

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/01467/2015

Date of order: 03.09.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

- 1) Tarak Bose,
Son of Late Kamal Kumar Bose,
Aged about 67 years,
Residing at 'SANS SAUCI',
Flat No. 102, 40A, Panchanontala Lane,
Behala,
Kolkata - 700 034.

- 2) Anil Kumar Biswas,
Son of Late Panchanan Biswas,
Aged about 67 years,
Residing at A-10/264,
Kalyani, P.S. Kalyani,
Dist. Nadia,
Pin - 741 235.

- 3) Srimanta Kumar Chowdhury,
Son of Late Mahesh Chandra Chowdhury,
Aged about 67 years,
Residing at Vill. Namo Basudevpur,
P.O. - Alamshahi; P.S. Samderganj,
Dist. Murshidabad and at present
Residing at 101, Kadamtala (Chuapur),
P.O. Berhampore,
Dist. - Murshidabad,
Pin - 742 101.

- 4) Mihir Kumar Banerjee,
Son of Late Santosh Kr. Banerjee,
Aged about 67 years,
Residing at B-9/121, Kalyani,
Dist. - Nadia,
Pin - 741 235.

- 5) Basudeb Das,
Son of Late Kamakhya Kumar Das,
Aged about 67 years,
Residing at 87/II/J/1,
Raja S.C. Mullick Road,
Kolkata - 700 047.

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- All are retired Senior Superintendent Gr. I
Of NSSO (FOD), Govt. of India,
Region (South)/Berhampore/Chinsurah,
Sub-Regional Office.

... Applicants

V E R S U S -

1. Union of India,
Through the Secretary,
Govt. of India,
Ministry of Statistics & Programme Implementation,
Sardar Patel Bhawan,
Sansad Marg,
New Delhi - 110 001.
2. The Secretary,
Govt. of India,
Ministry of Finance,
Dept. of Expenditure,
Govt. of India,
North Block,
New Delhi - 110 001.
3. The Director General and CEO,
Govt. of India,
Ministry of Statistics & Programme Implementation,
Room No. 412,
4th Floor, Sardar Patel Bhawan,
Sansad Marg,
New Delhi - 110 001.
4. The Deputy Director (Admn.) & H.O.,
NSSO (FOD),
Ministry of Statistics & Programme Implementation,
Govt. of India,
East Block 6, Levels 4 to 7,
R.K. Puram,
New Delhi - 110 066.

.. Respondents

For the Applicants : Mr. K. Sarkar, Counsel

For the Respondents : Mr. P. Mukherjee, Counsel

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ORDER**Per Dr. Nandita Chatterjee, Administrative Member:**

The applicants have approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

“8.a) Leave be given to the applicants to file this joint application in terms of Rule 4(5)(a) of the CAT (Procedure) Rules, 1987;

b) To direct the respondents to cancel, withdraw and/or rescind the purported order of rejection of the representations of the applicants vide memo. dated 17.06.2015 as contained in Annexure “A-11” hereof;

c) To direct the respondents to cancel, withdraw and/or rescind the purported memos. dated 25.02.2013 & 22.08.2012 as contained in Annexures “A-8” & “A-6” herein respectively;

d) To direct the respondents to refix the pay of the applicants in the scale of Rs. 7450-11500/- & Grade Pay of Rs. 4600/- in terms of OM dated 07.01.2013 under FR 22(I)(a)(1) by allowing increment equal to 3% of the band pay and grade pay from the date of promotion till retirement from service and consequential service benefits and pensionary benefits to the post of Sr. Supdt. Gr.I as contained in Annexure “A-7” herein; as was granted to the similarly circumstanced employee, namely, Shri M.L. Mazumder, Ex-Sr. Supdt., NSSO (FOD) RO-Kolkata vide office order dated 21.02.2006 as contained in Annexure “A-12” herein (who was junior to the applicants during their tenure of service);

e) To direct the respondents to produce the entire records of the case before this Hon’ble Tribunal for adjudication of the issues involved herein;

f) And to pass such further or other order or orders as to this Hon’ble Tribunal may deem fit and proper.”

2. At the outset, as the applicants share a common interest and are pursuing a common cause of action, they are given leave to jointly prosecute this O.A. under Rule 4(5)(a) of Central Administrative Tribunal (Procedure) Rules, 1987.

3. The applicants have advanced the following grounds, inter alia, in support of their claim:-

(a) That, not fixing their pay to the post of Sr. Supdt. Gr.I in the scale of Rs. 7450-11500/- with Grade Pay of Rs. 4600/- while promoting them from the post of Sr. Supdt. Gr.II was violative of OM dated 07.01.2013 of Ministry of Finance, Deptt. of Expenditure as well as FR 22(I)(a)(1).

(b) That, the benefit of OM dated 07.01.2013 was denied to the applicants arbitrarily and illegally and their pay was not fixed as per Rule 13(i) of CCS (RP) Rules, 2008.

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(c) That, in terms of OM dated 30.06.2004 of the Ministry of Statistics & Programme Implementation and specifically in para 2(ii) therein it was decided that the incumbents who are holding the posts included in SSS in the pay scale of Rs. 6500-10500/- on regular basis, absorbed and appointed to the Grade of Statistical Investigator Gr. I in the pay scale of Rs. 7450-11500/- shall be fixed in accordance with FR 22(I)(a)(1).

(d) That, when a similarly circumstanced employee, namely, Shri M.L. Mazumder, Ex-Sr. Supdt. of NSSO (FOD), RO-Kolkata, appointed to the post of SI Gr. I in the pay scale of Rs. 7450-11500/- w.e.f. 01.04.04, was extended with the benefit of FR 22(I)(a)(1) on absorption and appointment as Sr. Supdt. in the grade of S.I. Gr.I. The applicants, although senior to the said Sri Mazumder but have not been considered with the same benefit.

4. The respondents, per contra, have primarily controverted the claim of the applicants stating that the pay of the applicants was fixed at the appropriate stage in the higher scale of pay of Rs. 7450-11500/-, as per provisions of FR 22(I)(a)(2) and that the provisions of FR 22(I)(a)(1) does not apply to the applicants.

According to the respondents, the pre-revised scale of pay of Rs. 7450-11500/- stood merged with the pay in the feeder post of Rs. 6500-10500/- and replaced with Grade Pay of Rs. 4600/- w.e.f. the date of introduction of the 6th CPC i.e. 1.1.2006, consequent to which, the applicants who have been granted a Grade Pay of Rs. 4600/- in view of the merged scale of pay of feeder post with that of promotional post w.e.f. 1.1.2006 have no legitimate claim for grant of 3% increment.

The respondents have relied upon Department of Expenditure O.M. dated 7.1.2013, O.M. dated 24.11.2000, Rule 13(i) of the CCS (RP) Rules,

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2008 along with O.M. dated 2.8.2006, issued in modification to O.M. dated 30.6.2004.

5. The crucial point of determination for adjudication of the present matter is whether the provisions of FR 22(I)(a)(1) will apply as claimed by the applicants or whether the applicants would be subjected to the provisions of FR 22(I)(a)(2) as contended by the respondents.

6.1. Heard both Ld. Counsel, examined pleadings and documents on record. We have carefully considered the arguments of both Ld. Counsel.

At the outset, it is noted herein that the applicants had earlier approached this Tribunal in O.A. No. 689 of 2013, which was disposed of on 14.1.2015 directing the applicants to prefer a comprehensive representation, which the respondents were to dispose of in a time bound manner. In compliance thereof, the respondent No. 4 to O.A. No. 689 of 2013 issued a speaking order annexed at A-11 to the O.A. on 17.6.2015, which is presently under challenge in the instant O.A. The said speaking order is reproduced as below:-

No. A-38020/9/2012-Estt.II
Government of India
National Sample Survey Office
(Field Operations Division)

East Block 6, Levels 4 to 7,
R.K. Puram, New Delhi

Dated: 17.6.2015

To

Shri Basudev Das,
Ex. Senior Superintendent Gr. I,
87/11/J/1, Raja S.C. Mullick Road,
Kolkata - 700 047.

Subject: Judgment dated 14th January, 2015 passed by Hon'ble CAT, Kolkata Bench, Kolkata in O.A. No. 689 of 2013 – Tarak Bose & Others Versus Union of India & Others – regarding.

Sir,

In pursuance to the decision of Hon'ble CAT, Kolkata envisaged in Judgment 14.1.2015 in O.A. No. 689 of 2013 your representation dated 4.2.2015 has been examined with reference to the guidelines issued by Govt. of India from time to time on the subject.

2. On examination, it is found that while holding the post of Statistical Gr.II in the pay scale of Rs. 6500-10500/- of SSS, you were promoted to the post of Statistical Investigator Gr.I in the pre-revised scale of Rs. 7450-11500/- in the year 2006 and accordingly your pay was fixed in accordance with the relevant rules. Consequent upon implementation of 6th CPC, Section I of PART C of Notification dated 29.08.2008, vide sub-Para (ii) it was ordered.

"On account of merger of pre-revised pay scales of Rs.5000-8000, Rs.5500-9000 and Rs. 6500-10500, some posts which presently constitute feeder and promotion grades will come to lie in an identical grade. The specific recommendations about some categories of these posts made by the Pay Commission are included Section II of Part C. As regards other posts, the posts in these three scales should be merged. In case it is not feasible to merge the posts in these pay scales on functional considerations, the posts in the scale of Rs. 5000-8000 and Rs. 5500-9000 should be merged, with the post in the scale of Rs.6500-10500 being upgraded to the next higher grade in pay band PB-i.e. to the grade pay of Rs. 4600 corresponding to the pre-revised pay scale of Rs. 7450-11500/-. In case a post already exists in the scale of Rs. 7450-11500, the post being upgraded from the scale of Rs..6500-10500 should be merged with the post in the scale of Rs. 7450-11500.

3. Department of Expenditure vide OM No. 10/02/2011-EII and dated 07.01.2013 has considered the matter of fixation of pay of those cases where promotions from one post to another carries the same grade pay as the feeder post and described manner as prescribed in Rule 3(i) of the CCS (RPS Rules, 2008, provided fixation of pay in such cases was done prior to 1.1.2006 in terms of Ministry's OM No. 169/2/2000-IC dated 24.11.2000.

4. In the present case, the pre-revised scale of pay of Statistical Investigator Gr. II i.e. Rs. 6500-10500 was merged with Statistical investigator Gr. I's pre-revised scale of pay of Rs. 7450-11500. Accordingly, the fixation of pay was done in terms of Government instructions on fixation of pay in such cases.

5. The matter was considered in view of the provisions which existed prior to 1.1.2006 and the President pleased to decide that in case of promotion from one post to another where the promotion post carries the same Grade Pay as the feeder post, the fixation of pay in such cases will be done in the manner as prescribed in Rule 13 (i) of the CCS (RP) Rules, 2008, provided fixation of pay in such cases was done prior to 1.1.2006, in terms of Ministry of Finance O.M. No.169/2/2000-IC dated 24.11.2000 (O. No. 10/2/2011-E.III/A, dated 7th January, 2013. In terms of the Ministry's OM No.169/2/2000-IC dated 24.11.2008, dealing with the situation whereby both the feeder and the promotional grades were placed in the identical revised pay scales based on the recommendations of the 5th Central Pay Commission, it was provided, inter-alia, that only in cases where it was not found feasible to appropriately restructure cadres in question on functional, operational and administrative considerations, extension of the benefit of fixation of pay under FR 22(i)(a)(1) could be considered on the merits of each case, provided all the conditions precedent for the grant of this benefit were fully satisfied and promotion to the post in question actually involved assumption of higher responsibilities. An examination of the OM dated 24.11.2000 shows that ".....What is envisaged in such a situation is that the affected cadres themselves should be appropriately restructured and the relevant recruitment rules amended so as to reduce the number of levels in the hierarchy. This is also the spirit underlying the 5th CPC recommendations relating to the merger of different pay scales".

6. In view of above examination, it is informed that the recommendation of 6th CPC have been accepted and implemented in toto and the fixation of pay has been done in terms of CCS (Revised Pay Rules, 2008) Rule 7(A)(i)(ii) read with Para under 2 B is just and proper. The Statistical Investigator Gr.II in the pre revised scale of pay of Rs. 6500-10500 i.e feeder cadre for promotion to the post of Statistical Investigator Gr.I pre-revised scale of pay of Rs. 7450-11500/- was merged and Grade pay of Rs. 4600/- was granted as against the Grade pay of Rs. 4200/- granted by the 6th CPC on account of merger of pre-revised scale of pay of Rs. 5000-8000; Rs. 5500-9000; and Rs. 6500-10500/-. The fixation of pay in the applicable pay band was done in manner prescribed in accordance

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with Clause (A)(i) and (ii) of Rule 7 by multiplying the existing basic pay as on 1.1.2006 by a factor of 1.86 and the grade pay corresponding to the upgraded scale as indicated in Column 6 of Part C. Thus, there is no illegality and the fixation of pay done in your case is just and proper and you have no legitimate claim for grant of additional increment as no promotion has taken place from one grade pay to another in the revised pay structure of 6th Central Pay Commission. Hence, the representation made by you is considered and rejected.

Yours faithfully,

(Fakhre Alam)
Deputy Director (A)"

The following is inferred from the above speaking order:-

- (i) The applicants were promoted to the post of Statistical Investigator Gr. I in the pre-revised scale of Rs. 7450-11500/- in the year 2006 and, accordingly, their pay was fixed in accordance with the relevant rules.
- (ii) On account of merger of pre-revised pay scales of Rs.5000-8000, Rs.5500-9000 and Rs. 6500-10500, some posts which constituted feeder and promotion grades would come to lie in an identical grade.
- (iii) In case it is not feasible to merge the posts in these pay scales on functional considerations, the posts in the scale of Rs. 5000-8000 and Rs. 5500-9000 should be merged, with the post in the scale of Rs.6500-10500 being upgraded to the next higher grade in pay band PB.
- (iv) In case a post already exists in the scale of Rs. 7450-11500, the post being upgraded from the scale of Rs. 6500-10500 should be merged with the post in the scale of Rs. 7450-11500.
- (v) That, the Department of Expenditure, vide OM No. 10/02/2011-EII dated 07.01.2013 has considered the matter of fixation of pay of those cases where promotions from one post to

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another carries the same grade pay in terms of Ministry's OM No. 169/2/2000-IC dated 24.11.2000.

(vi) In the present case, the pre-revised scale of pay of Statistical Investigator Gr. II i.e. Rs. 6500-10500 was merged with that of Statistical investigator Gr.I's pre-revised scale of pay of Rs. 7450-11500. Accordingly, the fixation of pay was done in terms of Government instructions on fixation of pay in such cases.

(vii) Promotional posts carrying the same Grade Pay as that of the feeder post will follow Rule 13 (i) of the CCS (RP) Rules, 2008, provided fixation of pay in such cases was done prior to 1.1.2006, in terms of Ministry of Finance O.M. No.169/2/2000-IC dated 24.11.2000.

(viii) In terms of the Ministry's OM No.169/2/2000-IC dated 24.11.2008, dealing with the situation whereby both the feeder and the promotional grades were placed in the identical revised pay scales based on the recommendations of the 5th Central Pay Commission, it was provided, *inter-alia*, that *only in cases where it was not found feasible to appropriately restructure cadres in question on functional, operational and administrative considerations, extension of the benefit of fixation of pay under FR 22(i)(a)(1) could be considered on the merits of each case, provided all the conditions precedent for the grant of this benefit were fully satisfied and promotion to the post in question actually involved assumption of higher responsibilities.*

An examination of the OM dated 24.11.2000 deciphers that ".....What is envisaged in such a situation is that the affected cadres themselves should be appropriately restructured and the relevant recruitment rules amended so as to reduce the number of levels in

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the hierarchy. This is also the spirit underlying the 5th CPC recommendations relating to the merger of different pay scales".

(ix) The Statistical Investigator Gr.II in the pre revised scale of pay of Rs. 6500-10500 i.e feeder cadre for promotion to the post of Statistical Investigator Gr.I pre-revised scale of pay of Rs. 7450-11500/- was merged and Grade pay of Rs. 4600/- was granted as against the Grade pay of Rs. 4200/- granted by the 6th CPC on account of merger of pre-revised scale of pay of Rs. 5000-8000; Rs. 5500-9000; and Rs. 6500-10500/-.

(x) The fixation of pay in the applicable pay band was done in manner prescribed in accordance with Clause (A)(i) and (ii) of Rule 7 of CCs (RP) Rules, 2008 by multiplying the existing basic pay as on 1.1.2006 by a factor of 1.86 and the grade pay corresponding to the upgraded scale as indicated in Column 6 of Part C.

Having analyzed the claim of the applicants on the above lines, the respondents rejected the claim of the applicants.

6.2 The provisions of FR 22(I)(a)(1) and FR 22(I)(a)(2) are germane to the lis. Hence, we proceed to examine the provisions of FR 22(I)(a)(1) as quoted below:-

"FR.22(I) The initial pay of a Government servant who is appointed to a post on a time-scale of pay is regulated as follows:-

(a)(1) Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or [rupees one hundred only], whichever is more.

[Save in cases of appointment on deputation to an ex cadre post, or to a post on ad hoc basis or on direct recruitment basis], the Government servant shall have the option, to be exercised within one month from the date of promotion or appointment, as the case may be, to have the pay fixed initially at the stage of the time-scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be refixed in accordance with this rule on the date of accrual of next increment in the scale of the pay of the lower grade or post. In cases where an ad hoc promotion is followed by

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regular appointment without break, the option is admissible as from the date of initial appointment/promotion to the exercised within one month from the date of such regular appointment.

*Provided that where a Government servant is, immediately before his promotion or appointment on regular basis to a higher post, drawing pay at the maximum of the time-scale of the lower post, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post held by him on regular basis by an amount equal to the last increment in the time-scale of the lower post or rupees one hundred, whichever is more."

An analysis of FR 22(I)(a)(1) reveals the following:

- (a) To be eligible for the benefits of FR 22(I)(a)(1) the Government servant is required to be promoted or appointed to another post carrying duties and responsibilities of greater importance than those attached to the post held by him.
- (b) The pay of the Government servant at the initial stage in the time scale of the higher post shall be fixed next above of the notional pay arrived at in respect of lower post held by him regularly by an increment at the stage in which that pay has accrued.
- (c) If the Government servant immediately before his promotion or appointment to the higher pay was maximum of the higher post, his initial time scale of the higher post shall be fixed next above the pay notionally arrived at by increasing his pay in respect of the lower post held by him by an amount equal to the last increment in the time scale of the lower post or Rs. 100/- whichever is lower.

FR 22(I)(a)(2), on the other hand, reads as follows:-

"(2) When the appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time-scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis:

Provided that where the minimum pay of the time-scale of the new post is higher than his pay in respect of the post held by him regularly, he shall draw the minimum as the initial pay:

Provided further that in a case where pay is fixed at the same stage, he shall continue to draw that pay until such time as he would have received an increment in the time-scale of the old post, in cases where pay is fixed at the

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higher stage, he shall get his next increment on completion of the period when an increment is earned in the time-scale of the new post.

On appointment on regular basis to such a new post, other than to an ex-cadre post on deputation, the Government servant shall have the option, to be exercised within one month from the date of such appointment, for fixation of his pay in the new post with effect from the date of appointment to the new post or with effect from the date of increment in the old post. "

The following inference is derived from the provisions of FR 22

(I)(a)(2):-

- (a) This provision will be applicable when appointment to the new post does not involve assumption of duties and responsibilities of greater importance;
- (b) The Government servant shall draw his initial pay to the stage of the time scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis.
- (c) When the minimum of the time scale of new post is higher than that of his pay in respect of the post held by him regularly, the incumbent will draw the minimum of the initial pay and that if the pay is fixed at the same stage, he shall continue to draw that pay until such time as he would have received an increment in the time scale of the old post.

6.3. The main contentions of the applicants are that the applicants were holding the post of Statistical Investigator Gr. II in the scale of Rs. 6500-200-10500/- of Subordinate Statistical Service and were promoted as Statistical Investigator Gr. I of Subordinate Statistical Service (since redesignated as Superintendent Gr. I) in the scale of pay of Rs. 7450-11500/- on diverse dates and to this effect, they have annexed the copies of their promotion orders at Annexure A-2 to the O.A.



The respondents do not deny the fact that the applicants were promoted from Statistical Investigator Gr. II to Statistical Investigator Gr. I. The contention of the respondents, however, is that as the pay scales in feeder posts and the promotional posts have been merged with a new scale of pay of Rs. 9300-34800/- in Pay Band 2 + Grade Pay of Rs. 4600/-, the promotions earned on the revised scale of pay Rs. 7450-11500/- as on 25.8.2006 have become redundant. This contention has been recorded by respondent No. 4 on 25.2.2013 as per Annexure A-8 to the O.A.

The respondents, have relied on Department of Expenditure O.M. dated 7.1.2013, annexed at Annexure A-7 to the O.A. wherein the following is stated:-

“2. In terms of this Ministry's OM No. 169/2/2000-IC dated 24.11.2000 dealing with the situation whereby both feeder and the promotional grades were placed in the identical revised pay scales based on the recommendations of the 5th Central Pay Commission, it was provided, inter-alia, that only in cases where it was not found feasible to appropriately restructure cadres in question on functional operational and administrative considerations extension of the benefit of fixation of pay under FR 22(I)(a)(1) could be considered on the merits of each case, provided all the conditions precedent for the grant of this benefit were fully satisfied and promotion to the post in question actually involved assumption of higher responsibilities.

3. In view of the provisions which existed prior to 1.1.2006 the matter has been considered and the President is pleased to decide that in cases of promotion from one post to another where the promotional post carries the same Grade Pay as the feeder post, the fixation of pay in such cases will be done in the manner as prescribed in Rule 13(i) of the CCS(RP) Rules, 2008, provided fixation of pay in such cases was done prior to 1.1.2006 in terms of this Ministry's aforesaid OM No. 169/2/2000-IC dated 24.11.2000.”

Respondents have further clarified in their written statement that the Subordinate Statistical Service was restructured as follows:-

“Consequent upon formation of Subordinate Statistical Service, all the statistical functional posts of National Sample Survey Office and other participating Ministries were merged together and reckoned as under:

- (I) Statistical Investigator Gr.IV (Scale of pay of Rs.5000-8000)
- (II) Statistical Investigator Gr.III (Scale of pay of Rs.5500-9000)
- (III) Statistical Investigator Gr.II (Scale of pay of Rs.6500-10500)
- (IV) Statistical Investigator Gr. I (Scale of pay of Rs.7450-11500)

11. The deponent states and submits that consequent upon implementation of 6th CPC vide Notification dated 29.08.2008, some of the pre-revised scale of pay got merged and as a result thereof the above four-tier structure was merged and converted into 2 tier Structure, i.e., Assistant Superintending Officer (now

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called **Junior Statistical Officer**) and Senior Superintending Officer (now called **Senior Statistical Officer**) with a retrospective date i.e. w.e.f 01.01.2006 as per the recommendations made by the 6th CPC under Section-I(ii) of Part-C of CCS(Revised Pay) Rules, 2008."

It is hence an admitted fact that the Subordinate Statistical Service was restructured. Accordingly, the requirement of Department of Expenditure O.M. dated 7.1.2013 that FR 22(I)(a)(1) would only be extended on merits of each case provided cadres cannot be restructured appropriately does not apply in this matter as the respondent authorities had carried out the restructuring process consequent to the 5th CPC recommendations.

The respondents have also argued that the provisions of Rule 13(i) of CCS (RP) Rules, 2008 are not attracted in the present case as such provisions are admissible only in those cases where promotions have taken place in the pre-revised pay structure. This benefit, therefore, was extended to one Shri M.L. Majumdar, who was promoted as Statistical Investigator Gr. I w.e.f. 1.4.2004 i.e. prior to the implementation of the 6th CPC. Thus, his analogy cannot be extended to the case of the applicants who were promoted only in August, 2006.

The respondents have also referred to the O.M. dated 2.8.2006 on the subject of fixation of pay of incumbents absorbed and appointed in the Subordinate Statistical Service modifying O.M. dated 30.6.2004 wherein the following was substituted:-

"2(ii) The incumbents who are holding the posts included in SSS the pay scale of Rs. 6500-200-10500 on regular basis and absorbed and appointed to the grade of Statistical Investigator Grade I in the pay scale of Rs. 7450-225-11500 shall be fixed in accordance with FR 22(i)(a)(2)"

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"2(iv) The incumbents who are holding the posts included in SS in the pay scale of Rs. 5000-150-8000 on regular basis and absorbed and appointed to the grade of Statistical Investigator Grade III in the pay scale of Rs. 5500-175-9000 shall be fixed in accordance with FR 22(i)(a)(2)"

The above O.M. was issued in consonance with the 6th CPC recommendations and in compliance to the orders of the Central

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Administrative Tribunal, Principal Bench in O.A. No. 1607 of 2004. The Respondent Ministry, in consultation with DOP&T, Ministry of Law & Justice and the Department of Expenditure, had decided as follows:-

"That, those incumbents who are holding the posts in Subordinate Statistical Service in the pay scale of Rs. 6500-10500/- on regular basis and who have been appointed to Grade of Statistical Investigator Gr. I in the scale of Rs. 7450-11500/- shall be fixed in accordance with FR 22(I)(a)(2)."

This provision applies squarely in the case of the applicants. The applicants have not brought before us on record any successful challenge to the O.M. dated 2.8.2008 (Annexure R-6 to the reply).

In our considered view, the following transpires from the above findings:-

(1) The prevalence of O.M. dated 2.8.2008 remains undisputed.

Hence the applicants' pay fixation would be guided by the provisions of FR 22(I)(a)(2). O.M. dated 30.6.2004 stands modified vide O.M. dated 2.8.2006. Hence, applicants' reliance on O.M. dated 30.6.2004 is misconceived.

(2) The Subordinate Statistical Service having been restructured hence the scope of considering the applicant's pay fixation under Rule 13(i) of CCS (Revised Pay) Rules, 2008 does not arise.

(3) O.M. dated 7.1.2013 refers to a restructuring process in the absence of which fixation of individual cases may be resorted to on merit under Rule 13(i) of CCS (Revised Pay) Rules, 2008. As the Statistical Subordinate Service has been restructured, O.M. dated 7.1.2013, especially para 2 thereof does not apply. Hence the applicants cannot claim benefits of fixation under Rule 13(i) of CCS (Revised Pay) rules, 2008.

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(4) In case fixation of pay was made prior to 1.1.2006, promotional posts carrying the same grade pay as that of the feeder post would have followed Rule 13(i) of CCS (Revised Pay) Rules, 2008. The applicants had been promoted in August, 2006 and hence cannot claim the benefit of Rule 13(i) of CCS (Revised Pay) Rules, 2008.

7. Hence, the applicants claim for fixation as per FR 22(I)(a)(1) & Rule 13(i) of CCS (Revised Pay) Rules, 2008 fails.

Accordingly, the O.A. fails to succeed and is dismissed accordingly.

No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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