

In this writ petition, the petitioners have challenged the communication dated November 23, 2016 issued by the Under Secretary to the Government of India, Ministry of Shipping, to the Chairman, Kolkata Port Trust (KOPT), (hereinafter referred to as the impugned memorandum). The writ petition is based on the following facts.

2. The petitioners are Class I Officers of KOPT. Their service conditions are regulated by rules framed under the Major Ports Trusts Act, 1963. Earlier, the pay scales of the class I officers in KOPT were revised after every five years. Consequently, there was a pay scale revision in 1987 and 1992. From 1997 onwards, pay revision was effected after every ten years. By a memorandum dated June 6th, 2007, the Government of India, Ministry of Shipping, Road Transport and Highways, Department of Shipping Ports Wing, decided to constitute a Pay Revision Committee (PRC) to formulate proposals for the pay revision of Class I and II Officers of Major Port Trusts and Dock Labour Boards, to be effective from January 1, 2007. The terms of reference to the PRC, was to examine the structure of emoluments and conditions of service, taking into account the total package of benefits in cash and in kind available to Major Port Trust and Dock Labour Board officers upto and including the level of chairman, and to suggest changes which may be desirable and feasible on the expiry of the current pay structure, which was valid till 31 December, 2006. The PRC was further directed to reexamine the allowances paid to the said officers in addition to the pay and D.A and to suggest rationalisation and simplification thereof, with a view to promote efficiency, productivity and to achieve a degree of uniformity. It was further desired by the Central Government that while making recommendations on the above points, the PRC would follow the general guidelines relating to pay and allowances formulated by the Department of Public Enterprise for Public Sector Enterprises (PSE) executives who were in industrial D.A pattern and the committee was required to keep in view the economic conditions in the country and resources available at the disposal of the Port Trusts and Dock Labour Boards. The PRC was

asked to submit its recommendations within a year to the concerned Ministry for examination, consideration and approval of the Central Government.

3. The entry level pay scale of Class I Officers in Major Ports on January 1992 was Rs. 4350-175-7500. The same was revised with effect from January 1, 1997 to Rs. 9100-250-15100. This entry level pay scale for the years 1992 and 1997 was less than the pay scale of entry level class I officers in other public sector undertakings who enjoyed a pay scale of Rs 4800-8475 with effect from January 1, 1992 and Rs 10750-300-16750 with effect from January 1, 1997. The next pay revision was due on January 1, 2007. Prior to introducing a pay revision from January 1, 2007, the PRC was constituted by the Central Government.

4. The Committee submitted its summary of recommendations (in short the said recommendations). It appears that the said recommendations were made on the basis of the recommendations of the Justice Jagannadha Rao Committee on Revision of Pay and Allowances of PSE executives.

5. In Clause 10.8.2 of the said recommendations, the PRC recommended the pay scales for executives below the board level of Major Ports with effect from January 1, 2007.

6. The Committee recommended the removal of the non-standard pay scale of 9100-250-15100 and extension of pay scale of 10750-16750 to those category of officers. Consequently, wherever the pay scale of the feeder category and promotional posts fell on the same scale, the pay scale of the promotional category was recommended to be upgraded to the next higher scale.

Existing Pay Scale	Revised consequent to removal of non standard pay scale	Revised Pay Scale from 1.1.2007
9100-250-15100	10750-16750	20600-46500

7. In Clause 10.8.3 the PRC recommended the Fitment Formula as per DPE Guidelines.

8. By a memorandum dated July 14, 2010, the Ministry of Finance agreed to the recommendations of the PRC. The revised pay scale was to be implemented from 1.1.2007 but allowances were to be effective from the date of issue of the Presidential directive. It was further stated that the pay revision could be adopted subject to the criteria laid down in the DPE Guidelines. It was made clear that no budgetary support would be provided by the Government of India. The said memorandum was issued with the approval of the Finance Minister.

9. The Ministry of Shipping directed the implementation of the the revised pay scale recommended by the PRC. The Central Government on careful considerations of the recommendation of the PRC directed the revision of the pay scale of the Major Port Trusts and Dock Labour Boards by the pay revision order dated July 26, 2010. In clause 1.1 of the said order, it had been specifically stated that the Government had accepted the recommendation of the PRC, to do away with the pay scale of 9100-15100 and the extension of the pay scale of 10750-16750 to those category of officers. The pay revision order further stated that when the feeder category and promotional posts fell on the same scale, the promotional post may be upgraded to the next high scale.

Consequent to this decision, the existing and revised pay scale of various category of officers were to be given in the manner as provided.

10. In clause 2 of the said pay revision order, the Fitment Formula was provided, which was as per the recommendation of the PRC. Bunching increment was also provided for.

11. The revised scales were permitted by the Government of India from January 1, 2007, and the allowances were made effective from 26th July, 2010. The pay revision order dated July 26, 2010 was issued with the concurrence of the Ministry of Finance (Department of Expenditure) vide their memorandum dated July 14, 2010.

12. By a Memorandum dated August 3, 2010, the Government of India, Ministry of Shipping partially modified Clause 1.1 of the pay revision order dated July 26, 2010. It was provided that the replacement of non-standard pre revised pay scale of 9100-15100 by the standard pre-revised pay scale of 10750-16750 would be subject to the suitability of the incumbent to hold the upgraded pay scale. Apart from the aforesaid modification, the Ministry's letter/memorandum dated July 26, 2010 remained unchanged.

13. The respondent No.1, Kolkata Port Trust (in short KOPT) implemented the pay revision orders dated July 26, 2010, and August 3, 2010, giving effect to the replacement of the non-standard pay scale by extension of the standard pre-revised pay scale, notionally on December 31, 2006 and thereafter pay was revised from January, 2007 in accordance with the fitment formula. Previously, fitment was made from the pay point of the pre-revised scale to the corresponding pay point of the revised pay scale. An undertaking was given by the officers to refund excess payment, if any, made, due to such

erroneous assessment of such fitment. Consequently all excess payment made was recovered from those officers in 2011. This was informed by the Respondent No 1 to the Respondent No 2 by a letter dated December 16, 2010.

14. As all Major Ports did not implement the bunching of pay as per pay revision orders dated 26th July, 2007 and 3rd August, 2007 uniformly, the Respondent No.2 by an order dated November 20, 2014 constituted a two member committee comprising of the Chairman/MD Kamarajar Port and Chairman, New Mangalore Port Trust to look into the issue of granting bunching increments to officers of Major Port Trusts. They were required to ascertain how the revised scale of pay and bunching increments had been extended to the officers and then to arrive at a correct methodology for implementation of bunching benefits. The Committee filed its report along with a forwarding letter dated April 2, 2015. Upon going through the reasons given by the KOPT, the committee found that the benefit of upgradation of pre-revised pay scale of 9100-15100 to 10750-16750 given in the pay revision order dated July 26, 2010 was not withdrawn by the Pay Revision Order dated August 3, 2010 and the benefit of upgradation given by KOPT notionally, on December 31, 2006 was in accordance with the pay revision orders. The committee mentioned in the report that the extension of notional upgradation on December 31, 2006 in the pre-revised pay scale and thereafter the revision from January 1, 2007 was in keeping with the spirit of the pay revision order dated August 3, 2010. The committee opined that it was open to the ports to extend the benefit of upgradation either on January 1, 1997 or December 31, 2006 or on any date between and from January 1, 1997 to December 31, 2006. It was observed that though the benefit of upgradation from January 1,

1997 would be beneficial to the employees, it would impose additional financial burden on the Ports *vis-a-vis* notional extension on December 31, 2006. By notional fixation of pay due to upgradation, basic pay scale of officers in the scale of 9100-15100 was notionally brought to 10750-16750 on December 31, 2006. The Committee then went on to opine as to how officers drawing different basic pay in the range of 9100-10750 whose basic pay was fixed notionally at 10750-16750 on December 31, 2006, would get the benefit of clubbing. Having considered all the aspects, the committee considered the anomaly in clubbing benefits in the methodology followed by different Port Trusts and recommended that the actual pay drawn in the month of December 2006 in the non-standard pay scale of 9100-15100 should be taken to provide the benefit of bunching instead of the notionally fixed up-graded basic pay. This report was placed before the Department of Expenditure, Ministry of Finance.

15. The Under-secretary to the Ministry of Finance (Department of Expenditure) in a note sheet dated October 7, 2016 referred to the proposal for the replacement of pay scale of 9100-15100 by 10750-16750 and asked the Ministry of Shipping to follow the pay scales of the Department of Public Enterprises, as approved by the Finance Department by its memorandum dated July 14, 2010 and instructed the Ministry of Shipping that the pay in the revised applicable scale from January 1, 2007 should be fixed with reference to the actual pay (pre revised) drawn, by applying the fitment formula. This note sheet was issued on the basis of a handwritten note issued by the Director, Department of Expenditure. For the first time it was observed that the pay in the revised applicable scale would be fixed with reference to the

actual pay (pre-revised) drawn in the actual pre-revised scale as on December 31, 2006 (date of effect of revised scale being January 1, 2007). In the preceding paragraphs to the said handwritten note, it was opined that the Ministry of Shipping may be advised to strictly follow the pay scales of the employees under the DPE as approved by the Expenditure Wing of the Finance Department dated July 14, 2010 without any deviation. However, the notes dated October 5, 2016 and October 7, 2016 were contrary to the previous notes. The impugned memorandum dated November, 23, 2016 was issued by the Ministry of Shipping on the basis of the hand written note. The Under-Secretary to the Government of India, Ministry of Shipping on the advice of the Department of Expenditure (Ministry of Finance) issued the impugned memorandum directing that the revised applicable scale with effect from January 1, 2007 was to be fixed with reference to the actual pay (pre-revised) drawn on December 31, 2006, by applying the fitment formula indicated in the Pay Revision Order dated July 26, 2010 and order dated August 3, 2010. The Ministry was of the opinion that the pay of the officers working in the pay scale of 9100-15100 and 10750-16750 should be directly fixed to the pay scale of 20600-46500 with effect from January 1, 2007. Therefore, bunching benefits would not be available accordingly and the Ports were asked to initiate the process of recovery of the amount already paid and report to the Ministry by December 10, 2016.

16. Mr. Shakti Nath Mukherjee, learned senior advocate appearing for the petitioners submitted that gross disparity existed between the scale of pay of entry level Class I officers of KOPT and that of officers in other Public Sector Undertakings. Before the pay revision was effected on January 1, 2007, the

Central Government constituted the PRC to recommend revision of pay and allowances for officers with effect from January 1, 2007 and to address the issue of deprivation and/or discrimination of class I officers of Major Port Trusts *vis-a-vis* class I officers of other PSEs. The PRC termed the pay scale of 9100-250-15100 for every entry level class I officers of all Major Port Trusts, as a non-standard pay scale and the corresponding pay scale at entry level for Class I officers of other PSEs of 10750-300-16750 as standard pay scale. Thus, according to Mr. Mukherjee, the PRC took a conscious decision to replace such non-standard pay scale enjoyed by the petitioners with a standard pay scale enjoyed by class I officers of other public sector enterprises before effecting the pay revision on and from January 1, 2007, thereby restoring the uniformity in the pay scale of Port Officers vis a vis their counterparts in other PSEs. Consequently, wherever the feeder category and promotional posts fell on the same scale, the promotional post was recommended to be upgraded to the next higher scale. The PRC then revised the pay scale of 10750-16750 to the scale of 20600-47500 with effect from January 1, 2007, but did not recommend any corresponding revision of the non-standard pay scale clearly because the non-standard pay scale ceased to exist and there could not have been a pay revision from January 1, 2007 of a non-existent scale. By a memorandum dated July 14, 2010 the Ministry of Finance accepted the recommendations of the PRC and the pay revision order dated July 26, 2010 issued by the Ministry of Shipping was in consonance with the memorandum dated July 14, 2010. The Government clearly accepted the recommendation of the PRC to do away with the non-standard pay scale and extension of standard pay scale and then granting the revised pay scale of

20600-47500 from January 1, 2007. Mr. Mukherjee submitted that the revised pay of the petitioners was thus fixed by applying the fitment formula upon taking the notional upgraded revised basic pay on December 31, 2006 with corresponding DA and fitment benefit of 30% of basic plus DA. The Government also decided that the officers with lower basic pay who got clubbed with those getting higher basic pay in the existing scale, one increment in the revised scale would be granted for every 2 increments granted in the pre-revised scale. This method of bunching of increments was implemented to protect the pay of officers at senior stages of the pre-revised scale of pay. Although, on August 3, 2010, the Ministry of Shipping partially modified the memorandum dated July 26, 2010, but, according to Mr. Mukherjee, no alteration was made to the pay scale as the Ministry mentioned that the replacement of the pre-revised non-standard pay scale, that is 9100-15100 by standard pay scale of 10750-16750, would be subject to the suitability of the incumbent to hold the upgraded pay scale. Initially, the fitment was made from the pay point of the pre revised scale to the corresponding pay point of the revised scale during the year 2010 and an undertaking was taken from the petitioners for refund of excess drawal, if any, due to such fitment. Subsequently, the excess amount due to such erroneous assessment of fitment was recovered from the officers but such recovery did not have any connection with the subject matter of the instant case. Mr. Mukherjee further urged that none of the petitioners were unsuitable to hold the upgraded scale of pay and all of them were hence allowed to hold the upgraded scale of pay notionally on December 31, 2006 before their pay was fixed on the revised scale from January 1, 2007. He further submitted, that

the petitioners had either actually been promoted or had received benefits under the Assured Career Progression with effect from July, 2010 within 2014. Thus, the question of suitability introduced in the memorandum dated August 3, 2010 did not impact the petitioners. In 2014, the KOPT implemented the revised scale with the Ministry's Approval and recommendation with effect from January 1, 2007. Mr. Mukherjee submitted that in 2014 the Central Government constituted a 2 member committee to look into the matter of bunching and the committee upheld the process of notional upgradation and mentioned that the same was to bring uniformity and also to extend equity and fairness. The Committee recommended that the benefit of bunching should be extended based on pay in the pre-revised scale (9100-15100) considering the basic pay (in Pre-revised scale) earned by the petitioners before upgradation. This was based on the principle of notional fixation of upgraded pay. Therefore, according to Mr. Mukherjee, unless the petitioners were brought at par with other class I officers of other PSEs, at least within December 31, 2006, there could have been no uniformity in pay revision on and from January 1, 2007. Even in case of Central Government employees under Central Civil Services (Revised Pay) Rules, 2008 such upgradation and thereafter revision of pay scales were clearly recognised. Mr. Mukherjee submitted that the impugned memorandum dated November 23, 2016 which was issued based on a handwritten note of the Director, Ministry of Finance dated October 5, 2016 completely defeated the objective of the Government to maintain an uniformity in the pay of the petitioners *vis-a-vis* their counterparts in other public sector enterprises. The bunching effect, which was consequent to this upgradation was also denied contrary to the pay revision orders.

Although the Ministry of Shipping in concurrence with the Ministry of Finance had taken a final decision to replace the non-standard pay scale by the standard pay scale as specified in the pay revision orders dated July 26, and August 3, 2007, the impugned memorandum amounted to withdrawing the benefits of upgradation given to the petitioners based on the recommendations of the PRC. The order impugned, in effect, completely altered the pay revision order dated July 26, 2010 as modified on August 3, 2010. The Government denied the benefit of such upgradation from the non-standard pre-revised pay scale to the standard pre-revised pay scale retrospectively, which was recommended by the PRC and accepted by the Government, solely to remove the disparity in the pay scales of Class I officers of the Port Trusts. The petitioners got the benefit of standardization during 2014-2016 after the mechanism of removing the disparity was devised, approved and implemented by the Government itself. According to Mr. Mukherjee, the mention of the term “actual pay” as on December 31, 2006, in the handwritten note sheet which formed the basis of the impugned memorandum and also the decision for fixation of the revised pay accordingly, was contrary to the spirit and intention of the government to do away with disparity of pay scale of class I officers of Port Trusts vis a vis other PSEs and maintaining uniformity before revising pay scales from January 1, 2007. The Government had also accepted the grant of benefit of bunching increments in the pay revision order dated July 26, 2010 to protect the seniority of officers. Mr. Mukherjee further submitted that the impugned memorandum took away the right vested upon the petitioners to get the upgraded scale and consequent revision along with bunching benefits. He further submitted that by the order impugned, the fitment formula was re

written and the bunching benefit was totally done away with. The impugned memorandum was contrary to and inconsistent with the pay revision orders dated July 26, 2010 and August 3, 2010. Mr. Mukherjee further submitted that the consequence of the impugned memorandum would result in monetary loss and prejudice to the petitioners. Pay revision directly from the non-standard pre-revised scale to the revised scale from January 1, 2007 would also result in the subordinates (workmen) whose wages were fixed based on the collective bargaining power between workmen and management, getting a higher pay. Mr. Mukherjee relied on the decisions of **Bharat Sanchar Nigam Limited vs. R. Santhakumari Velusamy & Ors.**, reported in **(2011) 9 SCC 510**, **Tamil Nadu Electricity Board & Anr. vs. Status Spinning Mills Limited & Anr.**, reported in **(2008) 7 SCC 353**, **The Accountant General & Anr. vs. S. Doraiswamy & Ors.**, reported in **AIR 1981 SC 783**, **Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner, New Delhi & Ors.**, reported in **AIR 1978 SC 851** and **State of Punjab & Ors. vs. Jagjit Singh & Ors.**, reported in **(2017) 1 SCC 148** in support of his above submissions.

17. Mr. S.N. Mukherjee, learned senior advocate appearing on behalf of the respondent No.1 (KOPT) submitted that the Central Government was empowered to specify the salaries and allowances payable to different grades of employees of all major port trusts in terms of Section 23 of the Major Ports Trust Act, 1963 (hereinafter referred to as the said Act). Fixation of pay scale, replacement and upgradation of scale were matters of policy to be framed by the Central Government from time to time. He referred to Section 111 of the said Act. He submitted that the pay in the revised scale was applicable from January 1, 2007 and should be fixed on the basis of the actual pay in the pre-

revised scale drawn on December 31, 2006 as per the fitment formula. According to Mr. Mukherjee, the clarification was issued on August 3, 2010, and the decision for extension of the upgraded pay scale of 10750-16750 was modified within seven days. As a consequence, the pay of the petitioners were required to be directly fixed to the revised scale of Rs.20,600-46,500. According to Mr. Mukherjee, the two pay revision orders dated July 26, 2010 and August 3, 2010 were sought to be implemented on a provisional basis by KOPT, with an undertaking from the employees to the effect that if any excess payment was made and any anomaly noted subsequently, the excess payment would be refunded. On this basis, the amounts received by the employees, upon implementation of the pay revision orders dated July 26, 2010 and August 3, 2010 were fully recovered and no further payment was made upto 2014. Thereafter, payments were made after 2014 again upon obtaining undertakings. Mr. S. N. Mukherjee submitted that the question of replacement of pay scale of 9100-15100 by 10750-16750 notionally on December 31, 2006 did not arise. He submitted that the fitment formula in clause 2 of the Pay Revision Order of July 26, 2010 provided for basic pay as on December 31, 2006 and did not provide for any notional basic pay. Therefore, the fitment formula could only be applied on the actual pay as on December 31, 2006 particularly as the fitment formula was not modified by the pay revision order dated August 3, 2010. The other contention of Mr. Mukherjee was that the pay revision order dated August 3, 2010, indicated the scale of 9100-15100 to be revised directly to 20600-46500 and pay scale of 10750-16750 also to be revised directly to 20600-46500 and accordingly, paragraph 1.1 of the pay revision order dated July 26, 2010 was modified and the question of granting

the officers receiving pay of 9100-15100 a notional upgradation in the pay scale of 10750-16750 prior to applying the fitment formula to fit their pay in the scale of 20600-46500 was erroneous. He urged that the Chart in Paragraphs I and II of the pay revision order dated August 3, 2010 did not have a column indicating extension of pre-revised upgraded higher scale either actually or notionally. According to him, only if a person was found suitable for promotion to the upgraded scale by a selection process undertaken by the KOPT for such employees, the notional benefit in the pre-revised scale of 10750-16750 would be justified. Thus, allowing the petitioners a notional benefit in the upgraded scale of 10750-16750 on December 31, 2006 amounted to promoting them to the next higher scale from the feeder category which was not permissible in law and could not have been the policy of the government. He further submitted that neither the PRC's recommendations nor the recommendation of the two member committee had any legal sanctity or statutory force and were thus not accepted by the Government as also the respondent No.1. Mr. Mukherjee relied on the decision of **State of U.P. vs. Deep Narain Mishra & Ors.**, reported in **(2016) 14 SCC 207** and submitted that the impugned memorandum was issued in consonance with the pay revision order dated August 3, 2010 and the petitioners were thus required to refund the excess amount drawn by them due to erroneous fixation of such pay scales. He emphatically urged that the petitioners did not have a vested right to get the said notional upgradation.

18. Mr. Singhania, the learned Advocate for the Union of India submitted that under Section 23 of the said Act, it was only the Government of India which was empowered to fix the salaries and pay scales of the

petitioners. That although, the PRC had recommended removal of non-standard pay scale of 9100-15100 by 10750-16750 the Ministry of Shipping pursuant to a note dated July 29, 2010 clarified/modified the pay revision order dated July 26, 2010 by the order dated August 3, 2010. The revision from the scale of 9100-15100 to 20600-46500 was made directly. The order did not provide for replacement to the standard pre-revised scale either actually or notionally. He contended that the recommendation of the PRC to do away with the non-standard pay scale for entry level Class I officers in order to bring a uniformity was not binding on the government. He further contended that the government had never approved the increments or bunching benefits and had directed the Port Trust to keep all payments of bunching benefits in abeyance. Justifying the legality of the impugned memorandum on the ground that the same was issued in consonance with the pay revision order dated August 3, 2010, he contended that fixation of pay scale, upgradation thereof and consequent revision were policy matters exclusively within the domain of the executive and the Court in judicial review could not direct what scale should be given to employees of public sector enterprises. It was submitted by the learned advocate for the Union of India that the recommendation of the PRC was not binding on the government. The government in this case, did not accept the recommendation of first upgrading and then revising the scales of the petitioners. It was further submitted that the government was justified in directing recovery of excess payment based on the notional fixation of pay in the upgraded scale and bunching of increments in view of the undertakings given by the petitioners to refund any excess payment on account of erroneous fixation. It was also contended that the economic viability of the Port Trusts

was an important consideration for such upgradation and revision of pay scales and the government would be saddled with unnecessary financial burden due to such erroneous fixation. Learned advocate for the Union of India relied on the following decisions of **High Court of Punjab & Haryana vs. Jagdev Singh**, reported in **(2016) 14 SCC 267**, **State of West Bengal vs. Subhas Kumar Chatterjee**, reported in **(2010) 11 SCC 694** and **State of Punjab vs. Rafiq Masih**, reported in **(2015) 4 SCC 334** in support of his above submissions.

19. Heard the parties.

20. The point raised by the petitioners is that the impugned memorandum dated November 23, 2016 was a negation of the recommendation of the PRC to do away with the non-standard pay scale and extension of the standard pay scale to class I officers of all Major Port Trusts which had been accepted by the Government of India. It was urged that the direction to take into account the actual pay borne in the non-standard pre revised scale of pay while granting the revised pay scale from January 1, 2007 was arbitrary and perverse. In the light of the facts as enumerated above, the court has to examine whether the impugned memorandum is sustainable in law.

21. Admittedly, by an office memorandum dated June 6, 2007, the Government of India, Ministry of Shipping constituted the PRC to formulate the proposal for pay revision of Class I and Class II officers of Major Port Trusts and Dock Labour Boards with effect from January 1, 2007. The terms of reference was to examine the then prevailing structure of emoluments and conditions of service of officers of Major Port Trusts by taking into account the

total benefit in cash and kind available to them and to suggest changes which may be desirable and feasible on expiry of the pay structure which was valid till December, 2006. It was further provided in the terms of reference that while making the recommendations the committee would follow the general guidelines relating to pay and allowances formulated by the Department of Public Enterprises for executives in Public Sector Enterprises, who were in the industrial dearness allowances pattern. It is not in doubt that the Government of India wanted to do away with the disparity which existed in the total pay packet of the officers of Major Port Trusts qua their counterpart in other departments of public enterprises. It was the government itself which had decided to constitute a PRC which was assigned the task to suggest changes in the pay structure and allowances enjoyed by the Class I and Class II officers of Major Port Trusts. The committee was also required to suggest rationalization. The fact that up to December 2006, the class I officers of KOPT were not enjoying equal pay with the executives of other public sector enterprises is not disputed. It is an admitted position that the Ministry of Shipping itself felt the need to do away with the disparity and anomaly in the pay scales of the petitioners *vis-à-vis* their counterparts in other public sector enterprises. The PRC, so constituted, made the following recommendations:-

“10.8.2. The Committee recommends the following revised pay scales for Executives below Board level with effect from 01.01.2007.

	<i>Existing Pay scales</i>	<i>Revised Pay scales</i>
1.	8600-250-14600	16400-40500
2.	9100-250-15100	
3.	10750-300-16750	20600-46500
4.	13000-350-18250	24900-50500
5.	14500-350-18700	29100-54500
6.	16000-400-20800	32900-58000
7.	17500-400-22300	36600-62000

8.	18500-450-23900	43200-66000
9.	19500-500-25000	
10.	20500-500-26500	51300-73000
11.	22500-600-27300	

The Committee recommends removal of the non standard pay scale of Rs.9100-15100 and extension of the scale of pay of Rs.10750-16750 to these category of officers. Consequently, wherever the pay scales of feeder category and promotional posts fall on the same scale, the pay scale of promotional post may be upgraded to the next higher scale. As per Cadre Restructuring Orders issued by the Government, the officers presently drawing the non standard scale of Rs.19500-20500 should be brought to the pay scale of Rs.20500-26500.”

22. The PRC recommended revised pay scale of Rs.20600-46500 for Class I officers of major port trusts who were in the existing pay scales of Rs.9100-15100 and 10750-16750. The PRC while examining the pay structure, recommended the desirable change for consideration of the government, of first removing the non-standard pay scale of Rs.9100-15100 and extension of the standard pay scale Rs.10750-16750 to these class I officers and then revision in the scale of Rs.20600-46500 from January 1, 2007. It was also recommended that wherever the pay scale of feeder category and the promotional post fell on the same scale by such extension of the standard pay scale, the pay scale of the promotional post maybe upgraded to the next higher scale. It is an admitted position that in the earlier pay revision order effective from January 1, 1997 up to December, 2006, Class I officers at the entry level of KOPT were allowed a pay scale of Rs.9100-15100, although their counterparts, that is, Class I officers in other public sector enterprises were enjoying a higher scale. The committee also formulated a fitment formula which is quoted below:-

“10.8.3 Fitment Benefit

The Fitment Formula recommended by the Committee is the same as per DPE guidelines and the same is reproduced below:

A	B	C	D
Basic Pay as On 31.12.2006	+ Corresponding Dearness Pay Dearness Allowance AICPI of 2884 (base 1960=100) Total 78.2%	+ 30% of B	Aggregate Amount

The amount would be rounded off to the next ten rupees and pay fixed in the revised pay scale.

Where Executives drawing pay at two or more consecutive stages in an existing scale get bunched, then, for every two stages so bunched, benefit of one increment shall be given."

23. It was provided that while allowing the fitment benefit in the revised scale of Rs.20600-46500, the basic pay as on December 31, 2006 should be taken into account. It was also provided that where executives drawing at two or more consecutive stages in an existing scale get bunched, then, for every two stages so bunched, benefit of one increment shall be given. The PRC thought it fit that the desired change would be, first to do away with the non-standard pay scale of Rs.9100-15100 and bring such officers enjoying the non-standard pay scale, in the same scale as those Class I officers of other public sector enterprises, that is, to the scale of Rs.10750-16750 and then to revise the said scale to Rs.20600-46500. By a letter dated July 14, 2010 the Government of India, Ministry of Finance, Department of Expenditure accepted the recommendation of the PRC with regard to pay scale, fitment benefit, dearness allowances, etc. It was provided that the revised pay scale would be permitted from January 1, 2007 but the allowances would be effective from the date of issue to the Presidential directive. It was further provided that the pay revision may be adopted subject to the criteria of affordability as no budgetary support would be provided by the Government of India. The implementation

would be as per the prescribed DPE guidelines. The said order was issued with the approval of the Finance Department. Thus the recommendation of the PRC with regard to pay scale was accepted and further the revision of the pay scale from January 1, 2007 was also accepted. The relevant paragraphs of the letter dated July 14, 2010 are quoted below:-

“

*2. The recommendations made by the Pay Revision Committee of M/o Shipping have been examined in the D/o Expenditure and the following proposals have been **agreed to** :*

(i) The recommendations of the PRC in regard to pay scales.

(ii) The fitment benefit, dearness allowance, HRA/CCA, NPA, Pay fixation on promotion and annual increment which are proposed as per the DPE guidelines.

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5. The revised pay scale would be permitted from 1.1.2007 but the allowances would be effective from the date of issue of Presidential Directive by Ministry of Shipping as in the case of CPEs.

6. Further, the Pay Revision may be adopted subject to the criteria on affordability for implementation prescribed in DPE guidelines. No budgetary support would be provided by the Government of India.

7. This issues with the approval of the Finance Minister.”

24. Thus, admittedly the Ministry of Finance accepted the recommendation of the pay scale of the PRC which included removal of the non-standard pay scale by the standard pay scale and thereafter revision of the standard pay scale from January 1, 2007, subject to the condition that no budgetary support would be provided by the government of India. In concurrence with the order of the Ministry of Finance, the Ministry of Shipping by a pay revision order dated July 26, 2010 accepted the recommendation of the PRC to do away with the non-standard pay scale of Rs.9100-15100 and

extension of the scale of pay of Rs.10750-46750 to the class I officers of the major port trusts. The relevant portion of the paragraph of 1.1 of the said pay revision order is quoted below:-

“1.1 The Government has accepted the recommendation of the Pay Revision Committee to do away with the non-standard pay scales of Rs.9100-250-15100 and extension of the scale of pay of Rs.10750-16750 to these category of officers as recommended by the Committee. Consequently, wherever the pay scales of feeder category and promotional posts fall on the same scale, the pay scale of promotional post may be upgraded to the next higher scale. Consequent to this decision, the existing and the revised pay scales of various categories of officers would be as given below. The Cadre restructuring Orders and the Model Recruitment Rules may also be kept in view while implementing these orders.

S.no	Existing pay scale	Revised consequent to removal of non-standard pay scale	Revised pay scale effective from 01.01.2007
1	8600-250-14600	8600-250-14600	16400-40,500
2	9100-250-15100	10750-300-16750	20,600-46,500

25. The fitment formula and the bunching effect as recommended by the PRC were also accepted and the revised pay scale was allowed from January 1, 2007 but the allowances were made effective from July 26, 2010. The fitment formula is reproduced below:-

“2.0 Fitment Formula

2.1 Basic pay in the revised scale would be fixed as under:-

A	B	C	D
Basic Pay as On 31.12.2006	+ Corresponding Dearness Allowance at AICPI of 2884 (base 1960=100) Total 78.2%	+ 30% of A+B	Aggregate Amount

The aggregate amount would be rounded off to the next ten rupees and pay fixed in the revised pay scale.

2.1 The annual increment shall be at uniform rate of 3% of basic pay rounded off to the next ten rupees. The increment will be on the anniversary of previous increment.

2.2 In case of bunching where the officers with lower basic pay may get clubbed with those drawing higher basic pay in the existing scales, 1 increment in the revised scale should be granted for every 2 increments drawn in the pre-revised scale.”

The pay revision order dated July 26, 2010, was partially modified by order dated August 3, 2010. The relevant portion of which is quoted below:-

“(i) The revision of pay scales would be as follows:

<i>S.No</i>	<i>Existing Pay scales</i>	<i>Revised Pay scales effective from 01.01.2007</i>
<i>1.</i>	<i>8600-250-14600</i>	<i>16400-40500</i>
<i>2.</i>	<i>9300-250-15100</i>	<i>20600-46500</i>
<i>3.</i>	<i>10750-300-16750</i>	<i>20600-46500</i>
<i>4.</i>	<i>13000-350-18250</i>	<i>24900-50500</i>
<i>5.</i>	<i>14500-350-18700</i>	<i>29100-54500</i>
<i>6.</i>	<i>16000-400-22300</i>	<i>32900-58000</i>
<i>7.</i>	<i>17500-400-22300</i>	<i>36600-62000</i>
<i>8.</i>	<i>18500-450-23900</i>	<i>43200-66000</i>
<i>9.</i>	<i>20500-500-26500</i>	<i>51300-73000</i>

Accordingly, para 1.1 of the letter dated 26.07.2010 stands modified as above. All other upgradations except those reflected in above table would be decided in due course in consultation with Ministry of Finance. The replacement of non-standard pre-revised pay scale of Rs.9100-15100 and Rs.19500-25000 to Rs.10750-16750 and Rs.20500-26500 (pre-revised) would be subject to suitability of the incumbent to hold the upgraded pay scale.”

26. The pay scales of Rs.9100-15100 and 10750-16750 were both revised to Rs.20600-46500 on and from January 1, 2007. It was further provided that the replacement of the non-standard pay scale of Rs.9100-15100 by the standard pay scale Rs.10750-16750 would be subject to suitability of the incumbent to hold the upgraded pay scale. Undoubtedly, by this modification the Ministry of Shipping did not do away with the replacement of the non-standard pre revised pay scale by the standard pre revised pay scale, but, the conditions of suitability of the incumbents to hold the upgraded scale and affordability of the port trusts to grant such extension were incorporated.

Admittedly the petitioners were all found suitable to hold the upgraded scale (standard pre revised scale) as they had either been promoted to the said scale already or had been provided the said scale under the Assured Career Progression (in short ACP) from 2010. Moreover KOPT being the employer, had extended the upgraded scales to the petitioners having found them suitable. Suitability under such circumstances should be given a broad meaning and the argument of Mr. S.N. Mukherjee, learned senior advocate appearing on behalf of the KOPT that suitability would mean having been found suitable in a selection process cannot be accepted. All the officers borne in the pre revised pay scale of Rs.9100-15100 and Rs.10750-16750 were granted revised pay scale of Rs.20600-46500 on and from January 1, 2007. Thus these officers if not otherwise disqualified by reasons like pendency of disciplinary proceedings, remarks in the service book, break in service due to absence from work and the like, were entitled to extension of the standard pay scale. In the facts of this case, the KOPT as the employer had extended the standard pay scale to the petitioner notionally on December 31, 2006 and then brought them to the revised pay scale of Rs.20600-46500 by applying the fitment formula and also giving the bunching effect.

27. The KOPT after taking into account the suitability, affordability and out flow of the money from its coffer, notionally replaced Rs.9100-15100 by the pre revised standard pay scale of Rs.10750-16750 on December 31, 2006 and thereafter revised the said scale of Rs.10750-15750 to Rs.20600-46500 from January 1, 2007. No arrear payments were made and bunching effect in deserving cases were given, based on notional upgradation by applying the fitment formula. The Mumbai Port Trust also followed the same procedure.

The records reveal that there was some confusion between an earlier memorandum dated December 1, 2009 and the pay revision order dated July 26, 2010 with regard to the methodology to be followed in giving the bunching effect. However, records do not reveal that either the Ministry of Shipping or the Ministry of Finance or the Port Trusts ever had any objection or query with regard to the notional extension of the standard pay scale (pre revised) on December 31, 2006 to the petitioners.

28. The bunch of documents submitted by the KOPT and relied upon by them, containing the letters of the Financial Advisor and Chief Account Officer dated August 19, 2010, August 30, 2010, September 14, 2010, January 14, 2011, January 24, 2011, March 7, 2014, March 19, 2014 reflect such confusion. These documents reveal that there were queries and series of discussions with regard to the bunching effect and as such undertakings were obtained from the petitioners to the effect that in case of excess payment due to any anomaly the petitioners would be liable to refund/adjust the excess payment.

29. In the note sheet dated August 19, 2010, the Financial Advisor and Chief Account Officer, KOPT drew the attention of the chairman with regard to the implementation of the bunching effect in terms of Clause 2.2 of the order dated July 26, 2010. For convenience the same is quoted below:-

“Moreover, it has also been decided that in line with the clarification as received from the Ministry vide their letter No.A-29018/3/99-1 (Vol-11) dated 1st December, 2009, the payment as per clause 2.2 of the order dated 26-7-2010 should also be implemented. Accordingly, the fitment formula as per clause 2.0 of the aforesaid order of the Ministry dated 26-07-2010 is being applied and pay refixed in terms of clause 2.2 of the said order as per the approved modalities as mentioned above.”

30. The note sheet dated August 30, 2010 which was a follow up to the

previous note sheet contained the following observation:-

“In view of this, it is being categorically stated that this payment is being entirely on a provisional basis as per the orders of the Competent Authority and this aspect may please be clarified to the officers working under your administrative control. Please also note that any error and/or anomaly that may creep in due to this method will be subsequently rectified and may kindly be brought to the notice of the Senior Accounts officer (Pre-Audit) section for rectification.

Again, it is requested that individual undertakings from the officers may please be taken from your end (in the enclosed format) wherein the officers will give their written consent to refund either by adjustment against future payments due to them and/or otherwise as is decided by KoPT any excess payment that may have been made by this process of provisional enhancement of pay and allowances. This is mandatory and all such undertakings may please be forwarded to this office within this month for our office records. The enclosed format for the said undertakings will also be available in the KoPT website (www.kolkataportrust.gov.in).”

31. The provisional payment and undertaking referred to in the above note sheet logically flows from implementation of Clause 2 and 2.2 of the order dated July 26, 2010, with regard to bunching effect.

32. Thereafter, the finance department again generated a note sheet/communication to all heads of the department of KOPT. Relevant clauses of which are set out below:-

“(a) Since Para 2.2 of the order of the Ministry bearing No.A-29018/5/2006-PEI dated 26-07-2010 is effective from 01-01-2007 and bunching increment up to 01-01-1997 has already been allowed in appropriate cases as per this office previous circular no.Fin/679/P dated 04-02-2010, increments drawn from 01-0-1997 to 31-12-2006 (in the pre-revised scale) should only be considered for granting of increments in the revised scale, subject to maximum of 5 increments.

(b) In spite of following the procedure at (a) above, if an officer senior in the cadre as on 31-12-2006 and also drawing higher pay in the pre-revised scale less gets pay than his junior in the revised scale, the same should be addressed by upgrading the pay of the senior to the level of the junior in the cadre. In appropriate cases the G.I. date of senior should be advanced to the G.I. date of the junior in order to remove further anomaly. However, any clarification issued by the MOS in the matter of implementation of para 2.2 shall be final and binding.

Accordingly, you are requested to issue necessary instructions to prepare the RSs of the officers under your administrative control as per the decisions (a) and (b) cited above, and submit the same to the Pre-Audit section for verification and passing of the same.

It may be noted in this context that from the difference of pay and allowances for the month of July, 2010 which is payable in the middle of September, 2010, the excess payment arising out of bunching effect exceeding 5 increments received by the concerned officers in their salary for August, 2010 will be recovered.”

33. The note sheet generated on January 14, 2011 contained the steps to be taken by the KOPT with regard to the bunching effect which is set out below:-

“The bunching effect given from 01.01.2007 will be withdrawn from the salary of Class – I & II officers in the current month pay (January, 2011 payable on 01.02.2011) but those officers who are actually eligible to get bunching effect as per para 2.2 of the present pay revision order will continue to get the bunching effect as described in the said para.”

34. The communication dated March 7, 2014 issued by the Secretary General Administration Department of KOPT, reflects that a core committee consisting of senior officers, was constituted to look into the matter of payment of bunching increments to the officers of KOPT consequent on revision of their pay and allowances with effect from January 1, 2007. The committee submitted its report and suggested stepping up of basic pay of senior officers to address the anomalies arising out of bunching increments. The recommendation of the core committee is reproduced below:-

“15. Accordingly, the Core Committee has finally recommended as follows:

(i) Based on the principles enumerated above, bunching benefits @ one increment in the revised scale for every two increments drawn in pre-revised scale, subject to maximum 5 such increments, are recommended to be extended to all stages of those scales of pay where at least 2 stages are bunched/clubbed.

(ii) Based on the principles enumerated above, benefits of stepping up are recommended to be extended to all eligible officers, whether bunched or not, provided he physically draw less basic pay as on 1.1.2007 in the revised scale of pay than his corresponding junior officer, whether bunched or not, where junior officer may be in lower scale of pay or same scale of pay after upgradation, in entire KoPT (irrespective of Departments and Divisions), in terms of OM No. H-13/2001-DPE- (WC) dated 27.11.2012 of DPE.

(Incorporating the aforesaid recommendations, the Core Committee has prepared tables for all scales of pay of officers and those are enclosed to its report.)

(iii)

(iv)

(v)

(vi) While implementing bunching increments and/or stepping up of pay w.e.f. 1.1.2007, for re-fixation of pay, provisions under relevant paras (i.e. paras 3.1 and 3.2) of pay revision order dated 26.7.2010 are be re-exercised/followed.

16. A copy of the Core Committee's report is placed at flag 'B'. The committee has also observed that MACP has no bearing on bunching increments as the same will be allowed from 1.1.2007, whereas MACP came into effect from 26.7.2010."

35. The note sheet generated by the Secretary dated March 6, 2014 which has been annexed to the bunch of documents produced by the KOPT, shows that the bunching of increments by the KOPT was in concurrence with the recommendation of the core committee and the methodology was to be accepted in principle by the Chairman vide his note dated March 7, 2014. The communication dated March 19, 2014 from the Financial Advisor and Chief Account Officer to all heads of the department of the KOPT also deals with a clarification with regard to the grant of bunching increments to the eligible officers on revision pay of allowances with effect from January 1, 2007. The analysis of the note sheets and other communications would categorically show that the KOPT was faced with a problem with regard to bunching of pay

but implementation of Clause 1.1 of the order dated July 26, 2010, as modified by the order dated August 3, 2010, with regard to notional upgradation of the non-standard pre revised scale to the standard pre revised scale on December 31, 2006 was never in doubt and was well accepted by all.

36. Records further reveal that the Ministry by a letter dated November 20, 2014 constituted a two member committee comprising of the Chairman/MD Kamarajar Port and Chairman, New Mangalore Port Trust for looking into the issue of the bunching and the said committee after considering the issue of bunching submitted its report on April 2, 2015. In the report, the committee accepted the benefit of notional up gradation of the non-standard pay scale to the standard pay scale and the relevant paragraph are quoted below:-

“After going through the reasons given by the Kolkata Port Trust it was found that the benefit of upgradation of the pay scales 9100-15100 to 10750-16750 given in the pay revision order dated 26.7.2010 was not withdrawn in the pay revision order dated 3.8.2010 and therefore, the benefit of upgradation extended by the Kolkata port trust is in accordance with pay revision order dated 26.7.2010 and 3.8.2010. The extension of upgradation benefit with effect from 31.12.2006 in the pre-revised pay scales and thereafter extending the benefit of pay revision from 1.1.2007 is in accordance with the spirit of the order dated 3.8.2010 that stipulates to replace the non standard pre-revised pay scales and didn’t stipulate the timing of giving the benefit of the upgradation.

.....

In view of this, it was open to the Ports to extend the benefit of upgradation either on 1.1.1997 the date from which the notional pay scale was introduced or 31.12.2006 or any date from 1.1.1997 to 31.12.2006. Kolkata Port Trust had extended the benefit of upgradation notionally on 31.12.2006 and thereafter given the benefit of pay fixation as per the fitment formula issued in the order dated 26.7.2010. Here the word ‘notionally’ means the officers in the pay scale of 9100-15100 had drawn the basic pay for the month of December, 2006 in the said scale before giving the benefit of upgradation. The benefit of upgradation was given on 31.12.2006 and the basic pay in the upgraded scale was considered as notional basic pay for the purpose fitment. It was also ascertained from the Kolkata Port Trust that the officers holding pay scale of 9100-15100 retired on 31.12.2006 were not given the retirement benefit in the notionally fixed

basic pay in the upgraded scale. It was also found that though extension of the upgradation benefit from 1.1.1997 or any other date would be beneficial for the employees, it would have additional financial burden on the Ports vis-à-vis extending it on 31.12.2006 notionally. Due to notional fixation of pay due to upgradation, the officers drawing the basic pay from 9100 to 10750 in the pay scale 9100-15100 were notionally fixed at the basic pay of 10750 and thereafter the benefit of pay revision was extended to them.

.....

The Committee after going through the office order relating to pay revision dated 26.7.2010, 3.8.2010, 19.7.2013 and 19.1.2015 recommends that –

1. The benefit of bunching may be extended to the officers holding the pre-revised scale 9100-15100 and 19500-25000 considering the basic pay drawn by them in the said pre-revised scale before upgradation, subject to fulfilling the requirement of the provision of clause 2.2 of the Pay revision order dated 26.7.2010 read with the clarification of the Anomaly Committee dated 26.2.2013.

2. The benefit of bunching as per the bunching guidelines given in para 2.2 of the pay revision order dated 26.7.2010 may be extended to the officers given the pay scale of 51300-73000 and above in the pay revision order dated 26.7.2010.

3. As regards to the benefit to the marine officers as the clause 1.3 and 1.4 of the Pay revision order dated 26.7.2010, since it has been kept on hold by the Ministry in their letter dated 19.1.2015, as and when implemented, the recommendation given at para 1 above may be extended to them.”

37. Thus the contention of Mr. Mukherjee about the entitlement of KOPT to recover the excess amount paid to the petitioners on account of notional upgradation on the basis of these undertakings has no basis as the undertaking were all with regard to implementation of bunching increments.

38. The impugned memorandum does not state that the implementation of the recommendation of the PRC was made without assessing the suitability of the officers or the financial outflow. Moreover Government of India has not given any financial assistance for such upgradation. Rather, the papers filed by KOPT contain note sheets which mention that suitability was taken into consideration. Also, the financial out flow was considered and on that basis

only, notional upgradation on the last day of 2006 was made so that retired persons and existing officers would not have to be given arrear pension and arrear salary respectively. Records also do not reveal that there was ever any reason to revisit the procedure for implementation of Clause 1.1 of the pay revision orders dated July 26, 2010, and August 3, 2016, with regard to replacement of the pre revised non-standard pay scale by the standard pre revise pay scale notionally on December 31, 2006. Nor have the respondents, in the course of arguments, raised any question with regard to the correctness of the bunching effect given to some of the Class I officers as per the fitment formula on the principle of notional upgradation. The department of expenditure's note annexed to the writ petition as annexure p-8, which forms the basis of the impugned memorandum also shows that the report of the two member committee on the bunching effect was under consideration before the said department but the department without considering the said report strangely took into consideration the proposal for replacement of the non-standard pre-revised pay scale by the standard pre-revised scale which had attained a finality upon implementation by the KOPT. The Department of Expenditure made its recommendation as follows:-

*“Ministry of Finance
Department of Expenditure
(E-III-A Branch)*

Ministry of Shipping may please refer to the proposal for replacement of non-standard pay Scale of Rs.9100-15100/- in respect of officers of major Port Trusts and Dock Labour Boards (DLBs).

2. The proposal has been examined in this Department in this regard, Ministry of Shipping is advised to strictly follow the pay scales as in the case of DPE and as approved by this Department vide U.O. No.392/EV/2010 dated 14-7-2010 (F/AA) without any deviation since the organization is following the DEP pay scales. Ministry of Shipping may also refer to 'X' of para 5 on pages 61/N of their file that pay in the revised

applicable scale is fixed w.r.t the actual pay (per-revised) drawn in the fitment formula. This may be kept in view.

This issues with approval of JS (Personnel).”

39. In the same note sheet the Director, Department of Expenditure gave a hand written note stating *inter alia*, that the pay in the revised scale should be fixed with reference to the actual pay (pre revised) drawn in the actual pre revised scale as on December 31, 2006 as per the fitment formula. For the first time, the Department of Expenditure came up with the above direction, although in the letter dated July 14, 2010, the recommendation of the PRC with regard to pay scale was accepted and the same was implemented by the pay revision orders dated July 26, 2010 and August 3, 2010, which categorically recommended that replacement of the pay scale of Rs.9100-15100 by the standard pay scale of Rs.10750-16750 would be subject to suitability of the officers and affordability of the KOPT. The KOPT keeping in mind the suitability and the affordability, that is, the financial outflow, notionally brought the petitioners to the scale of Rs.10750-16750 on December 31, 2006 and then gave them the revised pay scale of Rs.20600-46500 on and from January 1, 2007. Thus, when the only issue before the department of expenditure, Ministry of Finance, was to consider the report of the two member committee filed on April 2, 2015, with regard to the bunching effect and implementation thereof, the withdrawal of the benefit already conferred upon the petitioners without any reason, is arbitrary. The impugned memorandum states that the fixation of pay of the incumbents working in the pre revised non-standard pay scale of Rs.9100-15100, in the revised scale and the issue of bunching increments were considered by the Ministry and the Department of

Expenditure. The Department of Expenditure had advised that the revised pay scale would be fixed on the actual pre revised non-standard pay scale drawn on December 31, 2006 and consequently no effect of bunching would be given. Recovery of money from those officers who had been given the benefit of bunching was also directed. It appears from the said memorandum that the respondent No.2 had mis-directed itself completely and had retrospectively modified the entire provision of Clause 1.1 of the pay revision orders dated July 26, 2010 and August 3, 2010. Extension of the standard pay scale of Rs.10750-46750 notionally on December 31, 2006 to the officers who were enjoying Rs.9100-15100 (pre revised pay scale, was never disputed or disallowed by any of the orders or communications of the KOPT, the Ministry of Finance and the Department of Expenditure. While considering the recommendation of the two member committee with regard to the bunching effect in terms of the reference made by the government by letter dated November 20, 2014, the respondent No.2 for the first time took a completely different stand. The impugned memorandum amounted to annulling the Governments' own acceptance of Clause 1.1 of the pay revision orders dated July 26, 2010 and August 3, 2010.

40. In this case, the government itself constituted the PRC in order to rationalize and examine the pay scale enjoyed by the class I and II officers of the major port trust vis-à-vis their counterparts in other public sector enterprises and to make changes for removal of any anomaly in the pay scale. The government was always conscious of the inequality in the pay which existed in the major port trusts and decided to eliminate such anomaly and referred the matter to the PRC. The PRC, an expert body, upon consideration

of the pay scale etc. made a recommendation for replacement of the non-standard pre revise scale of Rs.9100-15100 by the standard pay scale of Rs.10750-16750 and then revision of said scale to Rs.20600-46500 on and from January 1, 2007. This recommendation was accepted by the government and in Clause 1.1 of the pay revision order dated July 26, 2010, provided for extension of the scale of Rs.10750-16750 to those officers and then revision thereof to Rs.20600-46500 from January 1, 2007. However, the said clause was partially modified and the Clause of 1.1 was amended/modified by the order dated August 3, 2010, which is once again quoted below for convenience:-

“In partial modification of this Ministry letter of even number dated 26th July, 2010, the recommendations of the Pay Revision Committee in respect of Class I & II officers of Major Port Trusts and Dock Labour Boards, as approved by Ministry of Finance, after applying the conditions of affordability in respect of both i.e. pay scales and other allowances are as follows:

(i) The revision of pay scales would be as follows:

S.No	Existing Pay scales	Revised Pay scales effective from 01.01.2007
1.	8600-250-14600	16400-40500
2.	9300-250-15100	20600-46500
3.	10750-300-16750	20600-46500
4.	13000-350-18250	24900-50500
5.	14500-350-18700	29100-54500
6.	16000-400-22300	32900-58000
7.	17500-400-22300	36600-62000
8.	18500-450-23900	43200-66000
9.	20500-500-26500	51300-73000

Accordingly, para 1.1 of the letter dated 26.07.2010 stands modified as above. All other upgradations except those reflected in above table would be decided in due course in consultation with Ministry of Finance. The replacement of non-standard pre-revised pay scale of Rs. 9100-15100 and Rs. 19500-25000 to Rs. 10750-16750 and Rs. 20500-26500 (pre-revised) would be subject to suitability of the incumbent to hold the upgraded pay scale.”

41. Where an action of the executive is arbitrary, it is implicit in it that

such action was violative of Article 14 of the Constitution of India. In **Maganlal Chhagganlal (P) Ltd. vs. Municipal Corporation of Greater Bombay**, reported in **AIR 1974 SC 2009**, it was emphasized that “Article 14 enunciated a vital principle which lay at the core of our republicanism and shone like a beacon light pointing towards the goal of a classless egalitarian socio-economic order.” It was further said that the equality clause intended to strike at arbitrary and capricious actions of the executive.

42. In **Maneka Gandhi vs. Union of India**, reported in **AIR 1978 SC 597**, it was observed that Article 14 strikes at arbitrariness in State action and ensured fairness and equality in treatment. The principle of reasonableness, which legally as well as philosophically, was an essential element of equality or non-arbitrariness pervaded through Article 14 like a brooding omnipresence. If state action was found wanting in reasonableness the same was invalid under Article 14. Reasonableness in executive action was the demand of Article 14.

43. In **Shrilekha Vidyarthi vs. State of U.P.**, reported in **AIR 1991 SC 537**, the Apex Court held that requirement of reasonableness and non-arbitrariness were inherent in Article 14 and the principle of rule of law should apply to all state action. Determination and execution of policies although, was a matter within the domain of the executive, with which Court should not generally interfere, yet the policy and its execution must be consistent with the law. Arbitrariness, irrationality, perversity and *mala fide* would render the policy unconstitutional. In **Shrilekha (supra)** the Apex Court observed that the question whether an impugned action was arbitrary or not was ultimately to be answered in the facts and circumstances of a given case. An obvious test

to apply was to see whether there was any discernable principle emerging from the action and whether the test of reasonableness was satisfied. An action uninformed by reason was arbitrary and thus violative of Article 14.

44. The arbitrariness doctrine can now be invoked for any failure on the part of the executive to base an action on good reason. This new approach has widened the scope of application of Article 14 as one need not allege discrimination *vis-à-vis* others.

45. These principles should now be applied to the present case. Pay fixation is essentially an executive function, ordinarily undertaken by an expert body like a Pay Commission whose recommendations are entitled to great weightage though not binding on the government. That is not to say that the Court has no jurisdiction, and the aggrieved employee has no remedy if unjustly treated by arbitrary state action.

46. It is legally settled that recommendation of the Pay Commission is binding only upto the extent accepted. Reference is made to the decision of **Confederation of State Government Employees, West Bengal & Ors. vs. The State of West Bengal**, reported in **2018 SCC Online Cal 5897** and the relevant portion is quoted below:-

“47. It is the age old settled principle of law that the recommendation made by the Pay Commission is not binding upon the Government and non- acceptance of the recommendation does not amount to violation of Article 14 or 16 of the Constitution of India, but in the event reference is made in respect of all employees of the Government concerned and it accepts the recommendations of the Pay Commission, it is bound to implement those recommendations in respect of all employees of the Government concerned. In this context, the observations of a Constitution Bench of the Hon'ble Supreme Court made in Purushottom Lal Vs. Union of India, reported in (1973) 1 SCC 651, is noteworthy and relevant portion of the above decision is quoted below :-

"15. Either the Government has made reference in respect of all Government employees or it has not. But if it has made a reference in respect of all Government employees and it accepts the recommendations it is bound to implement the recommendations in respect of all Government employees. If it does not implement the report regarding some employees only it commits a breach of Articles 14 and 16 of the Constitution. This is what the Government has done as far as these petitioners are concerned." (Emphasis supplied)"

47. Even if Courts cannot enforce such a recommendation of the Pay Commission by issuing a Writ of Mandamus, yet the government having referred the matter to the PRC in order to bring uniformity in the pay scale and having accepted such recommendation by issuing orders dated July 26, 2010 and August 3, 2010 and KOPT having allowed notional extension of the standard pre-revised scale of 10,750-16,100 cannot now deny the same by issuing the impugned memorandum subsequently, thereby causing serious prejudice to the petitioners. Subsequent direction for recovery in this case is also not permissible in law.

48. A writ court is not so much concerned with the decision but with the decision making process. So long as the procedure adopted by the authorities for arriving at a decision is fair, free from arbitrariness and is in consonance with the principles of natural justice, the High Court in exercise of jurisdiction under Article 226 of the Constitution of India will be slow to interfere. However, in this case the Government accepted the recommendation of the PRC with some modifications, that is, suitability of the officers and affordability of KOPT. The impugned memorandum was issued out of the blue, without any occasion for such reconsideration and the Government made a paradigm shift in its stand. The impugned memorandum does not disclose why the recommendation of the PRC was reconsidered, revisited and the pay

revision orders were differently interpreted contrary to the earlier position. Moreover, reasons for disagreeing with the expert body like the PRC has also not been stated. Withdrawing the benefits already given by the KOPT to the petitioners without any reason is wholly irrational and arbitrary. The impugned memorandum issued by the Government of India, Ministry of Shipping does not indicate any reasons as to why the said decision was arrived at, which had the effect of completely doing away with the recommendation of the PRC and also cancelling the implementation done by the KOPT upon considering the suitability of the petitioners and its financial overflow. It is on record that the Government of India did not lend any budgetary support.

49. The Government has the power to frame policies under section 111 of the said Act. The Government had itself framed a policy to do away with the disparity in pay between the Class I and Class II officers of all Major Port Trusts vis-a-vis their counter parts in other PSEs and grant a pay revision. In furtherance to this policy, the PRC was constituted. The recommendation of the PRC was accepted by the government. The pay revision orders were issued and implemented. The government later, took a completely contrary stand and denied the benefit of such recommendations with retrospective effect by issuing the impugned memorandum. The Government cannot go back on its earlier decision by urging that the memorandum impugned was issued by way of a clarification to the policy. A policy cannot be retrospective in its operation, to the detriment of the petitioners. It is also not the case of the respondents in the impugned memorandum that the incumbents were neither suitable nor eligible to hold the upgraded pre-revised scale. The entire fund had flown from KOPT and the government had not given any budgetary support. KOPT

extended the benefits upon considering their financial burden and taking into account the suitability of the officers. Note sheets filed by KOPT indicate that suitability and affordability were taken into account. The respondents have also not urged the point of financial constraint or losses incurred by KOPT which would be a hindrance towards implementation of the pay revision orders dated July 26, 2010 and August 3, 2010. As per Section 23 of the said Act, the central government grants sanction to the Board of Trustees for preparing and publishing a schedule of its employees along with their salaries, allowances and posts. Such sanctioning process of the central government has not been either curtailed or usurped by KOPT in anyway while implementing the said recommendation and the pay revision orders. The said section cannot be used as a shield to justify the arbitrary decision of the respondents Nos. 2 and 3 to withdraw the benefit given and recover the excess money paid. The argument of the respondents that as the Government of India has the power to sanction the schedule of the employees of Port Trusts and in exercise of such power the impugned memorandum was issued, is unacceptable, inasmuch as, the denial of the recommendation of the PRC, without any reasons and contravention to the pay revision orders dated July 26, 2010 and August 3, 2010 issued by the Government itself, is wholly arbitrary and unreasonable. Such action does not satisfy the test of reasonableness in executive action. The said pay revision orders not only permitted extension of the pre-revised standard scale but also made provisions for giving the bunching benefit in appropriate cases.

50. The decisions cited by the respondent nos. 2 and 3 are not applicable in the facts of this case. In both **Jaydev Singh (supra)** and **Rafiq**

Masih (supra) the Apex Court laid down the principles with regard to recovery of money wrongly paid to the employees by the employer. According to the respondents, as the petitioners had given an undertaking to refund any excess amount paid, the cases of the petitioners were thus covered by the exceptions enunciated in these decisions and the direction for recovery in the impugned memorandum was sustainable in law. In my opinion, when the very decision of the Government dated November 23, 2016 is found to be irrational, arbitrary and without reasons, the question of recovery of the money paid to the petitioners does not arise. Moreover the records reveal that the undertakings were given with regard to the implementation of clause 2.2 of the pay revision order in relation to bunching increments. The decision of **Subhas Kumar Chatterjee (supra)** also does not help the respondent nos 2 and 3 in the facts of this case. There is no quarrel with the proposition of law that the recommendation of the PRC is not binding and the Government can reject the same. It is also not disputed that the writ court cannot declare what scale should be paid to the petitioners. However, in this case, the fact situation is different, inasmuch as, the government had accepted the recommendations of the PRC, the KOPT implemented the pay revision orders and thereafter the impugned memorandum was issued after six years, which amounted to retrospectively withdrawing the benefit which had been conferred upon the petitioners. The impugned memorandum is not clarificatory in nature and cannot have retrospective effect. It does not disclose any reasons and it has nowhere been urged by the respondents that the recommendations of the PRC had been rejected by the respondents. The respondent Nos.2 and 3 have always instructed that DPE guidelines should be followed. It is not the case of

the respondents that DPE guidelines have not been followed in this case. The records do not remotely suggest that the KOPT had acted contrary to the rules, policies or pay revision orders. Neither any reasons have been assigned as to why the steps taken by KOPT was considered to be erroneous. The impugned memorandum is totally unspeaking and without any rational basis. When records do not speak for itself, reasons cannot be supplemented or supplied by affidavits or arguments from the bar. The pay revision orders demonstrate that the PRC's recommendations was accepted by the government and the impugned memorandum, if allowed to stand, will amount to retrospective withdrawal of the benefit of upgradation conferred upon the petitioners on the basis of the pay revision orders. This will amount to monetary loss, inasmuch as, another pay revision has also come into effect in 2017. Moreover, the respondents have not denied the contention of the petitioners that the impugned memorandum, if implemented, the subordinate workmen would be getting higher pay. This situation is not permissible either.

51. Once the government has accepted the recommendation as discussed herein above, the same is binding on them, and they cannot shift their stand and retrospectively take away the benefit extended. The impugned memorandum also does not disclose any reasons for such deviation and the same smacks of arbitrariness and *mala fide* thus, being violative of the Article 14 of the Constitution of India and subject to judicial scrutiny. The impugned memorandum is quashed and set aside. In view of the setting aside of the order impugned memorandum, the petitioners will continue to enjoy the pay scales as revised by the KOPT by granting the benefit of notional upgradation to the standard pre-revised scale on December 31, 2006 and then revision

from January 1, 2007 in terms of the pay revision orders as discussed earlier. Subsequent pay revisions will be done accordingly.

52. This writ petition is, thus, allowed. GA 2 of 2020 is disposed of.

53. There will be, however, no order as to costs.

Urgent photostat Certified Copy of this judgment, if applied for, be given to the parties, on priority basis.

(Shampa Sarkar, J.)