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IN THE HIGH COURT OF DELHI AT NEW DELHI

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**Judgment Reserved on: 30.11.2009
Judgment Delivered on: 11.12.2009**

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(1) W.P(C)5777/2007

SHRI KRISHAN LAL & OTHERS Petitioners
Through: Mr. Pramod Kumar Sharma and
Mr. Deepak Raja, Advocates.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. A. K. Bhardwaj, Advocate.

AND

(2) W.P(C) 5789/2007

SHRI M.R.SATYARTHY Petitioner
Through: Mr. Pramod Kumar Sharma and
Mr. Deepak Raja, Advocates.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. A. K. Bhardwaj, Advocate.

AND

(3) W.P(C) 5812/2007

SHRI T.R.SACHDEV & ORS Petitioners
Through: Mr. Pramod Kumar Sharma and
Mr. Deepak Raja, Advocates.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. A. K. Bhardwaj, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

VIPIN SANGHI, J.

1. This common order shall dispose off the aforesaid three writ petitions preferred against the common order passed by the Central Administrative Tribunal, Principal Bench, New Delhi, inter alia, in O.A. No.2230/2006 filed by Sh. Krishan Lal and six others (from which W.P.(C) No.5777/2007 arises), O.A. No.1778/2006 filed by Sh. M.R. Satyarthi (from which W.P.(C) No.5789/2007 arises), and O.A. No.2231/2006 filed by Sh. T.R. Sahdev and 26 others (from which W.P.(C) No.5812/2007 arises). The Original Applications of the petitioners have been dismissed by the Tribunal on the ground of limitation and also by distinguishing the various decisions relied on by the petitioners to claim the reliefs as claimed by them. Since the issues arising in these petitions are the same, we are dealing with all these petitions at the same time. For the sake of convenience, we are taking some facts from W.P.(C) No.5777/2007 to understand the controversy. The facts and issues arising in the other cases are also similar.

2. The petitioners Sh. Kishan Lal and six others filed O.A. No.2230/2006 to seek directions to re-fix their pay under the new Electronic Data Processing (EDP) pay scales of Data Processing Assistant Grade-A (Rs.1600-2660), Data Processing Assistant Grade-B (Rs.2000 - 3200) and Programmer (Rs.2375-3500) w.e.f. 01.01.1986, or from the date of their appointment on the post of Senior Computer, Statistical Assistant and Assistant Programmer, whichever is later, with all consequential, monetary and pensionary benefits. To claim the said relief they relied on the decision of this Court in Civil Writ Petition No.1212 of 1999 dated 10.01.2002 titled **Union of India & Ors. v. B.N. Sharma & Ors.** and the judgments of the Tribunal dated 18.12.2003 in O.A. No.553/2003 titled **R.K. Sharma & Ors. v. Union of India** and in O.A. No.2587/2005 titled **Shama Kaul & Ors. v. Union of India.** A direction was also sought to re-fix the applicants' pensionary benefits with all consequential monetary benefits.

3. When the Fourth Pay Commission Report was accepted by the Government and implemented, in terms of para 11.45 of the Fourth Pay Commission Report, the Department of Electronics set up the Seshagiri Committee to examine and suggest the re-organization of the existing EDP posts and to prescribe uniform pay scales and designations in all the departments of the Government of India. Taking the Seshagiri Committee Report into account, Government of India, Ministry of Finance, Department of Expenditure issued an

office memorandum (OM) dated 11.09.1989, thereby introducing the pay structure for the EDP posts. The pay structure introduced by the government was as follows:

S. No.	Designation of Post	Pay Scale	
<u>Data Entry Operators</u>			
1.	Data Entry Operator Grade 'A'	Rs.1150-1500	This will be entry Grade for Higher Secondary with knowledge of Data Entry work.
2.	Data Entry Operator Grade 'B'	Rs.1350-2200	This will be entry grade for graduation with knowledge of Data Entry work or promotional Grade for Data Entry Operator Grade 'A'.
3.	Data Entry Operator Grade 'C'	Rs.1400-2300	Promotional Grade.
4.	Data Entry Operator Grade 'D'	Rs.1600-2660	Promotional Grade.
5.	Data Entry Operator Grade 'E'	Rs.2000-3500	Promotional Grade.
<u>Data processing/ Programming Staff</u>			
1.	Data Processing Assistant Grade 'A'	Rs.1600-2660	Entry grade for graduates with Diploma/Certificate in Computer application.
2.	Data Processing Assistant Grade 'B'	Rs.2000-3200	Promotional Grade.
3.	Programmer	Rs.2375-3500	Direct Entry for holders of Degree I n Engi (sic) or post-graduation in Science/Maths etc. or post-graduation in Computer Application.

OR

			By promotion from Data Processing Assistant Grade 'B'.
4.	Senior Programmer	Rs.3000- 4500	Promotional Grade."

4. This OM further provided that all ministries/departments having EDP posts under their administrative control should review the designation, pay scale and recruitment qualification of their posts and revise the same in consultation with their financial advisories to the extent necessary as per pay structure indicated in the OM. It further provided that the revised pay scales would be operative from the date of issuance of the notification by concerned ministry/department. This OM further provided that the review suggested would be made only with reference to existing EDP posts and it will not be necessary to create all the grades in all the ministries/departments as it would depend on requirement of the user departments. If the ministries/departments proposed to create new grades which were not existing at the time of issuance of the OM, the same was to be done with the approval of the financial advisories and subject to procedures laid down for the purpose.

5. As noticed hereinabove, the OM dated 11.09.1989 provided that the revised pay scales would be operative from the date of issuance of the notifications by the concerned ministry/department. However, this stipulation was modified by another ministerial communication dated 08.01.1991 of the Ministry

of Defence, whereby the revision of the pay scales of EDP posts was also prescribed. It was provided by this communication that the revised pay scales would take effect from 11.09.1989 and the pay of the existing incumbents would be fixed under FR 23 and FR 22(I)(a)(ii).

6. Various Original Applications were filed before the Tribunal by the EDP Staff working in different ministries/departments to challenge the decision to grant the revised pay scales to those holding EDP posts from 11.09.1989, and not from 01.01.1986 when the Fourth Pay Commission Report was implemented in respect of all government employees. The Tribunal upheld the claim of the EDP employees and granted the revised pay scales from 01.01.1986. Writ petitions preferred in this Court by the Government were also dismissed. The decisions relied upon by the petitioners as noticed in paragraph 2 above are some of them.

7. The Original Applications in question were filed by the petitioners only in the year 2006 to claim re-fixation of their pay from 01.01.1986 and, consequently, their pension on the basis of the earlier decisions of the Tribunal and of this Court. The Tribunal has, as aforesaid, inter alia, held that the original applications were barred by limitation. The Tribunal also held that the settled service position could not be altered and disturbed after the passage of nearly twenty years at the instance of the petitioners, as it would

create chaos and confusion. The Tribunal rejected the reliance placed by the petitioners on a host of earlier decisions wherein the Courts/Tribunal had granted re-fixation of pay from 01.01.1986 as opposed to 11.09.1989 by concluding that the said decisions/orders did not lay down any ratio nor constitute binding precedents in law. Most of them were simply orders containing directions founded upon earlier orders of the Court/Tribunal. Consequently, the aforesaid original applications were dismissed by the Tribunal.

8. The submission of learned counsel for the petitioners is that the original applications filed by the petitioners were not barred by limitation since the petitioners had been representing to the respondent to assert their claim. Moreover, from time to time, various directions/orders had been issued by the Tribunal and by this Court granting the re-fixation of pay w.e.f. 01.01.1986 which was the date of implementation of Fourth Pay Commission Report for all government employees. He submits that only when the petitioners learnt of the orders passed by the Tribunal and by this Court in other similar cases, they approached the Tribunal by filing the aforesaid original applications. He further submits that the Tribunal has completely disregarded the earlier precedents and decisions while denying relief to the petitioners. The petitioners are entitled to the same treatment as their colleagues who had earlier approached the Tribunal and had been granted relief.

9. Learned counsel for the respondent, on the other hand, supports the decision of the Tribunal that the original applications were highly belated and barred by limitation. He also submits that the Tribunal had rightly distinguished all the decisions cited by the petitioners, inasmuch as, in those decisions there was no ratio or principle which could be discerned and applied as a binding precedent.

10. Mr. Bhardwaj, learned counsel for the respondents, submits that the claim of the petitioners, in any event, was not justified, inasmuch as, in the case of these petitioners it was not a case of mere re-fixation of pay, but a case of introduction/creation of new pay structure and grades by creating fresh designations on the basis of experience and educational qualifications. Mr. Bhardwaj does not dispute that in case of a simplicitor re-fixation on a corresponding higher pay scales, the writ petitioners would be entitled to notional fixation of the revised pay w.e.f. 01.01.1986, and consequential re-fixation of their present pay/pension. He further submits that in terms of the Seshagiri Committee Report, new posts/grades were created with higher qualifications and a conscious decision was taken from time to time to place the eligible employees in the relevant grades/posts. He submits that in such like cases the re-fixation of pay, even on a notional basis, could not be preponed to 01.01.1986 mechanically and the revised pay-scales/grades could be granted only from the dates on which the government took the

conscious decision. In support of this submission, Mr. Bhardwaj relied on the Supreme Court decision in ***Union of India and Others vs. Secretary, Madras, Civil Audit and Accounts Association and Anr. etc.*** 1992 (1) SLR 667.

11. We have heard learned counsel for the parties at length.

12. While dealing with the issue of limitation, the Tribunal relied on ***Ramesh Chand Sharma etc. v. Udham Singh Kamal and others*** JT 1999 (8) SC 289 wherein it had been held that in the absence of any application under sub-Section (3) of Section 21 praying for condonation of delay, the Tribunal had no jurisdiction to admit and dispose off the original application on merits. In none of the three Original Applications, it appears that any application was filed by the petitioners/applicants to seek condonation of delay in approaching the Tribunal. The Tribunal also relied on ***E. Parmasivan v. Union of India*** (2003) 12 SCC 270, wherein the claim of retired officers of MES regarding fixation of pay had been rejected on the ground of limitation, stating that they should have raised objections regarding the anomaly when they were in service. The Tribunal relied on ***A.P. Steel Rolling Mill Ltd. v. State of Kerala & Ors.*** (2007) 2 SCC 725, wherein it had been held that the benefit of a judgment of a Court is not extended to all cases automatically. The Court would consider the fact whether the writ petitioner had chosen to sit over the matter and then wake up after

the decision of the Court in some other matter. It was further held that if the applicant approached the Court after a long delay, the same may disentitle him to obtain discretionary relief. In **S.S. Rathore v. State of M.P.** 1989 (7) SLR 449, it had been held that repeated unsuccessful representations, not provided by law, would not extend the period of limitation. In these cases the representations were also made highly belatedly in the years 2005 and 2006 as noted by the Tribunal in para 29 of the impugned orders. In **Union of India & Ors. v. O.P. Saxena** JT 1997 (6) SC 586, the Supreme Court held that the Original Application filed by the applications in July, 1991 in respect of the claim for stepping up of the applicants' salary, who had retired on 31.03.1988 was highly belated.

13. Merely because others had approached the Tribunal and this Court to seek re-fixation of their pay w.e.f. 01.01.1986 earlier, and had succeeded in their endeavour, would not entitle the petitioners to seek the same relief at this highly belated stage. We may refer the Supreme Court in **S.S. Balu & Anr. v. State of Kerala & Ors.** VIII-2009(2) All India Services Law Journal 480, wherein the Supreme Court has held as follows:

“18. It is also well settled principle of law that “delay defeats equity”. Government Order was issued on 15.1.2002. Appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were

allowed and State of Kerala preferred an appeal there against, they impleaded themselves as party respondents. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage.”

[Also see **Shri Gian Singh Mann v. The High Court of Punjab and Haryana and another** 1980 (3) SLR 18].

14. Though we are in agreement with the finding of the Tribunal that the writ petitioners could not have prayed for arrears of pay and allowances and even pension (in respect of those of the petitioners, who have since retired) by filing the Original Applications highly belatedly, in our view the Tribunal has failed to appreciate that the cause of action in these cases was a continuing cause of action, inasmuch as, the right to receive the pay/pension accrues each month. The Tribunal, in our view, ought to have applied the ratio of the Supreme Court decision in **M.R. Gupta v. Union of India & Ors.** AIR 1996 SC 669 wherein it held as follows:

“5. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So

long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.

6. The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a

subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao and Ors. v. Mattapalli Raju, AIR 1950 Federal Court 1).”

15. The claim for re-fixation of pay from 01.01.1986, even if granted to the petitioners, would not entitle them to claim arrears of pay and pension. The re-fixation would be notional, and the right to receive arrears could, at best, relate to the period of one year before the date of filing of the Original Applications and not before that date. Since the revision of the petitioners’ pay, if granted, would impact their respective salaries/pensions presently being drawn by them, in our view, on a combined reading of the aforesaid decisions relied upon by the respondents with **M.R. Gupta** (supra), it can be said that the Original Applications filed by the individual applicants were barred by limitation in so far as the claim for arrears of pay/pension beyond the period of one year prior to the date of filing of the Original Applications were concerned.

16. We now proceed to consider the submission of the parties with regard to the claim of the petitioners that they would be entitled to re-fixation of pay, re-designation and upgradation from 01.01.1986 in all situations, irrespective of when the posts were re-designated and/or upgraded. We have gone through the aforesaid decision in **The Secretary, Madras Civil Audit & Accounts**

Association and Anr. Etc. (supra). In our view the ratio of this decision squarely applies to the petitioners' case. Since this is a detailed decision of the Supreme Court, in our view, it would be a futile exercise to undertake the analysis of the other decisions relied upon by the petitioners.

17. We now proceed to deal with the same. The Comptroller & Auditor General of India (C.A.G.) recommended some time in 1983 to the Government of India to bifurcate the Indian Audit & Accounts Department (I.A. & A.D.) into two separate and distinct wings, one to exclusively deal with 'audit' and the other to deal with 'accounts' with their own separate personnel. The Government of India after considering all aspects approved the proposal in December, 1983. Thereafter, C.A.G. formulated a scheme on 19.12.83 for bifurcation of the I.A. & A.D. into two separate and distinct wings from 1.3.84. This scheme also provided for all incidental and auxiliary matters relating to the two wings. Before the restructuring of the cadres, the staff working in the I.A. & A.D. were asked to exercise their option to serve in either of the two wings. Some employees exercised the option.

18. A grievance arose that the various equivalent cadres in Audit and Accounts Wings were not paid the same scales of pay, and the persons allotted to the Audit Wing were drawing more pay than the persons allotted to the Accounts Wing.

19. The Fourth Pay Commission which was looking into various aspects of the matter recommended in its report that there should be parity of scales of pay between the two wings. The Government took the necessary decision on the basis of the recommendations and the same were published in the Gazette on 13.9.86. The Government accepted the recommendations relating to the scales of pay and decided to give effect, from 1.1.86, to the recommendations of scales of pay for Group 'D' employees. Thereafter Ministry of Finance, Department of Expenditure issued Office Memo (OM) dated 12.6.87 regarding the posts to be placed in higher scales of pay and it was mentioned that these orders would take effect from 1.4.87.

20. The employees raised a grievance that the recommendations of the Fourth Pay Commission should be given effect from 01.01.1986. Several employees belonging to the Accounts Wing filed original applications before the Bangalore Bench, while others moved the Madras Bench of the CAT. Because of a difference of opinion in the two Benches, a full Bench of the Tribunal was constituted which took the view that the employees belonging to the Accounts Branch are entitled to the benefit of higher pay scales w.e.f. 01.01.1986. The Union of India approached the Supreme Court and the precise question considered by the Supreme Court was whether the benefit of O.M. dated 12.06.1987 issued by the Government of India, Ministry of Finance, Department of Expenditure should be extended to the members of the Accounts

Wing of the I.A. & A.D. w.e.f. 01.01.1986 as in the case of Audit Wing, or whether it should be with effect from 01.04.1987, as indicated in the said office memorandum.

21. The Supreme Court extracted Para 11.38 of the Fourth Pay Commission Report and concluded that there were two recommendations made by the Pay Commission namely :

1. That there should be broad parity in the pay scales of the staff in the I.A. & A.D. and other accounts organizations;
2. The scales of pay of Rs. 1400-2000 and 2000-3200 should be treated as functional grades requiring promotion as per normal procedure. The number of posts to be placed in the said scales was to be decided by the Government.

22. The Supreme Court noticed that so far as the first recommendation was concerned, there was no dispute about the same. However, in respect of the second recommendation the Supreme Court observed that to implement the said recommendation, the Government would have to take specific decisions to give effect to the same, from a suitable date keeping in view of all the relevant aspects. Accordingly, the Government had to examine and decide the number of posts to be placed in these scales of pay and to take a final decision, which was taken in the year 1987, whereafter promotions were to be made as per normal procedure.

23. The full Bench of the Tribunal had interpreted the recommendations of the Pay Commission to mean that both the wings would not only get the revised scales of pay but that they would also get the same from the same date. The Tribunal had held that the office memorandum dated 12.06.1987 was violative of Article 14 of the Constitution of India.

24. The Supreme Court, however, did not agree with this view of the Tribunal. In para 4, the Supreme Court held as follows:

“In the instant case the question is whether there was apparent reason to give different dates of implementation of the recommendations of the Pay Commission in respect of the members of the Accounts Wing and whether such an implementation offends Articles 14 and 16 in any manner? It is not in dispute that after the report of the Pay Commission the Government considered the matter and accepted the substantial part of the recommendations and gave effect to the revised scales of pay with effect from 1.1.86. **It is clearly indicated in the report that in regard to recommendations in other matters the Government will have to take specific decisions to give effect to them from a suitable date keeping in view all the relevant aspects including the administrative and accounting work. The second part of the recommendations relates to treatment of scales of pay of Rs. 1400-2000 and Rs.2000-3200 as functional grades requiring promotion as per normal procedure and also the number of posts to be placed in these scales of pay.** These recommendations clearly fall in the category of other recommendations and the Pay Commission itself has indicated that in

respect of such recommendations the Government will have to take specific decisions to give effect from a suitable date. **The Government, therefore, had to take the decision in respect of number of posts to be placed in these scales of pay.** In this context it is relevant to refer to paragraph 4 of the Office Memo dated 12.6.87. It reads as under:

“(4) The question regarding number of posts to be placed in the higher scales of pay has been under the consideration of the Government and it has now been decided that the ratio of number of posts in higher and lower scales in the Organised Accounts cadres as well as in Accounts Wing of the IA & AD may be as follows:

(i) Section Officer (SG)	Rs.2000-60-2300-EB-75-3200	80%
(ii) Section Officer	Rs.1640-60-2600-EB-75-2900	20%
(iii) Senior Accountant	Rs. 1400-40-1600-50-2300-EB-60-2600	80%
(iv) Junior Accountant	Rs.1200-30-1560-EB-40-2040	20%

The designations in different Organised Accounts cadres may be different. In such cases also the pay structure on these lines may be decided.”

The Government have to necessarily frame rules for appointment to these functional grades and the Government decided that those who have passed the Graduate examination and who have completed three years as Section Officer could be placed in the category of the persons entitled to the scale of pay of Rs. 2000-3200 and the same post was redesignated as Assistant Accounts Officer which post was not there previously. A Circular dated 17.8.87 makes this aspect clear. It can be seen that the category of officers who have

to be placed in the functional grade had to be decided by the Government and accordingly the Government took the decision in the year 1987. Therefore it is not correct to say that these officers who were subsequently placed in the functional grade belong to the same group who were entitled to the respective scales in their own right on 1.1.86 itself. It must be borne in mind that in order to enable the identification of posts and fitment of proper persons against them the Government had to take a decision. We have already noted that the recommendations of the Pay Commission deal with parity of scales of pay of the staff in I.A. & A.D. and other Accounts Organisations after holding that Audit and Accounts wings functions are complementary. But the Pay Commission also pointed out that the posts in the scales of pay of Rs.1400-2000 and Rs.2000-3200 should be treated as functional grades requiring promotion as per normal procedure and it was left to the Government to decide about the number of posts to be placed in these scales. Paragraph 4 of the Office Memo dated 12.6.87 deals with the later part of the recommendations and clearly provides for the identification of the posts carrying somewhat higher responsibilities and duties and for an exercise to be undertaken for fitting the senior and suitable persons against these posts. The Government after due consideration decided the issue. The Circular dated 17.8.87 clearly shows that some of the posts are identified as belonging to the higher functional grade and accordingly issued instructions in conformity with its Office Memo dated 12.6.87 and accordingly they were given the benefit with effect from 1.4.87." (emphasis supplied)

25. The Supreme Court in Para 9 and 10 further held as follows:

“9. Having given our earnest consideration we are unable to agree with the view taken by the Full Bench of CAT that the principle of equal pay for equal work is attracted irrespective of the fact that the posts were identified and upgraded in the year 1987. There is no dispute that after such up gradation, officers in both the wings who are doing the equal work are being paid equal pay. But that cannot be said to be the situation as well on 1.1.86 also.....

10. There is no dispute that in the instant case the terms of reference of Pay Commission applied to all the categories of Government servants. But the question is as to from which date the other category referred to above namely Assistant Accounts Officer etc. should get the higher scales of pay. Identification of these posts and the up gradation cannot be treated as mere administrative difficulties. The implementation of the recommendations of the Pay Commission according to the terms thereof itself involved this exercise of creation of posts after identification which naturally took some time. Therefore the above decisions relied upon by the learned Counsel are of no help to the respondents.”

26. In our view the ratio of aforesaid decision of the Supreme Court would be applicable in respect of the aforesaid office memoranda/communications, inasmuch as, by these office memoranda/communications, apart from providing mere re-fixation of pay-scales, higher grades/pay-scales and posts have been created/re-designated for which higher qualifications and

experiences have been prescribed by a conscious decision, and the process of grant of the higher grades/re-designation involves a process of assessment of the candidates. The posts with higher designations did not even exist as on 01.01.1986 and none of the petitioners were occupying these higher designated posts as on that day or even thereafter, till well after 11.09.1989, if at all. They possibly could not have got the higher grades from 01.01.1989 or from any date prior to 11.09.1989. They would not have got the higher grades even from 11.09.1989, but for the governmental decision taken subsequently, to grant the higher grades from 11.09.1989.

27. Reliance placed by the petitioners on **Chandraprakash Madhavrao Dadwa Vs. UOI & Others**, (1998) 8 SCC 154 was also negated by the Tribunal by a detailed analysis. We reproduce the relevant extract from the impugned order wherein the Tribunal noted some relevant facts and analyzed the decision of the Supreme Court in the case of **Dadwa** (supra).

“7. Ministry of Defence, based on aforesaid Memorandum dated 11.09.1989, issued OM dated **08.01.1991** conveying President sanctioned for revision of pay scale of various posts enumerated therein in AFHQ/ISO. Statistical Assistants in AFFQ/ISO carrying pay scale of Rs.1400-2300/- was designated as Data Entry Operator Grade ‘D’ in revised pay scale of Rs.1600-2600/-, to take effect from 11.09.1989. In continuation of aforementioned OM, Ministry of Defence, Office of JS (Trg), CAO issued further

communication dt. 6.12.1994 conveying President sanctioned: **“to the placement/ promotion of the incumbents of the posts of Computer, Senior Computer, Statistical Assistant, Statistical Investigator and Programme Assistant”** in different grades of EDP discipline subject to certain conditions contained in enclosed Annexure-I. As per said Annexure-I, under column 4, Statistical Assistants of AFHQ/ISOs earlier carrying pay scale of Rs.1400-2300/- were allowed revised scale of Rs.2000-3200/-, with designation of DPA Grade-B, with certain educational qualifications. Graduates in Science/ Maths/ Statistics/Economics subjects and having a certificate in Computer Programming were to be placed in pay scale of Rs.2000-3200/- with designation DPA Grade-C while those not possessing said qualifications were to be placed in pay scale of Rs.1600-2660/- and designated as DPA Grade ‘A’.

8. Ministry of Planning, Department of Statistics also issued order dated 2.07.1990 and conveyed President sanction to revision of designation and pay of Grades ‘C’ & ‘D’ of EDP posts w.e.f. 11.09.1989 to the following effect:-

Organisation	Present Designation	Present Scale	Revised Designation	Revised Scale
(1)	(2)	(3)	(4)	(5)
Computer Section	Punch Card Operator	Rs.950-20-1150-ES-15-1500+ Spl. Pay Rs.40	Data Entry Operator Grade ‘A’	Rs.1150-25-1500
Industrial Statistics (IS) Wing of CSO, Calcutta	Computer (Junior scale)	-do-	-do-	-do-
Field Operators Division NSSO	Key Punch Operator	-do-	-do-	-do-
Computer Centre	Punch Card Supervisor	Rs.1200-30-1400-EB-30-1800	Data Entry Operator Grade ‘B’	Rs.1350-3-1440-40-1800-EB-50-2200

Computer Centre	Data Processing Assistant/Tape Librarian	Rs.1200-30-1560-EB-40-2040	-do-	-do-
IS Wing of CSO at Calcutta	Computer (Senior Scale)	-do-	-do-	-do-
Data Processing Division, NSSO	Data Processing Assistant	Rs.1200-30-1560-EB-40-2040	Data Entry Operator Gr. 'B'	Rs.1350-3-1440-40-1800-EB-50-2200
Computer Centre	Junior Programme Assistant	Rs.1400-40-1800-EB-50-2300	Data Processing Assistant	Rs.1600-50-2300-EB-60-2660
IS Wing of CSO at Calcutta	Jr. Investigator/ Console Operator/ Data Processing Librarian	-do-	-do-	-do-
Data Processing Division, NSSO	Data Processing Supervisor	Rs.1400-40-1600-50-2300-EB-60-2600	-do-	-do-
Computer Centre	Programme Asstt/ Console Operator	Rs.1640-60-2600-EB-75-2900	Senior Data Processing Assistant	Rs.2000-60-2300-EB-75-3200
IS Wing of CSO at Calcutta	Sr. Investigator	-do-	-do-	-do-
Data Processing Division, NSSO	Superintendent	-do-	-do-	-do-

9. Aforesaid Order dated 2.7.1990 of Department of Statistics was challenged before the Mumbai Bench in OA 625/1990, which was dismissed. Initially SLP filed by applicants was dismissed by Hon'ble Supreme Court at admission stage and later, on review filed, was allowed in **Chandraprakash Madhavrao Dadwa vs. Union of India & Ors.**, 1998 (8) SCC 154. Challenge to aforesaid Order had done basically on two accounts:

(i) It challenged the designation of Data Processing Assistants in the National Sample Survey Office to Data Entry Operators which

amounted to reversion to an entry grade below that of Data Processing Assistants to which they were recruited;

(ii) It changed the designation of certain other officers in NSSO from Data Processing Supervisors into Data Processing Assistants.

10. The Hon'ble Supreme Court noticed that there have been statutory rules known as NSSO (DPD, SD & RD) Class III (Non-Ministerial posts) Recruitment Rules, 1973 which were applicable for recruitment to the posts of Computer Operator (225 posts), Machine Operator (68 posts) and Key Punch Operator (80 posts) which were in scale of Rs.130-300 & all these posts were on the "Data Entry" side. On the other hand, the NSSO Rules, 1977 were applicable to Data Processing Assistants in the pay scale of Rs. 330-560. Similarly, 1978 Rules were applicable to Data Processing Supervisors in pay-scale of Rs. 425-800. These posts (DPA & DPS) were in "Data Processing" stream. Thus there had been distinction between Data Entry Operators who were governed by one set of rules of 1973 and Data Processing Assistants and Supervisors governed by the 1977 and 1978 Rules respectively. Prior to 1978 Rules in NSSO, there was no distinct cadre styled as the Data Entry Operators as the Data Entry Operators but there were Machine Operators, Key Punch Operators and Computers who were doing Data Entry work. All these three cadres of employees doing data entry work got merged into one common cadre of Data Processing Assistants from 1977 onwards. IVth Pay Commission felt that all matters concerning the Data Entry and Data Processing Staff be decided by an expert body. Thereafter, a Committee known as "Dr. Seshagiri Committee" went into the question of revision of pay scale and restructuring in various departments of Government, including NSSO. The said Committee initially appointed a Sub-

Committee to go into various questions. The said Sub - Committee gave its significant directions stating that there should be two streams- one relating to Data Entry and another relating to Data Processing. The Sub-Committee vide Para 9(6) referring to Data Entry Operators recommended that Key Punch Operators and Data Entry Operators are performing work of a repetitive nature and which does not involve any Science and Technology content, be classified as Data Entry Operators and five grades were recommended for them, namely;

DEO Grade A : Rs. 1350-2200
DEO Grade B : Rs. 1400-2300
DEO Grade C : Rs. 1600-2660
DEO Grade D : Rs. 2000-3200
DEO Grade E : Rs. 2375-3500
respectively.

Further grade of 'AA' in regard to non-graduates in the scale of Rs. 1150-1500.

11. Thereafter, the Sub- Committee referred to 'Data Processing Assistants' as well as Programmers and observed that this work will require intellectual skills, which was not a routine type and, therefore, recommended scales and designations, namely, Data Processing Assistant-'A', Rs. 1640-2900 based on certain educational qualifications and Data Processing Assistant 'B', Rs. 2000-3200 on promotion from Data Processing Assistant A having 5 years service in the said grade. The said Committee nowhere in its report recommended that in view of slightly different qualifications fixed for Data Processing Assistants, those specifically recruited earlier under statutory rules as Data Processing Assistants, were to be dislodged therefrom and be brought into that Data Entry Stream. Even with regard to extra qualifications now prescribed, Committee clearly stated that they should not be applied to existing staff. Ministry of Finance issued O.M. dated 11.9.1989

virtually accepting all the recommendations of Dr. Seshagiri Committee with very slight modifications.

12. The grievance raised in aforementioned case, namely, **C. Madhavrao Dadwa and Ors** had been that the change in essential qualifications made vide order dated 2.7.1990 of additional functions now required to be performed by the appellants could not retrospectively affect the initially recruited Data Processing Assistants. Recruitment qualifications could not be altered or applied with retrospective effect so as to deprive the recruitees of their right to the posts to which they were recruited nor could it affect their confirmation.

13. Under 1977 Rules for direct recruitment of Data Processing Assistants their essential qualification was Degree in Arts or Commerce with Statistics, Mathematics as one of the subjects. Desirable was to have a Computer's certificate or other certificates as specified therein. Later order dated 2.7.1990 stipulated graduation plus diploma/certificate in computer application or knowledge of the system to be evaluated by tests. After noticing the Rules positions of 1973, 1977 and 1978 & orders dated 11.9.1989, 2.7.1990 as modified on 15.5.1996 as well as 5th Pay Commission recommendations on the upgradation of pay scale of DEOs and DPAs, which later resulted in further order dated 16.3.1998, Hon'ble Court allowed the claim laid by the Review Applicants and observed that:

"To put it in a nutshell, the change in the essential qualification made in 1990 or 1998 or the additional functions now required to be performed by the appellants could not retrospectively affect the initial recruitment of appellants as Data Processing Assistants nor their confirmation in 1989. Recruitment

qualifications could not be altered or applied with retrospective effect so as to deprive the recruitees of their right to the posts to which they were recruited nor could it affect their confirmations”.

The Hon'ble Supreme Court further held that:

“For all the above reasons, the impugned orders dated 2.7.90, 16.3.98 and all other orders which have the effect of redesignating the appellants-who were recruited as Data Processing Assistants as Data Entry Operators in the scale of 1350-2200 (or 1400-2300 by concession of counsel) are arbitrary and illegal, ultravires and are declared violative of Articles of 14 and 16 of the Constitution of India. The appellants are declared entitled to the designation of Data Processing Assistants Grade III (also called earlier as grade B) in the scale of Rs. 1600-2660 with effect from 1.1.1986, the date when the IVth Pay Commission scales came into force. The appellants are also entitled to the scale of Rs.5000-8000 with effect from 1.1.96. In view of the government orders passed in connection with the Vth Pay Commission recommendations.

It is made clear that the judgments is applicable only to those 48 appellants who are directly recruited as Data Processing Assistants in the NSSO, Department of Statistics, Ministry of Planning.” (emphasis supplied)

Perusal of above underlined portion would show that said judgment was applicable only to those 48 applicants who were directly recruited as Data Processing Assistants in NSSO, Department of Statistics.

14. Later on an I.A. was filed for recalling order dated 22.1.1997 passed in Review

Petition No. 2094 of 1995 in Special Leave Petition (Civil) No. 19257 of 1995, known as **Kamlakar & Ors vs. Union of India & Ors**, 1999 (4) SCC 756. Court noticed that anomalous situation had arisen and some of the petitioners in OA 625/1990 got relief in OA **Chandra Prakash Madha Rao Dadwa and Ors** and some others were denied the same relief even though all of them had been petitioners in the same OA before Mumbai Bench of this Tribunal. In said I.A., Union of India pointed out that among the appellants, some were direct recruits but some others were promotees, and that was a point of some distinction. Therefore, UOI prayed that direct recruits may be given relief but not promotees. Rejecting the same, Hon'ble Supreme Court vide Para 12 observed that:

“All these appellants should get the same relief as the appellants in the Civil Appeal which arose out of SLP No. 16646 of 1995. It was further observed that “once they were all in one cadre, the distinction between direct recruits and promotees disappears at any rate so far as equal treatment in the same cadre for payment of the pay scale given in concerned. The birth marks have no relevance in this connection. If any distinction is made on the question of their right to the post of Data Processing Assistants they were holding and to its scale- which were matters common to all of them before the impugned order of the Government of India was issued on 2.7.1990, then any distinction between Data Processing Assistants who were direct recruits and those who were promotes, is not permissible. We, therefore, reject the respondents’ contention”.

(emphasis supplied)”

28. We find no error in the aforesaid analysis of the Tribunal and we accept the same. Higher grades of pay could not have been claimed with retrospective effect from 01.01.1986 in cases involving creation/re-designation of the posts and the fitment of the incumbents on those posts, as the same required a conscious governmental decision.

29. We find that the Tribunal while dismissing the aforesaid applications of the writ petitioners / applicants has not gone into the issue as to whether their claims for grant of the revised pay scales w.e.f. 01.01.1986 was based merely on the basis of re-fixation/revision of pay scales, or on the basis of re-designation of posts i.e. creation of posts; upgradation of pay scales, and; assessment of their respective cases for grant of the higher/revised grades/pay scales and designations. The grant of the notional relief, if any, to the individual writ petitioners would depend on the examination of the aforesaid issue in respect of each of the writ petitioners.

30. While examining the cases of the petitioners for grant of the new EDP pay-scales w.e.f. 01.01.1986 and not 11.09.1989, the decision of the Supreme Court in ***The Secretary, Madras Civil Audit & Accounts Association and Anr. Etc.*** (supra) would have to be kept in mind and the revised pay-scales cannot be claimed by those who are placed in the higher grades/redesignated posts as a

result of their fitment in those posts on account of their higher experiences and educational qualifications and on the basis of their assessment on merit.

31. Consequently we partly allow these petitions and remand these cases back to the Tribunal to examine each of the cases in the light of our aforesaid observations and in the light of the decision of the Supreme Court in ***The Secretary, Madras Civil Audit & Accounts Association and Anr. Etc.*** (supra), and if the writ petitioners/applicants are found so entitled, to grant them notional re-fixation of pay from the appropriate dates and actual re-fixation of pay / pension along with arrears from the period beginning one year before the filing of the original applications by each of the writ petitioners.

32. With the aforesaid directions we dispose off these writ petitions leaving the parties to bear their respective costs.

VIPIN SANGHI, J.

DECEMBER 11, 2009
rsk/dp

ANIL KUMAR, J.