

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) Nos.10688-90/2005**

% **Date of Decision: 30.05. 2011**

Union of India through the Secretary, Ministry of Petitioners
Home Affairs & Ors.

Through Mr.R.V.Sinha Advocate with Mr.
A.S.Singh, Advocate for petitioners.

Versus

Akhil Bhartiya (Operational Staff) Association & Ors. Respondents

Through Mr. Shaju Francis Advocate and
Mr.Vishal Bhatnagar Advocates.

Sh.Suresh Babu, General Secretary,
Wireless Operator Directorate of Co-
ordination Police Wireless.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MS.JUSTICE VEENA BIRBAL

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| 1. | Whether reporters of Local papers may
be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be
reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioner, the Secretary, Ministry of Home Affairs & Ors.,
have challenged the order dated 20th September, 2004 passed by the

Central Administrative Tribunal, Principal Bench, New Delhi in OA No.3026/2003, titled as 'Akhil Bhartiya Operational Staff Association & Ors. v. Union of India through the Secretary, Ministry of Home Affairs & Ors.', allowing the original application of the respondents granting the benefits of 5th Central Pay Commission to them from 1st January, 1996.

2. The brief facts to comprehend the disputes between the parties are that the respondents challenged the order dated 10th January, 2002 and the order dated 8th April, 2003 whereby the petitioners had upgraded the pay scale of the respondents to the post of the Operational Staff viz. Wireless Supervisor, Technical Assistant and Senior Supervising Officer of the Directorate of Coordination Police Wireless (hereinafter referred to as 'DCPW') with immediate effect, but had declined to give the upgraded pay scale w.e.f. 1.1.1996, the date on which all Government servants had been granted the new pay scale by the 5th Central Pay Commission.

3. The respondents contended that even though the 5th Central Pay Commission had not made any recommendation regarding the posts in which the respondents were working i.e. no specific recommendations were made in the favor of the Group B, C & D services in Directorate of Coordination Police Wireless, however the 5th Central Pay Commission did make certain general recommendations with regard to the

rationalization of the pay scales of the direct entry grade of graduates in paras 43.15 and 43.16 (Vol.1).

4. According to the respondents, though subsequently, the pay scales were upgraded at par with the scale granted by the 5th Central Pay Commission from 10th January, 2002, however this benefit was conferred prospectively, and not w.e.f. 1st January, 1996.

5. By Office Order dated 10th January, 2002 re-structuring of Group B & C posts in the Operational and Technical Wings of the Directorate of Coordination Police Wireless was done. The Office Order dated 10th January, 2002 is as under:-

<u>“Operational Wing</u>		<u>Technical Wing</u>	
<i>Post</i>	<i>Pay Scale (Rs)</i>	<i>Post</i>	<i>Pay Scale (Rs)</i>
<i>Wireless Operator</i>	<i>5000-8000 (4000-6000)</i>	<i>Radio Technician</i>	<i>5000-8000 (4500-7000)</i>
<i>Wireless Supervisor</i>	<i>5500-9000 (4500-7000)</i>	<i>Technical Asstt/ Technical Asstt (Maint)</i>	<i>5500-9000 (4500-7000)</i>
<i>Senior Supervising Officer</i>	<i>5500-9000 (5500-9000)</i>	<i>Senior Technical Assistant</i>	<i>5500-9000 (5500-9000)</i>

2. This issue with the approval of MHA and IFD vide their Dy.No.38/Fin.IV/02 dated 8.1.2002.

6. Pursuant to Office Order dated 10th January, 2002 the respondents were placed in the corresponding scale w.e.f. 10th January, 2002 by order dated 8th April, 2003. Pursuant to the approval from the Ministry of Finance, upgradation of the pay scale of the posts Senior Supervising Officer/Senior Technical Assistant & Extra Assistant Director of the Directorate of Coordination Police Wireless was done from 8th April, 2003.

7. The respondents had contended that the pay scale of Directorate of Coordination Police Wireless was dealt with by the 5th Central Pay Commission in para 70.107 to 70.110 of the report. According to the respondents, 5th Central Pay Commission acknowledged that main issue concerning the Directorate of Coordination Police Wireless was (i) grant of Group A Status to Extra Assistant Director, (ii) up-gradation of the rank of Director to the level of Additional Director General (P) & (iii) creation of a post of Additional Director in the scale of Rs.4500-5700/- (Pre-revised). Thus, the 5th Central Pay Commission was concerned with the issues involved with the gazetted rank and issues concerning with non-gazetted Groups B, C & D were not specifically dealt with.

8. The plea of the respondents was that entry level Wireless Operators in Directorate of Coordination Police Wireless are recruited through direct recruitment, with Entry Level Qualification of B.Sc.

(PCM) and 9 months training in Wireless & Telecommunication Engineering.

9. The respondents also referred to para 43.15 & 43.16 of the 5th Central Pay Commission recommending rationalized and upgraded pay scales for Entry Level Graduates and Diploma holders and specifically recommended a higher scale of Rs.5000-8000/- w.e.f. 1st January, 1996 to different posts in other departments where Entry Level Qualification is B.Sc. The respondents also relied on the recommendation of 5th Central Pay Commission in the case of Assistant Sub Inspector (Wireless Operator) of Delhi Police and Andaman Nicobar Police whose duties and responsibilities are similar to Wireless Operators of DCPW and who had been recommended for the pay scale of Rs.5000-8000/- w.e.f. 1st January, 1996.

10. According to the respondents, since the Operational Staff (Wireless Operator, Wireless Supervisor, Technical Assistant and Senior Supervisor) had been left out by 5th Central Pay Commission, a representation was made on 7th March, 1997 and by further correspondence a comparison of DCPW, Telecom Wind (MOF) & Narcotics Bureau and Delhi Police/CPMF was also done to claim the upgraded scale of Wireless Operator to Rs.5000-8000/- and the pay scale of Wireless Supervisor/Technical Assistant to Rs.5500-9000/-

and that of Senior Supervising Officer to Rs.6500-10,500/-. The respondents also relied on another matter being O.A. Nos. 1003,1004,1005 & 1007/2000, of Radio Technicians of the Directorate of Coordination Police Wireless wherein the Central Administrative Tribunal, Principal Bench, by order dated 8th November, 2000 had held that even though there was a general recommendation in the 5th Central Pay Commission to rationalize the pay scale of Entry Level Diploma holders and Graduates to Rs.5000-8000/- however, the same was not done in the case of the applicants, and therefore, allowed the pay scale of Rs.5000-8000/- to Radio Technicians of Directorate of Coordination Police Wireless w.e.f. 1st January, 1996. Since by order dated 10th January, 2002 and 8th April, 2003 the revised pay scales were not given to the respondents from 1st January, 1996 but were rather given prospectively from 10th January, 2002 and 8th April, 2003, the respondents filed an OA being No.3026/2003 before the Tribunal.

11. The plea of the respondents was contested by the petitioners, contending inter-alia, that in the Operational Wing of Directorate of Coordination Police Wireless, the entry grade service is Wireless Operator and next promotional grades are Technical Assistant, Wireless Supervisor, Senior Supervising Officer and Extra Assistant Director. The petitioners also pointed out that in the Technical Wing, the entry grade service is Radio Technician and the next promotional grades are

Technical Assistant (Maintenance)/ Technical Assistant, Senior Technical Assistant and Extra Assistant Director.

12. The petitioners categorically asserted that the 5th Central Pay Commission did not give any specific recommendation about any Group B, C or D posts in the Office of the Directorate of Coordination Police Wireless, therefore, the pay scale of all the posts had been replaced by the standard pay scale defined by the 5th Central Pay Commission.

13. According to the petitioners, the matter was thereafter taken up on the representations of the respondents and other employees of Directorate of Coordination Police Wireless with the Ministry of Finance, Implementation Cell. The proposal was examined and the pay scale of Operational and Technical Wings of Directorate of Coordination Police Wireless was restructured and allowed with the following pay scale with prospective effect to the grade, as detailed hereinafter:-

“Operational Wing

<i>S.No.</i>	<i>Name of Post</i>	<i>Previous Scale</i>	<i>Revised Scale</i>
1.	<i>Wireless Operator</i>	<i>4000-6000</i>	<i>5000-8000</i>
2.	<i>Wireless Supervisor</i>	<i>4500-7000</i>	<i>5500-9000</i>
3.	<i>Senior Supervising Officer</i>	<i>5500-9000</i>	<i>5500-9000</i>

		<u>Technical Wing</u>	
1.	<i>Radio Technician</i>	4500-7000	5000-8000
2.	<i>Technical Assistant/ Technical Asstt (Maintenance)</i>	4500-7000	5500-9000
3.	<i>Senior Technical Assistant</i>	5500-9000	5500-9000

14. According to the respondents, the Senior Supervising Officer and Senior Technical Assistant had represented against the merging of the pay scale of their feeder cadre viz. Wireless Supervisor, Technical Assistant and Technical Assistant (Maintenance), and therefore, the matter was taken up with the Ministry of Finance, Implementation Cell and the following pay scale to the grades with prospective effect was allowed:-

<u>S.No.</u>	<u>Name of Post</u>	<u>Previous Scale</u>	<u>Revised Scale</u>
1.	<i>Extra Assistant Director</i>	6500-10500	7500-12000
2.	<i>Senior Technical Assistant</i>	5500-9000	6500-10500
3.	<i>Senior Supervising Officer</i>	5500-9000	6500-10500

15. The Ministry of Finance while granting the pay scale with the prospective effect also clarified the facts vide note dated 27th April, 2004 which is as under:-

“The Fifth Central Pay Commission had not made any specific recommendation with regard to upgradation of pay scales of the post of the petitioners. The issue was subsequently considered by the Government and appropriate upgraded pay scales were allowed in their case from a prospective date based on a proposal received from the administrative ministry with regard to cadre restructuring of these posts. As no specific recommendation was made by the Fifth Central Commission in the instant case and cadre restructuring was involved, the upgraded pay scales could be granted to the concerned posts with prospective effect only in accordance with the provisions of the CCS (RP) Rules, 1997. As such no arbitrary discrimination has been made by the Government whatsoever alleged by the petitioners in the instant OA.”

16. It was also contended that though standard pay scales were allowed from 1st January, 1996 however, the revision was done later on granting revised pay scale as a measure of re-structuring of cadre.

17. The pleas and contentions of the parties were heard by the Tribunal which passed the order dated 20th September, 2004 holding that admittedly the 5th Central Pay Commission while making recommendations, did not deal with the Group B, C & D Officer of the Directorate of Coordination Police Wireless. The Tribunal however, held that re-structuring in relation to organizational and functional set up means opening or closing of units or offices; revision of the organizational and functional set up; declaration of staff required; integration of posts, fixation of seniority and pay scales, integration of required personnel in the revised set up and issuance of appointment

orders in that behalf; declaration and demarcation of duties and responsibilities attendant to posts; declaration of posts equivalent to one another and any other matter that may be necessary or incidental to meet the organizational or functional needs. Considering the averments made by the petitioners in their counter affidavits and the note of Ministry of Finance which has been reproduced hereinabove, the Tribunal had held that it clearly shows that it is an up-gradation of pay keeping in view the fact that the 5th Central Pay Commission had not made any specific recommendation and that there was an urgent need to revise their pay scales. It was further held that revision was done in pursuance of the Fifth Central Pay Commission as the anomaly had to be removed and rejected the plea of the petitioners that there had been re-structuring. The Tribunal also placed reliance on P.U.Joshi & Ors. v. Accountant General, Ahmedabad & Ors., (2003) 2 SCC, 263 and also noted that it is competent to see whether the pay scales have been revised arbitrarily from a particular date or not. Since all other employees were given benefits from 1st January, 1996 after 5th Central Pay Commission report was received, therefore, there is no reason why these benefits could not be accorded to the respondents, and thus, granted them the revised pay scale from 1st January, 1996.

18. The petitioners have challenged the order of the Tribunal dated 20th September, 2004 primarily on the ground that revision of the pay

scale of various Wings of Directorate of Coordination Police Wireless was done considering various factors and it was not pursuant to the recommendation of the 5th Central Pay Commission and it was a subsequent decision of the petitioners by re-structuring the higher scale as per the provisions of CCS (RP) Rules, 1997. The petitioners emphasized that the 5th Central Pay Commission report was a complete report and it was not open to the Tribunal to substitute, alter or amend by substituting its view in any manner whatsoever. The petitioners also challenged the findings of the Tribunal that revision in pay scale was not due to re-structuring of the pay scale of existing cadre of Directorate of Coordination Police Wireless.

19. The learned counsel for the petitioners has also relied on Dr.V.P.Malik & Ors. v. Union of India, (1996) 1 SCC 454 holding that pursuant to a Committee report which is recommendatory in nature, a decision is to be taken for accepting or not accepting recommendations. If the decision to implement the report is taken in a year, the Court will not hold the time lag to be unjustified, nor could it be held that a choice of date for implementation of a recommendation of committee cannot be dubbed as arbitrary unless it is shown to be capricious and whimsical in the circumstances.

20. Reliance has also been placed by the learned counsel for the petitioner on (1996) 7 SCC 493, 'P.N.Puri v. State of U.P. & Ors.' holding that on the basis of the principle of equal pay for equal work, equation of pay scale is to be granted from the date of order and not from the date the pay scale came into existence.

21. In P.N.Puri (Supra), the employee had claimed equal pay to pay scale of a medical officer of Rs.2200-4000/- and there was a long controversy regarding the entitlement of the employees. The matter was referred to the anomaly committee which accepted in its proceeding dated 1.1.1995 accept new pay scale of different bodies including for the employees who had filed the writ petition and recommended to upgrade the said scale from 7th November, 1994. The Government had accepted the recommendation and had issued the order on 16th February, 1995. The employees who had filed the writ petition had sought payment of arrears from 1986. The Supreme Court had held that fixing of date in the circumstances was not arbitrary as the matter was referred to anomaly committee regarding fixing of the scale of pay. The Committee had gone into the question and had recommended the scale of pay to Rs.2200-4000/- w.e.f. 7th November, 1994 which was accepted by the Government and in the circumstances, it was held that these employees who had filed the petition were not entitled for the pay from 1986.

22. The petitioners have also placed reliance on (2008) 14 SCC 702, Government of Andhra Pradesh & Ors. v. N.Subbarayudu & Ors. holding that cut off date is an executive function based on several factors like economic conditions, financial constraints, administrative and other circumstances.

23. In N.Subbarayudu & Ors. (Supra), the order of the High Court had fixed the cut off date as 1.11.1992 as arbitrary and discriminatory regarding the entitlement of pension. The Supreme Court while setting aside the order of the High Court had held that the cut off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and attending circumstances which is within the domain of executive authority and Court should not normally interfere with the fixation of cut off date. The Supreme Court was of the view that the Court must exercise judicial restraints and must ordinarily leave it to the executive authority to fix the cut off date. The Apex Court had held that even if no reasons are given in the counter affidavit of the Government or executive authority as to why a particular cut off date has been chosen, the Court must still not hold that date to be arbitrary and violative of Article 14 unless the cut off date leads to some blatantly capricious or outrageous result.

24. Similarly in JT 2002 (5) SC 189 State of Haryana & Anr. V Haryana Civil Secretariat Personal Staff Association it was held by the Supreme Court that factors such as financial position of the government and the additional liability have to be kept in mind. Courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the government is patently irrational, unjust and prejudicial to a section of the employees.

25. Reliance has also been placed on behalf of the petitioners on (1995) 2 SCC 396, 'State of Rajasthan & Ors. v. Gopal Das', where prospective revision of pay scale was justified and it was said that it could not be held to be discriminatory merely because the pay scale of the categories of the employees left out from the general revision were at subsequent stage granted revised pay scale w.e.f. from the date of the general revision.

26. In Gopal Das (Supra), the pay scale of the Government servants in the state of Rajasthan were revised w.e.f. 1.09.1981. The pay scale of Upper Division clerks both in Subordinate Offices as well as in the Secretariat were revised but in the Secretariat they were given a revised pay scale better than that given in the Subordinate Offices. Later on, the demand of UDCs in the Subordinate Offices was also accepted by a Notification dated 23rd January, 1985 granting revised pay scale from

1st February, 1985 as had been given to Upper Division clerks in the Secretariat. The UDCs of the Subordinate Offices had challenged the discrimination before the High Court which was accepted by the High Court, however, the Supreme Court had set aside the order of the High Court holding that the revised pay scale in case of UDCs of the Subordinate Offices were made as a result of the recommendation of the Pay Commission. It was held that the State Government was justified in granting revised higher scale to the UDCs of the Subordinate Offices w.e.f. 1st February, 1985 though the UDCs of the Secretariat were granted higher pay scale w.e.f. 1st September, 1981.

27. In V.P. Malik (Supra), the writ petitioners were the members of the teaching specialist sub cadre of the Central Health Service under the Ministry of Health and Family Welfare and had made a grievance that the committee's report had not been implemented from the date of submission of the report (31st October, 1990), but from 1st December, 1991 which date according to them was arbitrary and would have an adverse effect on the seniority of some of them. The Supreme Court repelled the contentions holding that the date 1st December, 1991 had been fixed because of issuance of Office Memorandum containing the decision of the Government on the Tikko Committee recommendation on 14th November, 1991 and in the circumstances, the cut off date of 1st

December, 1991 was far from arbitrary and whimsical and was founded on logic.

28. Per contra, the learned counsel for the respondent has relied on a judgment of the Division Bench of the Allahabad High Court in Special Appeal (D) No.870 of 2009 where the UP Police Radio Department employees in the light of the recommendation of Pay Commission followed by the report of the Equivalence Committee who had been given the pay scale from the date of issuance of Government Order dated 30th October, 2004 and not from 1.1.1996 as given to other employees of the State Government from 1.1.1996 and the decision of the State not to grant the pay scale from 1.1.1996 was struck down by the Single Judge and appeal of the State Government was not accepted and dismissed.

29. This Court has heard the learned counsel for the parties in detail and has also perused the entire record of the Tribunal. The petitioners have submitted that it is an admitted fact that the Fifth Central Pay Commission did not give any specific recommendations with regard to Group B, C or D posts of the office of Director of Co-ordination Police Wireless/Petitioners, while giving its recommendations in Para 70.107. Therefore, the pay scales of all the posts in these groups had been replaced as per the standard pay scales defined by the Fifth Central Pay

Commission. Learned counsel further contended that it is only on account of the representations made by the aggrieved respondents and with the bonafide intention of settling the controversy that the petitioners had effected a cadre-restructuring which resulted in a revised pay scale. Which is why, this revised pay scale was implemented prospectively by the order dated 8th April, 2003 w.e.f. 10th January, 2002.

30. The contention of the petitioners is that since the revised pay scale of the respondents was a result of cadre-restructuring and not the recommendations of the Fifth Central Pay Commission, thus the implementation of the same should be prospective from the date of the respective orders, i.e. 10th January, 2002 and 8th April, 2003 and not retrospectively from the date of the Fifth Central Pay Commission i.e. 1st January, 1996. As per the learned counsel this aspect was even clarified in the communication by the Ministry of Finance clearly stipulating that due to cadre-restructuring the upgraded pay scales would be granted to the concerned posts with prospective effect only, in accordance with the provisions of the CCS (RP) Rules, 1997.

31. Per contra, the learned counsel for the respondents has contended that the revised pay scale was rendered in pursuance of the General Recommendations of the 5th Central Pay Commission,

specified in para 43.15 & 43.16 stipulating rationalized and upgraded Pay Scales for Entry Level Graduates and Diploma holders. This aspect was also duly highlighted by the respondents in their representations dated 7th March, 1997 which was made before the petitioners, and was subsequently accepted by them. However the benefit of the same has been given prospectively, which as per the learned counsel for the respondents is purely arbitrary and discriminatory, as the same pay scale had already been granted in favor of other Government employees of an equivalent rank, possessing the same qualifications as the respondents from the date of the 5th Central Pay Commission i.e. 1st January, 1996.

32. At this stage it will be imperative to review the relevant general recommendations of the 5th Central Pay Commission. The relevant portion is reproduced as follows:

Direct entry grade for graduates etc:

43.15: Presently incumbents of a large number of posts requiring qualifications of ordinary Graduation or a three year Diploma course in engineering fine art etc. are in different scales, i.e. Rs.1200-2040, Rs.1400-2300, Rs.1400-2600, Rs.1600-2660 and Rs.1640-2900. In order to bring about improvement, it is proposed to induct entrants to the posts requiring graduation, three year diploma course etc. as minimum entry qualification in the scale of Rs.1400-2300, Rs.1600-2660 and Rs.1640-2900. Most of the Jr. Engineers, Jr. Scientific Assistants, Technical Assistants, Investigators etc who are presently distributed in these different scales will be benefited by this measure of rationalization. However, there may still be some

exceptional cases where this improvement has not been effected. This has been due to various factors like job content, skill requirements, inter se horizontal and vertical relativities etc.

Direct entry grade for Engineering graduates, post-graduates CAs etc..

43.16: The scales of Rs.2000-3200 and Rs.2000-3500 are proposed to be merged into Rs.2900-3500. This scale has been identified as direct entry grade for degree holders in Engineering and law, Post graduates in any other subjects, Chartered Accountants, Cost and Works Accountants etc. However, there may still be cases where posts requiring any of the above qualifications have still been continued in scales like Rs.1600-2660 or Rs.1640-2900. This is due to the fact that apart from recruitment qualifications, other factors like job content, skill requirements, inter-se horizontal and vertical relativities etc have also been taken into consideration in the determination of pay scales of various posts. In certain cases upgradation to the scale of Rs.2000-3500 would result in a quantum jump over 2 or 3 intermediate scales, which has been generally avoided, keeping in view the need for not unduly disturbing existing relativities.

The learned counsel for the respondents has also referred to the recommendations of the 5th Central Pay Commission in Para 72.35 (Vol 2) in order to substantiate his argument. The relevant para is reproduced as follows:

72.35: The recruitment qualification prescribed for the post of Technical Assistant (6 posts) is Bachelor's degree in Physics, chemistry, Economics, Statistics, Technology or Diploma in Engineering and the posts are filled by direct recruitment. In the case of UDCs, the posts are filled up promotion from the grade of Lower Division Clerk-60 percent by non-selection method, and the remaining 40 percent by competitive examination held for Lower Division Clerks whose essential recruitment qualification is Matriculation. **We have made general recommendations**

for improving the pay scales and promotion prospects of ministerial staff in subordinate offices in the relevant Chapter. These recommendations would cover ministerial staff in Patent Office as well. The pay scale of Technical Assistants will also improve to Rs.1600-2600 in present terms, in view of our general recommendations on the initial pay scale of directly recruited diploma engineers/science graduates. In our opinion, the ministerial and technical streams should not be kept distant from each other.

33. A perusal of the recommendations of the 5th Central Pay Commission in Para. 70.107 specifically dealing with the issues concerning the petitioner's institution, clearly shows that the matters of Group B, C or D posts of the office of the petitioners had not been dealt with specifically. However this does not in any manner negate the general recommendations given by the 5th Pay Commission which clearly stipulates that the pay scales of the Entry Level Graduates and Diploma holders need to be rationalized.

34. This is also an admitted fact that the entry level Wireless Operator in DCPW are recruited through direct recruitment with Entry Level Qualifications being B.Sc (PCM) and nine months of training in Wireless & Telecommunication Engineering. Thus their claim for rationalization as per the recommendations of the 5th Central Pay Commission is justified. The respondents have further contended that the pay scales of Official in equivalent ranks having the same

qualifications were implemented since 1st January, 1996. The officials having equivalent ranks, who received the benefits are the Assistant Sub Inspector (Wireless Operator) of Delhi Police and Andaman Nicobar Police whose duties and responsibilities are similar to Wireless Operators of DCPW, and were awarded Pay scales of Rs. 5000-8000/- with effect from 1st January, 1996. Similarly the pay scale of Sub Inspectors (Wireless Operators) which is equivalent to the post of Wireless Supervisor/Technical Assistant of DCPW had been granted the Pay Scale of Rs. 5500-9000/- w.e.f. 1st January, 1996 and the Pay Scale of Inspector of Delhi Police and Andaman Nicobar Police which is equivalent to Senior Supervising Officer of DCPW had been upgraded to Rs 6500-10,500/- with effect from 1st January, 1996. Thus as per the learned counsel for the respondents the implementation of the revised pay scale prospectively from the date of the orders, in view of the above mentioned fact is purely arbitrary and discriminatory and a clear violation of Article 14 of the Constitution of India.

35. The Tribunal had observed that the main reason, as urged by the petitioners, for prospectively implementing the revised pay scale is on the ground that the same was effected in pursuance of cadre restructuring and not the recommendations of the 5th Central Pay Commission. However the Tribunal further observed that by merely stating the fact that there was cadre-restructuring the same is not

established. On lifting the veil, and evaluating the background in which the revised pay scales came into existence, the Tribunal was of the view that there was no cadre-restructuring as no changes had been brought about to the cadre, except for the revised pay scale. The Tribunal had further taken a clue from the clarification given by the Ministry of Finance, wherein it was clearly stipulated that the revised pay scale is basically an upgradation of pay keeping in view of the fact that no specific recommendations were made by the Fifth Central Pay Commission. Therefore, necessarily it is a revision that is in pursuance of the Fifth Central Pay Commission, as the anomaly had to be removed and not on account of cadre re-structuring as had been alleged by the petitioners. On the basis of facts disclosed before the Tribunal, it had rejected that restructuring of the cadre had been done.

36. Learned counsel for the petitioner has not been able to show any such facts and circumstances on the basis of which it can be inferred that cadre restructuring was effected, because of which the revised pay scales were implemented. When all the other employees of equivalent ranks had been given the benefit from 1st January, 1996 after the Fifth Central Pay Commissions Report was received, then there was no reason to not accord the same benefit to the respondents as well. Thus in the facts and circumstances merely by using the plea of cadre-restructuring, in the absence of any improvement in the cadre, or any

other factor which would demonstrate the cadre re-structuring, it cannot be accepted that the revision of the pay scale was on account of cadre re-structuring as had been alleged by the petitioners.

37. Reliance can be placed on Union of India and Anr. v. S. Thakur; 2008 (13) SCALE 277, wherein the Supreme Court held that although fixation of pay and date from which the benefit of revised pay scale would be admissible is the function of the Executive and the scope of judicial review of such an administrative decision is very limited but the Courts would interfere in such administrative decisions, if it found that such a decision is unreasonable, unjust and prejudicial to a section of employees. In the above noted matter in view of the fifth pay commission a Government order dated 16th October, 1998 was passed whereby 40 posts of Assistant Directors were placed in the pay scale of Rs. 12,000-16,500 corresponding to pre-revised scale of Rs. 3,700-5,000 and the remaining 12 posts were placed in the scale of Rs. 14,300-18,300 corresponding to pre-existing scale of Rs. 4,500-5,700 and re-designated as Joint Deputy Directors. The petitioners in that case had contended that the orders involved re-structuring of the Executive Cadre and redistribution of posts and therefore higher scales would be applicable only prospectively i.e. from 1st October, 1997. The respondent had retired from service as an Assistant Director (Executive) on 1st January, 2007 and he had prayed for the benefits of the

upgraded scale to him with effect from 1st January, 1996. The Tribunal had directed that the respondent be given the benefit of the upgraded scale from 1st January, 1996. The decision of the Tribunal was upheld by the High Court as well as the Supreme Court. While upholding the decision, the Supreme Court observed that there was no restructuring of cadre and redistribution of post and thus the decision to give the benefits of the upgraded scale with effect from 1st October, 1997, whereas benefit was awarded to other similarly situated employees with effect from 1st January, 1996 was clearly, unreasonable, unjust, arbitrary and prejudicial to the section of the employees. The relevant portion is reproduced as follows:

“6. The plea that as restructuring of cadre and redistribution of posts was involved in so far as the Assistant Directors were concerned and therefore the policy decision taken by the State Government to give benefit of upgraded scale to an Assistant Director (Executive) with effect from October 01, 1997 should not have been interfered with by the Tribunal and by the High Court is devoid of merits. There is no dispute nor there can be any, to the principle that fixation of pay and date from which the benefit of revised pay scale would be admissible is the function of the Executive and the scope of judicial review of such an administrative decision is very limited. However, it is equally well-settled that the Courts would interfere with the administrative decisions pertaining to pay fixation and pay parity as well as the date from which the revised pay scales would be made applicable if it is found that such a decision is unreasonable, unjust and prejudicial to a section of employees.

7. As observed earlier, no restructuring of cadre and redistribution of posts in regard to 40 posts of Assistant Directors was involved at all so as to justify the stand of the appellants to extend the benefits of revised pay scales of

Assistant Directors with effect from January 1, 1997. No other reason could be advanced by the appellants to justify their stand that the Assistant Directors were entitled to benefit of revised pay scale with effect from January 1, 1997. As the appellants were not required to undertake exercise of restructuring of cadre nor was it necessary to amend the recruitment Rules, the Assistant Directors forming part of the group of 40 to which the respondent belonged could not have been denied the benefit of revision of pay scale with effect from January 1, 1996, which benefit was awarded to other similarly situated employees with effect from January 1, 1996. As the decision to give benefit of revision of pay scale to the Assistant Directors with effect from October 1, 1997 was found to be unreasonable, unjust, arbitrary and prejudicial to the section of the employees, the Tribunal directed the appellants to grant benefit of revision of pay scale to the respondent with effect from January 1, 1996. The said decision was not found to be erroneous or illegal at all and therefore the High Court was justified in not interfering with the same while exercising powers under Article 226 of the Constitution.”

38. The case relied on by the respondents, ‘State of U.P. & Ors. v. Anand Kumar Mishra & Ors.’ Special Appeal (D) No. 870 of 2009 has similar facts as the present case. In this case, the employees of U.P. Police Radio Department had filed the writ to claim revised pay scale from 1.1.1996. In the light of the recommendations of the Fifth Pay Commission followed by the report of the Equivalence Committee, their pay scale had been revised but the benefit of the said pay scale was given from the date of issuance of Government Order dated 30.10.2004 and not from 1.1.1996 as given to the other employees of the State Government. The writ was disposed of with a direction to the State to

take decision in accordance with law. The State Government took a policy decision and held that the employees were not entitled to the revised pay scale from 1.1.1996 but from the date of the Government order. In the appeal filed by the aggrieved employees, the Appellate Court relied on an earlier case being Writ Petition No. 5092 (S/S) of 2005: 'Ghanshyam Singh and Anr. v State of U.P. and Ors.' where the Court had held that once the Equivalence Committee in pursuance to the Pay Commission's report had decided the revision of the pay-scale from 1.1.1996, then the grant of revised pay-scale to the petitioners from the date of the issuance of the impugned order dated 30.10.2004 appears to be an arbitrary act on the part of the State Government. It was further held that the right to livelihood is a fundamental right guaranteed under Article 21 of the Constitution of India and the revised pay- scale as per the Pay Commission, followed by the decision of the Equivalence Committee should be implemented equally for all the employees from the specified date and the State has no right to revise the pay scale from a different date than what has been recommended by the Equivalence Committee. In Anand Kumar Mishra's case (supra), the decision of Ghanshyam Singh (supra) was followed. The action of the State was held to be unreasonable and arbitrary, striking at the root of Article 14 of the Constitution of India. Since the other employees have been given the revised pay scale on the very same recommendation of the Pay Commission and Equivalence Committee w.e.f. 1.1.1996, there

was no justification for giving the benefit of the revised pay scale from the date of decision and not from 1.1.1996.

39. The facts of the present case reveals that the Directorate of Coordination (Police Wireless) clearly stipulated that a meeting was held on 30th November, 2000, wherein an evaluation of the current pay scales, the qualifications as well as the nature of work was done with regard to the recommendations of the 5th Central Pay Commission. The meeting notes shows that as per the opinion of the Deputy Director (Adm.) the 5th Central Pay Commission had recommended and notified the pay scales of Rs 5000-8000/- for entry level Graduates. Since the Wireless Operators of DCPW is also required to have the qualifications of B.Sc (PCM) it was opined that their pay scales may also be placed in the pay scale of Rs. 5000-8000/-. It was further opined that the grant of revised pay scale by the Ministry of Finance to the respondents should be implemented with effect from 1.1.1996, i.e., the date from which all other Govt. servants of equivalent rank of communication officials in the CPOs have been given higher pay scales by the Fifth Central Pay Commission and not from prospective effect, as it has held in para 7 of its recommendations undersigned by the Deputy Director, (Admn.), Director Police Telecommunications as under:

“7. In view of the above mentioned justification, the implementation of recommendation made by FCPC in para 43.15 only mitigate the hardship of DCPW partially. For

meeting natural justice to DCPW, at least the recommendation made by the FCPC for rationalization of pay scales at the entry level where the qualification has been fixed as Graduation/ Diploma in Engineering be implemented in respect of DCPW with effect from 1.1.1996.”

40. Thus it is apparent that the up-gradation of the pay scale was done in pursuance of the general recommendations of rationalization as proposed by the 5th Central Pay Commission, and it was not on account of any cadre-restructuring, which in any case has not been established by the petitioners.

41. In the circumstances the observation and findings of the Tribunal that judicial review does allow the Courts to check whether the date from which such scales have been given is arbitrarily fixed or not could be enquired by the Tribunal. The act of the petitioners in granting revision of pay scale from a prospective date under the shelter of cadre review which was not carried out, therefore could not be sustained and is arbitrary. Communication officials of equivalent rank in the CPOs, having the same qualifications and nature of work, as that of the respondents have received the benefits retrospectively while the respondents were granted benefits prospectively, without any proper rationale for doing the same and under the garb of cadre review which the petitioners have failed to establish. The learned counsel for the

petitioners have failed to show any such facts which would have established that in fact cadre review was carried out by the petitioners.

42. Thus, for the foregoing reasons, in the facts and circumstances, the learned counsel for the petitioners has failed to show any illegality, un-sustainability or perversity in the order of the Tribunal which will entail any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition in the facts and circumstances is without any merit and is liable to be dismissed. The writ petition is therefore, dismissed. Parties are however, left to bear their own costs.

ANIL KUMAR, J.

VEENA BIRBAL, J.

May 30, 2011

‘vk’