

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
**Pronounced on : 28.11.2019
Reserved on : 30.10.2019**

OA. 060/01067/2017

**CORAM:HON'BLE MR. SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MR.PRADEEP KUMAR , MEMBER(A)**

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1. Tarsem Nath Kaushal son of Sh. R.D. Kaushal, age 59 years, Assistant Director (P) (Ad-hoc) at All India Radio, Kurukshetra.
2. Amarjeet Singh son of Sh. Natha Singh, age 57 years, working as Assistant Director (P) (Ad-hoc) at All India Radio, Patiala.
3. Santosh Rish daughter of Sh. Mohan Singh, age 54 years, working as Programme Executive in the office of All India Radio (AIR), Jalandhar.
4. Poonam Amrit Kaur daughter of Sh. Balbir Singh Kalsi, age 51 years, working as Programme Executive in the office of All India Radio (AIR), Chandigarh.
5. R.K. Sharma son of Sh. Tulsi Ram age 57 years, working as Programme Executive in the office of All India Radio (AIR) Shimla.
6. Devinder Singh Johal son of Sh. Gurdip Singh, age 60 years, resident of 4-A, Green County, GNDU Regional Campus Road, Jalandhar-144 009.
7. Sanjeev Dosajh son of Sh. N.L. Dosajh, age 54 years, working as Assistant Director (P) (Ad-hoc) in the Directorate General, All India Radio, Parliament Street, New Delhi.
8. Rakesh Kapila son of Sh. Daljeet Chand Kapila, age 61 years, Retired, resident of ¼, Shivaji Colony, Jhajjar Road, Rohtak.
9. Dr. Nasib Singh Manhas son of G.S. Manhas, age 55 years, working as Assistant Director (P) (Ad-hoc) in the office of Doordarshan Kendra, Sector 37, Chandigarh.
10. Bhupinder Singh son of Sh. Karnail Singh, age 61 years, resident of 545, Sector 48, Chandigarh.
11. Shaminder Kumar son of Sh. Tara Chand Khajuria, age 61 years, resident of H. No. 145, Sector 4, Roopnagar Housing Colony (Upper), Jammu Tawi-180 013.
12. Mohammad Tahseen Abbasi son of Sh. A.F. Bazmi, age 58 years, working as Assistant Director (Ad-hoc) at All India Radio, Gorakhpur (U.P.).

...APPLICANTS

BY ADVOCATE: **SH. D.R. SHARMA**

VERSUS

1. Union of India through Secretary, Ministry of Information and Broadcasting, Shastri Bhawan, New Delhi.
2. The Secretary, Ministry of Finance, Department of Expenditure, New Delhi.
3. The Director General, All India Radio, Akashvani Bhawan, Sansad Marg, New Delhi.
4. The Director General, Doordarshan, Doordarshan Bhawan, Mandi House, Copernicus Marg, New Delhi.

.....RESPONDENTS

BY ADVOCATE: **SH. SANJAYGOYAL**

ORDER

MR. PRADEEP KUMAR, MEMBER(A):-

1. Applicants are Direct Recruits-Programme Executives (DR-PEXs) in All India Radio (AIR) and are recruited on the basis of the recommendations of the UPSC in the pay scale of Rs. 2000-3500 (4th CPC) during the period 02.08.1988 o 24.08.1992. Certain number of posts of PEXs are also filled by departmental promotion from the feeder category from a cadre known as Transmission Executives (TREXs) who were recruited in the pay scale of Rs. 425-750 (as per 3rd CPC) which was Rs. 1400-2660 in 4th CPC. For the purpose of this judgment, they are called PQ-PEX. This OA is in respect of pay related controversy of DR-PEX and it is necessary to

trace the developments that lead to this controversy and applicants plead as under.

2. The recommendations of 5th CPC were accepted and notified on 30.09.1997. The new scales were applicable w.e.f. 01.01.1996. This notification had two parts – Part A containing normal replacement pay scales and Part B which contained pay scales for specific posts under various Ministries. As per Part B, there were a total number of 1961 posts of PEXs in the existing pay scale of Rs. 2000-3500 and the 5th CPC recommended that while 1461 posts shall remain in the pay scale of Rs. 2000-3500, 500 posts shall be upgraded to the pay scale of Rs. 2500-4000 as per 4th CPC before their fixation in the 5th CPC. The corresponding 5th CPC scales were Rs. 6500-10500 and Rs. 7500-12000 respectively. Similarly, in respect of TREXs, there were a total number of 1841 while posts in the scale of Rs. 1400-2660 and 5th CPC recommended that 1000 posts shall remain in this scale, the remaining 841 posts shall be operated in the pay scale of Rs. 1640-2900. The corresponding pay scales recommended by the 5th CPC were Rs. 5000-8000 and Rs. 5500-9000 respectively.

2.1 Even though these higher pay scales for PEXs and TREXs were recommended by 5thCPC, but as per para 73.12 of their report, these higher pay scales were subject to fulfillment of certain conditions as advised by the 5th CPC. And till such time these

conditions were fulfilled, normal replacement scales as per part 'A' of notification dated 30.09.1997 were to be implemented. The relevant pay scales were as under:-

4 th CPC	5 th CPC
Rs. 1400-2660 for TREX	Rs. 5000-8000
Rs. 2000-3200	Only one common scale was given for both these scales as under: Rs. 6500-10500
Rs. 2000-3500 for PEX	

4. On establishment of Prasar Bharti, staff were posted from the All India Radio and Doordarshan. Certain agitation took place in Prasar Bharti amongst such transferred staff and an agreement was arrived at to defuse the same. As part of this agreement, in respect of those Government employees of All India Radio (AIR) and Doordarshan (DD), who had come to the service of Prasar Bharti, the Controlling Ministry of Information and Broadcasting (Min of I&B) vide order dated 25.02.1999, issued certain directions to upgrade the pay scales of PEXs as well as TREXs w.e.f. 01.01.1996. However, arrears were to be paid w.e.f. 01.03.1999 only and that also in instalments. These upgraded pay scales were applicable till the existing PEXs and TREXs remained with Prasar Bharti and they were required to give consent that if they decide to go back to AIR or Doordarshan, they would forego such higher pay scales as well as refund the excess amount received by them during the interregnum.

In addition to grant of such higher scales, such of the employees who were already working as TREXs in AIR and DD as on 01.01.1978 or onwards were also to be notionally fixed in pays scale of Rs. 550-800 w.e.f. 01.01.1978 and Rs. 2000-3200 w.e.f. 01.01.1986 before fixing their pay in the upgraded pay scale as of 01.01.1996. However, no arrears were to be paid for the period prior to 01.01.1996 on this account.

The benefit of these upgraded pay scales was granted to existing incumbents only or those who are promoted and not to the new Direct Recruits who join after 25.02.1999. The upgraded pay scales as per this order dated 25.02.1999 are as under:-

Post	No. of posts	Normal Replacement Scale as recommended by 5th CPC in Part A.	Scales as per order dated 25.02.1999
PEX	1961	6500-10500	7500-12000
TREX	1841	5000-8000	6500-10500

4. The applicants who are DR-PEX in scale of Rs.7500-12000, are aggrieved that as a result of this notional upgradation w.e.f. 01.01.1978 vide order dated 25.02.1999 (para-3 supra), the existing TREX, when they are promoted as PEX (PQ-PEX) and they are granted the scale of Rs. 7500-12000, PQ-PEX start getting more basic pay vis-à-vis DR-PEX, who were senior and were otherwise

also drawing a higher basic pay so far even though after promotion both are in the same pay scale of Rs.7500-12000.

Feeling aggrieved, the DR-PEX challenged the order dated 25.02.1999 by filing OAs No. 1489 of 1999 and 728 of 1999 before the Principal Bench of this Tribunal. This was decided vide order dated 27.09.2002. The observations and directions made by the Tribunal are as under:-

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6. It is noted from the above that while upgrading the pay scales of TREX, which is admittedly a feeder category post for promotion to PEX, the pay scale of the promotion post and the relevant recommendations of the 5th Pay Commission with regard to these two posts have not been fully taken into account by the respondents. The reliance placed on the recommendations of the 5th Pay Commission in paragraph 43.5 by Ms. Geetanjali Goel, learned counsel, is also relevant. The observation of the 5th Pay Commission that the promotion from the pay scale of Rs. 2000-3200 to scale of Rs. 2000-3500 will be an illusory promotion is very relevant.xxxxxxxxxxxxxxxxxxxx In the circumstances, the contention of learned counsel for the respondents that the matter can be dealt with on the principle of stepping up of pay of pay of the senior to that being received by the junior, would not appear to be applicable to the facts of the case.xxxxxxxxxxxxxxxxxxxx In the present case, we find force in the submissions made by learned counsel for the applicants that an anomaly has been created by upgrading the pay scales of TREX to that of Engineering Assistant while no similar consideration has been given to keep the relativities vis-à-vis TREX and PEX. It is not disputed that the TREX is feeder category for promotion to the post of PEX.

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8. In view of the discussion above, the OAs partly succeed and are disposed of with the following directions:-

- (i) The respondents shall constitute an Anomalies Committee of senior level officers, not below the rank of Joint Secretaries of the concerned Ministries/Departments including Ministry of Finance, to consider the claim of the applicants for revision of their pay scale vis-à-vis revised pay scale of TREXs in accordance with law and rules taking into account also the above observations;
- (ii) The applicants in the two OAs (supra) may nominate one person to represent them before the above committee;
- (iii) The Committee shall grant a reasonable opportunity of hearing to the nominee of the applicants before taking a decision in the matter;
- (iv) The Committee shall submit its recommendations/report within four months from the date of receipt of a copy of this order and in case the above applicants claim for revision of pay scale w.e.f. 1.1.1996 is rejected, they shall give a detailed and speaking order. This shall also be intimated to the applicants.

4.1 It may also be noted here that the letter dated 25.02.1999 had

come up under challenge in another OA No. 2579/1999 also before the Principal Bench of this Tribunal. However, this letter was upheld.

4.2. In follow up of the above directions dated 27.09.2002 (para-4 supra), an Anomaly Committee was constituted in the year 2003 consisting of Additional Secretary (B) in M/o I&B as Chairman, Joint Secretary (Pers.) in Ministry of Finance, Joint Secretary (Broadcasting) in M/o I&B and Dy. Director General (P) in DG/AIR and Dy. Secretary (BA) in M/o I&B as Members. This Committee submitted its report in the year 2004 and made certain recommendations for removal of anomalies. Thereafter the DDG (P) AIR sought clarifications from Ministry of Information and

Broadcasting regarding implementation of this report of the Anomaly Committee. Ministry of I&B approved the recommendations and directed DG/AIR to step up the pay.

10. The DG/AIR, vide circular dated 20.08.2004, invited representations from DR-PEXs for removal of pay anomaly and the salary fixation in respect of Sh. Pramod Mehta and Others was stepped up w.e.f. 01.01.1996 vide orders issued in 2005 and 2006 to the same stage as that of his junior PQ- PEXs in the pay scale of Rs. 7500-12000.

6. Respondents have now issued another letter dated 07.04.2015, i.e. after passage of almost ten years by which salary fixation so granted to DR – PEX, has now been reduced on the plea that the stepping up of pay granted at that time was wrongly given and the alleged amount paid in excess during the interregnum w.e.f. 01.01.1996, is sought to be recovered. The applicants made representations against these orders, however to no avail.

7. Feeling aggrieved, they filed OA No. 451/2015 wherein the respondents were restrained from effecting recovery vide Tribunal's directions dated 26.05.2015. However, subsequently, due to technical reasons in this OA, the same was dismissed as withdrawn vide order dated 12.07.2017 with liberty to the applicants to file a better OA on the same cause of action. Hence, the instant OA.

The applicants have sought relief to quash the order dated 07.04.2015 with directions to the respondents to restore the benefits granted in pursuance to the Tribunal's order dated 27.09.2002 (para 4.2 supra).

8. The applicants rely on Note 6 below sub-rule (1) of Rule 7 of CCS (Revised Pay) Rules, 1997 for fixation of initial pay in the revised pay scales as per 5th CPC as per the Notification dated 30.09.1997. This note reads as under:-

“Where in the fixation of pay under sub-rule (1), pay, of a Government servant, who in the existing scale was drawing immediately before the 1st day of January, 1996, more pay than another Government servant junior to him in the same cadre, gets fixed in the revised scale at a stage lower than that of such junior, his pay shall be stepped up to the same stage in the revised scale as that of the junior.”

Applicants also plead that no opportunity of show cause notice was extended to them and issuance of such an order reducing pay is not sustainable in accordance with relevant Apex Court judgments in **B.D. Gupta Vs. State of Haryana**, [(1973) (3) SCC 149], **Shiv Kumar Goyal Vs. State of Haryana and another**, [2007 (1) SCT 739] and **Prakash Rattan Sinha Vs. State of Bihar & Ors.** [(2009)(9) SCALE 529].

Applicants also plead that once pay fixation was done as a result of follow up action in compliance of Tribunal's directions dated 27.09.2002 by forming a high level Anomaly Committee, the benefits already granted more than ten years back, cannot be taken back on

the plea of wrong fixation as law of Promissory Estoppel also comes into play.

The applicants also plead that in respect of such belated recoveries, the estoppels as ordered by the Hon'ble Supreme Court in **State of Punjab and Ors. Vs. Rafiq Masih and Others in Civil Appeal No. 11527 of 2014** decided on 18.12.2014 also comes into effect.

9. Per contra, the respondents opposed the OA. It was pleaded that a high level Anomaly Committee which was set up in compliance of directions contained in Tribunal's order dated 27.09.2002, had submitted certain recommendations. As directed by the Tribunal, the implementation status of this Committee's recommendations was conveyed to the applicants of OA No. 1489 and 728 of 1999 vide letter dated 23.04.2004. In this letter, it was advised that the stepping up of pay can be done as under:-

“a) Extant rules already provided for stepping up of pay of a senior to that being received by the junior subject to certain conditions. The condition existing in the case of PEXs was therefore not unique to them and the existing FRs/SRs already provided appropriate solutions for resolving it as per which pay of the senior which happens to get fixed at a stage lower than that of his junior is subject to certain condition, raised so that it becomes equal to that of the junior.

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f) The duties, responsibilities, minimum qualifications etc. attached to the post of PEXs are higher vis-à-vis that of TREXs and the same is duly reflected in the existing hierarchy where the former are in a distinctly higher pay scale and

grade. As such no anomaly can be stated to be existed on this account.

g) Scale of Rs. 2500-4000 cannot be granted to PEXs from 1.1.1986 as this scale came into existence only w.e.f. 1.1.1996. Moreover, even extension of this scale to PEXs would not ensure that all direct recruit PEXs draw higher salary than TREXs.”

9.1 Since anomalies were still not resolved and representations were made, the Ministry of I & B issued administrative directions dated 21.05.2004 to DG/AIR which read as follows:-

“This Ministry has received representations from S/Sh. Pramod Mehta and Gaurab Ganopadhyay, PEXs requesting to remove their anomaly, vis-à-vis their common junior Sh. D.P. Banerjee. These representations are addressed to DG-AIR.

2. DG-AIR is requested to verify the claims of these two PEXs from the angle that the junior of these two PEXs viz Sh. D.P. Banerjee was drawing less pay to them and started getting more pay with effect from 1.1.1996 when his pay was refixed in terms of this Ministry's order No. 310/173/97-B(D) when his pay was refixed in terms of this Ministry's order No. 310/173/97-B(D) dated 25.2.99. If their claim is found correct, then the concerned AIR Station (S) be directed to fix their pay on par with their junior with effect from 01.01.96 and arrears be granted to them with effect from 1.1.96 by calculating year-wise income tax (sic).

3. DG-AIR is also requested to adopt the similar procedure in respect of other similar cases also.”

9.2 In compliance thereof, the DG-AIR vide letter dated 20.08.2004, invited representations from DR-PEXs. This letter reads as under:-

“This Directorate had called for the information from AIR/DDN Kendra in r/o promote Programme Executives about the pay they had been drawing as on 1.1.96 as per 5th CPC and as per pay upgradation order dated 25.2.99, a consolidated

statement has been prepared based on the information received from various stations and endorsed with this letter.

All Heads of AIR Stations/DDN Kendras are requested to circulate this statement among the DR Programme Executives posted at that station/Kendra and ask them to make representation to this Directorate, if they desire to do so, for removal of pay anomaly, if any, vis-à-vis the Jr. Programme Executive identified by them on the basis of enclosed statement, justifying their case.”

Thereafter, in compliance, the pay of Sh. Pramod Mehta and Sh. Gaurab Gangopadhyay (DR-PEX) was stepped up to be at par with Sh. D.P. Banerjee (PQ – PEX) and thereafter, the pay of approximately 300 plus DR-PEXs was stepped up to be at par with their junior PQ-PEXs as and when they were promoted from TREX.

10. Since neither the directions of Tribunal vide order dated 27.09.2002 nor the Tribunal's order dated 05.05.2004 in CP No. 346/2003 in OAs No. 1489/1999 and 728/1999 nor the Anomaly Committee report dated 21.05.2004 nor the M/o I & B letter dated 21.05.2004 envisage that pay of all DR-PEXs be stepped up vis-à-vis their junior PQ-PEXs, the action of the respondents for stepping up of their pay was *ab-initio* erroneous and that error needs to be corrected now when this has already been noted in one of the audit inspections.

11. It was also pleaded that stepping up of pay is to be done under FR 22, but the applicants' case is not covered under this rule as underlying conditions are not satisfied as PEX and TREX are

two separate cadres. When this error had come to light, the matter was referred to Prasar Bharti in October, 2011 and subsequently to M/o I & B in December, 2011. Ministry of I & B remitted the matter back to DG-AIR duly advising that DG-AIR is fully competent to decide the issue. A five member Committee was set up which submitted its report on 08.12.2012, DG-AIR sent it to Prasar Bharti on 20.12.2012 for screening and rectification. Since it involved more than 300 DR-PEXs and had vide ramification, Prasar Bharti referred it for investigation by PAO, AIR Chennai on 01.12.2013 who expressed his inability to proceed further in the matter. Thereafter, DG-AIR formed a three member Committee which submitted its report on 28.08.2014 and concluded that stepping up of pay was not tenable. It is only thereafter that the instructions dated 07.04.2015 were issued by DG-AIR.

12. It was pleaded that since wrong fixation was somehow done in the past, its correction and recovery is in order and the excess payment involved is to the tune of Rs. 10.94 crore.

13. In respect of genesis of the order dated 25.2.1999, the specific averment made in the counter reply reads as under:-

“2.xxxxxxxxx in the case of Engineering Assistant, the Madras Bench of the Central Administrative Tribunal in OA No. 654/1989, by an order dated 29.06.1990 directed the Union of India that the pay of the Engineering Assistants of All India Radio and Doordarshan shall be revised in scale of Rs. 550-990 w.e.f. 01.01.1978 and Rs. 2000-3200 w.e.f. 01.01.1986. Accordingly, the pay scale for the post of

Engineering Assistants were revised by the Government vide Order dated 15.05.1995.

Sh. Vishnu Prasad Sinha and others filed an OA No. 307/95 in the Hon'ble CAT, Patna seeking parity of pay scales with that of Engineering Assistants. The OA was dismissed and against that a Special Leave Petition 4663/96 was filed in the Hon'ble Supreme Court, which was disposed of with the following directions:-

“In the event of Vth Pay Commission finding that the posts of Transmission Executives are equivalent to the post of Engineering Assistant, the Central Govt. may consider giving the benefit of revision of pay scale to the petitioners with retrospective effect as claimed by them”.

In view of the above, orders of Hon'ble Courts, the pay of the Transmission Executives were revised in scale of Rs. 550-990 w.e.f. 01.01.1978 and Rs. 2000-3200 w.e.f. 01.01.1986, vide order dated 25.02.1999.

However, the cadre Programme Executive did not fall under purview of the said judgment and hence grant of upgraded pay scale for this category of posts had been given effect from 01.01.1996 from which pay scales for all the Central Government servants had been revised on the recommendations of the Vth Pay Commission.”

14. It was also pleaded that in follow up to a decision by the Apex Court in **Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand and Ors.**, [2012 AIR SCW 4742], an OM dated 06.02.2014 was also issued by DoPT regarding recovery of wrongful/excess payments made to Government servants. The relevant order reads as under:

“17. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case (supra) and in Col. B.J. Akkara (retd.) case (supra), the excess payment made due to wrong/irregular pay fixation can always be recovered.

18. Appellants in the appeal will not fall in any of these exceptional categories, over and above, there was a stipulation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the appellants were working would be responsible for recovery of the amount received in excess from the salary/pension. In such circumstances, we find no reason to interfere with the judgment of the High Court. However, we order the excess payment made be recovered from the appellant's salary in twelve equal monthly installments starting from October 2012. The appeal stands dismissed with no order as to costs. IA Nos.2 and 3 are disposed of."

14.1 Similar directions have also been passed by Hon'ble Apex Court in Civil Appeal No. 3500 of 2006 titled High Court of Punjab and Haryana & Ors. Vs. Jagdev Singh decided on 29.07.2016. In Jagdev Singh, the Hon'ble Apex Court had observed that the respondents furnished an undertaking and he was granted the revised pay scales in selection grade of Rs. 14300-400-18000-300. While opting for the revised pay scales, he also undertook to refund any excess payment, if it was so detected and demanded subsequently. On this basis, the revised pay scales were allowed to him on 07.01.2002. Subsequently, he was suspended w.e.f. 19.08.2002 and was compulsorily retired w.e.f. 12.02.2003.

In the meantime, Haryana Civil Services (Judicial Branch) and Haryana Superior Judicial Service revised Pay Rules 2003 came into force w.e.f. 1.1.1996. Accordingly, on 18.02.2004, the recovery amounting to Rs. 1,22,003 was ordered against Sh. Jagdev Singh. This recovery order was challenged by filing a writ in the Hon'ble High Court which was allowed. It was this High Court order that came to

be challenged in the Hon'ble Apex Court. Hon'ble Apex Court delivered judgement on 29.07.2016 which reads as under:-

“11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”

15. Respondents also relied upon a common judgment dated 11.01.2019 by Principal Bench of this Tribunal in OA No. 4590/2017 and other connected OAs. This judgement is in the context of Central Secretariat Service (CSS) wherein direct recruitment rakes place centrally at the level of Assistants and a common seniority is maintained by DoPT. However, they get allocated to different Ministries. So long as they work in a Ministry, they work in the respective cadre unit of the particular Ministry. However, for regular substantive promotions, it is the common seniority maintained by DoPT, that is followed.

Due to exigency of needs of individual Ministries, instances arose when such Assistants got promoted as Section Officers (SOs) in that Ministry in respective cadre unit. When the occasion arises for substantive promotion, based on common seniority maintained by DoPT, cases arose when the salary drawn by a direct recruited Assistant of a later year became more vis-à-vis a direct recruited Assistants of an earlier year. This situation arose

as the two officers were in two different Ministries and the senior person was not promoted, as such promotions were based on seniority within cadre unit of that Ministry, while the junior, who was in a different Ministry, was promoted.

Similarly, certain UDCs on promotion to the post of Assistant were given pay fixation in the pay scale of Assistants whereby they were drawing more pay as compared to a direct recruited Assistant who was otherwise senior. In this context, it is also to be noted here that for promotion as Assistant, there is a LDCE channel also which is again conducted centrally for all the Ministries.

With a view of address the anomalies in such pay fixation, certain OM s were issued from time to time and seniors were granted stepping up of pay, if they fulfilled the attending conditions laid down in such OM s. At some stage, it came to light that some such employees who were otherwise not covered by these OM s were also somehow granted stepping up of pay at par with their juniors. Once this error came to light, refixation order and recovery orders were issued. Feeling aggrieved with such re-fixation and recoveries, this OA was filed. This was dismissed by Tribunal with the following order:-

“25. In case any of the applicants are of the view that their cases fit into the OM s dated 13.04.1998, 23.02.1994 and 08.10.1996, and are not hit by OM dated 04.11.1993, they can certainly make individual

representations duly supplying the relevant particulars, indicating how they are entitled to such benefits. If such representations are made, the concerned authority shall pass appropriate orders thereon within two months from the date of such representation.

26. We do not find any basis to interfere with the impugned orders. The OAs are accordingly dismissed but with the observations made in preceding paragraphs. There shall be no orders as to costs."

With this in view, the respondents pleaded that stepping up of pay with respect to juniors, has not been allowed by Tribunal and this ratio is attracted for instant applicants also who were granted stepping up with respect to their juniors.

16. Applicants have submitted rejoinder also. It was pleaded that the 5th CPC recommended the scale of Rs. 5000-8000 to 1000 number of TREX and the scale of Rs. 5500-9000 to 841 TREX. Instead, all 1841 TREXs were granted a still higher pay scale of Rs. 6500-12000. The Anomalies Committee constituted in follow up to the CAT directions dated 27.09.2002 (Para 4 supra), had also made the observations in sub paras (f) & (g) in the implementation status advised to some of the DR-PEX applicants on 23.04.2004 (Para 9 supra).

17. It was pleaded that the Anomalies Committee itself observed that the anomaly as noted was very grave. Therefore, the respondents were required to find a solution in consultation with

Ministry of Information & Broadcasting which was also recommended vide para 5 of their report by the same Anomalies Committee. However, this was not done.

It was also pleaded that FR 22 is not applicable in the instant case as the anomaly had not arisen on account of fixation as per CPC recommendations. Anomaly arose as a result of upgradation given to TREX from a back date and in consequence, stepping up being granted to DR-PEX, following due procedure. Accordingly, reference to conditions under FR 22 is not warranted and as such, no recovery can be ordered by quoting the same very Rule FR 22.

18. Matter has been heard at length. Sh. D.R. Sharma, Advocate represented the applicants and Sh. Sanjay Goyal, Advocate represented the respondents.

19. It is noted that there was certain historical relativity of pay scales between PEXs and TREXs. This is reflected in the fact that DR-PEXs were recruited to the scale of Rs. 2000-3500 (as per 4th CPC) by UPSC while TREXs were recruited in the much lower scale of Rs. 1400-2660 (as per 4th CPC). Further, DR-PEXs were higher in hierarchy and TREXs were a feeder cadre to fill the posts of PEXs in the promotion quota. It is only natural that DR-PEXs were getting much higher pay vis-à-vis PQ-PEXs.

20. However, there are aspirations for higher salaries and all cadres make representations. The 5th CPC considered the said representations in respect of TREXs and PEXs and made certain recommendations (Paras No 2 & 2.1 supra). As a result of judicial pronouncements (Para 13 supra), certain upgradation was given to TREXs and they were granted the pay scale of Rs. 2000-3200 (as per 4th CPC) w.e.f. 1.1.1986 itself as is reflected in the order dated 25.02.1999 (Para 3 supra).

The scale of PEX as of 1.1.1986 was Rs. 2000-3500. Thus, as per these upgradations, TREX in scale of Rs. 2000-3200 (granted w.e.f 1.1.1986), were being promoted to PEX in the scale of Rs. 2000-3500 scale, before fixation as per 5th CPC w.e.f. 01.01.1996. Promotion between these two scales, for certain other categories was marked as illusory by the 5th CPC. In this context, observations made by 5th CPC for these two scales in para 43.5 of their report needs to be recalled which is as follows:-

“These are identical scales but for difference in span. In many offices, persons were being promoted from Rs. 2000-3200 (Group C’scale) to Rs. 2000-3500 (Group ‘B’scale). This was an illusory promotion.”

It is in keeping with this fact that the 5th CPC recommended a common replacement scale for both these two pay scales as Rs. 6500-10,500 (para 2.1 supra).

What this means is that the historical relativity between TREX and PEX got almost completely obliterated leading to the

anomalous situation of a senior DR-PEX getting much lesser pay vis-à-vis his junior PQ-PEX. The respondents tried to address the situation while issuing letter dated 25.02.1999 granting higher pay scales to entire cadre of both TREX and PEX which is even beyond what was approved by the Government as 5th CPC recommendations (Para No. 2 supra).

22. The applicants, who are Direct Recruit PEX, are aggrieved on this disturbance of historical relativity and their take home salary becoming less vis-à-vis their erstwhile juniors and filed OAs No. 1489 and 728 of 1999. It is in follow up of directions dated 27.09.2002 that an Anomaly Committee was constituted and corrective action was recommended by taking recourse to existing rules. The existing rules however do not envisage stepping up of pay of direct recruit seniors vis a vis their promoted quota juniors who may be in the same post and in the same pay scale, as their cadres were so far different. Since existing rules did not cater to the anomalies observed, administrative directions were issued vide Ministry of I&B letter dated 21.05.2004 (Para No. 9.1 supra) wherein the DG-AIR was also requested to adopt the similar procedure in respect of other similar cases. In follow up, DG-AIR invited representations from direct recruit PEX vide his letter dated 20.08.2004 (Para No.9.2 supra) and stepping up of pay was granted to DR-PEXs vis-à-vis their junior PQ-PEXs.

It is these administrative instructions that were issued to tackle the anomalous situation of TREX and PEX and the issue of administrative instructions in the context of CSS has been upheld also e.g. in OA No. 4590/2017 (Para No. 15 supra).

23. The action of the respondents in making a turnaround now and to plead that the stepping up granted in terms of the administrative instructions dated 21.05.2004, was erroneous as the anomaly, even though it existed, stepping up was permissible under FR-22 only and this also could not be implemented as attendant conditions are not fulfilled in instant case, cannot be accepted.

Reason is that anomaly existed as it was recognized by the Tribunal and directions were issued to resolve it and in follow up Anomaly Committee was appointed and they made certain recommendations. Since the problem was still not resolved, it was resolved by administrative instructions issued by the Ministry of I&B which were complied with. Nullifying this entire process at this stage, after almost a decade, is not permissible. Taking recourse to such administrative instructions if underlying conditions are fulfilled, has been upheld by Tribunal in OA No. 4590/2017 (Para No. 15 supra).

24. Further, there has been no misrepresentation whatsoever by the applicants in seeking stepping up. It was as a result of

judicial pronouncements that a mechanism was set up to examine the entire issue with a view to resolve the anomaly and when the said mechanism was unable to resolve, administrative instructions were issued by the Administrative Ministry which decided certain course of action leading to stepping up of pay of direct recruit PEX. Accordingly, the pay cannot be reduced now and recovery effected.

The ratio of **Rafiq Masih** (Para No. 8 supra) by Hon'ble Apex Court, also comes into effect wherein such recoveries, after such long delay and under such conditions of no misrepresentation, are prohibited. The judgements in Chandi Prasad Uniyal and Jagdev Singh, both by Hon'ble Apex Court and relied upon by the respondents (Para No. 14 supra), are also of no help to the respondents as the underlying conditions were different as it is nowhere brought out by respondents that applicants had given consent for recovery later, if stepping up was not found in order.

The judgment in OA No. 4950 of 2017 is also of no help to the respondents as that is in different context and correction of anomaly as per administrative instructions, where underlying conditions were fulfilled, was upheld (para No. 15 supra).

25. The pleas put forth by applicants are thus gaining acceptability. OA is allowed. Order dated 07.04.2015 stands quashed and is set aside. Applicants' pay as fixed in compliance to

Ministry of I&B letter dated 21.05.2004 is restored with all consequential benefits. Recoveries made, if any, shall be refunded back to the applicants within 90 days. There shall be no order as to costs.

**(PRADEEP KUMAR)
MEMBER(A)**

**(SANJEEV KAUSHIK)
MEMBER(J)**

Dated:

ND*