
(2000) 05 DEL CK 0037
In the Delhi High Court
Case No : CWP. No. 4060 of 1998

Lal Bahadur Singh and Others

APPELLANT

Vs

U.O.I. and Others

RESPONDENT

Date of Decision : 26-05-2000

Acts Referred:

Citation : (2000) 5 AD 397 : (2000) 86 DLT 562 : (2000) 56 DRJ 743

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Ms. Shyamla Pappu and Mr. M.R. Krishnamurthy Adv, for the Appellant; Mr. Jayant Bhushan Advocate, for the Respondent

Judgement

A.K. Sikri, J.—In this petition, petitioners are demanding revision in pay scales from retrospective date i.e. w.e.f. 1.1.1996. Revision in pay scales have been given to the petitioners but prospectively only i.e. w.e.f. 10.10.1997 when the orders to this effect were issued.

2. Petitioners in this case are working in various ranks namely Inspector, Sub-Inspector and Constable in Para Military Organisations like ITBP, CRPF & BSF as non-gazetted combative cadre of the Central Police Organisations (CPOs in short) being the armed forces of UOI. ITBP, CRPF & BSF are CPOs under the Ministry of Home Affairs, other two being Assam Rifles and CISF. All these 5 CPOs are declared armed forces of the Union by Acts of Parliament. According to the petitioners, IV Central Pay Commission in its recommendations to the Government had suggested that there should be uniformity in the pay scales of the personnel in all these 5 CPOs and it recommended same scale for Delhi Police & CPOs. However while implementing the recommendations, Government granted higher pay scales to subordinate officers of Delhi Police, IB & CBI but denied the same pay scale to the personnel of CPOs. The pay scales as implemented by the Government in respect of CPOs personnel and Delhi Police personnel w.e.f. 1.1.1986 are as under:

RANK PAY SCALES DELHI POLICE OTHER CPO (Rs.) (Rs.) Inspector 1640-2900
 2000-3200 Sub-Inspector 1400-2300 1640-2900 Asstt. Sub-Inspector
 1320-2040 1320-2040 Head Constable 975-1660 975-1660 Constable
 825-1200 950-1500

3. In fact the pay scales of CPOs as given by the Government and mentioned above were the same as recommended by IVth Central Pay Commission. However the personnel of Delhi Police were given higher pay scales than recommended by IV Central Pay Commission. As CPOs personnel were given lesser pay scales than their counterparts in Delhi Police, this disparity was protested. It is stated by the petitioners that although the Government realised that the petitioners were entitled to same pay scale, due to time factor to complete the process and limitation of the Government for the payment of huge arrears when the country was facing financial crisis during 1989-90 the up gradation of the CPOs could not be implemented at that time but assurances were given by respondents 1 & 2 to the effect that such anomalies and disparities would be removed in the Vth Pay Commission. Vth Pay Commission which was set up by Resolution dated 9.4.1994 gave its report on 30.1.1997. However, according to the petitioners, it did not consider the representations made by respondents 3 to 5 recommending for parity in pay scales of subordinate officers and other in CPOs qua Delhi Police personnel and recommended the normal replacement scales of subordinate officers in CPOs which are as under:

RANK Pre-revised Revised Pay scales pay scales (Normal replacement) Scales.
 (Rs) (Rs) Subedar Major 2000-3200 6500-10,500 Inspector 1640-2900 5500-
 9,000 Sub-Inspector 1400-2300 5000- 8,000 Asst.Sub- Inspector 1320-2040
 4000- 6,000 Head Constable 975-1660 3200- 4,900 Constable 825-1200 2750-
 4,400

4. As anomaly persisted, matter was referred by Ministry of Home Affairs for review of pay structure of such personnel to Committee of Secretaries and Group of Ministers of the Government Resolution No. 50(I) IC/97 dated 30.9.1997 was issued by Ministry of Finance as per which the pay scales of the subordinate officers of CPOs were brought at par with the pay scales enjoyed by their counterparts in Delhi Police, IB & CBI. However para 7 of this Resolution reads as under:-

"Para : 7

In respect of personnel of Central Police Organisations, in the rank from Constable to Subedar Major, Ministry of Home Affairs will carry out an exercise for rationalisation of ranks so as to achieve parity with Delhi Police, pending which the scales recommended by the Fifth CPC will be applied."

5. From para 7, it is clear that the petitioners for time being were given the pay scales as recommended by V Central Pay Commission. However exercise for rationalisation of ranks so as to achieve parity with Delhi Police was to be

undertaken. This exercise was ultimately undertaken and it resulted in issuance of order dated 10.10.1997 as per which the pay scales of subordinate officers in CPOs were rationalised and were brought at par with the pay scales being given to Delhi Police. However in para 5 of this order it was mentioned that it would be effective from date of issue and for the period from 1.1.1996 till the date of issue of this order i.e. 10.10.1997 pay in the revised scales will be regulated in accordance with the provisions of CCS(Revised) Pay Rules, 1997 namely Notification dated 30.9.1997. Paras 2 & 5 of this order being subject matter of controversy are quoted below for proper appreciation of the problem:-

Para :2

"The President is also pleased to rationalise the pre-revised pay scales and replacement pay scales in respect of the above cadres as indicated below:-

S. Rank Rationalised Replacement No. Structure pre-revised pay scales pay scales
1. Constables/ Rs.950-1400 Rs.3050-75-4590 Security Assistant
2. Head Constables Rs.975-1660 Rs.3250-85-4900
3. Asst. Sub-Inspector Rs.1320-2040 Rs.4000-100-6000
4. Sub-Inspector/ ACIO-II Rs.1640-2900 Rs.5500-175-9000
5. Inspector/ACIO-I Rs.2000-3200 Rs.6500-200-10500
6. Subedar Major Rs.2000-3500 Rs.6500-200-10500

Para 5:

"The above orders will be effective from the date of issue. For the period from 01.01.1996 till the issue of this order, the pay in the revised scale will be regulated in accordance with the provisions of the Central Civil Services (Revised) Pay Rules, 1997."

6. Thus although petitioners have been given the pay scales which are enjoyed by their counterparts in Delhi Police etc. this revision in the pay scales is made effective from 10.10.1997 only. Petitioners claim that it should have been given w.e.f 1.1.1996 the date from it was given to their counterparts in Delhi Police.

7. Giving justification in support of the aforesaid claim, Ms. Shyamala Pappu learned senior counsel appearing for the petitioners argued that entry level educational qualifications, physical standards and mode of recruitment etc. of Delhi Police and CPOs personnel are more or less the same. Not only this CPOs personnel after joining service are put through comparatively more rigorous training and courses to make them fit to combat both against the militancy for maintaining the internal security and also against any external aggression. Their duties are more onerous than their counterparts in Delhi Police. Therefore they are entitled to the atleast same pay as is being given to their counterparts in Delhi Police, IB and CBI etc. This was recognised by even IV Central Pay Commission which suggested uniformity in pay scales of personnel in all CPOs and Delhi Police. However it is only at the time of implementation of the recommendations of IV Central Pay Commission, higher pay scales were granted to the subordinate officers of Delhi Police, IB & CBI. On protest being made by

respondents 3 to 5, namely employers of the petitioner, it was recognised that petitioners were also entitled to same pay scales but the matter was deferred due to the Government's own limitations with assurance that such anomaly would be removed in V Central Pay Commission. However even V Central Pay Commission did not consider this aspect and recommended normal pay scales but Government ultimately realised this anomaly and disparity and Therefore reviewed the entire matter and ultimately recognised that petitioners were entitled to same pay scales as are being enjoyed by their counterparts in Delhi Police, IB & CBI which resulted in issuance of order dated 10.10.1997. Once having realised that there was an anomaly and anomaly has been removed by the respondents themselves, it should have been removed at least from 1.1.1996 when the higher pay scale was granted to their counterparts in Delhi Police etc. In fact, it was submitted that relying upon para 2 of order dated 10.10.1997, the petitioners were entitled to the upward revision in pay scales w.e.f. 1.1.1986 i.e. when the pay scales as per the recommendations of IV Central Pay Commission were implemented because as per the petitioners in para 2 rationalisation of pre revised pay scales has also been given in para 2 of 10.10.1997. Thus respondents have recognised the fact that the pre-revised pay scales of the petitioners should have been more than what was given to them. In any case, the petitioners were entitled to the revision in pay scales w.e.f. 1.1.1996 and it could not have been made effective from the date of issue i.e. 10.10.1997. Reliance was also placed upon office memorandum dated 8.2.1996 as per which the pay scale of DSP & SP in CBI were revised from 1.1.1986 on the recommendations of IV Central Pay Commission and it was argued that in 1996 when revising the pay scales of aforesaid officials in CBI, the revision could be made effective from the date when the recommendations of IV Central Pay Commission were implemented i.e. 1.1.1986, why such a treatment could not have been given to the petitioners in revising the pay scales of the petitioners from 1.1.1986 when recommendations of V Central Pay Commission were accepted. Reliance was also placed on para 79.35 of the V Central Pay Commission wherein it is mentioned that pay scales for personnel of CBI, IB and CPOs. should follow a uniform pattern and it was submitted that once existence of anomaly was accepted and recognised and the said anomaly was removed, it should be from the initial date i.e. 1.1.1996 and not from the date of issuing of the order. In support of these submissions, reliance was placed upon the following judgments:-

1) Order dated 14.12.1987 passed by Supreme Court in CWP No.1193 of 1987 entitled G.S. Rathees Kumar & Ors. Vs. Union of India & Ors. This brief order reads as under:-

"We have heard learned counsel for the parties and we are satisfied that the petitioners are entitled to the revised pay scale with effect from January 1, 1986 which is the date applicable to the Central Government Employees instead of 11 June, 1987. It is ordered accordingly. This writ petition is disposed of."

2) Judgment dated 7.6.1991 of Punjab & Haryana High Court in CWP No.592/88 entitled Satpal Singh & Ors. Vs. Haryana State Electricity Board & Anr. and particularly the following observations made therein:-

"After hearing the learned counsel for the parties, I am of the view that the petitioners are entitled to the revised grade of Rs.1200-2040/- w.e.f. 1.1.1986 when the Board decided to revise the grades of different categories of its employees, it is not dispute that different pay scales were revised with effect from this date and it was only when some anomalies came to surface in the implementation of those revised grades that a committee was constituted with a view to remove anomalies. This committee after examining various anomalies and obviously with a view to remove them recommended to the Board the higher pay scale of Rs.1200 2040/-. If anomalies existed in the implementation of the revised grades and the same had to be removed they must necessarily be removed from the date when the grades were revised. There would be no meaning in removing an anomaly from a date subsequent to the date when the grades were revised. In other words, if now grades had to be given by way of removing an anomaly, such grades should take effect from the date when the grades were originally revised. In this view of the matter, the petitioners are justified in claiming the grade of Rs.1200-2040/- w.e.f. January 1, 1986."

3) Judgment dated 22.9.1997 passed by Punjab & Haryana High Court in CWP o.13360 of 1996 entitled Shyam Sunder & Ors. Vs. Haryana State Electricity Board & Anr. wherein the Court extended the benefit from 1.1.1986 instead of 1.5.1990 granted by Haryana State Electricity Board by observing as under :-

"Once the claim of pay parity has been granted to the petition ers, there is no reason to assign different date for its effect. The revised pay scale should be given from the same date as in the case of other categories of employees. The petitioners" intention is that the revised pay scale given from May 1, 1990 instead of January 1, 1986 is the result of discrimination and arbitrariness.

Some junior Draftsman filed a Writ Petition (No.592 of 1988 titled as "Satpal Singh and Others Vs. Haryana State Electricity Board) and the High court in that petition gave a direction on June 7, 1991 to give the pay scale of Rs.1200-2040/- to the petitioners therein from January 1, 1986."

4) Shri Alvaro Noronha Ferriera and Others Vs. Union of India and Others, In this case principle of equal pay for equal rk was applied for granting same pay scale to District & Session Judges as was enjoyed by their counterparts in Delhi. Paras 11 to 13 of this judgment read as under:-

"Para 11: The parameters for invoking the said principles would include, inter alia, nature of the work and common employer. There can be no two views that the nature of work of District & Sessions Judges is the same though in some areas pendency of cases would be higher than others. Differences in the backlog are not uncommon even in two different stations or the same territory, nay, in two different courts of the same station. Such lopsidedness is hardly the ground

to conclude that the nature of work done by one judicial officer at one place is different from other. The duty hours would be substantially the same, the powers to be discharged are in no way different, whether they are district Judges in Goa or in Delhi. It would be a futile exercise to make an endeavor for drawing a distinction between the work pattern at two different places, for, such differences are discernible every where. But what would not make the nature of work different. It was not necessary to cast the burden of proof on the appellants to establish "the pendency of litigation or the norms fixed for disposal of cases by the Delhi court to enable comparison between the nature of duties and the responsibilities carried by the officers of the Delhi Territory and the Goa Territory."

Para 12: One admitted fact which looms large is that till hike in the pay-scale was brought about in 1982 for Delhi Judges the parity maintained as between Union Territory of Goa and Delhi applied to the same cadre of judicial officers. Nobody doubted till then that the nature and dimension of work discharged by the officers of the same cadre of judicial officers at two different territories were different from any perceptible standard. It is for the contesting respondents to show that there was change in the nature of work which necessitated the Government to keep two different levels of pay to the same officers working at two different places.

Para 13 : Pay-scale of District and Sessions Judges in the Union Territory of Goa was made on a par with that of Delhi by means of the rules and regulations formulated by the Central Government in exercise of the powers conferred on it by the provisions of "The Goa, Daman and Diu (Absorbed Employees) Act, 1965". The change was effected in 1982 on the premise that the judicial officers in Delhi were upgraded as class I officers and since Union Territory of Delhi was declared a Metropolitan city, the pay-scales were equated with the pay-scales of judicial officers in other Metropolitan cities. We are not against revision of the pay-scales of the judicial officers in the Union Territory of Delhi on the basis of any justifiable grounds. But in doing so the pay scales of their counterparts working in other Union territories cannot suffer."

8. Reliance was also placed upon the orders dated 18.12.1998 and 2.5.1999 passed in CWP Nos. 801/86 & 1201/86 in the case of Supreme Court Employees Welfare Assn. Vs. Union of India & Ors.

9. Mr. Jayant Bhushan learned counsel who appeared on behalf of UOI defended the decision of the Government in giving the higher pay scale to the petitioners w.e.f. 10.10.1997 i.e. from the date of issuance of order. His submission was that the replacement scale of the petitioners as per the Central Civil Services (Revised Pay) Rules, 1997, on the recommendations of V Central Pay Commission, was given to the petitioners. It has specifically mentioned the following pay scales of CPOs and the relevant entries in these rules were as under:-

Sl.	Posts	Present scale	Revised scale	Paragraph No.	(Rs.)	(Rs.)	No. of report
Central Para Military Forces	13. Constable	825-15-900-	2750-70-3800-	70.22			

20-1200 75-4400 (with two (with two increments) advance increments) 14. Lance 825-15-900- 3050-75-3950 70.22 Naik 20-1200 80-4500 (without (Plus Rs.15 special pay) special pay) 15. Sub- 1400-40-1800 5000-150-8000 70.22 Inspector -50-2300

10. Referring to para 7 of resolution dated 30.9.1997 it was submitted that the respondents were to "carry out an exercise for rationalisation of ranks so as to achieve parity with Delhi Police." This rationalisation was done after carrying out necessary exercise and a conscious decision was taken to give the upgraded pay-scales to the petitioners with effect from the date of issue of office order dated 10.10.1997. When rationalisation is done, it is not necessary that it has to relate back to the date when the recommendations of Vth Central Pay Commission are implemented and the executive could choose the date from which these are to be implemented. Fixation of such a date was prerogative of the Government and it had no relevance with 1.1.1996. The rationalisation made and the pay-scales given ultimately were not based on findings to the effect that the subordinate officers of CPOs were doing the same work which was being done by their counterparts in Delhi Police, IB & CBI etc. and Therefore it cannot be presumed that rationalisation was done and higher pay given to the petitioners was the result of removing any alleged anomaly. The presumption of the petitioners Therefore that any anomaly existing which was allegedly removed is far fetched. It was further submitted that fixation of such a cut off date being prerogative of the Government was duly recognised by the Supreme Court in various judgments wherein it was held that Courts are not to interfere with fixation of cut off date that is the date from which the particular decision is to be implemented. It was also submitted that when decision to give upward revision of any pay scale from a particular date was taken, such date was specifically upheld in various cases rejecting the claim for retrospective revision. It was also submitted that there was a difference between demanding a pay scale at par with certain other officers and removal of anomalies on left out cases. In the latter case when the anomaly is found or it is found that a particular category is left out of the benefit, while removing the said anomaly it could be made effective from the date when similarly situated persons are given. However same would not hold good when the demand of particular class to make them at par with some other class is accepted and in this case while accepting the demand different date i.e. the date from which the demand is accepted can be prescribed and officers cannot claim retrospective revision. The case of the petitioners fell in this category. The petitioners were in different organisations and the personnel in Delhi Police, CBI & IB belong to different organisations. It was their demand that they should be brought at par with the officers in Delhi Police etc. and when this demand was accepted, Government had right to fix the date from which it is to be accepted. It was also submitted that admittedly recommendations of Pay Commission were not binding on the Government and it was for Government to accept or reject the recommendations or accept part of recommendations and reject another part. When this is the position in law and the recommendations come into force when

the Government accepts it has right to accept the same from later date also. Therefore in the present case when the demand of the petitioners is accepted and they are brought at par with Delhi Police etc. for the purpose of pay-scale the date on which such decision was taken it becomes relevant date and claim of the petitioners to give pay scale from retrospective date was not permissible. In support of aforesaid propositions, the learned counsel relied upon the following judgments:-

(1) Union of India (UOI) and Others Vs. Secretary, Madras Civil Audit and Accounts Association and Another, .

(2) Joint Action Council of Service Doctors' Organisations and Others Vs. Union of India (UOI) and Another, .

(3) State of Rajasthan Vs. Gopaldas,

11. I have considered the submissions of both the parties and have gone through the records. Pay Commission constituted by the Government, which is a High powered Expert Committee, after going through all relevant aspects, makes recommendations in regard to revision of pay scale, pay structure and parity in the pay scales of different cadres of employees. However pay scale suggested by it would be recommendatory in nature and ultimately it is for the Government to accept or not to accept the recommendations. It is a different matter that the recommendations of high powered committee like Pay Commission are not rejected without cogent reasons (Joint Action Council of Service Doctors' Organisation Vs. U.O.I.). Once such recommendations are to be accepted by the Government, it is also the prerogative of the Government to fix the date from which these recommendations would be applicable and fixing of such cut off date cannot be interfered with by the Courts unless it is arbitrary or violative of Article 14 of the Constitution. It is also well settled that question of parity in the pay scales of the employees of two cadres on the basis of qualifications, job descriptions, responsibilities etc. is the function of the Pay Commission's and/or Government and Courts would generally keep themselves away from indulging into such exercise which is better left to such High Powered Committees. However, it is also an accepted fact that in the process of consideration of the recommendations of Pay Commission and its implementation, the likelihood of various anomalies and omissions cannot be ruled out. It is for this reason that Anomaly Committees are normally appointed to straighten the discrepancies and deal with the omissions which might come to the notice of the Government after the initial process of pay revision once by the anomaly committee it is found that there was such anomaly and a particular class of employees were not given the proper pay scale or were left out while implementing the recommendations of the Pay Commission. Such anomaly is normally removed from the date fixed by the Government for implementation of the recommendations of the Pay Commission i.e. the date from which other similarly situated employees got the revised pay scale. However there may be a situation where it may not be a case of anomaly in the implementation of recommendations of the Pay Commission but a case

where certain class of employees make a demand that they be given the same pay scales given to their counterparts in other cadre on the ground that they also belong to same category. Once this exercise of rationalisation is done as a result of the acceptance of demand of such class of employees for grant of higher pay scale which was given to their counterparts and notification is issued to this effect, such a notification can be issued from a later date and can have prospective date. It need not be from the date when their counterparts got the revised pay scales (State of Rajasthan Vs. Gopaldass).

12. The question Therefore which falls for consideration is that in the given facts of the present case, what was the exercise undertaken by the Government when the Government agreed that the petitioners were entitled to the same pay scale which was being given to their counterparts in Delhi Police etc.

13. Facts of this case, as already incorporated above, would show that IVth Central Pay Commission in their recommendation to the Government had suggested that there should be uniformity in the pay scales of the personnel in all CPOs viz. BSF, CRPF, ITBP, CISF and Assam Rifles. However after the implementation of the recommendations of IVth Central Pay Commission, the other CPOs. were given lesser pay scales than given to Delhi Police, IB, CBI etc. What is to be borne in mind that different pay scales were given, notwithstanding the recommendations of IVth Central Pay Commission that the pay scales of CPOs and Delhi Police should be the same. It is the case of the petitioners that they protested against this discriminatory treatment and the Government even realised that the petitioners were entitled to same pay scale, due to time factor to complete the process and limitation of the Government for payment of huge arrears when the country was facing financial crisis during 1989-90. The up gradation of CPOs. could not be implemented and assurance was given that this anomaly would be removed in the Vth Central Pay Commission. Vth Central Pay Commission in para 79.35 mentioned that pay scales of personnel of CBI, IB & CPOs. should follow a uniform pattern but did not take care of this aspect while recommending the revised pay scales. The implementation of the Vth Central Pay Commission recommendations also resulted into varying pay scales for CPOs on the one hand and Delhi Police etc. on the other hand. This resulted into issuance of Resolution dated 30.9.1997, on the demand of the petitioners that, as per which Ministry of Home Affairs was to carry out an exercise for rationalisation of ranks so as to achieve parity with Delhi Police. This exercise was undertaken which resulted into issuance of order dated 10.10.1997 as per which subordinate officers in CPOs. are given the same pay scales as were being given to Delhi Police.

14. The picture that emerges from the aforesaid discussion is that IVth Central Pay Commission specifically recommended same pay scales for CPOs as that of Delhi Police, CBI etc. Even the V Central Pay Commission stated that there should be a uniformity in the pay scales of these cadres. The claim of the petitioners that the petitioners" cadre level educational qualifications, physical

standards and mode of recruitment etc. are more or less the same as that of Delhi Police is also not disputed. The petitioners also claim that their training and duties are more onerous than their counterparts in Delhi Police. However in any case it is not disputed that they are no less onerous than their counterparts in Delhi Police. Still the petitioners were not paid the same pay scale as was to their counterparts in Delhi Police and the petitioners tried foul. No doubt in para 7 of Resolution dated 30.9.1997, it is mentioned that Ministry of Home Affairs will carry out an exercise for rationalisation in respect of personnel of CPOs in the rank from Constable to Subedar Major. It also specifically mentions that this exercise was for the purpose "to achieve parity with Delhi Police". Thus function was to achieve pay parity with Delhi Police after raising that there was an anomaly which erupted in granting the revised pay scales to the petitioners belonging to CPOs when compared to their counterparts in Delhi Police etc. This would be further clear from para 2 of the impugned order dated 10.10.1997 as per which President is pleased to rationalise the pre-revised pay scales and replacement pay scales in respect of the concerned cadres to which the petitioners belong. In fact what is stated in this para clinches the issue. The pay scales which are rationalised are not only rationalised in the revised pay scales but pre-revised pay scales i.e. which were in existence before the V Central Pay Commission's recommendations were accepted w.e.f.1.1.1996 are also revised. For example as on 31.12.1995, an Inspector in CPO was getting a pay scale of Rs.1640-2900. This pre-revised pay scale is rationalised to Rs.2000- 3200. This was the pay scale of Inspector in Delhi Police. Same is the position in respect of other subordinate cadres in CPO. Thus first the pre revised pay scales of these CPOs were brought at par with that of Delhi Police and on that basis higher replacement pay scales were granted to the petitioners. Therefore it cannot be a case where rationalisation is done as on the date of issuance of the order and the higher pay scales granted to the petitioners at par with Delhi Police is given from the date of issuance of the order. In fact first these petitioners are brought at par with their counterparts in Delhi Police etc. in the pre-revised pay scales which was the position as on 31.12.1995 and on that basis they are given the replacement pay scales. In view of this exercise having been done by the Government itself, the necessary consequence is that the petitioners are deemed to be in the pre-revised pay scales as rationalised as per para 2 of order dated 10.10.1997 on 31.12.1995 and that the basis it is but natural that the replacement pay scale is to be given to the w.e.f. 1.1.1996. Position would have been different if as a result of this rationalisation, it was mentioned in the order dated 10.10.1997 that the Government has agreed to give the revised pay scales as given to their counterparts in Delhi Police and then date of 10.10.1997 i.e. the date from issuance of order is fixed for grant of these pay scales. Position has totally changed when even the pre-revised pay scales are rationalised for which there has to be a date anterior to 1.1.1996 as these pre-revised pay scales were applicable only up to 31.12.1995. Once pre-revised pay scales are also made higher, granting revision in the replacement pay scales w.e.f. 10.10.1997 would have the effect of persisting the anomaly for the period from 1.1.1996 till

9.10.1997. This can be again illustrated by taking the case of an Inspector in CPO. He is given the higher pay scale of Rs.6500-10500 w.e.f. 10.10.1997 as per impugned order and the pay scale of Rs.5500-9000 from 1.1.1996 to 9.10.1997. However the pre-revised pay scale of Rs.5500-9000 is Rs.1640-2900. When the pre-revised pay scale itself is rationalised to those are Rs.2000-3200/- which has to be as on 31.12.1995, how he can be given the replacement pay scale of Rs.5500-9000 w.e.f. 1.1.1996. In view of this position, once it is to be treated as a case of removal of anomaly by the Government itself, which existed in the implementation of revised grades, it had necessary to be removed from the date when the grades were revised i.e. 1.1.1996. The ratio of the judgment cited by the learned counsel for the petitioners Therefore become applicable to the present case also. In fact, as pointed out by the petitioners, Government has granted higher pay scales from 1.1.1996 in many other cases and few such examples are as under:

Sl. Name of Org./Deptt. Effective Authority No. with date of order date 1. xxxxx 2. xxxxx 3. University Teachers 01/01/96 - 06/11/98 (M/O HRD, D/O Edn.) 4. Mail Express/Sr. 01/01/96 - Passengers Driver/ Sr. Motor Man 16/12/97 (Ministry of Railways) 5. J.T.O. 03/06/98 01/01/96 - (M/o Communications)

15. As far as the cases cited by the learned counsel for the respondents are concerned, there cannot be any quarrel with the legal proposition mentioned therein which has already been stated above. However in those cases, prospective date fixed for revision of pay scales was accepted in altogether different factual background. In so far as case of Union of India (UOI) and Others Vs. Secretary, Madras Civil Audit and Accounts Association and Another, is concerned, the effect would show that Indian Audit & Accounts was bifurcated into two department and separate wings namely audit wing and accounts wing. IVth Central Pay Commission recommended that i) there should be a parity in pay scales of staff in is & AD and other accounts organisation and accordingly scales should be revised and (ii) certain revised pay scales in the accounts wing should be treated as functional (grades) requiring permission as per normal procedure and number of posts to be placed in those scales to be decided by Government. In so far as first part of the recommendations is concerned, effect was given from 1.1.1986 and as such all those officers of both the wings who were entitled to scales of pay from 1.1.1986 were granted the same w.e.f. that date. It was the second part of the recommendations which was given effect from 1.4.1987. The Court found that on the reference to the second part of recommendations, categories of posts in functional grades in the accounts wing had to be identified and graded and without undergoing this exercise upgraded pay scales could not have been given. This exercise was done and thereafter upgraded pay scales given to the post which were identified and brought into functional grades from a future date i.e. 1.4.1987 on completion of such an exercise was held to be valid. The Court found that identification of these posts and the up gradation cannot be treated as mere administrative difficulties.

Implementation of the recommendations of the Pay Commission according to terms thereof itself involved this exercise of creation of posts after identification which naturally took some time and Therefore the two categories being different, principle of "equal pay for equal work" was not attracted. It was found, as a matter of fact, it cannot be said that the post identified specifically were in existence as on 1.1.1986, and Therefore, claim to get the same pay scale from 1.1.1986 could not be justified. In the case of State of Rajasthan Vs. Gopaldass (supra) the Court found on the facts of that case that it was not a case of removal of anomaly but acceptance of the demand of the UDCs of the subordinate offices for grant of higher pay scale which was given to their counterparts in Secretariat, and Therefore, it could be given from a later date. Therefore this case is distinguishable on facts.

16. It may be mentioned at this stage that at the time of arguments, counsel for the petitioner had even tried to argue that petitioners were entitled to the revision in the pay scales at par with Delhi Police etc. w.e.f. 1.1.1986 and directions be given to this effect. However, I am not inclined to accept this submission. First of all, it may be noticed that the prayer of the petitioners in the writ petition is for grant of revision in the pay scales w.e.f. 1.1.1996 and there is no prayer that the petitioners are entitled to the same pay scale as was given to their counterparts in Delhi Police w.e.f. 1.1.1986. Secondly, the entire case is based on order dated 10.10.1997 which had been passed after undertaking the exercise of rationalisation of implementation of recommendations of Vth Central Pay Commission. Therefore the relevant date has to be 1.1.1996. Thirdly, even on merits, there is no basis to make the claim of parity e.f.1.1.1986. Para 2 of order dated 10.10.1997 whereby pre-revised pay scales are rationalised (i.e. the pay scales of IVth Central Pay Commission) is for the purpose of giving replacement pay scales after the implementation of recommendations of V Central Pay Commission and not for any other purposes. Therefore, as pointed out above, the rationalisation of pre-revised pay scales has to be as on 31st December 1995 to make the replacement scale applicable to the petitioners, and Therefore, pre-revised pay scales cannot be granted to the petitioners w.e.f. 1.1.1986 as claimed.

17. The result of the aforesaid discussion is that this petition succeeds. Rule is made absolute. Petitioners are entitled to the revised pay scales w.e.f. 1.1.1996. Para 5 of the order dated 10.10.1997 is quashed. The arrears to which the petitioners shall be entitled to as a result of the aforesaid directions be calculated and paid to the petitioners within a period of four months from today.

18. However in the peculiar circumstances of this case, parties would bear their own costs.