

**Central Administrative Tribunal
Principal Bench, New Delhi.**

(20)

OA-318/2003

New Delhi this the 31st day of May, 2005.

**Hon'ble Shri Shanker Raju, Member(J)
Hon'ble Shri S.A. Singh, Member(A)**

1. Balbir Singh,
R/o 123/2, Sector-1,
Pushp Vihar, M.G. Road,
New Delhi.
2. Gopal Ji,
R/o p761 Sector 37,
Noida (UP).
3. J.S. Bobla,
R/o village & P.O. Bawana,
Delhi.
4. B.R. Peyush,
R/o 67/7, Sector -1
Pushp Vihar, New Delhi.
5. Hafiz Khan,
R/o 141/15, Sector-1,
Pushp Vihar,
M.B. Road, New Delhi.
6. Harsh Bardhan,
R/o A-165, Lalpat Nagar,
Sahibabad (UP).
7. Jagbir Singh,
R/o vill. RZ 17C, Sanjay Enclave,
Uttam Nagar, New Delhi.
8. T.T. Wangdi,
R/o C-637, Sarojini Nagar,
New Delhi.
9. K.C. Bhardwaj,
R/o village & Post Office Kansala,
Distt. & Teh . Sonapat, Haryana.

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10. S.R. Meena,
R/o Vill. & P.O. Lahanad Via Shahar The Nadoti,
Distt. Karauli, Rajasthan.
11. Omvir Singh,
R/o Dr. Ambedkar Nagar Sikhera Road,
Modi Nagar,
Distt. Ghaziabad (UP).
12. Tikam Singh
R/o Vill. Dasthala,
PO Aitmadpur,
P.S. Pari, Kshigarh,
Distt. Meerut.
13. Jagdish Prasad,
R/o H.No. 186,
Vill. & P.O. Bawana.
14. Daya Nand Guhlawat,
R/o D.B. 850,
Sarojni Nagar, New Delhi.

...Applicants

(By Advocate: Shri H.S.Dahiya)

-versus-

1. Union of India through
Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi.
2. Secretary,
Department of Expenditure,
Ministry of Finance,
North Block, New Delhi.
3. Member,
Central Board of Excise & Customs,
Ministry of Finance,
North Block, New Delhi.

..Respondents

(By Advocate: Shri A.S.Singh proxy for Shri R.V. Sinha)



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Order (Oral)

Hon'ble Shri Shanker Raju, Member(J)

Applicants have been working as Radio Operators in Department of Customs, Central Board of Excise and Customs. Applicants No. 1 to 9 and 13 & 14 are ex-Army Personnels. They have acquired technical qualification after requisite training in the Army, which is equivalent to Radio and Operator Key Board by National Council of Training for vocational Trade. Applicants No.10 and 11 were directly recruited and were given National Certificate of Wireless Operators. As per recruitment rules issued in 1978, two pay scales were prescribed for the post of Radio Technician in the pay scale of Rs. 425-700 for diploma holders and Rs. 380-560 for ex-serviceman, though the qualification and other functional requirements were identical. Vth Central Pay Commission in order to remove the anomalies, recommended revision of pay scale of Radio Operators and Cipher Operators to Rs. 1400-2300. The pay scale of the post of Supervisor in the Operation Stream was brought at par with the Technical Assistant in the pay scale of Rs. 1640-2660 and recommended for 20 posts out of 42 posts of Cipher Operator. An order issued on 1.1.1998 by the Ministry of Finance incorporated in the Recruitment Rules vide Notification No. 248 dated 4.5.2000 in Directorate of Preventive Operation, Customs and Central Excise Department (Group 'C' Technical Posts) Recruitment Rules, 2000. This has



brought parity in the pay scale of three different posts. Some personnel of Maintenance Stream being aggrieved by the order of implementation of the Vth Pay Commission recommendations vide which the pay scales for the posts of Radio Technician, Technical Assistant and Senior Technical Assistant were brought at par with the corresponding posts in the Operation Stream and Cipher Stream and as revision has not taken place in Maintenance Stream, preferred OA-79/1998 which was disposed of by the Tribunal to dispose of the pending representation. OA Nos. 1003 to 1005/2000 have been filed by the Radio Technicians of the Maintenance Stream which were allowed on 8.11.2000. Those personnel working in Maintenance Stream in the Ministry of Finance filed an OA-1244/2001 through Association before the Chennai Bench of this Tribunal, which was allowed on 11.9.2002.

2. However, respondents vide order dated 9.10.2002, to avoid giving of upgradation to the pay scales, cancelled the upgradation against which a representation was preferred against illegal recovery. OA-660/2002 was filed by the aggrieved persons before the Ahmedabad Bench of this Tribunal wherein status quo was ordered on 1.12.2002.

3. A Bench of this Tribunal at Delhi in OA-3088/2002 on the issue of recovery as per order dated 9.10.2002 dismissed the OA on 24.06.2003. However, Chandigarh Bench of the Tribunal, ^{on} having conflicting decisions, referred the matter to a Larger Bench, with the following reference:

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"(1) Whether Annexure A-1 dated 9.10.2002, an administrative order can have the effect of taking away the scale of pay for the post of applicants as mentioned in the Directorate of Preventive Operations, Customs and Central Excise Department Group 'C' (Technical Posts) Recruitment Rules, 2000?

(2) If question to (1) is answered in the negative i.e., if it cannot take away scales of pay of applicants, as to whether the point of law laid down in the decision by the Principal Bench dated 24.6.2003 in a Bunch of cases titled Shri Raj Singh Sharma etc. vs. Union of India & Others (Annexure R-1), is correct law?"

4. A Full Bench in OA-1257/CH/2002 by an order dated 4.11.2004, answered the reference as under:-

(1) The question is answered in the negative.

(2) By the administrative order it could not take away the scales of pay of the applicants and further that the decision of the Principal Bench in the matter of **Raj Singh Sharma etc. v. Union of India & Others** (OA No.3088/2002) dated 24th June, 2003 is over-ruled."

5. In the result, an administrative order dated 9.10.2002 cannot take away the scales of the applicants particularly when an amendment has been carried in the statutory rules to that effect. Accordingly, order passed by the respondents on 9.10.2002 is rendered nullity in the light of decision of the Full Bench (Telecommunication Group 'C' Staff Association Customs and Central Excise, Chandigarh Vs. U.O.I. & Ors) (OA-1257/CH/2002), which is binding on us.

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6. Respondents, on the other hand, vehemently contested the case but have nothing to comment upon the Full Bench, which in all fours covers the present issue in the OA. Accordingly, we have no hesitation, for the reasons recorded above and in the light of the decision of the Full Bench (supra), to allow this OA. Order dated 9.10.2002 and Notification dated 30.1.2004 are set aside. Respondents are restrained from downgrading the pay scales of the applicants and further not to effect any recovery against which status quo was directed to be maintained by this Tribunal vide its order dated 11.2.2003. In case any recovery is made, the same shall be refunded to the applicants. No costs.


(S.A. Singh)
Member(A)


(Shanker Raju)
Member(J)

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