

No.11024/26/2006-SSS
Government of India
Ministry of Statistics & Programme Implementation

Sardar Patel Bhavan, Sansad Marg,
New Delhi 110 001

Dated: 28 March, 2011

ORDER

Sub: CAT, PB, New Delhi order dt. 22.10.2010 in OA No.2131/08(Amit Kamal &Others vs. UOI), OA No.2186/2008 (O.P. Gupta & Others Vs. UOI), OA No.2645/2008 (Rajendra Prasad & Others Vs. UOI) & OA No.35/2009 (N.Venkata Rao & Others vs. UOI)

Shri Amit Kamal & Others, filed OAs No. 2131/08,2186/08,2645/08 &35/09 before the Hon'ble CAT(PB), New Delhi, against the order dated 29.08.2008 regarding fixation of pay under rule F.R.22(1)(a)(ii) at the time of their absorption and appointment to the non-functional post of S.I.Gr.I, w.e.f. 1.4.2004. It was ordered by the Deptt.vide order dated 2.8.2006 that excess payment already made was to be recovered as per rule from the salary of the incumbents.

2. The Hon'ble CAT (PB), vide their order dated 3.10.2008 stayed the recovery. Now, after hearing the Counsel on both sides, all the four OA's 2131/08, 2186/08, 2645/08 and 35/09 have been disposed of by a common order dated 22.10.2010 as follows:

“Resultantly, we partly allow the OA directing the respondents to reconsider the claim of the applicant in right perspective and on consideration of the contentions and factual aspects of the matter, which have surfaced during the litigation before us a speaking order shall be passed within three months from the date of receipt of a copy of this order. It goes without saying that if a decision is taken not to recover excess payment it shall be binding on the respondent's vis-à-vis the applicants and those who have retired during this interregnum to whom the amount shall be refunded within the above period.”

3. In order to reconsider the cases as directed by Hon'ble CAT in the back- ground of the order dt.2.8.2006 of the Dept. for recovery of excess payment and fixation of pay under FR 22(1)(a)(ii) it is stated that the decision was based in the light of common order dt. 28.7.2005 passed by the Hon'ble CAT in OAs. 1607/04 with OA No.2030/04 stating as follows :-

“.....OA Nos. 2030/2003 and 1607/2004 are partly allowed. We do not see any definite assumption of duties and responsibilities of higher nature of assignment to the change from functional scale to non-functional scale one. The condition precedent for invoking FR 22(1) (a) (1) is assumption of duties and responsibilities of higher nature, which is lacking. Accordingly, decision of the respondents to invoke fixation of pay under FR 22(1) (a) 1) through their OM is certainly in violation of FR as well as DOP&T, OM dated 22.05.1989.....Impugned orders are set

aside. However, the respondents are at liberty to re-examine the entire matter, in the light of our observations while taking a decision to fix the pay of the applicants in non-functional scales, by passing a detailed and speaking order within six months from the date of receipt of a copy of this order”.

4. The SSS, issued an office order dated 2.8.2006 for fixation of pay of all the incumbents of SSS absorbed/appointed to S.I.Gr.III and Gr.I non-functional posts, (including the SSOs of CSO) in accordance with FR 22(1)(a)(ii). This had resulted in recovery on the officers who were posted in the offices other than CSO but the same was not effected in CSO. After issuing a show-cause notice to the applicants in pursuance of directions of Hon'ble CAT in OA No.2304/06, 109/07 and 646/07, the matter was referred to DOPT and M/O Law.

5. Accordingly, with the concurrence of DOP&T and M/O Law a speaking order dated 29.8.08 for fixation of pay of applicants under FR 22(1)(a)(ii) in respect of S.I.Gr.I (non-functional) was as ordered vide this Ministry's order dated 2.8.2006. This order was issued after giving due notice to the applicants and examining their contentions for fixation of pay under FR 22(1)(a)(i). These were examined by the Competent Authority and were rejected on the following grounds and communicated to them vide this Ministry's communication dated 18.12.2007.

a) There has not been any increase in the duties and responsibilities of erstwhile Senior Investigator (Applicants of the OA Nos.2304/2006, OA No.646/2007 and OA No.109/2007) after re-designation as Statistical Investigator Grade I due to induction in SSS cadre as they were merely absorbed and placed in the non-functional scale of Rs.7450-11,500 while performing the same functions and responsibilities as were being discharged prior to absorption. Since there has been no assumption of higher duties and responsibilities on absorption in SSS, there is no justification in giving them the benefit of pay fixation under FR 22(1)(a)(i) which is admissible only on assumption of higher duties and responsibilities on promotion to a functional post.

b) The applicants are absorbed and appointed in a non-functional post and accordingly their pay now being fixed is as per the rules in force and also in compliance of the Hon'ble Tribunal judgement order dated 28.7.2005 as well as 11.10.2007 and also in conformity with DOP&T O.M. dated 22.5.89 and 10.8.07.

6. In the light of order dated 22.10.2010 passed by the Hon'ble CAT, the matter has been reexamined. The observation made by Hon'ble CAT in para-6 of the order dated 22.10.2010 mentioning that department had earlier in July 2005 treated the S.I. Gr.I as functional post is based on the O.M.No.12013/1/2004-SSS, dated-30.06.2004 to the extent that all the four grades of SSS were functional for fixation of pay under ACP scheme. However this O.M. was challenged in CAT and CAT ordered that pay in non-functional post may not be fixed under FR 22(i)(a)(i) and department was advised to reconsider the ACP issue. A Writ Petition was subsequently filed in Delhi High Court against the CAT order and the same has been disposed of with directions to consider ACP of SSS through the Anomaly Committee mechanism, which is still under consideration. So far as absorption of incumbents in S.I.Gr.I(Old) is concerned department has not accepted it as a functional post. It is further submitted that fixation of pay in S.I. Gr.I(Old) has already been considered by the department and all participating

offices were advised to fix the pay of S.I.Gr.I(old) under FR 22(1)(a)(ii) vide O.M.No.12013/1/2004-SSS, dated 02.08.2006. On the basis of the same pay in S.I.Gr.I (old) have already been refixed in most of the non-CSO offices and recovery has also been effected. It is stated that almost all the applicants have already been promoted to JTS Grade of ISS and there is no factual change in the rule position or function of applicants when they were working as S.I. Gr.I(Old) in pay scale of Rs.7450-11500/-. As such pay of S.I. Gr.I (old) including applicants may be fixed under FR-22(1)(a)(ii) w.e.f.1.4.2004 and excess amount already paid may be recovered in lump sum.

7. In view of the foregoing, in super session of all earlier orders of this Ministry, and in compliance of the judgement dated 22.10.2010, it is reaffirmed that the applicants in the above OAs will be governed by the pay fixation under Rule FR 22(1)(a)(ii) at the time of their absorption and appointment to the non-functional post of Statistical Investigator Grade I w.e.f. 1.4.2004, and the excess payment already made shall be recovered as per rule from the salary of the incumbents, after giving due notice.

8. All participating Ministries/Departments/Organizations may take immediate action for re-fixation of pay of the incumbents under intimation to this Ministry.



(Arvind Kumar)
Joint Secretary to the Govt. of India

All the Applicants in the above 4 OAs

All the participating Ministries/Departments/Organizations.

✓ Computer Centre, R.K Puram, New Delhi with the request to place the above order on the official web site of the Ministry under Miscellaneous link.

LIST OF APPLICANTS IN OA 35/2008,2186/2008, 2465/2008, 2131/2008

DA No.	S.N	Name	Address
35/2008	1	N.Venkata Rao	R/o 199-MIG, Balaji nagar Colony, Kukatpally, Hyderabad.
	2.	Bijoy Kumar Shrivastava	R/o Qr.No.IV/10 (Old), DGMS Colony, Karmik Nagar More, P.O.I.S.M. Dhanbad.
	3.	Birendera Kumar Mishra,	R/o Qr. No.III/4, New DGMS Colony, Saraidhela, Dhanbad.
2186/2008	4	Om Prakash Gupta	R/o, 91/22, Patel Marg, Mansarover Jaipur-20(Raj)
	5	P. Dhayalan	R/o 40/37, Punitha Antonier Street, G KM Colony, Chennai-6000082.
2645/2008	6	Rajenda Prasad	R/o 27/126, Vishwas Nagar, Delhi.
	7	U.S. Rajput	R/o S.III/350, Sadiq Nagar, New Delhi-110049.
	8	Kalicharan	R/o 125, Ashoka Enclave-III, Sector, 35, Faridabad.
2131/2008	9	K.C. Rathore	R/o341/36-b, Bagh Kare Khan, Kishan Ganj, Delhi-110007.
	10	Sh. Amit Kamal	S/o, Sh. N.P. Verma, R/o,flat No.5, T. Market, 649, Timarpur Delhi - 110054
	11	Sh. M. A. Khan	S/o, Sh. Abdul Wahid , R/o, Flat No.5, T.Market Srinivaspuri New Delhi - 110065
	12	Ms. Poonam Gupta	W/O, Shri Ajay Kumar Gupta R/o, D-4/111, Sec-8, Rohini Delhi - 110085
	13	Sh. Satyender Kumar	S/o, Sh. Bhagwati Prakash R/o, 658/9 Krishna colony Gurgaon - 122001
	14	Smt. Swaran Kanta Grover	W/o, Shri Mahender Kumar Grover R/o, B - 121, Phase IV Ashok Vihar Delhi- 110052
	15	Sh. Khem Chand	S/o, Sh. Ram--Phal R/o, L - 157, Sarojini Nagar New Delhi 110023.

16	7	Sh. Malkhan Khan	S/o, Sh. Late Dulla Khan, R/o, D- 87, Gali No. 11 Near masjid Old Mustafabad Delhi - 110094
17	8	Sh. Bodh Raj Sharma	S/o, Sh. K. L. Sharma, R/o, 547, Vikas Kunj, Vikaspuri, New Delhi -- 110018
18	9	Sh. Chattar Singh	S/o, Sh. Late Shri Kishan Lal R/o, 143, Housing Board Colony Gurgaon-122001
19	10	Sh. Ram Swaroop singh	S/o, Shri. Banshi Singh R/o, 107-A Sarpanch ka Bade Gali No. 2 Mandawali Delhi - 110092
20	11	Sh. Brij Mohan	S/o, Ami lal R/o, 169 Pocket C-11 Sector- 3, Rohini Delhi - 110085
21	12	Sh. M. S. Dhanda	S/o, Sh. Balle Singh R/o, B-1039, Avantika Rohini Sector - 1 Delhi -85
22	13	Sh. Promod Kumar	S/o, Shri Ram, R/o, D-51 / VG -5, Dilshad Colony Delhi 110095
23	14	Sh. M. Shiva Rama Raju	R/o, F-2 Sugana Tower, Ayyappanagar, Vijayawada-520007.
24	15	Sh. Raj lal	R/o, S/o, Shri Late Shri Krishan Chand R/o, Flat No. 317 Sector - 9 Pocket -2 DDA SFS Swarka New Delhi - 110075
25	16	Sh. Tanveer Ahmed Khan	S/o, Shri Chhote Khan R/o, 1-33/6, Batla House, Jamia Nagar Okhla New Delhi 110025.
26	17	Sh. K.K. Vasudeva	S/o, Shri Late Shri M. N. Vasudeva R/o, 77 / 4C, Kalibari Marg New Delhi - 110001
27	18	Rakesh Chandra Negi	S/o, Sh. B. S. Negi , R/O,15/263 Lodhi colony, New Delhi
28	19	Sh. Girdhari Lal	S/o, Shri Palyaba Ram, R/o, H. P. 22-B, Pitam Pura Delhi - 88
29	20	Sh. R. S. Mehra	S/o, Shri Lichhman Singh R/o, Sector-9, Block N 546 R. K. Puram New Delhi 110022.
30	21	Sh. M. P. Diwakar	S/o, Shri Hukam Singh R/o, A-2/445 Gali No.22, Subhash Kansal Marg, Harsh Vihar Delhi -93

31	22	Sh. D. S. Mishra	S/o, Shri K.K. Mishra R/o, B-80, Moti Bagh - I New Delhi - 110021
32	23	Sh. Govind Sharma	S/o, S. L. Sharma, R/o, 930 / 8, R. K. Puram New Delhi - 110022
33	24	Sh. S.K. Mittal	S/o, Shri D. R. Mittal R/o, A2/405, Milan Vihar 72, I.P. Extn.Parparganj Delhi - 110091
34	25	Smt. M. Lakhmi Rao,	W/o, Shri M.M. Rao, R/o, 165, B"Pocket. A. Ph- II Mayur Vihar Delhi -
35	26	Sh. V. Ethiraj	S/o, Shri Vijayaraghvan , R/o, 54- E, Pocket K, Trivani-II New Delhi
36	27	Sh. Abinash Kumar	S/o, Shri Late Sukhdev Sinha R/o, 20/15, Lodhi Colony New Delhi - 110003
37	28	Sh. Mahabir Singh	S/o, Shri Shankar Lal R/o, G-12/AC-348, Gaurence Lane-II Shalimar Garden Ext.II, Shahibabad (U.P.)
38	29	Sh. A. K. Chopra	S/o, Shri N. L. Chopra ,R/o, B-613, Panchwati Society Vikaspur New Delhi -110018
39	30	Sh. Ram Kesh	S/o. Shri Maha Singh R/o,200/9, Dayanand Colony. Gurgoan -(Haryana)
40	31	Sh. C.S.Bhatia	S/o, Shri Samparan Singh Bhatia R/o, G-41 B (Gali No. 5) Hari Nagar Jail Road New Delhi- 110058
41	32	Sh. Ravi Velivel	S/o, Late Sh. V.V.Anjanjjatu, R/o, O/6 West Patel Nagar IIInd floor, New Delhi 110008.
42	33	Sh. Rajendera Pathak	S/o, Shri Shikil Chand R/o, WZ- 39A, Adars gali Palam Village, New Delhi - 110045.
43	34	V.K. Khanna	S/o,late Sh.M.L. Khanna R/o, G- 11, Bali Nagar New Delhi- 110015.
44	35	Sh. V. K. Jain	R/o, H. No. 1423, K. Dutt Street Maliwada Delhi - 110006
45	36	Sh. R. M. Saxena	S/o, Shri Raj Krishna R/o, 15/272, Lodhi colony New Delhi 110003.

46	37	Sh. Mahesh Chand	S/o, Shri Dal Chand R/o, M. Gautam Puri Dadri Gautam Budh Nagar (U.P)
47	38	Smt. Asha Rani Sharma	D/o, Shri Ram Asra R/o, 616, Laxmi Bai Nagar New Delhi 110023.
48	39	Sh. Manjula Prashar	S/o, Shri Vijay Kumar, B- 3 /95C, Keshav Puram (Lawarance Road) New Delhi - 110035
49	40	Sh. Narender Singh	S/o, Shri Raghubir Singh , R/o. H. No. 2653, Sector - 23, Gurgoan (Haryana)
50	41	Sh. R.N. Rathee	S/o, Shri Ram Kishan Rathee , R/O 2916/9 sector, HUDA Bahadurgarh (Haryana)
51	42	Sh. Hari Dass	S/o, Shri Mukund Ram R/o, LIG, A-2, Balaji Apptt. Nehru Nagar Illrd A-4, Rakesh Marg Ghaziabad (U.P.)
52	43	Sh. Ghish Ram Janghu	S/o, Shri Chndgi Ram, R/o, Village Jat Shahpur. P.O. Inchhapuri Distt. Gurgoan (Haryana)
53	44	Sh. Atul Kr. Sharma	S/o, Shri. Ramanand Sharma, R/o, SE- 409, Shastri Nagar Ghaziabad (U.P.)201001
54	45	Sh. C. N. Sastry	S/o, Late Shri C. Jagannadham ,R/o, H.No.45-45-6 / 5, Swaroop Enclave Akkayyapalam, Visakhapatnam- 530016
55	46	Sh. S. K. Deshpande	S/o, Late Kashinathji Deshpande R/o M.M.S.Division, Indian bureau of Ministry Indira Bhavan Civil Lines Nagpur (Maharashtra)
56	47	Sh. L.S. Deswal	s/o Late Siri Chand, R/O I-3/108, Sector-16, Rohini, Delhi 110085.
57	48	Sh. B.B.S. Negi	S/o, Late Ishwardass Negi, R/O-1200-C, Sector-46(B), Chandigarh. - 173213