

(2011) 04 DEL CK 0249
In the Delhi High Court
Case No : Writ Petition (C) 4377 of 2003

K.L. Noatay

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 311, 311(2)

Citation : (2011) 182 DLT 313 : (2011) 5 ILR Delhi 167

Hon'ble Judges : Suresh Kait, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : K.N. Madhusoodhanan, in WP C 4377/2003, Rekha Palli, Punam Singh and Amrita Prakash, in WP C 10121/2009, for the Appellant; K.P.S. Kohli in WP (C) 4377/2003, R.V. Singh and A.S. Singh, in WP (C) 10121/2009, for the Respondent

Judgement

Pradeep Nandrajog, J.—The above captioned writ petitions under Article 226 of Constitution of India raise three issues; namely: (i) whether the administrative officers cadre of Border Roads Organization is required to be encadred as an organized cadre; (ii) whether the Petitioners in W.P. (C) No. 10121/1999 are entitled to the payment of special pay/headquarters allowance; and (iii) whether the initial pay of the Petitioner in W.P.(C) No. 4377/2003 in the post of Civilian Officer Grade-I (SG) was required to be fixed in terms of the provisions of F.R. 22(I)(a)(1).

2. Whereas issue No. (i) arises for consideration in both the writ petitions, issues Nos. (ii) and (iii) arise in W.P.(C) Nos. 10121/1999 and 4377/2003 respectively.

3. Since one of the issues which arise for consideration in the two captioned petitions is common, arguments were heard in both the matters on 07.04.2011 and decision was reserved. The present judgment decides both the petitions.

4. We shall be dealing with each of the issues separately.

Issue No. (I)

5. Border Roads Organization (hereinafter referred to as the "BRO") was set up in March 1960 for the expeditious execution of Road Works for development of communication in North and North - Eastern border areas of the country. BRO is a civil engineering institution responsible to provide civil (construction) engineering cover to the Armed Forces of India and under the administrative control of Ministry of Road Transport and Highways, Government of India. BRO is staffed with a combination of Border Roads Engineering Services (BRES) officers from General Reserve Engineering Force (GREF) and officers from Corps of Engineering of Indian Army. Broadly, there are four cadres in BRO; namely: (i) Civil Engineering Cadre; (ii) Electrical and Mechanical Engineering Cadre; (iii) Administrative Officers (Non-Technical) Cadre and (iv) Medical Cadre. Out of the said four cadres, two cadres namely, civil engineering cadre and electrical and mechanical engineering cadre have been encadred as organized cadres. The Petitioners in the two captioned writ petitions are/were the officers who are/were holding various Group A posts in the administrative officers cadre of BRO.

6. In the year 1991 the Petitioner of W.P.(C) No. 4377/2003, K.L. Noatay who was working on the post of Civilian Officer, Grade-I in the administrative officers cadre of BRO filed a petition bearing No. 3210/1991 under Article 226 of Constitution of India before the Gauhati High Court, inter-alia praying for the relief(s) that: (i) a direction be issued to the department to undertake a cadre review of the posts in the administrative officers cadre of BRO; and (ii) Petitioner K.L. Noatay be promoted to a post higher than that of Civilian Officer, Grade-I, with effect from the date his counterpart working in engineering cadres was promoted to a higher post and to grant him incidental benefits of such promotion.

7. Noting that there are no promotional prospects for the persons working as Civilian Officers in BRO, vide judgment and order dated 14.07.1995 the Gauhati High Court directed the department to undertake a review of the cadre of Civilian Officers i.e. administrative officers cadre to improve promotional prospects of the post of Civilian Officer in BRO. The relevant portion of the judgment of the High Court reads as under:

9. There is thus an immediate need to provide promotional prospects for persons working as Civilian Officers in the Border Roads Organization. The Respondents have stated in their affidavit-in-opposition that it has been decided to carry out the cadre review of the Civilian Officer and grant relief to them, but the matter has been dragged for too long time. Since such cadre review of the Civilian Officers of Border Roads Organization is long over-due and the Petitioner is about to retire from service within a year, I direct that the Respondents shall within a period of 3 months from the receipt of a certified copy of this order from the Petitioner review the cadre of Civilian Officers in the Border Roads Organization for the purpose of creating promotional posts for Civilian Officers and within two months thereafter consider the Petitioner along with others for promotion to such promotional posts which may be created by the Respondents. I further direct that while making such cadre review and granting promotional benefits, the

Respondents shall also decide as to whether, considering the fact that the Civilian Officers have stagnated in their respective posts for almost two decades, such promotional benefits should be given with retrospective effect. With these directions, the writ petition is disposed of, but there shall be no order as to costs.

(Emphasis Supplied)

8. Pursuant to the afore-noted directions issued by Gauhati High Court, on 08.11.1995 the department carried out a review of the posts in the administrative officers cadre of BRO.

9. All this while, the officers working in the administrative officers cadre of BRO were making representations to the department that in view of the lack of promotional prospects in the administrative officers cadre which has a sizeable strength inasmuch as it consists of 130 Group A officers and plays an important role in the working of BRO the same be encadred as an organized cadre.

10. In view of the representations made by the officers of the administrative officers cadre, on 30.09.2009 DDG (Pers), BRO forwarded a note to the Border Roads Development Board wherein he mooted a proposal for the encadrement of the administrative officers cadre of the BRO as an organized cadre. The said note reads as under:

1. Ref Sectt. BRDB ID Note No. PC-6 to BRDB/03/191/2007/GE-I dated 13 May 2009.

2. GO - 1349W Dir (Admn) RS Ghera of this Dte has submitted a representation requesting for making Administrative Officers Cadre as an organized cadre so that the benefits of Organized Cadre can also be extended to Administrative Officers Cadre, as in the case of Civil/E & M cadre.

3. The case has been examined in the light of the following aspects:

(a) Instruction from Deptt of Pers & Trng vide No. AB-14017/38/90-Estt (RR) dated 23 May 1990(F/B) which stipulates that all isolated posts should be encadred into Organized Cadre.

(b) 130 Group A Officers are on the strength of the Administrative officers cadre in the Organization. Organized services like Indian Supply Service, Indian Inspection Service, P & T Building Works Service, etc have less strength than that of Administrative Officer Cadre.

(c) In BRO, the Group A E&M Cadre who were having less strength (i.e. 117 Nos) had been made an Organized Service, during 1997.

(d) A model Organized Cadre should have the following level of posts.

Ideal

Holding

SAG (Jt Secy or equivalent)

Director (JAG)

JAG (Dy Secy or equivalent)

Jt Dir (JAG)

STS (US or equivalent)

SAO(STS)

JTS (Admn Offr or equivalent)

AO(JTS)

50% of JTS should be through direct recruitment.

(e) Presently in the Administrative officers cadre, the lower three levels are available as against the SAG level, two posts of Director are available which are lower than SAG level.

(f) In BRO there are broadly four arms/cadre of Officers:

(i) Civil Engineers

(ii) Mech Engineers

(iii) Medical Officers

(iv) Administrative Officers

(g) The cadres mentioned at (i) and (ii) of Para 3 (f) are organized cadre. The Medical Cadre which is small in strength, though not Organized, is covered by Dynamic Assured career progression and an Officer joined as MO-II(JTS) will get SAG Scale after completion of 20 years of Service.

(j) The Administrative officers cadre, in fact, is large in strength and meets the requirements of an Organized Service and is presently deprived of benefits of both Organized Cadre as well as DACP.

4. Representation of Director (Admn) RS Ghera was also referred to the Cadre Review Committee constituted at this Dte for the purposes of cadre review of all categories of GREF officers. The Committee has opined that if Admn Officers Cadre is to be constituted as an organized cadre, then all the attributes of an organized service has to be satisfied, viz post at the level of JS equivalent has to be created, lateral entry to be stopped, Dir (Admn) post to be declared Non-Functional, entry at JTS level has to be from Civil Service Examination conducted by UPSC and the Gazette Notification of the Ministry will be required making Admn Officers of BRO as an organized service.

6. All organized cadres do not have posts strictly as per the model Organized Service and even Indian Legal Services do not have any post of JTS level.

Therefore, the cadres which do not fit as per the model can also be declared as Organized cadre. In view of all the points elaborated above, it is recommended that the case for declaring Administrative Officers Cadre as an organized cadre be considered even if it involves excluding the SAG level post at present.

(Emphasis Supplied)

11. Vide office order dated 05.11.2009 the Border Roads Development Board rejected the afore-noted proposal mooted by DDG (Pers) for the encadrement of the administrative officers cadre of the BRO as an organized cadre, which office order reads as under:

Subject: To encadre Administrative Officer of BRO as an Organized Group A Cadre

Reference Dte. GBR's Note No. 13822/SCR/Adm Cadre/DGBR/93/E1A dated 30.09.2009 on the above subject.

2. The proposal has been examined and the same has not been accepted due to the reasons given below:

(a) Border Roads Organization is a construction agency and engineers are the backbone of the organization and the main cadre for the execution of construction works, hence comparison of AOs with engineers is not tenable.

(b) The Assistant Executive Engineers (entry level) are recruited through UPSC on the basis of Engineering Service Examination whereas Administrative Officers are recruited through interview basis only. Thus mode of selection for these two posts is not similar.

(c) After implementation of recommendation of 6th Central Pay Commission, the Govt. has introduced Modified ACP Scheme for Group A officers also. Under this scheme, there will be three financial upgradation at intervals of 10, 20 and 30 years of continuous regular service and the same is also applicable to the officers of Administrative officers cadre.

3. This issues with the approval of secretary BRDB.

12. Aggrieved by the decision of the department not to encadre the administrative officers cadre as an organized cadre the Petitioners in both the petitions have filed the present petition(s) under Article 226 of Constitution of India inter-alia contending that in view of the lack of promotional prospects in the administrative officers cadre which has a sizeable strength inasmuch as it consists of 130 Group A officers and plays an important role in the working of BRO, the department be directed to encadre the said cadre as an organized cadre. In order to highlight the lack of promotional prospects in the administrative officers cadre, the Petitioners laid emphasis on the fact there exists a wide disparity between the promotional prospects in the administrative officers cadre and the two cadres of BRO which have been encadred as organized cadre namely, civil engineering cadre and electrical and mechanical engineering cadre. To demonstrate the said disparity, following table(s) were pressed into

service by the Petitioners:

Comparison of Cadres in BRO

Civil Engineering Cadre

S. No

Name of Official

Date of Joining

Senior Time Scale

Junior Admn. Grade (Jt Dir/Dir)

Senior Admn. Grade

Higher Admn Grade

1.

V.K. Yadav

09.05.1978

15.06.1992

13.12.1997 (Dir)

12.12.2002

17.11.2009

2.

Anil Kumar

10.05.1983

23.07.1993

18.08.1999 (Dir)

01.12.2004

-

3.

Vinod Kumar

05.04.1983

July 1993

14.06.1999 (Dir)

05.10.2005

-

Electrical and Mechanical Engineering Cadre

S. No

Name of Official

Date of Joining

Senior Time Scale

Junior Admn. Grade (Jt Dir/Dir)

Senior Admn. Grade

Higher Admn Grade

1.

S. Sen

01.05.1982

22.03.1992

07.06.2001 (Dir)

31.05.2006

-

2.

V.N. Singh

06.08.1985

09.11.1993

07.10.2003 (Dir)

-

-

3.

Rajesh Kumar

08.09.1990

20.08.2000

28.11.2009 (Dir)

-

-

Administrative Officers Cadre

S. No

Name of Official

Date of Joining

Senior Time Scale

Junior Admn. Grade (Jt Dir/Dir)

Senior Admn. Grade

Higher Admn Grade

1.

R.S. Ghera

18.03.1978

05.03.1993

20.02.2002 (Jt Dir); 30.11.2007 (Dir)

-

-

2.

A.K. Chattopadhyay

14.03.1983

29.06.1995

06.09.2004 (Jt Dir)

-

-

3.

R.P. Singh

04.03.1983

12.04.1996

01.12.2006 (Jt Dir)

-

-

4.

Rohtash Kumar

17.10.1979

08.06.1996

22.08.2007 (Jt Dir)

-

-

5.

Alok Das

15.06.1982

09.09.1997

01.09.2007 (Jt Dir)

-

-

13. Per contra, the department contended that it is settled legal position that the courts should be very slow in interfering with the policy decisions of the State as it is a decision taken by the administrators on an examination of various facets before them and the inputs they receive from various sources. It was contended that in view of the said legal position, this Court should not interfere with the policy decision of the department not to encadre administrative officers cadre as an organized cadre.

14. Broadly speaking, there are two categories of posts in Group A services in the Central Government viz., those encadred in the organized cadres and those which do not form part of any organized cadre. In an organized cadre the posts belonging therein are arranged in a hierarchical and pyramidal manner representing different level of responsibilities or grades and the level of responsibilities increases with each senior level. There are six grades in an organized cadre viz., Junior Time Scale (JTS), Senior Time Scale (STS), Junior Administrative Grade (JAG), Non-Functional Selection Grade (NFSG), Senior Administrative Grade (SAG), Higher Administrative Grade (HAG) and Higher Administrative Grade-I (HAG-I). While the Junior Time Scale (JTS) is the lowest grade, Higher Administrative Grade-I (HAG-I) is the highest grade. The Pay Commissions recommend scales of pay (now known as pay bands) for different grades/levels of posts keeping in view the nature of responsibilities attached to the posts and the cadre structure i.e. the promotional avenues. As opposed to this, the posts belonging to an unorganized cadre are not arranged according to the level of the responsibilities attached to the posts. Since the posts belonging to the unorganized cadres are not arranged according to the level of the

responsibilities/grades the recommendations made by the Pay Commissions do not apply to the unorganized cadres as a result whereof acute stagnation is caused in the said cadres. The instant case is a perfect example of the same. The tables noted in para 12 above depicting the career progressions of the officers working in the administrative officers cadre vis-à-vis their counterparts working in the two engineering cadres, the organized cadres of BRO. The afore-noted judgment dated 14.07.1995 passed by the Gauhati High Court also notices the stagnation of the officers of the administrative officers cadre.

15. In view of the acute stagnation in the administrative officers cadre of BRO due to non-encadrement of the said cadre as an organized cadre, is the decision of the department of refusing to encadre the administrative officers cadre as an organized cadre legally valid is the question which needs to be answered by us?

16. As already noted herein above, three reasons have been given by the department in refusing to encadre the administrative officers cadre as an organized cadre; namely: (i) the two engineering cadres play a pivotal role in the working of BRO, which is not the case with administrative officers cadre; (ii) the mode of selection for the entry level posts in the administrative officers cadre and the two engineering cadres are different; and (iii) the implementation of the recommendations of Sixth Central Pay Commission the Modified Assured Career Progression Scheme (MACPS) applies to all the Group A central government employees including the officers working in the administrative officers cadre of BRO and the same solves the problem of the lack of promotional prospects in the administrative officers cadre.

17. The first two reasons given by the department to refuse to encadre the administrative officers cadre as an organized cadre are wholly fallacious. The department has not correctly appreciated the tenor of the grievance raised by the officers working in administrative officers cadre in respect of non-encadrement of their cadre as an organized cadre. The grievance raised was that due to non-encadrement of the administrative officers cadre as an organized cadre there is lack of promotional prospects in the said cadre. It was not the grievance of the officers working in administrative officers cadre that they are being discriminated against their counterparts in the two engineering cadres and thus their cadre should also be encadred as an organized cadre like the two engineering cadres. The career progression of the officers working in the said two engineering cadres has only been referred to by the officers working in administrative officers cadre to demonstrate the lack of promotional prospects in their cadre. Thus, the approach of the department in drawing a comparison between administrative officers cadre and the two engineering cadres and thereby refusing encadrement to administrative officers cadre is totally non-focused. In any case, it is not correct to say that the administrative officers cadre does not play an important role in the working of BRO. BRO has a task force of approximately 42,000 personnel. The administrative officers cadre is responsible for assisting, advising and operating matters of discipline, administration and

other matters relating to human behavior and motivation in personnel of BRO. The administrative officers cadre is also responsible for the general safety of unit lines, maintenance of regimental institutions, general administration matters, preservation of resources and liaison with other units on matters connected with execution of tasks assigned to them.

18. As regards the application of the Modified Assured Career Progression Scheme (MACPS) to the officers working in the administrative officers grade is concerned, relevant would it be to note that in order to remove stagnation, the Fifth Central Pay Commission recommended Assured Career Progression Scheme (ACPS) to all the general employees in the Central Government. The scheme of ACP recommended by the Fifth Central Pay Commission envisaged three time-bound promotions for Group A posts after 4, 8 and 13 years of service. For posts in Groups B, C and D, two time-bound promotions were to be provided on completion of 8 and 16 years of service for Group B, 10 and 20 years for Group C and 12 and 24 years for Group D. The Government accepted the said scheme in a modified manner and introduced the ACPS for Groups B, C and D and isolated posts in Group A where two financial upgradations were to be provided on 12 and 24 years of service. The financial upgradations were to be in the next higher grade in the existing hierarchy. The Sixth Central Pay Commission recommended certain modifications in the Assured Career Progression Scheme implemented by the Government. One of the recommendations made by the Sixth Central Pay Commission was that save and except organized Group A services, the benefit of ACPS be available to all posts belonging to Group A, whether isolated or not, which recommendation has been accepted by the Central Government. Grant of financial upgradation envisaged by Assured Career Progression Scheme is different from grant of higher scale of pay recommended by the Pay Commissions therefore the Assured Career Progression Scheme does provide a limited relief to the officers of the administrative officers cadre of BRO to a limited extent but is not a substitute for the benefits available to the said officers on encadrement of administrative officers cadre as an organized cadre.

19. It is trite that the courts should not ordinarily interfere with the policy decision of the State. But at the same time it is equally settled that the courts can interfere with a policy decision of the State if such decision is shown to be patently arbitrary, discriminatory or mala fide.

20. In view of the above discussion, we direct the department to encadre the administrative officers cadre of BRO as an organized cadre.

21. However the matter does not rest here. The further question which arises is whether the said encadrement would take effect from a prospective or retrospective date and if retrospective, then from which date.

22. We direct the department to decide whether the encadrement of administrative officers cadre of BRO as an organized cadre would be given a prospective or retrospective effect. The decision would be taken within 16 weeks

of the receipt of this judgment. In taking the said decision, the department shall take into account all the facts germane to the issue, particularly the fact that the officers working in the administrative officers cadre have been stagnating since a long time.

Issue No. II

23. The Petitioners in W.P.(C) No. 10121/2009 who are holding various Group A posts in the administrative officers cadre in BRO have been posted at the headquarters of BRO in Delhi.

24. On 26.08.1974 Department of Expenditure, Ministry of Finance, Government of India issued following office memorandum to all the Ministries/Departments of Government of India:

Subject:- Grant of special pay to class I senior scale (Rs. 1100-1600)/junior Administrative Grade/inter Administrative Grade officers posted in headquarters organization of the various Departments-Recommendations of the Third Pay Commission.

The undersigned is directed to invite a reference to the recommendations of the Third Pay Commission contained in paragraph 34 and 35 of Chapter 8 and paragraph 27(1) of Chapter 14 of its Report regarding grant of special pay to officers in the senior scale and the Junior/inter administrative grades of Central Class I Services while holding posts in their respective Headquarters organization. These recommendations have been accepted by the Government vide item No. 8 of the Annexure to the Ministry of Finance to the Ministry Resolution No. F.11/35/74-IC dated 1.5.1974. The President is accordingly pleased to decide that special pay at the following rates to officers of Class I Non-technical, Technical, Scientific and Engineering Services when they are posted to the Headquarters Organizations of those Departments, i.e. to the highest office administratively in charge of the Department like the office of the C & A.G., office of the Controller General of Defence Accounts, P & T Board, Central Board of Direct Taxes, Central Board of Customs and Excise, etc.

Rates of Special Pay Officers in the senior scale Rs. 200/- per month (Revised scale Rs. 1100-1600)

Officers in the Junior Rs. 300/- per month

Administrative/Intermediate

Administrative grade

(Revised scales Rs. 1500-1800/1800-2000/1500-2000)

The grant of special pay at the rates indicated above will be subject to the condition that the pay plus special pay does not exceed Rs. 1700/- in case of senior scale officers and Rs. 2250/- in case of Junior/Intermediate administrative grades.

25. On 20.02.1979 the Director General Border Roads sanctioned the payment of special pay/headquarters allowance only with respect to the officers working in the "organized cadres" of BRO.

26. Aggrieved by the action of the department of denying the payment of special pay/headquarters allowance to the officers working in the administrative officers cadre, the Petitioners have filed the present petition under Article 226 of Constitution of India.

27. Whether the action of the department in denying special pay/headquarters allowance to the officers working in administrative officers cadre on the ground that the administrative officers cadre is not an organized cadre is legally valid?

28. This issue is no longer *res integra*. In LPA No. 121/1984 *Union of India v. K.R. Swami & Ors.* decided on 23.08.1991, a Division Bench of this Court was faced with a similar controversy. In the said case, the Ministry of Defence had issued an Office Memorandum dated 20.08.1975, which memorandum is *pari materia* to the Office Memorandum dated 26.08.1974 involved in the present case. The Office Memorandum dated 20.08.1975 issued by Ministry of Defence envisaged the payment of special pay to the officers holding Class I posts (Group A posts) in Defence Establishments when they are posted in the headquarters of their respective organizations. The Petitioner therein was working as Senior Administrative Officer in Military Engineering Service. A similar stand that the officers therein did not belong to an organized Group A service was taken by Military Engineering Service to deny the payment of special pay/headquarters allowance to the officers therein, which stand was repelled by this Court in following terms:

We have reproduced above the relevant resolution of the Central Government accepting the recommendation of the Pay Commission regarding special pay. This resolution refers paras 34 and 35 of Chapter 8 and para 27(i) of Chapter 14 of the Pay Commission Report. Only para 34 is relevant for our purpose as other paras deal with the quantum of the special pay. Para 34 is as under:

34. We are of the view that the device of special pay should be used as sparingly as possible. Thus our approach generally has been to suggest a higher scale of pay for posts which are held on a non-tenure basis and where the special pay has been granted at present in lieu of a higher scale for the post itself. However, we feel that the device of granting special pay cannot be discarded in the case of posts where persons have to be attracted for a fixed tenure from other cadres and departments. The grant of special pay for compensating genuine and discernible, but not substantial, difference of duties is to be preferred to the fragmentation of cadres, with attendant complication. Once a higher scale of pay as such is sanctioned for a post or category of posts in a cadre, and a person is appointed to such a post, it may be difficult to shift him to a post carrying even a slightly lower scale of pay, as it may be construed as a reduction in rank, attracting the provisions of Article 311 of the Constitution. No such disadvantage attaches to

posts carrying special pay which leads to enormous flexibility. This criterion would apply to posts in the Secretariat and at the Headquarters of the departments. In the case of posts at "headquarters" held on a tenure basis, the officer brought on deputation has to encounter many problems due to the disturbance involved, and some compensation on this account has to be provided also if suitable persons are to be attracted to these posts.

Special Pay, under F.R. 9(25), means an addition, of the nature of pay, to the emoluments of a post or of a Government servant, granted in consideration of - (a) the specifically arduous nature of the duties; or (b) a specific addition to the work or responsibility. Cadre under F.R.9(4) means the strength of a service or a part of service sanctioned as a separate unit. Para 34 of the Pay Commission Report reproduced above does not talk of any organized service or established service. In this para it is recommended that special pay be granted "in the case of posts where persons have to be attracted for a fixed tenure from other cadres or departments." The Commission opined that the grant of special pay for compensating genuine and discernible, but not substantial, difference of duties was to be preferred to the fragmentation of cadres, with attendant complication. This criterion, it said, would apply to posts in the Secretariat and at the Headquarters of the departments and in the case of posts at Headquarters held on tenure basis, the officer brought on deputation had to encounter many problems due to the disturbance involved, and some compensation on this account had to be provided also if suitable persons were to be attracted on those posts. The resolution of the Government for grant of special pay merely says that it would be given to the officers of Central Class I Services posted at the Headquarters organizations of the various non-technical, scientific and engineering departments. The resolution says nothing more. In the office memorandum dated August 20, 1975, it was stated that on the recommendation of the Third Pay Commission contained in paragraphs 35 and 37 of Chapter 8 and para 27(i) of Chapter 14 of the Report regarding grant of special pay, the President was pleased to decide that special pay shall be paid officers of Class I non-technical, technical and engineering services in defence establishments viz. ML&C, IOFS and MES when they were posted to their Headquarters Organizations, i.e., to the highest office administratively in charge of the Defence Establishments, viz., (1) Director of Military Lands and Cantonments; (2) the office of the Director General of Ordnance Factories, Calcutta; and (3) E-in-C's Branch, Army Headquarters. On the basis of this office memorandum, Senior Barrack Stores Officers or Principal Barrack Stores Officers or Senior Administrative Officers started getting special pay. A clarification to this scheme was issued on June 9, 1982 when another office memorandum was issued, and under this it was stated that a doubt had arisen whether the benefit of special pay as contained in office memorandum dated August 20, 1975, could be extended to officers of non-organized services on their posting to the Headquarters Organizations of their respective departments. It was clarified by the office memorandum that benefit of special pay would be admissible to Class I

Officers (Group "A" Officers) of the respective Organized Services only when they were posted to the Headquarters Organization of their respective departments. The Petitioners have, therefore, been denied special pay on this account.

We have seen above, the decision of the Government accepting the recommendation of the Pay Commission means that the posts held by senior scale officers (officers of Central Class I Services) in the Headquarters Organ in various non-technical, scientific and engineering departments should carry a special pay of Rs. 200/- per month, etc. The argument that special pay is to be admissible to Class I Officers of respective organized services is based on para

29. of the Report which is not relevant for our purposes inasmuch paragraphs 25 to 29 deal with pay fixation on promotion. Special pay is discussed in paras 30 to 39 of the Report. Moreover, resolution of the Government does not talk of any tenure posting to be eligible for special pay. There is no ambiguity in the resolution of the Government for us to go back to the Pay Commission Report on the grant of special pay. Special Pay cannot mean other than what F.R. 9(25) says...." 29. In view of the aforesaid legal position, we find no merit in the stand taken by the department that the officers working in the administrative officers cadre of BRO are not entitled to the payment of special pay/headquarters allowance on the ground that the administrative officers cadre is not an organized cadre. As a necessary corollary to the aforesaid, the department is directed to make payment of special pay/headquarters allowance to the Petitioners in W.P.(C) No. 10121/2009 from the date said Petitioners were posted in headquarters of BRO.

Issue No. (III)

30. On 28.10.1972 the Petitioner in W.P.(C) No. 4377/2003 was recruited in the administrative officers cadre of BRO on the post of Civilian Officer Grade-I in the pay scale of `3700-4500/-. On 01.12.1991 the Petitioner was granted selection grade in the pay scale of `3700-125-4700-150-5000 and his pay was fixed at `4,575/- per month. Pursuant thereto, the Petitioner made a representation to the department inter-alia stating therein that his initial pay in the post of Civilian Officer Grade-I (Selection Grade) be fixed in terms of the provisions of FR 22(I)(a)(1) for the reason the post of Civilian Officer Grade-I (Selection Grade) carries greater duties and responsibilities than the post previously held by him i.e. the post of Civilian Officer Grade-I. The department accepted the aforesaid representation of the Petitioner and fixed the pay of the Petitioner as `4,700/- per month in terms of the provisions of FR 22(I)(a)(1).

31. All was well in the world of the Petitioner till about 11.03.1996, on which date the Controller of Defence Accounts issued a letter to the department inter-alia stating therein that the department has wrongly fixed the initial pay of the Petitioner in the post of Civilian Officer Grade-I (Selection Grade) in terms of the provisions of FR 22(I)(a)(1) for the post of Civilian Officer Grade-I (Selection Grade) is a non-functional post and thus the initial pay of the Petitioner ought to

have been fixed in terms of the provisions of FR 22(2). On the receipt of the afore-noted letter issued by Controller of Defence Accounts, the department re-fixed the initial pay of the Petitioner in the post of Civilian Officer Grade-I (SG) as `4,575/- per month in terms of the provisions of FR 22(2).

32. Aggrieved by the aforesaid action of the department the Petitioner has filed the present petition under Article 226 of Constitution of India.

33. As evident from the afore-noted conspectus of facts, the controversy involved in the present matter centers around FR 22, the relevant portion whereof reads as under:

F.R. 22. (I) The initial pay of a Government servant who is appointed to a post on a time-scale of pay is regulated as follows:

(a)(1) Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage which such pay has accrued or rupees one hundred only, whichever is more.

Save in cases of appointment on deputation to an ex cadre post, or to a post on ad hoc basis or on direct recruitment basis, the Government servant shall have the option, to be exercised within one month from the date of promotion or appointment, as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage of the time-scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be re-fixed in accordance with this rule on the date of accrual of next increment in the scale of the pay of the lower grade or post. In cases where an ad hoc promotion is followed by regular appointment without break, the option is admissible as from the date of initial appointment/promotion, to be exercised within one month from the date of such regular appointment:

Provided that where a Government servant is, immediately before his promotion or appointment on regular basis to a higher post, drawing pay at the maximum of the time-scale of the lower post, his initial pay in the time-scale of the higher post shall be fixed at the stage above the pay notionally arrived at by increasing his pay in respect of the lower post held by him on regular basis by an amount equal to the last increment in the time-scale of the lower post or rupees one hundred, whichever is more.

(2) When the appointment to the new post does not involve such assumption of

duties and responsibilities of greater importance, he shall draw as initial pay, the stage of time-scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis:....

34. A plain reading of the above Rule shows that two distinct situations are envisaged when a government servant is promoted or appointed in a substantive, temporary or officiating capacity to another post. Where such appointment involves higher duties and responsibilities, the initial pay of such Government servant in higher post shall be fixed at the stage "next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees one hundred only, whichever is more.". This is otherwise called stepping up of the pay at the initial stage. However, where the appointment to the new post does not involve duties and responsibilities of greater importance there would be no stepping up of the pay at the initial stage and the initial pay would be "equal to his pay in respect of the lower post held by him on regular basis." Therefore, in each case, it would be a question of fact whether the appointment to the new post is one which has higher duties and responsibilities than the old post.

35. As evident from the aforesaid, the sine qua non for the application of F.R. 22(1)(a)(I) in a given case is appointment or promotion to a new post. Both, the Petitioner as also the department have proceeded on the premise that the post of Civilian Officer Grade-I (Selection Grade) is distinct from the post of Civilian Officer Grade-I. Whereas the Petitioner has contended that the post of Civilian Officer Grade-I (Selection Grade) is a functional post i.e. it carries greater duties and responsibilities than the feeder post of Civilian Officer Grade-I the department has contended that the said post is non-functional. The stands taken by both the Petitioner and department are incorrect as they are based on an incorrect understanding of the concept of selection grade.

36. The concept of "Selection Grade" was explained by the Supreme Court in the decision reported as Lalit Mohan Deb and Others Vs. Union of India (UOI) and Others, in the following terms:

It is well recognised that a promotion post is a higher post with a higher pay. A selection grade has higher pay but in the same post. A selection grade is intended to ensure that capable employees who may not get a chance of promotion on account of limited outlets of promotions should at least be placed in the selection grade to prevent stagnation on the maximum of the scale. Selection grades are, therefore, created in the interest of greater efficiency.

(Emphasis Supplied)

37. In the decision reported as Union of India (UOI) and Another Vs. S.S. Ranade, the question which had arisen for consideration was whether the post of Commandant (Selection Grade) is distinct from the post of Commandant.

Answering the aforesaid question in negative, the Supreme Court observed as under:

This submission is based on a misunderstanding of what is meant by Selection Grade. Undoubtedly, a Commandant who becomes a Commandant (Selection Grade) secures a promotion to a higher pay scale. But it is a higher pay scale in the same post. The use of the word "promotion" in Rule 6 and the constitution of a Departmental Promotion Committee for selection of Commandant (Selection Grade) in Rule 7, do not necessarily lead to the conclusion that the promotion which is contemplated there is necessarily a promotion to a higher post. Promotion can be either to a higher pay scale or to a higher post. These two rules and the use of the word "promotion" there do not conclude the issue.

The High Court in its impugned judgment has referred to Article 311(2) of the Constitution. It has considered how different posts in the Civil Service of the Union or the States or all-India services are compared or ranked with reference to one another in order to ascertain whether, in a given case, there is reduction in rank under Article 311(2) by transfer from one post to another post. In this connection the High Court has emphasised that posts carrying different designations and different duties may be considered equivalent in rank if they are in the same pay scale. In this context pay scale may be a good yardstick for measuring rank. But this has no application to selection grade posts. Because the creation of a selection grade in the same post stands on a very different footing. By its very nature a selection grade provides a higher pay or a higher pay scale in the same post. The beneficiary of a selection grade does not thereby occupy a post which is higher in rank than the post earlier occupied by him.

(Emphasis Supplied)

38. That being the position, the post of Civilian Officer Grade-I (Selection Grade) is not distinct from the post of Civilian Officer Grade-I. When the post of Civilian Officer Grade-I (Selection Grade) is not distinct from the post of Civilian Officer Grade-I F.R.22(I)(a)(1) has no application in the present case.

Conclusion

39. In view of above discussion, we conclude as under:

I The department is directed to encadre the administrative officers cadre of BRO as an organized cadre. The department shall further decide whether the encadrement of administrative officers cadre of BRO as an organized cadre would take effect from a prospective or retrospective date within eight weeks of the receipt of this judgment.

II The department is directed to make payment of special pay/headquarters allowance to the Petitioners in W.P.(C) No. 10121/2009 from the date said Petitioners were posted in the headquarters of BRO.

40. With these directions, the above captioned petitions are disposed of. There

shall be no order as to costs.