sh. Lachhman Das Chughwani,
 R/o B Block, 14, Room No.12,
 Pimpri Colony, Pune-411017.
52. Gurdas Ram,
 S/o Sh. Prithi Singh,
 R/o 597, Sector 32A,
 Chandigarh.

... Applicants

(By Advocate: Shri Anil Singal)

Versus

1. Union of India
 Through its Seceretary,
 Ministry of Science and Technology,
 Technology Bhawan,
 New Mehrauli Marg,
 New Delhi.
2. The Surveyor General of India,
 Survey of India,
 Dehradun,
 Uttaranchal.
3. The Directorate of Survey (AIR),
 Survey of India,
 West Block No.4,
 R.K.Puram,
 New Delhi.
4. Union of India
 Through its Secretary,
 Ministry of Finance,
 Department of Expenditure,
 North Block,
 New Delhi.

... Respondents

(By Advocate: Shri Rajinder Nischal)

OA-2217/2013

1. Topographical Staff Association,
 Survey of India,
 Through Sh. K.P.Mathani,
 Secretary General,
 R/o G-96, No.3 Block,
 Hathibarkala Estate,
 Dehradun-248001.
2. Sh. D.C.Purohit,
 S/o Sh. M.C.Purohit,
 12/483, Lodhi Colony,
 New Delhi-110003.

... Applicants

(By Advocate: Shri Anil Singal)

Versus

1. The Survey General of India,
 Survey of India,
 Dehradun,
 Uttaranchal.
2. The Director,
 Directorate of Survey (AIR),
 Survey of India,
 West Block No.4,
 R.K.Puram,
 New Delhi.
3. Union of India
 Through its Secretary,
 Ministry of Finance,
 Department of Expenditure,
 North Block,
 New Delhi.
4. Union of India
 Through its Secretary,
 Ministry of Science and Technology,
 Technology Bhawan,
 New Mehrauli Marg,
 New Delhi.

... Respondents

(By Advocate: Shri Rajinder Nischal)

ORDER

Mr. K.N. Shrivastava, Member (A):

As common questions of law and facts are raised in these two Original Applications, with the consent of both the parties, we proceed to dispose them of through this common order.

OA No.3809/2010

2. These applicants are Storekeeper Grade-II/Store Assistants of Survey of India (respondent No.2). Some of them have already retired and some are still in service. They are seeking V CPC pay scales of Rs.5000-8000 for Storekeeper Grade-I and Rs.5500-9000 for Store Assistants. They had approached the Principal Bench of the Tribunal in OA No.2123/2007 seeking the *ibid* pay scales. The said OA was disposed of in the following terms:

“6. Resultantly, OA is allowed. Impugned order is set aside. The matter is now remitted back through Administrative Ministry to the Ministry of Finance for reconsideration of this aspect, on removal of anomaly, to grant the pay scales to the applicants, w.e.f. 1.1.1996 in the respective pay scales *ibid* within a period of 3 months from the date of receipt of a copy of this order. It goes without saying that such a valid consideration having regard to our observations would entail a speaking order to be passed within the aforesaid period. No costs.”

2.1 Complying with the order dated 19.08.2008 in OA No.2123/2007 of this Bench as well as order dated 22.08.2008 in OA No.54/2008 (P. Satyanarayana Reddy) of Hyderabad Bench and order dated 09.09.2008 in OA No.2122/2007 (I.S. Dahiya) of this Bench, the respondents have issued Annexure A-1 OM dated 04.03.2009 declining the claim of the applicants to the pay scales referred to hereinabove. It is also stated in it that the promotional posts for Storekeeper is Store Assistant in the pay scale of Rs.5000-

8000. The relevant portion of the impugned order is extracted below:

“(ix) The 5th CPC had specifically examined the pay scale to be attached to the Division II Grade II posts in Survey of India in para 85.34 of their report and observed that prior to the 4th CPC, these officials were in the grade of Rs.425-600 while Gr.I staff were in the grade of Rs.425-750. Thus both types started at the same level. Fourth CPC in general recommendations on replacement scales provided Rs.1350-2200 to the former and Rs.1400-2600 to the latter thus disturbing the relativity: the Anomaly Committee recommended Rs.1400-2300 for the Gr.II staff in order to restore relativities. It may be observed that prior to the 4th CPC, there was a substantial gap at the higher end of the two scales, though the starting post was the same. In general proposals on replacement scales, the scale of Rs.1400-2600 will be merged with the Rs.1600-2660 and the scale of Rs.1350-2200 will be merged with the scale of Rs.1400-2300. Thus the demand for grant of the scale of Rs.1400-2300 would be met. In view of this, there is no case for upgradation of the post as the issue has already been examined by the 5th CPC, an expert body constituted to go into such issues.

(x) The 5th CPC in Para 85.31 has only recommended the higher pay scale of Rs.1600-2660 to the post of Store Assistant in Survey of India on the ground that the post of Store Keeper and the Store Assistant are in the same pay scale of Rs.1350-2200. As such the 5th CPC has not recommended any upgradation of the pay scale of the post of Storekeeper in Survey of India in Para 85.31. The promotional post of Storekeeper is Store Assistant in the pay scale of Rs.5000-8000. The proposed upgradation of the pay scale of the post of Storekeeper would create anomaly resulting in that the promotional post and feeder post would be placed in the same pay scale thus disturbing, vertical relativities”.

2.2 Aggrieved by the impugned Annexure A-1 OM, the applicants have filed the instant OA, praying for the following reliefs:

“A. Set aside/quash the O.M. dated 04.03.2009 passed by the Respondents and Direct the Respondents to grant the pay

scale of Rs.5000-8000/- to applicants no.1,6,9-11, 15-19, 21, 24, 26-27, 29-30, 32, 34-44, 46, 48, 50-52 holding the post of Store Keeping Staff Grade II and the pay scale of Rs.5500-9000/- to applicants no.2-5, 7-8, 12-14, 20, 22-23, 25, 28, 31, 33, 45, 47, 49 holding/retired from the post of store assistants w.e.f. 01.01.1996;

B. Direct the Respondents to grant all consequential benefits to the applicants including arrears of pay w.e.f. 01.01.1996, promotional benefits, 18% interest on the arrears of pay and any other benefit if any.”

3. In support of the reliefs claimed, the applicants have pleaded the following important grounds:

i) The V CPC had clearly recommended that the pay scale of Rs.1350-2200 be merged with Rs.1400-2300 and the merged pay scales, may be granted to the Storekeeper Staff Grade-II. The respondents have wrongly concluded that after merging these two pay scales, their replacement scale under the V CPC should be Rs.4500-7000 ignoring the fact that the V CPC had explicitly recommended Rs.5000-8000 as the replacement scale for Rs.1400-2300. The anomaly committee has also recommended this pay scale for Storekeeper Staff Grade-II.

ii) The respondents have wrongly held in the impugned Annexure A-1 OM dated 04.03.2009 that duties and responsibilities of

Storekeeping Grade-II and Store Assistants in respondent No.1 and in other similarly situated organizations are not the same.

iii) The Pay Commission is an expert body constituted by the Government. It makes recommendations after in-depth study of the issues and hence its recommendations cannot be rejected without valid reasons. All other departments/ministries have implemented the recommendations of the V CPC and have granted the replacement scale of Rs.5000-8000 for the earlier pay scale of Rs.1400-2300 e.g. Ministry of Chemical and Fertilizer, Ministry of Coal, Ministry of Commerce, Ministry of Communications and the Ministry of Defence but such recommendations of the V CPC have not been implemented in respondent No.1.

iv) The respondents admit that the Store Assistants were to be placed in the pay scale of Rs.1600-2660 but yet have declined to grant them the replacement scale of Rs.5500-9000.

OA No.2217/2013

4. This OA has been filed by the Topographical Staff Association of Survey of India through its General Secretary. Their claim is that after becoming Air Survey Draftsmen/Plane Tabler Division II Grade II w.e.f 1.1.1996, they are entitled for the grant of the pay scale of Rs.5000-8000. They had approached this Bench of the Tribunal

twice in the past in OA No.666/2009 and OA No.3026/2010. The specific prayers made in OA-666/2009 were as under:

- “i) To direct the respondents to grant higher pay scale of Rs.5000-8000 offer becoming Air Survey Draftsmen/Plane Tabler Division II Grade II to the applicants from 01.01.1996 with all arrears of pay.
- ii) To direct the respondents to remove the anomaly by revising the pay scale of applicants from 01.01.1996 with arrears and 18% interest.”

4.1 This OA was disposed of vide order dated 26.10.2009, the operative part of which reads as under:

“4.Keeping the above in view, we find that there is no plausible reason forthcoming as to why the recommendations of the Anomaly Committee dated 11.07.2005 are not acceptable and the applicants claim is denied due to there being no functional justification which has not been explained and seems to only succeed in obfuscating the issue. As such, we are of the considered opinion that the respondents need to re-consider the claim of the applicants as set out in the prayer clause of the present OA.”

4.2 Complying with the aforementioned order of this Bench of the Tribunal, the respondents vide the impugned Annexure A-1 OM dated 3rd April/May, 2012 declined to grant the pay scale of Rs.5000-8000 (V CPC) to the applicants. The relevant portion of the OM is extracted below:-

“7. Therefore, the Government is of the view that the demand of applicants, viz. Division-II Grade-II staff - Plane Tabler/Air Survey Draftsman etc. for up-gradation of the pay scale from Rs.4500-7000 to Rs.5000-8000/- w.e.f.

1.1.1996, stands rejected in light of the factors brought out in para 6 (i-xiv).”

4.3 Aggrieved by the impugned Annexure A-1 order the applicants have approached this Tribunal in the instant OA praying for the following reliefs:

“A. Set aside/quash the O.M. dated 3rd April/May 2012 passed by the Respondents and direct the Respondents to grant the pay scale of Rs.5000-8000/- after becoming Air Survey Draftsman/Plane Tabler Division II Grade II to the applicants from 01.01.1996 with all arrears of pay as recommended by the Vth Pay Commission and ad-hoc Anomaly Committee.”

5. In support of their claim, the applicants have urged the following important grounds:

- i) The respondents have simply repeated the contents of the OMs dated 07.11.2008 and 22.2.2010 and have not given any valid reasons for rejecting the claims of the applicants. Thus the judgment of the Tribunal dated 24.01.2012 in OA-3026/2010 has not been duly complied with.
- ii) The respondents have not explained the reasons for not accepting the recommendations of the ad hoc anomaly committee and of the V CPC who had recommended the grant of pay scale of Rs.5000-8000 to the applicants.

iii) The Pay Commission is an expert body which makes recommendations after in-depth study of the issues. Its recommendations cannot be rejected without any valid reasons.

iv) The V CPC had clearly recommended that the pay scales of Rs.1350-2200 and Rs.1400-2300 should be merged and replaced with the pay scale of Rs.5000-8000 but the respondents have erroneously revised the pay scale of the applicants to Rs.4500-9000 (V CPC).

v) The Guwahati Bench of this Hon'ble Tribunal vide its order dated 05.03.2010 had directed the respondents to grant the pay scale of Rs.5500-9000 in conformity with the recommendations of the V CPC and ad hoc anomaly committee, which had also been upheld by the Hon'ble Guwahati High Court. The respondent No.4 had issued circular/direction for the implementation of the Guwahati Bench order dated 05.03.2010 in OA No.52/2009.

vi) The applicants have been subjected to hostile discrimination vis-a-vis Draftsmen and Surveyor Assistants as they have been granted the pay scale of Rs.4500-7000 whereas Draftsmen/Surveyor Assistants have been placed in the pay scale of Rs.5000-8000, ignoring the recommendations of the V CPC and the ad hoc anomaly committee.

6. Pursuant to the notices issued, the respondents entered appearance and filed separate replies in these two OAs in which they have broadly made the following important averments:

a) The Plane Tabler and the Air Survey Draftsmen and the other Division II Grade II staff were in the pre-revised scale of Rs.1350-2200 (IV CPC). The anomaly committee recommended Rs.1400-2300 to all the Division II Grade II staff. The V CPC recommended that IV CPC pay scale of Rs.1350-2200 be merged with the scale of Rs.1400-2300 and thus the demand for grant of the IV CPC pay scale of Rs.1400-2300 would be met. The recommendations of V CPC contained in para 85.34 of its report reads as under:

“85.34. Class III, Div II, Grade Staff (Rs. 1350-2200) are Trainees Type-‘B’, Gr.II. Prior to Fourth CPC, these officials were in the scale of Rs. 425-600, while Gr.I Staff were in the grade of Rs. 425-750. Thus, both types started at the same level. Fourth CPC in the general recommendations on replacement scales, provided Rs.1350-2200 to the former and Rs. 1400-2600 to latter, this, disturbing the relativity. The Anomaly Committee of the administrative Ministry, recommended Rs.1400-2300 for the Gr.II staff in order to restore relativities. We observe that prior to Fourth CPC, there was a substantial gap at the higher end of the two scales though the starting point was the same. In our general proposals on replacement scales, the scale of Rs.1400-2600 will be merged with Rs.1600-2660, and the scale of Rs.1350-2200 will be merged with the scale of Rs. 1400-2300. Thus the demand for grant of the scale of Rs.1400-2300 would be met”.

b) Implementing the recommendations of the V CPC, the demand for grant of pay scale of Rs.1400-2300 is met. The applicants in other Division II Grade II staff were rightly placed in the pay scale of Rs.4500-7000 (V CPC).

c) The departmental anomaly committee recommended higher pay scale of Rs.5000-8000 on the ground that that educational qualifications of Topo Trainee Type-B has been enhanced from matric to intermediate with maths. This recommendation was not consistent with the recommendations of V CPC as it was made without establishing the nature of anomaly and the basis on which the upgradation was to be supported. Nevertheless, the respondents considered the matter in consultation with the Ministry of Finance and found it unacceptable and accordingly the impugned Annexure A-1 OM dated 03.05.2012 has been issued.

d) The applicants have sought intervention from this Tribunal in the policy decision of the Government without assigning any reason as to how such decision is irrational or unconstitutional. As per the ratio of law laid down by the Hon'ble Apex Court in the case of **CSIR v. Ramesh Chandra Agarwal**, [(2009) 3 SCC 35] and **Kunhayammed & Ors. v. State of Kerala**, [AIR 2000 SC 2587], judicial intervention can be sought in the policy decision of the

Government only if such decision suffers with irrationality, arbitrariness and unconstitutionality.

e) The pay fixation falls under the exclusive domain of the executive. The Hon'ble Supreme Court has held that judiciary must exercise restraint in encroaching upon the domain of the executive.

In regard to pay fixation, the Hon'ble Apex Court in the case of **Union of India & Ors. v. Hiranmoy Sen and others**, [(2008) 1 SCC 630] has held as under:

“4. This Court in S.C. Chandra and Ors. vs. State of Jharkhand and Ors. JT 2007(10)4 SC 272 has held that the Court cannot fix pay scales as that is the purely executive function. In the aforesaid decision one of us (Markandey Katju, J.) has discussed in detail the principle of equal pay for equal work and has observed that the said principle has been considerably watered down in recent decisions of this Court, and it is not applied unless there is a complete and wholesale identity between the two groups, and even there the matter should be sent for examination by an Expert Committee appointed by the Government instead of the Court itself granting the higher pay scale.”

f) The recommendations of the departmental anomaly committee are not final and such recommendations are to be examined by the nodal Ministry keeping in view several factors such as method of recruitment, level at which recruitment is made, the hierarchy of service in a given cadre, minimum educational/technical qualifications requires, avenues of promotion, the nature of duties

and responsibilities, the horizontal and vertical relativities with similar jobs, satisfaction level and financial resources etc.

g) The Hon'ble Apex Court in regard to judicial intervention in the matters of pay scale in **Union of India v. P.V. Hariharan**, [(1997) 3 SCC 568] has observed as under:

“We feel impelled to make a few observations. Over the past few weeks, we have come across several matters decided by Administrative Tribunals on the question of pay scales. We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a pay Commission. Change of Pay scale of a category has cascading effect. Several other categories similarly situated, as well as those situated above the below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. the pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is all being misunderstood and mis-applied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales.”

h) Reliance is also placed on the judgments of the Hon'ble Apex Court in the case of **Director General of Geological Survey of India v. R. Yadaiah**, [(2001) 10 SCC 563], **Finance Department and others v. West Bengal Registration Service Association and**

others, [(1993) Supp (1) SCC 153] to say that judicial intervention in the matter of pay scales is not warranted. Reliance is further placed on the decisions reported in **State of West Bengal and others v. Deb Kumar Mukherjee and others**, [1995 Suppl. (2) SCC 640] and **State of U.P. v. Ministerial Karamchari Sangh**, [1998 (1) SCC 422].

i) The respondents had referred the matter to Ministry of Finance, who vide letter dated 17.07.2006 had advised as under:-

“I am directed to refer to the minutes of the meeting of the reconstituted ad-hoc anomaly committee to settle the anomalies arising out of the implementation of the fifth pay commission’s recommendations held on 11.07.2005. The recommendations of the ad-hoc anomaly committee regarding removal of pay anomaly of Div. II Gde. II (Plane tabler, Reprographers, ASD/Man, Record Keepers, Store Keepers) forwarded to the Ministry of Finance, Department of Expenditure for their consideration and approval. Ministry of Finance has informed that since the constitution of the next pay commission for the central govt. employees is round the corner, such cases may be taken up with the next pay commission. You are therefore requested to take further necessary action as advised by the Ministry of Finance, Department of Expenditure”.

j) The post of Store Assistant cannot be compared with that of Surveyor as they perform entirely different duties and responsibilities.

7. On completion of the pleadings, the case was taken up for hearing the arguments of the learned counsel for the parites on

10.11.2017. Arguments of Shri Anil Singal, learned counsel for the applicants and that of Shri Rajinder Nischal, learned counsel for the respondents were heard.

8. During the course of his arguments, Shri Anil Singal, learned counsel for the applicants submitted as under:

i) The Guwahati Bench of this Tribunal in OA No.52/2009 vide order dated 05.03.2009 has endorsed the pay scale of Rs.5500-9000 for Survey Assistants, which has since been implemented by the respondents vide order dated 20.03.2013.

ii) The V CPC has clearly recommended for merger of the pay scale of Rs. 1350-2200 into Rs.1400-2300 and has further recommended merger of Rs.1400-2300 with Rs.16500-2660 and that the replacement scale for Rs.1400-2300 is Rs.5000-8000 and for Rs.1600-2660 is Rs.5500-9000.

iii) The anomaly committee considering the nature of work and educational qualifications has recommended the pay scale of Rs.5000-8000 to Division-II Grade II staff of Survey of India.

iv) In response to a query, the respondent no.2 had informed that during the year 1980-1992, 26 number of Air Survey Draftsmen/Plane Tabler were converted to the trade of Draftsman owing to physical difficulties and family problems. The Draftsmen

who are below Plane Tabler have already been given the pay scale of Rs.5000-8000 in V CPC. The Government have already granted the pay scale of Rs.5500-9000 to Storekeeping staff as per the CCS (Revised Pay) Rules, 1997.

v) In the context of Storekeeping staff, the post in the pay scale of Rs.1350-2200 and Rs.1400-2300 have been merged and provided with replacement scale of Rs.5000-8000 as per order dated 17.08.2009 (Annexure A-5 – OA No.3809/2010). The anomaly committee has recommended as under:

“5.....The Committee observed that although the Pay Rationalization Committee recommended the pay scale of Rs.425-700/- but the Government implemented the un-prescribed pay scale of Rs.425-600 which led to the assigning of the corresponding pay scale of Rs.1350-2200/-. This was agitated before the Anomaly Committee of 4th CPC which recommended the pay scale of Rs.1400-2300/- to maintain relativity at the starting point. This was a mistake as this should have been Rs.1400-2600 against the pre-revised maximum of Rs.700/-. Further the 5th CPC also ignored the fact that the educational qualification from Maths with Matric to Intermediate Maths was enhanced in 1988. Considering the nature of work and educational qualifications, the Committee recommended the pay scale of Rs.5000-8000/- to all Div. II Grade II staff in SOI.

6. To remove anomaly in the pay scale of Trainee Type ‘B’ and Topo Trainee Type ‘B’ in SOI”.

vi) The respondent no.2 vide letter dated 07.08.2006 (Annexure A-10) has written to respondent no.1 in regard to pay scale of

Storekeeping staff stating therein that due to administrative overlook, some discrepancies have cropped up which needs to be rectified. Para-5 of this letter reads as under:

“5. It is mentioned here that Store Keeper Gde.II and Store Assistant of Survey of India (both are the Store Keeping Staff) were drawing the same pre-revised scale (1350-30-1440-1800-50-2200) but due to Administrative over look the Store Keeper Gde-II were not fixed in the revised applicable scale Rs. 5000-150-8000 and the Store Assistant were fixed from Pre-revised scale 1350-30-1440-1600-50-2200 to revised approved Scale 5000-150-8000”.

vii) The Ministry of Finance has not considered the representation of the applicants on merit and decided to throw the ball in the court of next CPC.

9. Shri Rajinder Nischal, learned counsel for the respondents submitted that the courts cannot fix pay scales and that such matters lie in the exclusive domain of executive. In this regard, he drew our attention to the judgment of Hon'ble Apex Court in **Hiranmoy Sen and others** (supra). He further submitted that this Hon'ble Tribunal vide its order dated 19.09.2016 in OA No.3074/2012 has observed as under:

“10. Pay scales for various cadres across the Government Departments are considered and recommended by the CPC, which is constituted at periodical intervals. Indisputably, the CPC is the competent body to consider all such matters and make suitable recommendations to the Government. The CPC also provides opportunities to various Services,

Associations and individuals to present their cases before it. In the instant case, the 5th CPC had recommended the pay scale of `3050-4590 for the Instrument Mechanics in Survey of India, which has been accepted by the Government and Notification to that effect was issued by the Government way back on 30.09.1997 itself. Later on, two more CPCs, i.e., 6th and 7th CPCs, came to be constituted and they too have submitted their Reports, which have been accepted and implemented by the Government. The applicants had liberty to represent their case before the 6th and 7th CPCs, who were the right fora to consider the matter.

11. The recommendations of the Anomaly Committee would carry no conviction unless such recommendations are accepted by the Government. In the instant case, the respondents, in consultation with the Ministry of Finance, have rejected the recommendations of the Anomaly Committee. In this view of the matter, we are of the view that there is no substance nor any merit in the O.A. and as such, the O.A. is liable for dismissal.”

10. He further argued that validity of impugned order dated 04.03.2009 has already been upheld by this Hon’ble Tribunal in its order dated 02.09.2011 in OA No.3732/2009 and as such that order cannot be a subject matter for adjudication in the present litigation.

11. We have considered the arguments of the learned counsel for the parties and have also perused the pleadings and documents annexed thereto. Evidently the V CPC had recommended that the pay scale of Rs.1400-2300 be granted to the Grade-II staff vide its recommendation contained in para-85.34. It had also recommended that the holders of pay scale of Rs.1350-2200 be granted the pay scale of Rs.1400-2600 and that the holders of pay scale of Rs.1400-

2600 be granted the pay scale of Rs.1600-2660. It is also correct that replacement pay scale for Rs.1400-2600 is Rs.5000-8000 and that for Rs.1600-2660 is Rs.5500-9000. It is also an admitted fact that the anomaly committee had also made identical recommendations. In this regard, it is pertinent to mention that the CPC and anomaly committee can only make recommendations. It is up to the Central Government to accept their recommendations or reject them. In case of rejection, valid grounds are required to be given by the Government. In the instant cases, as noticed from the records, the recommendations made by the V CPC and anomaly committee as well as by Survey of India itself have been examined by the Ministry of Finance but not agreed to in relation to the claims of the applicants in these OAs.

12. As observed by this Tribunal in its order dated 19.11.2016 in OA No.3074/2012, proper forum for the government servants and their association, for seeking change in their pay scales and such other service benefits is the next Pay Commission. Two Pay Commissions, namely, VI and VII CPCs have already deliberated over such matters across Government departments/Ministries and submitted their recommendations which have also been implemented by the Government. It is not clear as to why the applicants in these OAs could not avail the opportunity of

ventilating their grievances before the VI and VII CPCs. The Tribunal's observations in its order dated 19.11.2016 in OA No.3074/2012 are very significant. The Hon'ble Apex Court in a catena of judgments has advised the Courts to refrain from interfering in such matters as such matters fall in the domain of the executive.

13. The respondents in compliance of various judgments of this Bench and Coordinate Benches of the Tribunal have passed the impugned orders dated 3rd April/May, 2012 (OA No.2217/13) and 04.03.2009 (OA No.3809/2010).

14. We also find that the challenge against the validity of the impugned order dated 04.03.2009 had already been rejected by the Tribunal vide its order dated 02.09.2011 in OA No.3732/2009. The applicants have been raising the present controversy for over two decades, which has been examined by various Benches of this Tribunal in different OAs. After the validity of order dated 04.03.2009 having been upheld by the Tribunal in order dated 02.09.2011 in OA No.3732/2009, this controversy is come to an end and is required to be given a quietus.

15. In the conspectus of the discussion in the foregoing paras we do not find any merit in these two OAs. They are dismissed accordingly.

16. No order as to costs.

17. Consequently, MAs also stand disposed of accordingly.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

‘San.’

OA No.3809/2010
MA No.2039/2010
MA No.2931/2010
With
OA No.2217/2013
MA No.1176/2013