

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH, KOLKATA  
(CIRCUIT BENCH AT PORT BLAIR)**

O.A. 621/AN/ 2017

**Coram :** Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Mr. N. Neihsial, Administrative Member

Shri G. Chinnaiyah,  
Son of Late C. Ganeshan,  
Aged about 37 years,  
Working as Higher Grade Clerk  
In the Establishment of Dr. B.R. Ambedkar  
Institute of Technology,  
Resident of Aberdeen Village,  
Port Blair, South Andaman,  
Pin – 744101.

..... Applicant.

Versus

1. Union of India  
Through the Secretary,  
Ministry of Human Resource & Development,  
Department of Higher Education,  
Technical Section-II,  
New Delhi, Pin – 110001.
2. The Lt. Governor,  
Andaman & Nicobar Islands,  
Raj Niwas, Port Blair,  
Pin – 744101.
3. The Chief Secretary,  
Andaman & Nicobar Administration,  
Secretariat, Port Blair,  
Pin - 744101;
4. The Secretary (Education-cum-Per.),  
Andaman & Nicobar Administration,  
Secretariat, Port Blair,  
Pin – 744101.
5. The Principal,  
Dr. Ambedkar Institute of Technology,  
Port Blair, Pin – 744103.

..... Respondents.

For the applicant : Mr. P.C. Das, Counsel

For the respondents : Mr. T. Lall, Counsel

Reserved on : 06.06.2019

Date of Order : 11.9.19

ORDER

Per : Bidisha Banerjee, Judicial Member

The applicant in this O.A. has sought for the following reliefs:

"8.(a) To quash and/or set aside the impugned office memo dated 30.11.16 being No. 81-3034/99-PW issued by the Andaman & Nicobar Administration by the Deputy Secretary (Personnel) by which the benefit of ad hoc service for the purpose of pay fixation on the regular appointment of the applicant to the post of LGC has been rejected which is absolutely against the decision made by the Hon'ble Supreme Court in SLP(C) No. 3187 of 2013 in the case of Lt. Governor of Andaman & Nicobar Administration vs. Parimal Halder & Another which was decided on 13.01.2015 by which the Hon'ble Supreme Court has held that the High Court was fully justified in allowing pay fixation to the respondent with effect from the date of their appointment in the first instance on ad hoc basis.

(b) To quash and/or set aside the office memorandum being No. 10-8/DBRIT/Estt/2014/288 dated 03.01.2016 issued by the Administrative Officer, Dr. B.R. Ambedkar Institute of Technology by which the claim of the applicant has been rejected by not following the decision of the Hon'ble Supreme Court in SLP(C) No. 31187 of 2013.

(c) To pass an appropriate order directing upon the respondent authorities to grant the benefit of ad hoc service for the purpose of pay fixation on his regular appointment to the post of LGC along with all consequential benefits.

(d) To pass an appropriate order directing upon the respondent authorities to pay the arrears and other consequential benefits by fixation of his pay and counting the benefit of ad hoc service.

(e) To direct the respondent authorities to produce relevant documents in connection with the above mentioned case before this Hon'ble Tribunal for proper adjudication of this matter.

(f) Costs;

(g) Any order or orders direction or directions as Your Lordships may deem fit and proper."

2. His case lies in a narrow compass.

The applicant is at present serving as Higher Grade Clerk in the establishment of Dr. B.R. Ambedkar Institute of Technology at South Andaman, Port Blair under the control and authority of Andaman & Nicobar Administration. The applicant is seriously aggrieved against the impugned office memorandum dated 30.11.2016 whereby and whereunder the administration has refused to recognize the past service rendered by him and did not protect his pay by not regularization the ad hoc service which he has rendered with effect from 1<sup>st</sup> February, 1999 to 9<sup>th</sup> August, 1999.

He has claimed that while he was studying in the JNRM College in B.Sc. (Chemistry, 1<sup>st</sup> year 1998 he had applied for the post of Laboratory Assistant in the Directorate of Education under Andaman & Nicobar Administration and also to the post of L.G.C.(Lower Grade Clerk) in the Personnel Wing of Andaman & Nicobar Administration.

He was selected to the post of Laboratory Assistant through selection process and was appointed on ad hoc basis for a period of 3 months vide Director of Education's order no. 371 dated 01.02.1999 on ad hoc basis in the scale of pay of Rs. 4000-100-6000/- (pre-revised) and his pay was fixed in the initial stage of Rs. 4,000/- . Thereafter he was reappointed to the post of Laboratory Assistant vide Director of Education Office order No. 3821 dated 09.08.1999 for a period of 6 months while serving in the post of Laboratory Assistant he also got selected to the post of LGC in the scale of pay of Rs. 3050 – Rs. 4590/- (pre-revised) through Staff Selection Commission. After regular selection he reported for duty in the post of LGC on 03.02.2000 and his pay was fixed at the minimum stage of Rs. 3,050/- which was lower than the earlier basic pay drawn by him. He was not given any pay protection.

He has claimed that as per rules and as per various cases decided by this Tribunal as well as the Hon'ble High Court and Hon'ble Apex Court he is entitled to protection of pay to the post of LGC when he was appointed.

He has averred that the law laid down by the Hon'ble Apex Court in SLP(C) No. 31187 of 2013 clearly stated that since the appointment of the respondents from the very beginning was in the pay scale, and not on a fixed pay the High Court was fully justified in allowing pay fixation to the respondents with effect from the date of their initial appointment in the first instance on ad hoc basis. Although in his representation dated 16.11.2015 he quoted the aforesaid decision of the Hon'ble Supreme Court vide representation the Andaman & Nicobar Administration rejected his claim by impugned office memorandum no. 81-3034/99-PW dated 30.11.2016.

3. The respondents have defended their action by way of reply. They have stated as under:

*\*Director of Education under Andaman & Nicobar Admn. after conducting a selection process prepared a panel for the post of Laboratory Assistant and based on the panel, the applicant was appointed on ad-hoc basis to the post Laboratory Assistant purely for a period of three months in scale of pay of Rs. 4000-100-6000 vide Directorate of Education's order No.371 dated 1.2.1999 and thereafter he was re-appointed in the post of Laboratory Assistant on the same post for a period of six months vide order No.3821 dated 9.8.1999. The said ad hoc period expired w.e.f. 31.01.2000. The pay of the applicant was allowed in the basic pay of Rs. 4000/-.*

*The applicant while working as Laboratory Assistant applied for the post of LGC, and was selected and appointed to the post of Lower Grade Clerk (LGC) in the pay scale of Rs. 3050-4590 (Pre-revised) vide Admn's Order No. No. 357 dated 28.01.2000 and he reported for duty in the post of LGC on 3.2.2000(FN).*

*Consequent to his reporting for duty to the post of LGC his pay was fixed in the minimum stage in the scale of pay of Rs. 3050-4590 w.e.f. 3.2.2000 i.e., Rs. 3050/-.*

In the year 2014 the applicant promoted to the post of HGC vide Andaman & Nicobar Administration Order No.3737 dated 9.11.2013 in PB-1 Rs.5200-20200 plus GP of Rs.2400/- and he reported for duty in the post of HGC on 01.01.2014.

The Service book of the Incumbent was sent to the Education Officer, Car Nicobar (earlier DDO) for verification of his ad-hoc service rendered in the post of Laboratory Assistant vide this office letter dated 11.02.2015 in response Education Officer, Cat Nicobar vide letter No.1-39/SV/EDN/CN/2014-15/236 dated 0.2.2015 has informed that the service rendered by the applicant on ad-hoc basis could not be verified due to the reason that all the records were washed away during Tsunami on 26.12.2004.

The applicant made representation dated 16.11.2015 before the Respondent Authority quoting the reference of Parimal Haldar case claiming pay protection for the Ad-hoc service rendered by the applicant in the post of Lab Assistant followed by representation dated 17.10.2016.

The matter was examined by the Personnel Department of Andaman & Nicobar Administration and reply communicated to the applicant vide Institute letter No.10-8/DBRAIT/ESTT/2014/288 dated 3.1.2016 stating that

"As per rules, the benefit of past service is allowable only in cases, where Govt. Servant apply for another post in the same or other department through proper channel and get appointment to the new post after acceptance of his technical resignation from the previous post.

The records available in the Personnel Wing reveals that Shri G. Chinnaiyah submitted his application for the post of LGC directly and not through proper channel, as such he is not eligible for benefit of past adhoc service rendered in the post of Laboratory Assistant. The Judgment cited in support of his claim relate to allowing increment benefits to a Physical Education Teacher for his adhoc service, who was appointed initially on adhoc basis and regularized subsequently in the same post. Hence, cited judgment have no relevance to the present case."

The applicant had submitted another representation dated 7.6.2016 in response to the Institute letter dated 3.1.2016. He has mentioned that while studying as a student in the JNRM College he had applied for the following posts i.e., Laboratory Assistant in the Directorate of Education, Andaman & Nicobar Administration and LGC in the Personnel Department of Andaman & Nicobar Administration. Firstly, he was selected to the post of Laboratory Assistant on ad-hoc basis and later he was also selected as LGC through staff selection commission. And requested to accept his resignation in the post of Laboratory Assistant in terms of DOPT's OM dated 22.01.1993 for the purpose of fixation of pay in the post of LGC as "Technical Formality".

During the course of examination, the applicant had made another representation dated 17.10.2016 stating that he was initially appointed on

*ad-hoc basis in a pay scale as such requested to consider his ad-hoc service for the purpose of fixation of pay.*

*The Personnel Department of Andaman & Nicobar Administration after examining the representation dated 7.6.2016 and 17.10.2016 of the applicant finally rejected vide memorandum No.81-3034/99-PW dated 30.11.2016 stating that :-*

- (i) *The judgment referred by the applicant is claim related to allowing increment benefits to a Physical Education Teacher for his Ad-hoc service, who was appointed initially on ad-hoc basis and his service has been regularized subsequently in the same post. Hence, judgment cited by the Applicant has no relevance.*
- (ii) *As per Para 21.1 of DOPT's latest OM dated 17.08.2016, no question of benefit of resignation being treated as technical resignation arises in case of it being from a post held on ad-hoc basis.*
- (iii) *In the instant case, the past service rendered by the applicant on ad-hoc basis will not be admissible for fixation of pay / pay protection in the new post i.e., LGC.*

Xxx

xxx

xxx

*The respondent authorities have acted as per law with all fairness and reasonability and not violated article 14 and article 16 of the Constitution of India.*

4. The applicant therefore, as it appears from the pleadings has basically asked for protection or pay of his ad hoc period of service which was higher than his regular pay in the other department.

Ld. Counsel for the applicant in support of his contention would reply upon the following decisions:

- (i) **In Civil Writ Petition No. 15081 of 2011 Shanno Devi v. State of Haryana & Ors.** rendered by Hon'ble High Court of Punjab and Haryana " where it was held that entire service interrupted or continuous followed by confirmation is to be treated as qualifying service for pension and the period of break is to be omitted while working out the aggregate service".

(ii) 1. Lower Primary School Assistant, Vs. 1. State of Kerala in WP(C)

No. 28739 of 2008(U) rendered by Hon'ble High Court of Kerala at Ernakulam, the petitioner is entitled to get first increment counting his prior broken service of 10 months and 15 days.

(iii) By High Court of Judicature for Rajasthan Bench at Jaipur in Civil

Writ Petition No. 9001/2006 while interpreting Rule 26 of Rajasthan service Rules, 1951, it was held in a matter, where in terms of Denial of pay protection when Initially appointed as J. Een. In PHED on ad-hoc on temporary basis, appeared in RAS Exams., appointed as ACTO, entitlement it was held "Ad-hoc appointments were regularised by amending Rules of 1967 vide notification dated 2.7.2003 rule 26(1)(b)(i) applies in his case no reason even otherwise not to provide pay protection order quashed and set aside".

We note that none of the decisions support his cause of pay protection of ad hoc period of service in lower regular scale in another department, when he with open eyes has joined the regular service in new department, on lower scale.

5. In order to discern whether the Fundamental Rules support his cause, we need to examine the provisions.

6. Fundamental Rules 15, stipulates as under:

" F.R. 15. Substituted by G.I., Dept. of Per. & Trg., Notification No. 28020/I/96-Estt. (C), dated the 9<sup>th</sup> February, 1998, published as GSR 44 in the Gazette of India, dated the 28<sup>th</sup> February, 1998.(a) The President may transfer Government servant from one post to another provided that except –

- (1) on account of inefficiency or misbehaviour, or
- (2) on his written request,

a Government servant shall not be transferred to, or except in a case covered by Rule 49, appointed to officiate in a post carrying less pay than the pay of the post on which he holds a lien.

Deleted by G.I., Dept. of Per. & Trg., Notification No. 28020/I/96-Estt. (C), dated the 9<sup>th</sup> February, 1998, published as GSR 44 in the Gazette of India, dated the 28<sup>th</sup> February, 1998 (b) Deleted.

#### GOVERNMENT OF INDIA'S ORDERS

(1) **Fixation of pay in case of employees who seek transfer to a lower post under FR 15 (a) – Clarification.** – It is directed to refer to instructions issued vide this Department's O.M. No. 16/6/2001-Estt. (Pay), dated 14-2-2006, on the above subject. It was clarified therein that on transfer to the lower post / scale under FR 15 (a), the pay of a Government servant holding a post on regular basis will be fixed at a stage equal to the pay drawn by him in the higher grade. If no such stage is available, the pay will be fixed at the stage next below the pay drawn by him in the higher post and the difference may be granted as personal pay to be absorbed in future increments. If the maximum of the pay scale of the lower post is less than the pay drawn by him in the higher post, his pay may be restricted to the maximum under FR 22 (a) (a) (3) [Should be FR 22 (I) (a) (3) ].

(2) **Fixation of pay in case of employees who seek transfer to a lower post under FR 15 (a) – Clarification.** – It is directed to refer to this Department's O.M. No. 16/4/2012-Pay-I, dated the 5<sup>th</sup> November, 2012 read with O.M. No. 13/9/2009-Estt. (Pay-I), dated the 21<sup>st</sup> October, 2009, whereby clarification was issued by this Department for fixation of pay in case of employees seeking transfer to lower posts under FR 15 (a) subsequent to the implementation of the recommendations of VICPC and CCS (RP) Rules, 2008. It was clarified therein that in case of transfer of a Government servant to a lower Grade Pay under FR 15 (a) on his/her own request with effect from 1-1-2006, the pay in the Pay Band will be fixed at the stage equal to the pay in Pay Band drawn by him/her prior to his/her appointment against the lower post. However, he/she will be granted the Grade Pay of lower post. Further, in all cases, he/she will continue to draw his/her increment(s) based on his pay in the Pay Band *plus* Grade Pay (lower)."

#### 7. FR 17 envisages as under:

"F.R. 17. (1) Subject to any exceptions specifically made in these rules and to the provision of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties:

Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence.

(2) The date from which a person recruited overseas shall commence to draw pay on first appointment shall be determined by the general or special orders of the authority by whom he is appointed."

8. While F.R. 22 that deals with fixation of pay on promotion, transfer, appointment enjoying as under:

"Substituted by GI, Dept. of Per & Trg, Notification No 1/10/98-Estt. (Pay-I) dated the 30<sup>th</sup> August, 1989, published in the Gazette of India as GSR 679, dated the 16<sup>th</sup> September, 1989, as amended by notification of even number, dated the 28<sup>th</sup> November, 1990 F.R. 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) \*\*\* (Not printed – see GIO (1) below this Rule).

Substituted by GI, Dept. of Per & Trg, Notification No. 13/6/95-Estt. (Pay-I), dated the 10<sup>th</sup> August, 2000 [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 under this rule from the date of such promotion or appointment or 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 regular appointment without break, the option is admissible as from the date of initial appointment / promotion, to be exercised within one month from the date of such regular appointment : (see also GIOs (1-4) and (1-B) below this Rule).

See GIO (1) below this Rule Provide 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.

(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:

Provide 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 as increment in the time-scale of the old post, in cases where pay is fixed at the 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:

See GIO below F.R. 15.(3) When appointment to the new post is made on his own request under sub-rule (a) of Rule 15 of the said rules, and the maximum pay in the time-scale of that post is lower than his pay in respect of the old post held regularly, he shall draw that maximum as his initial pay.

(b) If the conditions prescribed in Clause (a) and not fulfilled, he shall draw as initial pay on the minimum of the time-scale:

Provide that, both in cases covered by Clause (a) and in cases, other than the cases of re-employment after resignation or removal or dismissal from the public service, covered by Clause (b), if he-

- (1) Has previously held substantively or officiated in
  - (i) the same post, or
  - (ii) a permanent or temporary post on the same time-scale, or
  - (iii) a permanent post or a temporary post (including a post in a body, incorporated or not, which is wholly or substantially owned or controlled by the Government) on an identical time-scale; or
- (2) Is appointed subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules to a tenure post on a time-scale identical with that of another tenure post which he has previously held on regular basis;
 

then the initial pay shall not, except in cases of reversion to parent cadre governed by proviso (1)(iii), be less than the pay, other than special pay, personal pay or any other emoluments which may be classed as pay by the President under Rule 9 (21) (a) (iii) which he drew on the last occasion, and he shall count the period during which he drew that pay on a regular basis on such last and any previous occasions for increment in the stage of the time-scale equivalent to that pay. If, however, the pay last drawn by the Government servant in a temporary post had been inflated by the grant of premature increments, the pay which he would have drawn but for the grant of these increments shall, unless otherwise ordered by the authority competent to create the new post, be taken for the purposes of this proviso to be the pay which he last drew in the temporary post which he had held on a regular basis. The service rendered in a post referred to in proviso (I) (iii) shall, on reversion to the parent cadre count towards initial fixation of pay, to the extent and subject to the conditions indicated below-

  - (a) the Government servant should have been approved for appointment to the particular grade or post in which the previous service is to be counted;
  - (b) all his senior, except those regarded as unfit for such appointment, were serving in posts carrying the scale of pay in which benefit is to be allowed or in higher posts, whether in the Department itself or elsewhere and at least one junior was holding a post in that Department carrying the scale of pay in which the benefit is to be allowed; and
  - (c) the service will count from the date his junior is promoted on a regular basis and the benefit will be limited to the period the Government servant would have held the post in his parent cadre had he not been appointed to the ex cadre post.
- (II) The President may specify posts outside the ordinary line of service the holder of which may, notwithstanding the provisions of this rule and subject to such conditions as the President may prescribe, be given officiating promotion in the cadre of the service which the authority competent to order promotion may decide, and any thereupon be granted the same pay whether with or without any special pay attached to such posts as they would have received if still in the ordinary line.
- (III) For the purpose of this rule, the appointment shall not be deemed to involve the assumption of duties and responsibilities of greater importance, if the post to which it is made is on the same scale of pay as the post, other than a tenure post, which the Government servant holds on a regular basis at the time of his promotion or appointment or on a scale of pay identical therewith.

**(IV) Notwithstanding anything contained in this rule, where a Government servant holding an *ex cadre* post is promoted or appointed regularly to a post in his cadre, his pay in the cadre post will be fixed only with reference to his presumptive pay in the cadre post which he would have held but for his holding any *ex cadre* post outside the ordinary line of service by virtue of which he becomes eligible for such promotion or appointment.**

For orders regarding treatment of special pay for fixation of pay on promotion see Appendix-8 in this compilation.

**GOI orders:**

**(4) In the case of promotion within the cadre but not on regular basis, fixation of pay to be done under FR 22 (I) (a) (I) and restricted under FR 35. – See G.I.O. (3) below FR 35.**

**(5) Condonation of resignation for purposes of fixation of pay.**– The question whether the benefit of past service for purposes of fixation of pay can be given to a Government servant who resigns his post before taking up appointment in the new post in the same or another Department, has been under the consideration of the Government of India. Normally, the benefit of past service is given only in those cases where such service has not been terminated by resignation / dismissal. The President is, however, pleased to decide that in cases where Government servants apply for posts in the same or other Departments through proper channel and on selection, they are asked to resign the previous posts for administrative reasons, the benefit of past service may, if otherwise admissible under rules, be given for purposes of fixation of pay in the new post treating the resignation as a 'technical formality'. The pay in such cases may be fixed under FR 27:

[ GI, M.F., O.M. No. 3379-E, III (B)/65, dated the 17<sup>th</sup> June, 1965. ]

A question has now been raised as to whether the above benefit is admissible to Government servants who applied for posts in the same or other Departments before joining Government service and on that account the application was not routed through proper channel. The matter has been examined and it is now decided that the benefit of past service subject to the same conditions as incorporated in O.M., dated 17-6-1965 above, may be allowed in such cases also, subject to the fulfilment of the following conditions:-

- (i) the Government servant at the time of joining should intimate the details of such application immediately on their joining;
- (ii) the Government servant at the time of resignation should specifically make a request, indicating the dates that he is resigning to take up another appointment under the Government / Government Organization for which he applied before joining the Government service and that his resignation may be treated as 'technical' resignation;
- (iii) the authority accepting the resignation should satisfy itself that had the employee been in service on the date of application for the post mentioned by the employee, his application would have been forwarded through proper channel.

[GI, Dept. of Per. & Trg, O.M. No. 13/24/92-Estt. (Pay-I), dated the 22<sup>nd</sup> January, 1993 ]

**(6) Counting service in a scale higher than or identical with the parent cadre.**– 1. Doubts having been expressed as to whether the benefits of proviso (1)(iii) to FR 22 in respect of protection of pay and period of increment would be admissible to Government servants on their appointment directly or on transfer from a post carrying an identical time-scale of pay without fulfilment of the conditions prescribed in that proviso, it was clarified that in such cases the

benefit mentioned above will be admissible without fulfilment of those conditions subject to Paragraph 2 below.

2. This benefit will not be admissible to an individual who enters Government service for the first time from a post in a body, incorporated or not, which is wholly or substantially owned or controlled by Government.

3. In cases of reversion from an *ex cadre* to a cadre post on an identical time-scale of pay, the benefit of proviso (I) (iii) to FR 22 shall be admissible subject to the fulfilment of all the conditions mentioned under the said proviso.

[ GI, M.F., O.M. No. F. 1 (25)-E III (A)/64, dated the 23<sup>rd</sup> July, 1968 ]

**(7) Fixation of pay in case of employees who seek transfer to a lower post under FR 15 (a) – Clarification.** – [ See GIO below FR 15 (a) ].

**(8) Fixation of pay of Government servants in *ex cadre* post on their permanent absorption.** – O.M. No. F.I (II)-E. III (B) 69, dated the 20<sup>th</sup> January 1970 (copy enclosed), provides that pay of those deputationists who draw pay in their parent grade *plus* Deputation (Duty) Allowance in the *ex cadre* post may be fixed on their permanent absorption as if the person concerned had elected to draw pay in the scale of the post from the date of his initial appointment on deputation / foreign service, subject to the restrictions laid down in M.F., O.M. No. 10 (24)-E. III/60, dated 9-3-1964. This is further subject to the condition that the pay thus fixed may not be more than the pay *plus* Deputation (Duty) Allowance drawn immediately before permanent absorption. This restriction gives rise to an anomaly, as pay of those who are absorbed after four years of deputation (when no Deputation Allowance is admissible) has to be restricted to the grade pay only and is thus fixed at a considerably lower stage. The matter has thus been reconsidered in consultation with Ministry of Finance. It has been decided that in such cases, pay as fixed in the pay scale of the *ex cadre* post in permanent absorption may be restricted to pay *plus* the Deputation (Duty) Allowance which the Officer would have got immediately before permanent absorption had it not been discontinued at the end of the fourth year of deputation. It may however, be ensured that persons on deputation are absorbed well in time, i.e., immediately after the expiry of their tenure on deputation. Those who are not to be absorbed should be reverted to their parent departments after the expiry of the fixed service.

[ GI, M.H.A. D.P. & A.R., O.M. No. F. I(I)-Estt. (P.II)/81, dated the 21<sup>st</sup> February, 1983. ]

9. The following orders explicitly that officiating pay is not to be protected.

#### GOVERNMENT OF INDIA'S ORDER

**Officiating pay not protected.** – Since a temporary Government servant does not have a lien on any post, at the time of completion of probation, it is hereby clarified that, on completion of probation, when such a Government servant is confirmed in the service or post, his pay will not be refixed under FR 22 or 22-C with reference to the pay that he would have drawn in the previous post which he was holding in a temporary capacity, but he will continue to draw pay in the scale of pay of the service or post. Similarly, in the case of a permanent Government servant holding a higher officiating post at the time of appointment as probationer, the pay will not be refixed with reference to the pay that he would have drawn in the higher officiating post.

[ G.I., M.F., O.M. No. F. 1(37)-E. III(A)/64, dated the 6<sup>th</sup> November, 1965. ]

**D.G., P. & T.'s INSTRUCTIONS**

**Benefit of FR 22-B (2) admissible to Quasi-permanent Government servant.** – It is clarified in consultation with Ministry of Finance and Department of Personnel and Training, that the benefits under FR 22-B (2) may be extended to the Government servants who were holding the previous post in Quasi-permanent capacity and are appointed as probationers.

[ G.I., Dept of Telecom. Letter No. 4-10/88-PAT, dated the 14<sup>th</sup> February, 1989. ]

**AUDIT INSTRUCTIONS**

See *Audit Instruction (1) below FR 9 (6)*.

Deleted by G.I., Dept. of Per & Trg., Notification No. 1/10/89-Estt. (Pay-I), dated the 30<sup>th</sup> August, 1989, published in the Gazette of India, as G.S.R. 679, dated the 16<sup>th</sup> September, 1989. **F.R. 22-C. deleted.**"

10. We note that none of the clauses as extracted supra, come to the aid of the applicant. Therefore his claim fails and O.A. stands dismissed.

11. However, in the event the applicant is able to lay his hands on any decision or rule that supports pay protection of ad hoc service rendered in a different organisation before an incumbent join a post in a lower scale of pay on regular basis, he may prefer representation to the authorities for consideration in accordance with law. No costs.

(N. Neihsial)

Administrative Member

(Bidisha Banerjee)

Judicial Member

drh