

CENTRAL ADMINISTRATIVE TRIBUNAL**MUMBAI BENCH, MUMBAI.****ORIGINAL APPLICATION NO.330 OF 2013.**

Date of decision: 21st day of July, 2017.

**CORAM:- HON'BLE SHRI. A.J. ROHEE, MEMBER (J).
HON'BLE MS.B. BHAMATHI, MEMBER (A).**

1. N.B. Kumbhare

Working as Sr. Draughtsman
at DSW (E) under
Controllerate of Quality
Assurance (EE), Aundh Pune
R/at S. No. 71, Kirti Nagar,
New Sangvi, Pune.

2. A.P. Chavan

Working as Sr. Draughtsman
at DSW (E) under
Controllerate of Quality
Assurance (EE), Aundh Pune
R/at H. No. 83, Kawade Nagar,
Pimple Gurav, Pune 411027.

3. P.B. Nemade

Working as Sr. Draughtsman
at DSW (E) under
Controllerate of Quality
Assurance (EE), Aundh Pune
R/at S. No. 73, Samarth Nagar,
New SAngvi, Pune 411027.

4. John Skariah

Working as Sr. Draughtsman
at DSW (E) under
Controllerate of Quality
Assurance (FFE), Aundh Pune
R/at B/19, Aashiyana Triveni,
Bhau Patil Road Marg, Aundh Road,
Pune 411020.

5. R.V. Hingnekar

Working as JTO (D) under
Controllorate of Quality
Assurance (FFE), Aundh Pune
R/at Sairang Residency, B8/15, Vidyanagar,
Pimple Gurav, Pune 411061.

6. Mrs. Sunanda Vijayamadhavan

Working as JTO (D) under
Controllorate of Quality
Assurance (FFE), Aundh Pune
R/at Flat No. 5, Kundan Plaza, Bhau Patil Road
Marg, Aundh Road, Pune 411020.

7. R.G. Manpurkar

Retired as Chief Draughstman under
Controllorate of Quality
Assurance (FFE), Aundh Pune
R/at, Sai Nisarg Park, Building No. D-101-102,
Pimple Saudager, Pune- 411027.

8. G.N. Pawar

Retired as Draughstman Grade-I under
(S.Q.A.E. wing)
Controllorate of Quality
Assurance (EE), Aundh Pune
R/at, Babasaheb Ambedkar Colony,
Yervada, Pune.

9. Smt. Shashikala D. Hinge

widow & legal heir of Late D.R. Hinge who was
Retired as Draughstman Grade-I under
Controllorate of Quality
Assurance (EE), Aundh Pune
R/at 29/3, Bhima Alankar Colony, Opp.
Ramkrishna Mangal Karyalaya,
Pimple Gurav, Pune 411061.

10. R.V. Bartakke

Retired as Draughstman Grade-I under
Controllorate of Quality
Assurance (EE), Aundh Pune
R/at Ravindranath Vinayak Bantvi,
Dhavari Co-operative Society, Flat No. 19,
Bibwe Wadi, Kondhava Pune 411037.

11. A.K. Palav

Retired as Draughstman Grade-I under
Controllorate of Quality

Assurance (EE), Aundh Pune
R/at Samarth Colony, Vishal Nagar.
Jagtap Dairy, Pune 411027.

12. M.B.K. Shaikh

Retired as JTO (D) under
Controllerate of Quality

Assurance (EE), Aundh Pune
R/at S. 23A, Rajiv Nagar (South), Viman Nagar,
Pune 411014.

13. V.H. Gaikwad

Retired as Draughtsman Grade-I under
Controllerate of Quality

Assurance (EE), Aundh Pune
R/at Plot No. 23, Vinkar Society,
S. No. 11/1, Dhanakwadi,
Pune 411043.

...**Applicants**

(Applicants by Advocate Shri. Harish Adake)

Versus

1. Director General Quality Assurance

Ministry of Defence,
Department of Defence Production
Nirman Bhavan PO New Delhi- 110011.

2. Union of India

Through the Secretary
Ministry of Defence, South Block,
New Delhi- 110001.

3. Director of Quality Assurance,

Ministry of Defence, Kashmir House, DHQ, PO,
New Delhi 110011.

4. The Controller

Controllerate of Quality Assurance (EE),
Aundh Camp, Pune- 411027.

...**Respondents.**

(Respondents by Advocate Smt. H.P. Shah)

Reserved on :- 09.06.2017.

Pronounced on :- 21.07.2017.

O R D E R

Per : Ms. B. Bhamathi, Member (A)

This O.A. has been filed by the
applicants under Section 19 of the

Administrative Tribunals Act, 1985 seeking
the following reliefs:-

I. My Lords be pleased to declare that the Applicants' are entitled for "stepping up" of their pay at par with their juniors' who are on grant of ACP are receiving higher pay.

II. My Lords be pleased to declare that senior employees are entitled to salary equal their juniors whether the reason for such difference in salary is ACP or not.

III. My Lords be pleased to declare reason/ ground mentioned in Para (iii) on second page of the 'reconsideration order' is not justifying discrimination among senior & junior employees in terms of salary and hence against Art. 14 and 39 (d) of the Constitution of India.

IV. My Lords be pleased to declare that the Applicants' are entitled for salary equal to their junior employees who were getting higher salary than the Applicants from 1982.

V. My Lords be pleased to direct the Respondents to do appropriate stepping up of pay of the applicants to bring the salaries of the applicants at equal level to the salaries of the junior employees who were paid higher salary than the applicants. Where such is done from the same date on which the juniors were paid higher salary than the applicants.

VI. My Lords be pleased to direct the Respondents to pay

the amounts of arrears to the Applicants where such arrears is calculated from the date on which the juniors were granted ACP and they were paid higher salary than applicants.

VII. *My Lords be pleased to direct the Respondents to pay appropriate interest on amounts of arrears to the applicants from the same date.*

VIII. *Such other orders may also be passed in favour of the applicants as deemed fit and proper in the facts and circumstances of the case."*

2. The case of the applicants' is that they are working under R-4 as Draughtsman and are senior to the junior employees who are drawing higher pay prior to grant of ACP in 1999. Applicant Nos. 1 to 6 are still in service and Applicant Nos. 1 to 4 are working as Sr. Draughtsman and Applicant No. 5&6 are working as JTO (D). The rest of the applicants have retired from service. All the applicants were part of OA No. 545/2006 pertaining to the first stage litigation in the matter. Applicant No.10 in OA No. 545/2006 has expired recently. Hence his widow/ legal heir is representing him in the present OA.

2.1. Following junior employees are getting higher salary than the applicants:-

Sr. No.	Name of the Junior Employee	Designation	Basic & Grade pay in October 2012
1	A.D. Khole	Draughstman Gr. I	Retired
2	Smt. K.G. Shaikh	Sr. Draughstman	21070+5400
3	Smt. S.C. Laghate	Sr. Draughstman	21070+5400
4	D.P. Mali	Sr. Draughstman	19860+4800
5	S.G. Phatak	Sr. Draughstman	21070+5400

2.2. All the applicants are in the pay band of grade below Rs. 4800/-. The work and duty of these junior employees is same and equal to that of the applicants. However, they have been given additional responsibilities in view of their seniority.

2.3. Respondents have granted ACP benefits to junior employees in February 2001 w.e.f. August 1999. However, the applicants are not disputing or objecting to grant of ACP to the 5 juniors, in this OA although they were impleaded as private

respondents in OA 545/2006.

2.4. In OA No. 545/2006 this Tribunal held that there was a case of discrimination among senior and junior employees but directed the respondents to reconsider the applicants' case. On subsequent reconsideration the case of the applicants' was rejected vide impugned order which is challenged in this OA.

2.5. The grounds on which the applicants have challenged the impugned order are that (a) the order does not address the applicant's contention regarding the right of senior employees to always, have salary higher or equal to their juniors' (whether prior to or after ACP) which includes the right of senior employees to have salary equal to their juniors' who were granted ACP.

(b) The impugned order does not address the issue of parity of pay in the context of the constitutional principle of "Equal Pay for Equal Work" enacted through Article 39(d) of the constitution of India.

Accordingly, higher salary can be paid to the junior employee if the concerned junior employee is burdened with higher responsibility than the senior. The letter dated 09.08.1999 does not impose any higher responsibility on these juniors than their seniors.

(c) The applicants are getting lesser salary than these junior employees prior to grant of ACP. Hence, the grounds mentioned in the reconsideration order are not against the applicants' claim to have salary equal to their juniors who were getting higher salary irrespective of and prior to grant of ACP.

(d) Paras (i) & (ii) of the reconsideration order are irrelevant and not justifying respondent's act of discrimination among senior & junior employees, especially by granting higher salary to the juniors on account of ACP and not giving equal salary to the seniors whose salary is lesser.

(e) Para (iii) of the reconsideration

order is similar to para 8 of the ACP Scheme, contained in the letter dated 09.08.1999. This para does not explain respondents' acts of discrimination. This ground is against the principles of equality provided under Article 14 of Constitution of India.

(f) The grounds raised in the reconsideration order are already raised in the OA No. 545 of 2006 by the respondents and the Tribunal had rightly rejected the same.

(g) The reference to the safety net may be relevant for removal of stagnation due to lack of promotional avenues and such stagnation is similarly probable for both senior and junior employees. Hence, this does not mean that senior employees, should be discriminated against from their juniors, by paying them less though both set of employees are assigned similar duties of work.

2.6. In OA No. 545/2006, the applicants withdrew the prayer questioning the grant of

ACP to the junior employees aware not opposing the same. In the present OA, also, applicants are not opposing grant of ACP to junior employees. Hence, justifying grant of ACP in the impugned order is of no relevance to the present OA. The present OA is about the senior employees whose pay remained lesser than those of junior employees, whose suffering are mitigated by introduction through the ACP.

2.7. The grounds in the impugned order also pertain to factors like 'personal basis' for grant of the ACP benefit, the differences between 'ACP Schemes' and 'regular/ functional promotion' and ACP won't require creation of new posts. The applicants have never questioned the grant of ACP to stagnated employees on personal basis. On the other hand they are claiming that if the junior benefitted employee and the applicants are doing same work they should be paid equally. There is no need for the applicants to argue that ACP should be mixed up or compared with functional/

regular promotion. The applicants are not claiming any out of course promotion to have equal pay. They are just asking for equal salary and such equal salary may be given at their present post and designation. They have also are never asked for creation of new posts. They are asking for salary equal to the junior employees and this requires neither promotion nor creation of new post. Their salary may be stepped up 'as where as there' i.e. on same designated/ post. The grounds in the reconsideration order is giving hyper technical reasoning for causing discrimination among senior & junior employees.

2.8. The applicant has also referred to the judgment in OA No. 2117/2005, which was allowed by this Tribunal. The Tribunal ruled in favour of senior employees by allowing their prayer for pay equal to their juniors. But as Hon'ble High Court of Bombay directed the Tribunal to re-hear the OA No. 2117/2005 as the earlier judgment had not referred to clause 8 of the ACP Scheme. The

Tribunal was pleased to revert the earlier judgment and to reject the claims of senior employees in that OA. Hence, it is obvious in the background of the earlier judgment in OA No. 545/2006 dated 28.04.2010 was silent on Clause 8.

2.9. However, the above referred later judgment dated 01.08.2012 in the same **OA No. 2117/2005 (Supra)** after remand from the Hon'ble High Court has considered this issue but did not decide the issue "whether such clause is justifying such discrimination between senior and junior employees and whether such clause is according to provisions under Article 14 of the Constitution of India. The applicants have therefore raised this very issue by a prayer in Para 8(i) of the present OA. Hence the judgment of Hon'ble Tribunal in **OA No. 2117/2005 (Supra)** is not against the present OA and the present OA may be admitted to decide the larger issue of constitutional validity of the Clause 8 of the ACP Scheme.

2.10. The judgment in **OA No.**

2117/2005 (Supra) had answered the question whether there is any existing rule/clause providing for rejection of applicants' claim for payment equal to their juniors and whether Clause 8 in the letter dated 09.08.1999 is similar to Rule 9 of the ACP scheme of state of Haryana. But the judgment is silent on the major and larger issues whether such existing clause justifying discrimination among senior and junior employees or whether such rule/ clause is constitutionally valid and whether order implementing ACP has imposed higher responsibility or work load on the junior employees than the applicants. Further applicants were getting lesser salary than these juniors prior to grant of ACP i.e. from 1982 itself. On this ground also the judgment in **OA No. 2117/2005 (Supra)** is not against the applicants' claim.

2.11. The Hon'ble Tribunal in its final order in **OA No. 545/2006 (Supra)** has directed the respondents to reconsider the applicants' case and further the Tribunal

also gave liberty to the applicants to file fresh OA if they were not satisfied with the reconsideration order by the respondents.

2.12. As applicants are not happy with the reasons/ grounds mentioned in the reconsideration order of the respondents as there were no new reasons/ grounds adduced and the reasons/ grounds which were mentioned in **OA No. 545/2006 (Supra)** were also mentioned in reconsideration order for rejecting applicant's case. It is a fact that the Hon'ble Tribunal has mentioned in para 7 of its final order in **OA No. 545/2006 (Supra)** that "..... No cogent and convincing reply is forthcoming from the respondent for such discrimination.....". So the applicants had filed CP No. 35/2012 before this Hon'ble Tribunal. On 9th May 2012 the Hon'ble Tribunal was pleased to dismiss the petition with remark that the applicants are at liberty to file fresh OA to seek remedy against the reconsideration order of the respondents.

2.13. Applicants have relied upon the

judgment in **Ashok Kumar Vs. Union of India (OA No. 156-JK-2009)** decided on 19.01.2010 by the Chandigarh Bench of this Tribunal and Hon'ble Supreme Court's judgment in **Commissioner and Secretary to the Government of Haryana & Others vs. Ram Sarup Ganda** rendered in Civil Appeal No.3250/2006 delivered on 02.08.2006 which allowed the applicants praying for Stepping up of Pay at par with their juniors, who on grant of ACP are getting higher pay. The applicants are not praying for re-fixation of pay.

2.14. The applicants have also relied upon the **OA No. 2124/ 2011** of CAT Principal Bench New Delhi decided on 01.02.2013 in which the Clause 8 of the ACP scheme was challenged as being ultra vires to Article 14 of the Constitution of India for grant of stepping up of pay of all the applicants in the said OA. The said OA was allowed.

2.15. Applicant has also relied upon the DoPT OM of 20.05.2014 **"issuing directions to step up of pay of senior employees drawing less pay on promotion than their juniors"**.

3. In the reply to the OA the respondents have taken the preliminary objection that the juniors will be affected if any orders will be passed in favour of the applicants and due to non-joinder of concerned respondents, this OA is not maintainable.

3.1. The junior employees, as stated in the OA, on initial appointments were working with R-4 on the post of Draughtsman Grade III in the pay scale of Rs. 330-560. Two of the juniors were appointed on 19.10.1982, one on 23.12.1982 and the fourth one on 01.03.1984. The pay scales of Draughtsman Grade III in the Ministry of Defence were revised vide order dated 15.09.1995. These were persons appointed with qualification of Certificate in Draughtsmanship (from recognized institution) of not less than two years (including 6 months practical training) with one year experience as Draughtsman in the pay scale of Rs. 1200-2040. As per MOD order dated 15.09.1995 they have been placed in

the revised scale of Rs. 1400-2300. The applicants were appointed as Tracers between 1977 to 1979 i.e. before 13.05.1982 and the revised pay scale were granted to applicants as per para 3(1) (a) of the order dated 15.09.1995. The applicants were appointed in the scale of Rs. 975-1540 which was revised to Rs. 1200-2040 after completing the required length of service.

3.2. The Government of India introduced ACP Scheme on 09.08.1999 providing 2 financial upgradation for group B, C & D employees on completion of 12 yrs and 24 yrs on regular service. All the Juniors were granted financial up gradation vide DGQA order dt. 15.02.2001 in the scale of Rs. 5500-9000/- with effect from 09.08.1999 which was the date for commencement of ACP.

3.3. The DoPT has clarified that:-

"If the rationalized/ structured grade require possession of a specific nature of qualification and experience, not specified for the existing incumbents in pre-rationalized set up, and existing incumbents in pre-rationalized scale/ pre-structured grades, who are in

possession of the required qualification/ experience are placed directly in the rationalized up graded post, such placement will also not be viewed as promotion/ upgradation. As per the DoPT clarification Junior employees were granted the financial upgradation for Rs. 5500-9000/- w.e.f. 09.08.1999. As per MOD letter dt. 15 Sep 1995 and ACP order dt. 09.08.1999 the pay of the junior has been increased."

3.4. As per Clause 8 of DoPT OM dated 09.08.1999 the financial upgradation granted under the ACP Scheme is purely personal and there shall be no additional financial upgradation for the senior employee on the ground that the junior employee in the grade has got higher pay scale under the ACP scheme. The scheme contemplates that merely placement on personal basis in the higher pay scale/ grant of financial benefits only shall not amount to actual/ functional promotion of the employees concerned.

3.5. Accordingly, applicants' claims were considered in the reconsideration order and rejected with reference to para 8 of the ACP scheme referred above in the applicant's

claim vide letter dated 04.10.2011, pursuant to the order of the Tribunal in **OA No. 545/2006 (Supra)**.

3.6. Article 14 of Constitution of India states about equal pay of equal work and para 8 of ACP Scheme states that there shall be no additional financial upgradation for the senior employee on the ground that the junior employee in the grade has got higher pay scale under the ACP Scheme. These are two different aspects, and hence the applicants are wrongly clubbing both Article 14 of the Constitution of India with the ACP Scheme.

3.7. The respondents have further submitted that the junior employees were appointed on the post of Draughtsman Grade III in the pay scale of Rs. 1200-2040 (Pre-revised Rs. 330-560/-) vide order dated 15.09.1995. The respondents revised the pay scale of Draughtsman Grade III. As per para 4(b) of the OM dated 15.09.1995, the persons appointed with qualification of certificate or diploma in Draughtsmanship and appointed

after 13.05.1982 were appointed in the pay scale of Rs. 1400-2300 (pre-revised Rs. 425-700/-). The applicants vide order dated 02.11.1996 were placed in the pay scale of Rs. 1400-2300/-.

3.8. The entitlement of higher pay scale has been given to the junior by virtue of their qualification held by them on the date of appointment. Subsequently, all the juniors were given financial upgradation under ACP scheme vide DGQA order dated 15.02.2001 in the scale of Rs. 5500-9000 w.e.f. 09.08.1999. However, R-4 in present OA withdrew the upgradation granted in the pay scale of Rs. 5500-9000. Therefore junior employees filed **OA No. 890/2003** before this Tribunal and the said OA was allowed.

3.9. As per para 3(1)(a) of OM dated 15.09.1995, granted revision of pay after completion of requisite length of service. The DoPT decided to allow stepping up of pay in consultation with Department of Expenditure in such cases where the senior Government servant should have been drawing

equal or more pay than the junior before receiving ACP/ promotion.

3.10. Respondents submit that the financial upgradation under the scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/ category of post without creating new post and there shall be no additional financial upgradation for the senior employees on the ground that the junior employee/ the grade has got higher pay scale under the ACP scheme. The financial upgradation granted under the ACP scheme is not concerned with the duties and responsibilities allotted to senior and junior employees.

4. In the rejoinder filed by the applicants the contentions in the reply have been denied and disputed and contentions in the OA have been re-iterated. It is submitted that applicants are not claiming any relief which may alter the service conditions of any of the junior employees.

4.1. It is further stated that the

respondents are admitting that the applicants are senior to the junior employees and they were granted ACP benefits and the juniors were drawing higher pay than the applicants and the same has been done although the work and duties were similar.

4.2. The applicants have relied upon following judgments:

"a. Randhir Singh Vs. Union of India & Ors. Supreme Court of India, 1982 SCR (3) 298.

b. State of Andhra Pradesh & Ors. Etc. ... Vs. G. Sreenivasa Rao & Ors. Supreme Court of India, 1989 SCC (2) 290."

In the above case the Hon'ble Supreme court held that the equal pay for equal work is inclusive under Article 14 of the Constitution of India.

4.3. The OM dated 20.05.2014 has mentioned at para 2.3.1. that the reason seniors were the promotee employee and the juniors were the direct recruits cannot be a valid ground to reject the benefits of stepping up of pay to the seniors. All the juniors were appointed on the post of Draughtsman Grade III in the pay scale of

Rs. 330-560 after 19.10.1982. whereas, all the applicants were placed on the post of Draughtsman Grade III in the pay scale of Rs. 330-560 on or before 01.12.1981. Hence the applicants are entitled to stepping up of the pay.

5. No Sur-rejoinder has been filed by the respondents.

6. Applicants have filed the Misc. application seeking condonation of delay in filing this OA. Applicants had earlier filed **OA No. 545/2012 on 14.08.2012** which was filed well within limitation. But in this OA applicants relied upon the judgment dated 28.04.2010 of this Tribunal in OA No. 2117/2005. The applicants relied upon the judgment in **OA No. 2117/2005 (Supra)**, a certified copy of which was supplied to them on 30.07.2012. The applicants were unaware about the fresh judgment in OA No. 2117/2005 (after remand from the Hon'ble High Court) which was contrary to the earlier judgment in the said OA. Hence, the applicants were left with no option but to

withdraw the **OA. 545/2012 (Supra)**, which was allowed on 12.12.2012. hence, from that date till the date of filing present OA, there is a delay of 124 days. Applicants pray that the delay may be condoned as the delay is not intentional nor due to any negligence or carelessness.

7. We have gone through the O.A. along with Annexures A-1 to A-9, Additional Submissions to OA along with Annexure A-10 to A-12, Rejoinder and written arguments of the applicants.

8. We have also gone through Annexures R-1 & R-2 the Reply to the OA additional reply affidavit along with Annexure R-1 to R-4 and further affidavit along with the Annexures as per the directions of the Tribunal to clarify certain issues.

9. We have heard the learned counsel for the applicants and the learned counsel for the respondents and carefully considered the facts and circumstances, citations, law points and rival contentions in the case.

10. This OA is the second stage litigation arising out of the impugned order dated 04.10.2011 issued pursuant to the directions of this Tribunal in **OA No. 545/2006 (Supra)** rejecting the claims of the applicants on the following grounds.

"(i) The Fifth Central Pay commission in its Report had made certain recommendations relating to the Assured Career Progression (ACP) Scheme for the Central Government employees in all Ministries/ Departments. The ACP Scheme needs to be viewed as a 'Safety Net' to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues.

(ii) The ACP Scheme envisages merely placement in the higher pay scale/ grant of financial benefits (through financial upgradation) only to the Government servants concerned on personal basis and shall, therefore, neither amount to functional/ regular promotion or would require creation of new posts for the purpose.

(iii) The financial up gradation under the ACP Scheme shall be purely personal to the employees and shall have no relevance to his seniority position. As such, there shall be no additional financial up gradation for the senior employee on the ground that the junior employee in the grade has got higher pay scale under the ACP scheme.

AND WHEREAS, the relief sought

by the applicants, to step up their pay scale equal to that of their juniors (Private Respondents) who were placed on a higher pay scale on account of ACP Scheme, directly violates the the rationale and premise of the ACP. The 'Safety Net' premise of the aCP Policy envisages a minimum of two financial up gradations so that the frustration caused by stagnation is assuaged. This is a policy aimed to mitigate suffering."

11. To get to the root of the matter, we reproduce the OM dated 15.09.1995 relied upon by the respondents. It is evident from the said OM that the pay scales of Draughtsman Grade I, II, III were revised based on an Award after arbitration in the case of CPWD employees, which was extended to the respondent's establishment, the provisions of which are vital to the contentions of respondents, for which no reference is made to the OM of 1995 by applicants. The OM reads as follows:-

"Sub:-Revision of pay scales of Draughtsmen Grade I, II and III in all Government of India offices on the basis of the Award of Board of Arbitration in the case of CPWD.

Sir,

I m directed to say that, in terms of Ministry of Finance OM No. 5(59)-E.III/82 dated 13.03.84 (circulated vide OM of D ID No. 12(1)/84/D, Civ-I) dated 3.7.84, the following revised scales of pay allowed to the Draughtsmen Grade I, II and III of CPWD were extended to D'Men Grade I, II and III in Defence Estts, subject to the condition that their recruitment qualification are similar to those prescribed in the case of D'Men in CPWD:-

Category	Original Scales Rs.	Revised Scales Rs.
Draughtsmen Grade I	425-700	550-750
Draughtsmen Grade II	330-560	425-700
Draughtsmen Grade III	260-430	330-560

2. Consequent to the issue of Ministry of Finance OM No. 13(1)/IC/dated 19.10.94 extending the CPWD pay scales for D'Men Grade I, II and III in other Govt. Departments irrespective of Fulfilment of recruitment qualifications subject to completion of certain length of service, the question of extending similar reliefs to D'men in Defence Establishments were in the pre-revised Scales has been considered. The President is now pleased to revise the pay scales of Draughtsmen in Defence Establishments as follows:-

Sl No.	Category	Present pay scales	Revised pay scales	Revised Designat ion
1	Trader/ D'men of any designation	975-1540 (260-430 pre-revised)	1200-2040 (330-560 pre-revised)	D'men Gr.III
2	D'men of any designation	1200-2040 (330-560	1400-2300 (425-700	D'men Gr.II

		pre-revised)	pre-revised)	
3	D'men of any designation	1400-2300 (425-700 pre-revised)	1600-2660 (550-750 pre-revised)	D'men Gr.I
DGDE				
4	SDO Gde.III	1200-2040 (330-560 pre-revised)	1400-2300 (425-700 pre-revised)	
5	SDO Gde.III	1400-2300 (425-700 pre-revised)	1600-2660 (550-750 pre-revised)	

3. Incumbents in position before 13.05.82 may be placed in the revised scale of pay as and when they complete/ completed the length of service in the respective grades and subject to condition indicated below:-

(1) The individuals will be granted the revised scale from the date on which they complete the required length of service as follows:-

(a) Minimum period of service for placement : 7 yrs.
From the post carrying scale of Rs. 975-1540 to Rs. 1200-2040 (pre-revised Rs. 260- 430 to Rs. 330-560)

(b) Minimum period of service for placement : 5 yrs.
From the post carrying scale of Rs. 1200-2040 to Rs. 1400-2300 (pre-revised Rs. 330-560- to Rs. 425-700)

(c) Minimum period of service for placement : 4 yrs.
From the post carrying scale of Rs. 1400-2300 to Rs. 1600-2660 (pre-revised Rs. 425-700 to Rs. 550-750)

(2) Once the Draughtsmen are placed in

the regular scales, further promotions would be made against available vacancies in higher grade and in accordance with the normal eligible criteria laid down in the recruitment rules.

(3) The benefit of this revision of scales of any would be given with effect from 13.05.82 notionally and actually from 01.11.83, in respect of D'Men who fulfilled the requirement relating to the period of service mentioned in Clause (1) above before 13.05.82. In respect of this D'Men who were in position as on 13.5.82 but did not fulfill the required length of service on that date, they will be entitled to the revised scaled as and when they complete requisite length of service.

(4) The individuals pay scales had not been revised earlier on the basis of Ministry of Finance OM No. 5(59)/E.III/82 dt 13.03.84, referred to in para 1 of this letter or through any Court orders.

4. D'men appointed on or after 13.5.82 may be placed in the scales of pay in the following manner:-

(a) Traders/ D'men appointed in the scale of pay of Rs. 975-1540 (Pre-revised Rs. 260-430) may be placed in the scale of Rs. 1200-2040 as and when complete requisite length of service prescribed in para 3(1)(a).

(b) In case of D'men appointed in scale of Rs. 1200-2040 (pre-revised Rs. 330-560), they may be placed in the revised scale of Rs. 1400-2300 if they have been appointed with a qualification of certificate or Diploma in Draughtsmanship from a recognised institution of not less than 2 years (including 6 months practical training) with 1 year experience as D'men. If they have been recruited with a qualification of certificate (including 6 months practical training) without 1 years experience,

they will continue in the scale of Rs. 1200- 2040. those appointed to this post promotion may be placed in the revised scale of pay of Rs. 1400-2300 as and when they complete requisite length of service prescribed under para 3(1) (b).

(c) The D/men appointed by promotion to the scale of Rs. 1400-2300 may be placed in the revised scale of rs. 1600- 2660 as and when they complete the requisite service mentioned in para 3(1)(c) or Diploma in Draughtsmanship of not less than 2 years.

Wherever the Cadre has already an existing scale of Rs. 1600-2660 the cadre authorities will merge that scale with the posts which may and upgraded from Rs. 1400-2300 to Rs. 1600-2660 in terms of their orders. The seniority of the existing D'men in the scale of Rs. 1600-2660 will be protected vis-a-vis D'men who would be placed in the revised scale of Rs. 1600-2660 to whom they are already on block seniors.

There orders shall not apply in respect of cadres of D'men where D'men Gr. III (Rs. 1200-2040) is the first entry grade by direct rectt. With further promotons to D'men Gr. II and Gr. I (Rs. 1400-2300) Rs. 1600-2660) with the respective qualifications exactly similar to corresponding CPWD categories.

Fixation of pay will be regulated by the relevant rules (i.e. R 22(a) (ii) and FR 23) prevailing as on 15.5.82. the provisions of R 22 (a) (ii) have since been modified by the Government vide Deptt of Personnel & Training OM No. 1/2/86-Estt. (Pay-I) dated 22.5.89 applicable from 1.1.86. As per this, the pay of an official as mentioned in Para 2 above will be fixed at the same stage, if any ***** in the new scale and if there is no such stage, the pay will be fixed at a stage next

above his payt in the old stage.

8. Future appointments in various Grade of D'men will be made based on the qualifications prescribed for the CPWD D'men as per Annexure to this letter.

9. These orders shall not also apply to DGEIF and OFB for which seperate orders will be issued.

10. This issues with the concurrence of Integrated Finance vide their U.O. No. 12013/1/PE/34/684/AG/FB/95 dt. 15.09.95 and in consultation with Ministry of Finance."

12. It is evident that the OM of 1995 envisaged two categories of employees i.e. those appointed before 13.05.1982 i.e. the applicants (promotees) and those after 13.05.1982 i.e. the junior employees (direct recruits) for purpose of implementing the award, revising the pay scales, inter alia, referring to qualifications. The benefit of revision of pay scales to those in position before 13.05.1982 was to be given with effect from 13.05.1982 notionally and actually from 01.11.1983 in respect of Draughtsman who fulfilled the recruitment qualification relating to the period of service mentioned in Clause (1) prior to

13.05.1982. All the applicants were in position before 13.05.1982. All the juniors who were appointed after 13.05.1982 were governed by the provisions of para 4 of the OM.

13. Based on the OM, the admitted service history/ profile/ careers progression/ pay scales of senior employees, who are 13 in number, based on the implementation of the OM of 1995 was as follows:-

DETAILS OF THE SENIOR APPLICANT EMPLOYEES

SL NO	NAME & RANK	DT OF APPT PAY SCALE Rs 260-	Date of Pay Scale Rs 330-560 (D/M-III) & Date of Pay Scale Rs 1400-2300 (D/M-II)	CPWD AWARD DATE AS D/M-I PAY SCALE Rs. 1600-2600	Basic Pay as on 1-10-96	Basic as on Aug 1999	Basic as on Oct 2006	Basic+3 rd MACP GP Rs 4600/- From 1-9-2008	Basic+GP As on July 2011	Basic+GP As on Oct 2012
1	R V Hingnekar JTO (D)	11-8-1977 (Tracer)	13-4-1981 (D/M-III) 5-9-1988 (D/M-II)	3-3-1988 D/M-I BP 1350/-	Rs. 1850/-	Rs. 6725/-	15360/- GP 4200	16830+ 4600/-	18860/- + 4600	19970/- + 4600
2	Mrs. Sunanda Vijayamadhavan JTO (D)	07-6-1978 (Tracer)	6-8-1981 (D/M-III) 11-12-1987 (D/M-II)	11-12-1987 D/M-I BP 1290/-	Rs. 1760/-	Rs. 6725	15360/- GP 4200	16560+ 4600	19220/- + 4600	19950/- + 4600
3	A P Chavan	15-6-1978 (Trac	6-8-1981 (D/M-	16-11-1988 D/M-I	Rs. 1760/-	Rs. 6725/-	15360/- GP	16220+ 4600	18840/- + 4600	19950/- + 4600

	Sr D/Man	er)	III) 16-11- 1988 (D/M- II)	BP 1320/-			4200	4600 /-	460 0	
4	NB Kumbha re Sr D/Man	01-9- 1978 (Trac er)	1-12- 1981 (D/M- III) 3-3- 1988 (D/M- II)	3-3- 1988 D/M-I BP 1320/-	Rs. 1760 /-	Rs. 672 5/-	1504 0/- GP 4200	1622 0+ 4600 /-	188 40/ - + 460 0	1995 0/-+ 4600
5	P B Nemade Sr D/Man	10- 10- 1978 (Trac er)	1-12- 1981 (D/M- III) 3-3- 1988 (D/M- II)	3-3- 1988 D/M-I 1320/-	Rs. 1760 /-	Rs. 672 5/-	1504 0/- GP 4200	1622 0+ 4600 /-	188 40/ - + 460 0	1995 0/-+ 4600
6	John Skaria h Sr D/Man	28- 10- 1978 (Trac er)	1-12- 1981 (D/M- III) 3-3- 1988 (D/M- II)	3-3- 1988 D/M-I BP 1320/-	Rs. 1760 /-	Rs. 672 5	1504 0/- GP 4200	1622 0+ 4600 /-	188 40/ - + 460 0	1995 0/-+ 4600
7	M B K Shaikh JTO (D) Rtd on	30-7- 1971 (Trac er)	1-8- 1978 (D/M- III) 22-9- 1982 (D/M- II)					ACP- NIL 1865 0/- +460 0		
8	R V Bartak ke Sr D/Man Rtd on Apr 2007	08- 12- 1971 (Trac er)	1-8- 1978 (D/M- III) 22-9- 1982 (D/M- II)	22-9- 1986 D/M-I	-	-	-	ACP- NIL 9000 /-	-	
9	R G Manpur kar JTO (D) Rtd on Apr 2009	08- 12- 1971 (Trac er)	1-8- 1978 (D/M- III) 22-9- 1982 (D/M- II)	6-2- 1987 D/M-I	-	-	-	ACP- NIL 1865 /- +460 0	-	
10	V H Gaikwa d Sr D/Man VRS on	11-8- 1977 (Trac er)	6-8- 1981 (D/M- III) 3-3- 1988 (D/M- II)	3-3- 1988 D/M-I	Rs 1760	Rs 672 5/-	1536 0/- +420 0/-	1622 0+46 00	-	
11	G N Pawar Sr	07-6- 1978 (Trac	31-3- 1981 (D/M-	28-12- 1991 D/M-I	Rs 1760	Rs 672 5/-	1504 0/- +420	ACP- NIL 1674	-	

	D/Man Rtd on	er)	III) 28-12- 1991 (D/M- II)				0/-	0/- +460 0		
12	D R Hinge Sr D/Man Expire d 2005	15-6- 1978 (Trac er)	1-12- 1981 (D/M- III) 3-3- 1988 (D/M- II)	16-11- 88 D/M-I BP 1320/-	Rs 1760	Rs 672 5/-	-	-	-	
13	A K Palav D/Man Rtd on	1-2- 1979 (Trac er)		31.3.8 8 D/M-II 28.12. 1991 D/M-I	-	-	-	-	-	

14. Similarly, the admitted details of service history of the junior employees following implementing of OM dated 15.09.1995 stands as follows:-

DETAILS OF THE JUNIOR EMPLOYEES

SL NO	NAME & RANK	DT OF APPT D/MAN -III PAY SCALE Rs 330-560	CPWD AWARD DATE AS D/M-II PAY SCALE Rs. 1400-2300	Basic Pay as on 1-10-96 Pay Scale Rs. 1400-2300 As per TS/39 Dt. 2 Nov 96	1 st ACP DATE Basi c Pay Scale Rs. 5500 - 175-9000 Aug 1999	2 nd ACP DATE Pay Scale Rs. 6500-10500 From Oct 2006 PB- 8700-34800	2 nd MACP GP Rs. 4800 From 1-9-2008	Basic+ GP As on July 2011	Basic+ 3 rd MACP with GRD PAY Rs.5400/- Oct 2012
1	S G Phatak, Sr D/Ma n	19-10-1982	19-10-1982	1950/-	6875 /-	BP 16040+ GP 4600/-	BP 16850/-+ GP 4800/-	Rs 19550 + GP 4800	Rs 21040 + GP 5400/-
2	A D Khole D/Ma	23-12-1982	23-12-1982	1900/- 1-12-95	6875 /- 9-8-1999	BP 16110 /- + GP 4600	BP 16850/-+ GP 4800/-	Rs 18860/-+ GP 4800/- (Apr	Retire d on Apr 2009

	n-I					22- 10- 2006		09)	
3	S C Lagh ate Sr D/Ma n	19- 10- 1982	19- 10- 1982	1950/ -	6875 /- 9-8- 1999	BP 16110 /- +GP 4600/ -19- 10- 2006	BP 16850/ -+ GP 4800	Rs 19570+ GP 4800	Rs 21070+ GP 5400/-
4	K G Shai kh Jr D/Ma n	19- 10- 1982	19- 10- 1982	1950/ -	6875 /- 9-8- 1999	BP 16110 /- +GP 4600/ -19- 10- 2006	BP 16850/ - +GP 4800	Rs 19570+ GP 4800	Rs 21070+ GP 5400/-
5	D P Mali Jr D/Ma n	16- 02- 1982	03/01 /84	1900/ - 1-3- 96	6875 /- 9-8- 1999	BP 15480+ GP 4600/- 01- 03- 2006	BP 16470/ -+ GP 4800	Rs 19140 + GP 4800	Due on 2014

15. The Pay scales in the various Pay Commissions in the case of D/M- III, II and I was as follows:-

3	3.1	3.2	3.3
	3 rd Pay	4 th Pay	5 th Pay
D/M-III	260-430	1200-2040	4000-6000

2	2.1	2.2	2.3
	3 rd Pay	4 th Pay	5 th Pay
D/M-III	330-560	1400-2300	5000-8000

1	1.1	1.2	1.3
	3 rd Pay	4 th Pay	5 th Pay
D/M-III	425-700	1600-2660	5500-9000

16. It is evident from the above tables that in the course of revising of scales

itself, as per CPWD Award, the applicants were in a lower pay scale than their juniors, which is not disputed. The applicants accepted/ enjoyed the benefit of the award i.e. upward revision scales and never challenged the award as being discriminatory violating of 'equal pay/ equal work' principles etc or any other ground brought up in this OA or earlier **OA of 545/2006 (Supra)**.

17. It is also evident that the above CPWD award having preceded the ACP scheme, the ACP scheme itself had nothing to do with evolving Pay scale differentials. The ACP being effective, after the CPWD award was implemented in favour of applicants, it could not wipe out the effect of the earlier CPWD award. The time bound promotion, by way of financial upgradation, upto the maximum extent under ACP/MACP, were also accepted and enjoyed i.e. this included III MACP benefits on completion of 30 years of service. No more financial upgradation is envisaged under any scheme of the Government

of India. Hence, the contentions that the grant of ACP benefits in 1999, caused anomaly/ pay differentials etc is baseless, in view of pre-existing/ unchallenged pay differentials arising from implementation of the CPWD Award. This award arose out of an arbitration proceedings of CPWD employees and by a policy decision was extended to respondents' establishment.

18. The policy decision having been accepted and not challenged after 1995 or anytime thereafter, not even in this OA, it is not open to applicants to seek the benefits prayed for in this OA, that "because of ACP" or irrespective of pre-ACP, they should be given same salary, if not Pay scale of juniors, on the principles of equal pay for equal work. Allowing this prayer would amount to unsettling the CPWD award 1995 itself, which is not the prayer in this OA. It is under the guise of this OA, that the applicant's oblique/ implied prayer should be seen, which is to unsettle the CPWD award which is beyond the scope of the

Tribunal's adjudication in this OA.

19. The fundamental conditions of stepping up as per DoPT guidelines with effect from the date of promotion of the junior employee is subject to the fulfillment of the following conditions, namely:-

"(a) Both the junior and the senior Government servants should belong to the same cadre and the posts to which they have been promoted or appointed should be identical and 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 should have been drawing equal or more pay than the junior.

(d) The anomaly should be directed 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, provision of this Note need not be invoked to step up the pay of the senior officer."

It is clear that applicants also do not fulfill the general conditions of stepping up. The relevant provisions of the principles of stepping up of pay have not

been challenged.

20. The facts in the present OA are also clearly distinguishable from the judgments relied upon by the applicant in OA. 156-JK-2009 of the Chandigarh Bench, in case of Mr. D.R. Sharma Vs. Union of India and Ors. decided on 19.01.2010, OA No. 2124/2011 in case of All India Postal Accounts Employees Association Vs. Union of India & Ors decided on 01.02.2013 by Principal Bench, New Delhi. The cases are not similarly situated, since the decisions pertained to stepping up on the basis of ACP scheme alone.

21. Hence, reliance on judgments of Court's and Tribunals as above and in **Ashok Kumar Vs. UOI (Supra), (Ram Sarup Ganda (Supra), OA No. 2124/2011 (Supra)** have nothing to do with the present case, unless the CPWD award of 1995 itself gets set aside on being challenged, twenty two years after it has come into effect and the benefit of which has been enjoyed by both applicants/ juniors as per their respective pay scales and

subsequent ACP/MACP benefits granted (upto the maximum) to applicants. The ACP benefit was a logical sequel from the bench mark laid down by the CPWD award regarding pay scales and not unrelated to each other.

22. The applicants have not only not made any reference to the CPWD award in the OA or rejoinders. This figures only in the replies and additional relies of respondents.

23. At the same time, the Tribunal is constrained to point out that the impugned order has not been issued in the light of the OM of 1995, per se, but has gone only into the details surrounding the ACP scheme.

24. The bench mark of CPWD award having attained finality, the prayer in the OA is also a stale matter to be pressed for since prayer in these OAs can be considered in favour of applicants, only by removing the very foundation was i.e. the CPWD award followed by the ACP benefit i.e. the super structure.

25. The issues in this OA having been rendered irredeemably stale, the cause of

action having arisen in 1995, calculating delay from 2006 or thereafter is not tenable and cannot infuse any freshness into the matter.

26. The reliance on **Randheer Singh (supra)** and **Sreenivasa Rao (Supra)** on the grounds of equal pay for equal work, on the ground that pay must be equal, if work conditions are same, cannot come to the rescue of applicants, without challenging the 1995 OM, and without overcoming law regarding limitation.

27. Hence, the OA is not bound to succeed based on facts and law. The impugned action of the respondents in not granting the prayer of applicants is based on the OM of 1995, which is the crux of the matter and not on the basis of the ACP. The action behind the impugned order is fully justifiable on the basis of the OM of 1995. Hence, stepping up of even salaries/pay (if not pay scales) as per the applicants, is not in order. This cannot be done without undoing the pay scales of the CPWD award,

now cast in stone and having archeological value in service jurisprudence and with a history that cannot be ignored/ dispensed with/ done away with. The issue of ACP has no self standing value, since it was a superstructure built on the foundation of the CPWD award.

28. Further, from the table at para 13 and 14, it is evident that the applicants were admittedly, drawing less pay than their so called juniors even on 01.10.1999 i.e. even before implementation of ACP as August 1999. Therefore, it is not clear that the issue of stepping up of pay, with respect to juniors has arisen only after grant of ACP. This is not the case where direct recruits were getting higher pay due to financial upgradation under ACP and promotees (seniors) were getting less pay. The respondents have also not commented on this issue.

29. In view of the above discussions, we hold that the MA for delay condonation is not maintainable, while the OA cannot

succeed on merit.

30. Accordingly, the OA is dismissed.

No costs.

(Ms.B. Bhamathi)
Member (A)

(Shri. A.J. Rohee)
Member (J)

srp/ak*