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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2400/2003 IN
M.A.No.2058/2003

this the 4th day of May, 2004

Hon'ble Shri S. A. Singh, Member (A)

1. All India CPWD
Office Staff Association
thro': its General Secretary (Aruna Sharma)
'C' Wing Ground Floor
Near Generator Room, IP Bhawan
New Delhi-110002
2. JN Antil, Office Superintendent
PWD Circle-VI, MSO Bldg., IP Estate
New Delhi-110002 (Ph:2331-7369)

...Applicants

(Presently the President of the Association)

(By Advocate: Shri T.V.George)

Vs.

1. Union of India thro' Secretary
Ministry of Urban Development &
Poverty Alleviation, Nirman Bhawan
New Delhi-110011
2. The Secretary, Min. of Finance
(Deptt. Expenditure)
Implementation Cell, North Block
New Delhi-110001
3. The Secretary, Deptt. Pers & Trg.
North Block, New Delhi-110001
4. The Director General (Works)
Central Public Works Department
Nirman Bhawan, New Delhi-110011
5. Additional Secy (UD), Chairmn
Special Anomaly Committee
M of Urban Development & Poverty
Alleviation, Nirman Bhawan,
New Delhi-110011.

... Respondents.

(By Advocate: Sh. D.S. Mahendru)

O R D E R

By Shri S.A.Singh

The applicant No.1 is the Service Association of
all office staff working in Central/Works out (CPWD).
The applicants have impugned the respondents order dated

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14.8.2003 wherein the respondents have informed that the higher pay scale of Rs.6500-200-10500 could actually be extended to the concerned officials only with prospective effect and not retrospectively from 1.1.96 either on notional or on actual basis.

2. The matrix of facts giving rise to the present OA starts from a meeting of the Departmental Council (JCM) of the Ministry of Works and Housing held on 12/15.8.76 where the staff had demanded that the pay scale of circle officers of CPWD should be revised from 550-750 to 550-900. As no agreement could be reached, the same was referred, through the Ministry of Labour, to the Board of Arbitration. The arbitration award was placing 40% posts of Office Superintendent (OS) in the higher pay scale of Rs.500-900 and the same was accepted w.e.f. 1.9.81.

3. The 4th Pay Central Commission granted a single scale of Rs.1600-2660 to all OS as a replacement for the earlier pay scale of Rs.550-750. The recommendations were made without taking into consideration the arbitration award of 40% of the OS being in the higher pay scale of Rs.550-900. This issue was agitated by the staff association and the arbitration award was restored by placing 40% of the post of OS in 1986 into the higher pay scale of Rs.1640-2900 (pre-revised) the date of recommendations of the 4th CPC, i.e., 1.1.86. As the order was issued on 31.1.96, the 5th CPC was not aware of this fact. As a result, the 5th

CPC proceeded on the assumption that there was only one scale of pay of Rs.1600-2660 for all OS and made the following recommendations:-

Designation	Pay Scale		Remarks
	Existing	Recommended	
Superintendent Grade - II	1600-2660	1640-2900	60 posts to be kept in this scale
Superintendent Grade - I	New Level	2000-3500	20 posts to be upgraded to this scale

4. This recommendation was challenged before the Hon'ble Tribunal vide OA 1631/2001 by the OS wherein it was directed that the applicants may be allowed to state their case before a Special Anomaly Committee to be constituted in terms of the direction given in the OA.

5. The Special Anomaly Committee took the view that there was no anomaly in the 5th CPC and rejected the claim of the applicant and the same was challenged by the applicants vide OA 1673/2001. The Tribunal disposed of the OA vide judgement dated 5.2.2002. The relevant portions are reproduced:

"Learned counsel appearing on behalf of the applicants has drawn our attention to the Office Memorandum of 25.4.2001 which amongst others, contains the following recital:

"In fact it was not necessary for Vth CPC to stick to the 40:60 ratio, as it had recommended placement of all existing posts in the higher

scale of 1640-2900 rather than granting the said scale to only 40% which would have been necessary as per the Award xxx xxx

4. Learned counsel has further pointed out paragraph 89.25 of the recommendations of the 5th Central Pay Commission which provides as follows:

"80.25 - Having considered the issue, and keeping the view the general recommendations made for ministerial staff in subordinate offices, we recommend following pay structure:

Designation	existing Rs.	Pay scale recommended Rs.	Remarks
Lower Division Clerk	950-1500	950-1500	No change.
Upper Division Clerk	1200 - 2040	1320 - 2040	Rationalised
Head Clerk	1400-2300	1600-2660	As in other subordinate offices
Superintendent	1600 - 2660	1640 -2900	60 posts to be kept in this scale
Superintendent Grade I	New Level	2000-3500	20 posts to be upgraded

5. The higher pay-scale of Rs.1640-2900, learned counsel has asserted, is the replacement pay-scale to the existing pay-scale of Rs. 1600-2660 and not the existing pay-scale. Had the Pay Commission been apprised of the fact that 1640-2900 was also the existing pay-scale, the aforesaid pay-scale would have been placed below 1600-2660 and the same would not have found place in the column of replacement scale which is sought to be recommended. Had 1640-2900 been shown as existing pay-scale, its replacement scale would have been 2000-3500. Having regard to this, respondents have factually erred by issuing the impugned Office memorandum of 25.4.2001 by proceeding on the assumption that all the Office Superintendents have been placed in a higher pay-scale.

6. In our view, the contention raised by Shri G K Aggarwal, learned counsel appearing on behalf of the applicants is undoubtedly justified. Having regard to the present state of things, we find

that interests of justice will be duly met by directing the respondents to treat the present OA as a fresh representation and pass fresh orders in terms of the submissions made by the learned counsel and the observations contained in the present order. Present OA is disposed of in the aforestated terms. Respondents are directed to comply with the aforesaid directions within a period of three months from the date of service of a copy of this order. No costs."

6. In pursuance of the judgement dated 5.2.2002, the respondents vide their OM dated 18.6.2002 passed the following order:-

In pursuance of CATs above mentioned dated 5th Feb., 2002 the matter has been considered in consultation with Department of Personnel & Training and Department of Expenditure (Implementation Cell), Ministry of Finance. It has been decided to place 40% of the 80 posts of Office Superintendents, which were in existence at the time of 5th CPC recommendations, in the revised pay scale of Rs.6500-10500 with effect from 1.1.1996 on the basis of arbitration award, as mentioned below:

<u>Designation</u>	<u>Pay Scale</u>	<u>Remarks</u>
Office Supdt. (Gd.I)	6500-10500	32 posts
Office Supdt. (Gd.II)	5500-9000	Remaining posts

Notification to this effect will follow.

7. The case of the applicants is that even though the above OM placed 40% of the OS in the revised pay scale of Rs.6500-10500 w.e.f. 1.1.96 on the basis of the arbitration award, the respondents did not pay arrears as their order is effective from 1.1.96 but the impugned order only allows the scale from prospective effect and it is clear violation of the directions of the Tribunal.

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8. The respondents have contested the claim of the applicants and have put forward in the preliminary objection that in view of the decision of the apex court in the judgement dated 23.4.97 reported in AIR 1997 SC 2391. That " what enhanced pay scale should be given to a particular employee is within domain of the authorities themselves who appoint them and the Tribunal should not have ventured for this forbidden field." In another judgement dated 12.3.97 reported JT 1997 (3) SC 569 Hon'ble Supreme Court observed that keeping in view the judgement in the cases cited earlier the Tribunal has no jurisdiction to hear the application regarding which upgradation of the pay scale over and above recommendations by the 5th CPC. Hence, the OA is liable to be rejected.

9. The applicants have pointed in the rejoinder pertaining to the preliminary objection that the present OA does not seek any revision or upgradation over and above the pay scale recommended by the 5th CPC. For these reasons, the judgement cited by the respondents have no application.

10. In the present OA, the applicants are praying that the 40% of sanctioned cadre strength of OSs are entitled to the scale of pay of rs.6500-10500 w.e.f. 1.1.96 and to declare that from 26.12.96, 47 OSs, i.e., 40% of the existing cadre of OS as on that day be placed in higher pay scale. The prayer is not seeking revision

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or upgradation of pay scale. Hence preliminary objection is without merit.

11. The respondents pleaded that the Government had constituted an Anomaly Committee in compliance with the Tribunal's order dated 8.11.2000 and it had not agreed to placing 40% of the 80 posts in the higher scale of Rs.6500-10500 on the ground that it was not necessary for the commission to stick to the 40-60 ratio as the 5th CPC had recommended the placement of all the existing posts in the higher scale of Rs.1640-2900 (6500-10500 revised), rather than granting the said scale to only 40% of the OS. Staff Association, who had filed OA 616/2001 against this decision and as per the direction of the Tribunal, Government examined the matter afresh and decided placing 40% of the 80 posts of OS in the revised scale of Rs.6500-10500 w.e.f. 1.1.96. For making the percentage of 40%, 12 additional posts were upgraded from OS Grade-II to OS Grade-I vide order dated 27.6.2002 w.e.f. 1.1.96. However, the higher pay scale could only be extended with prospective effect on notional or on actual basis. The reason why this could not be done from 1.1.96 is that the higher scale was not to be extended to all the posts of OS but only 40% as such redistribution of posts was involved. In terms of the preamble to the CCS (RP) Rules, 1997, the higher pay scale could therefore only be granted with prospective effect.

12. The applicant strongly contested the logic stating that the respondents by merely placing 40% of the

OS in the higher scale were simply ratifying an anomaly committed by not projecting to the 5th CPC complete and relevant information. In any case, no redistribution of posts is involved because OS grade-II to OS grade-I are interchangeable posts as there is no difference in the duties and responsibilities between the two. This is also clear from the fact that no duties and responsibilities in respect of the Senior Scale OS/OS grade-I have been segregated by the Directorate General of Works/ Ministry of Urban Development & Poverty Alleviation till date. Thus all the Superintendents grade-I and grade-II are working and posted on the basis of "As is where is basis". The OSs were entitled to the arrears as was done when the issue was resolved after the 4th CPC. The applicants pointing out that in several instances employees have been granted retrospectively and specifically mentioned the case of Junior Engineers and Assistant Engineers of the Department, who were granted all the benefits retrospectively w.e.f. 1.1.96. The order granting the benefits are placed at annexure A-1 of the rejoinder. Similarly, the functional pay scales for Group-A Engineering Services were also granted retrospectively.

13. I have heard the learned counsel for the applicant and the respondents and perused the documents placed on record.

14. The respondents' office order dated 27.6.2002 is as under:

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"It has been decided in consultation with Department of Personnel & Training and Department of Expenditure (Implementation Cell), Ministry of Finance it has been decided to place 40% of the posts of Office Superintendent in the revised pay scale of Rs.6500-10500 w.e.f.1.1.1996 in the existing sanctioned strength as on 1.1.1996 on the basis of arbitration award."

15. From a plain reading of the above, it is clear that the respondents have placed 40% posts of Office Superintendent in the pay scale of Rs.6500-10500/- w.e.f. 01.01.1996 on the basis of arbitration award.

16. On the other hand, the impugned order dated 14.8.2003 is as under:

"3. Now the issue of payment of benefits of higher scale of Rs.5600-200-10500 to these 32 in all Circle Office Supdts.Gr.I effective from 1.1.96 was under examination in consultation with the M/o UD&PA and M/o Finance & Co. Affairs. It has been advised by the M/o Finance & Co. Affairs that higher pay scale of Rs.6500-200-10500 could actually be extended to the concerned officials only with prospective effect and not retrospectively from 1.1.96 either on notional or on actual basis.

4. The competent authority in the CPWD had decided to implement advice given by the M/o Finance. Accordingly, higher pay scale of Rs.6500-200-10500 could actually be extended to 20 C.O.Ss. upgraded from C.O.S. Gr.II to Gr.I vide Office Order No.165 of 1999 dated 1st Sept.1999 from the date they took over the charge of post of C.O.S. Gr.I. Similarly, higher pay scale of Rs.6500-200-10500 could actually be extended to 12 C.O.Ss. upgraded from C.O.C.Gr.II to Gr.I vide Office Order No.2/7/2000-EC.IV(C) Vol II dated 27th June, 2002 from the date they took over the charge of post of C.O.S.Gr.I."


17. It is apparent that the above two orders are contradictory because the placement of the posts on

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higher scale is on the basis of the arbitration award and the effective date is 1.1.1996. Therefore, to deny the benefits of this higher scale on the ground that it can only be put into effect prospectively is not in line with the arbitration award.

18. In view of above, the OA succeeds and para-4 of the impugned office order No.171/2003 dated 14.8.2003 is quashed. Respondents are directed to modify the impugned office order by extending the benefits of higher pay scale of Rs.6500-200-10500 w.e.f. 01.01.1996 on actual basis and pay the resulting arrears within a period of three months from the date of receipt of a certified copy of this order. No costs.


(S.A. Singh)
Member (A)

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