

Before M.M. Kumar & T.P.S. Mann, J.
SEHDEV PASWAN AND OTHERS,—Petitioner
versus
UNION OF INDIA AND OTHERS,—Respondents
C.W.P. No. 17482/CAT of 2006
28th February, 2011

Constitution India, 1950—Art. 226—Revision of pay scales for EDP staff working in Ministry of Railways—Recommendation for revision of pay scale in respect of Data Entry Operators Grade ‘B’ belonging to Census Department declined—Judicial precedents in favour of petitioners accepting parity of pay scale between EDP staff of Ministry of Railways and Data Entry Operators—Petitioners also entitled to same pay scale which is given to holder of same post in Ministry of Railways—Petition allowed, order of Tribunal holding that matters of pay scales have to be left to wisdom of expert bodies set aside.

Held. that the view taken by the Tribunal is liable to be reversed because the Tribunal has misdirected itself by concluding that the matters of pay scales have to be left to the wisdom of expert bodies. The aforesaid proposition of law is indisputable but it would not apply to the facts of the present case. There are judicial precedents in favour of the applicant-petitioners accepting parity of pay scale between them and the EDP staff working in the Ministry of Railways.

(Para 28)

Further held. that the Fourth and the Fifth Central Pay Commission has taken the view that the pay scales of all the EDP staff should be on par with each other. Therefore, on the recommendation of the Pay Commission, past judicial precedents in the case of the applicant-petitioners themselves and principles of law, no doubt is left that Data Entry Operators Grade ‘B’ working in the Directorate of Census Operations, Union Territory, Chandigarh have to be given the same pay scale which is being given to the holder of the same post in the Ministry of Railways.

(Para 28)

Deepak Sibal, Advocate, *for the petitioners.*

Hemen Aggarwal, Advocate, *for the respondent-Union of India.*

M. M. KUMAR, J.

(1) This petition filed under Article 226 of the Constitution challenges order dated 18th August, 2004 (P-9) passed by the Central Administrative Tribunal, Principal Bench, New Delhi (for brevity, 'the Tribunal') in a bunch of Original Applications including the OA filed by the applicant-petitioners, declining their claim of parity of pay scales. The applicant-petitioners, who have been working as Data Entry Operators Grade-B in the Directorate of Census Operations, Union Territory, Chandigarh, have also sought quashing of order dated 6th January, 1998 (P-4), *vide* which the pay scale of Data Entry Operators Grade B has been revised from Rs. 1,400–2,300 to Rs. 4,500—7,000 instead of Rs. 5,000–8,000, with effect from 1st January, 1996. They have also challenged order dated 28th May, 2002 (P-5) declining their request for grant of scale of Rs. 5,000–8,000, with effect from 1st January, 1996. Still further a *mandamus* has been sought commanding the respondents to place the applicant-petitioners in the pay scale of Rs. 5,000–8,000 with effect from 1st January, 1996 and to pay arrears with interest.

(2) Brief facts of the case are that the applicant-petitioners are working as Operators Grade-B (commonly known as 'the Data Entry Operators') in the Directorate of Census Operations, U.T., Chandigarh. By a notification dated 7th/14th December, 1984, statutory rules known as 'the Office of the Registrar General, India and the Offices of the Directorate of Census Operations in States and Union Territories (Operator) Recruitment Rules, 1984 (for brevity, 'the Rules') were notified (P-1). The Rules were applicable to the post of Operation in the office of the Registrar General, India, and each of the offices of the Directors of Census Operations in the States and Union Territories, has been treated as separate and an independent unit as specified in the Appendix to the Schedule appended to the Rules. For direct recruitment to the said post, the requisite qualification prescribed was possession of degree of a recognised University or equivalent and proficiency as Operator of Key Punching/English typewriting, which was to be assessed through a prescribed qualifying test. The Schedule appended with the Rules further provided the pay scale of Rs. 330–10–380–EB–12–500–15–560 for the post of Operator. The said post was classified as a 'General Central Service Group 'C' Non-Gazetted Non-Ministerial'.

(3) The Fourth Pay Commission constituted by the Central Government, in Chapter XI of its recommendations made certain observations with regard to 4000 posts of Electronic Data Processing (for brevity, 'EDP') available in 21 Ministeries/Departments. In fact, the Fourth Pay Commission found that there were a large number of EDP posts at different levels in different departments such as National Informatics Centre (NIC), Department of Electronics, Registrar General of India (Ministry of Home Affairs), Ministry of Defence, Planning Commission and Department of Statistics, which were in 14 pay scales at different levels ranging from Rs. 260-400 to Rs. 650-950. It was felt necessary that there should be regularly constituted service for staff engaged in the EDP work. Accordingly, recommendation was made to constitute a cadre of experienced employees trained in EDP and other related areas of work. The task was to be undertaken by the Department of Electronics.

(4) In view of the above recommendations, a Committee under the Chairmanship of Dr. N. Sheshagiri was constituted, which recommended the pay scale of Rs. 1,350-2,200 for EDP Staff working in the pay scale of Rs. 330-560 in the Ministry of Railways i.e. the same scale of pay which the applicant-petitioners were drawing prior to 1st January, 1986. On 11th September, 1989, the Ministry of Finance accorded sanction to the revised pay scale of Rs. 1,350-2,200 to the EDP staff engaged in various offices of the Registrar General of India including employees of the Directorate of Census Operation in various States but with effect from the date of letter i.e. 11th September, 1989, instead of 1st January, 1986. Subsequently, on 10th September, 1990, the Registrar General of India also issued an order revising the pay scales of Operators from Rs. 330-560 to Rs. 1,350-2,200 with effect from 11th September, 1989. The applicant-petitioners have asserted that their post of Operator was re-designated as Data Entry Operators Grade 'B'. However, in the case of EDP staff working in the Ministry of Railway, the revised pay scale of Rs. 1,350-2,200 was implemented with effect from 1st January, 1986.

(5) Feeling aggrieved, the Data Entry Operators working in the Directorate of Census Operations in the State of Orissa filed Original Application No. 249 of 1991 before the Cuttack Bench of the Tribunal claiming implementation of the pay scale of Rs. 1,350-2,200 with effect from 1st January, 1986 instead of 11th September, 1989, as was done in

the case of EDP staff of the Ministry of Railways. On 6th April, 1992, their Original Application was allowed holding that there could not be any discrimination in the date of implementation of the revised pay scale between EDP staff working in the Directorate of Census Operations under the Ministry of Finance and similar staff working in the Ministry of Railways. All the applicants in the said OA were held entitled to be placed in the revised pay scale of Rs. 1,350-2,200 with effect from 1st January, 1986 and the authorities were directed to calculate and release the arrears due to them within 120 days from the date of receipt of a copy of the judgment. On 29th August, 1992, the Review Petition filed before the Cuttack Bench of the Tribunal was dismissed. Thereafter Special Leave to Appeal (Civil) No. 24415 of 1994 filed by the Union of India was also dismissed by Hon'ble the Supreme Court *vide* order dated 15th March, 1994. Similar orders were passed by the Hyderabad and Lucknow Benches of the Tribunal against which SLPs were dismissed by the Hon'ble Supreme Court. Thereupon, the office of the Registrar General of India addressed a communication to the States of Uttar Pradesh, Andhra Pradesh and Orissa conveying approval of the Government to implement the said judgments. It was, however, observed in the aforesaid communication that the judgments be implemented only in respect of the applicants before the Tribunals.

(6) The applicant-petitioners also represented for grant of same relief and when their claim was ignored they approached the Chandigarh Bench of the Tribunal. They were ordered to be placed in the scale of Rs. 1,350-2,200 with effect from 1st January, 1986 but arrears along with interest @ 18% were to be paid for 18 months prior to the filing of the respective OAs. Feeling dissatisfied, the applicant-petitioners challenged the order passed by the Chandigarh Bench of the Tribunal before this Court in CWP No. 904 of 1999 (Sehdev Paswan and others *versus* Union of India and others). On 12th May, 2000 (P-2), Division Bench of this Court allowed the said writ petition and ordered that all financial dues be released to them with effect from 1st January, 1986.

(7) In the interregnum, the recommendations of the Fifth Pay Commission came into being. In Chapter 55 of its report, the Fifth Pay Commission after referring to various recommendations of the aforesaid Sheshagiri Committee and the existing grades etc., in para 55.70 noticed the qualifications for recruitment generally obtaining in different departments

for EDP staff and then recommended pay scales for various posts concerning Data Entry/Processing. The relevant extracts of paras 55.70 and 55.71 of the report of Fifth Pay Commission (P-2/A) reads thus :

“55.70 The recruitment qualifications generally obtaining in different departments for EDP staff are summarised below :

| S. No. | Designation | Pay Scale (Rs.) | Recruitment Qualification |
|--------|--|-----------------|--|
| 1. | Data Entry Operator Gr. 'A' | 1,150-1,500 | 10+2 + speed of 8000 key depressions per hour for Data Entry work. |
| 2. | Data Entry Operator Gr. 'B' / Console Operator | 1,350-2,200 | Graduation + Aptitude Test (Railways) or Diploma/ Certificate in Computer Application/Programming etc. Speed of 8000 depressions per hour. |
| 3. | Data Entry Operator Gr. 'C' | 1,400-2,300 | Promotion |
| 4. | Data Entry Operator Gr. 'D' / Data Processing Assistant 'A' | 1,600-2,660 | Degree + Diploma/ Certificate in Computer Application (part Direct Recruitment) |
| 5. | Data Processing Asstt. Gr. 'B' / Senior Console Operator/Scientific Asstt. 'B' | 2,000-3,200 | Degree in Computer Science/Computer Engineering or Masters Degree in Computer Application or Masters in Stat/Maths Etc. + 2 years or Degree in Maths + 4 years (part Direct Recruitment) |

“55.71 We are aware of the fact that trained EDP personnel are much in demand within the country as well as abroad. Keeping in view the existing recruitment qualifications prescribed for various levels of posts for EDP personnel, we consider that there is a need for improving the remuneration of EDP/Computer professionals. Accordingly, we recommend the following general pay structure :—

| Designation | Pay Scales (Rs.) | |
|--|------------------|------------------|
| | Existing | Recommended |
| Data Entry Operator Grade ‘A’ | 1,150–1,500 | 1,320–2,040 (*) |
| Data Entry Operator Grade ‘B’/Console Operator | 1,350–2,200 | 1,400–2,300 (\$) |
| Data Entry Operator Grade ‘C’ | 1,400–2,300 | 1,600–2,660 |
| xxx | xxx | xxx |

- (*) The recruitment qualification for this post being 10+2 and 8000 key depressions per hour for data entry work, the pay scale of Rs. 1,320–2,040 would be justified in view of ordinary matriculates being granted the lower pay scale of Rs. 950–1,500. The pay scale of Rs. 1,150–1,500 presently available to DEO Grade ‘A’ is also proposed to be abolished in the proposed general pay structure.
- (\$)
- In some organisations DEO Grade ‘B’ is the initial pay scale for Data Entry Operators. The recruitment qualification in such organisations for the post of DEO Grade ‘B’ is graduation + Aptitude test or Diploma/Certificate in Computer Application/ Programming + Speed of 8000 depressions per hour. The proposed pay scale of Rs. 1,400–2,300 is, therefore, justified in the light of general principles being proposed by us for revised pay structure.”

(8) The Fifth Pay Commission also made specific recommendations for the EDP staff working in the departments of Census Commissioner and Registrar General, India, Ministry of Home Affairs from paras 55.100 to 55.103. Paras 55.102 and 55.103 being relevant are reproduced as under :

“55.102 The EDP staff have demanded (i) merger of DEO Grade ‘A’ and ‘B’ on the plea that the duties and responsibilities of these posts are identical. (ii) implementation of five standard pay scale of EDP staff in RGI offices. (iii) Upgradation of the pay scale of Junior Supervisor (Rs. 1,400–2,300) to the pay scale of Rs. 1,600–2,660 at par with similar post in NIC. (iv) Re-designation of the post of Senior Supervisor (Rs. 1,640–2,900) as DEO Grade ‘D’ and its classification as gazetted. (v) Availability of gazetted posts for promotion of EDP staff and (vi) introduction of Flexible Complementing Scheme (FCS)

55.103 We have carefully examined the cadre structure of EDP staff in RGI offices. Our recommendations are as under :—

- (i) We are of the considered view that number of pay scales are dependent on functional requirements. Redesignations be considered by the Department keeping in view our general recommendations and job profile of posts.
- (ii) In order to remove stagnation and improve the career prospects, the following pay structure is recommended in line with our general recommendations :—

| Designation | Pay Scale (Rs.) | | No. of Posts |
|-------------------------------|-----------------|-------------|--------------|
| | Existing | Recommended | |
| Data Entry Operator Grade ‘A’ | 1,150–1,500 | 1,320–2,040 | 288 |
| Data Entry Operator Grade ‘B’ | 1,350–2,200 | 1,400–2,300 | 1152 |
| Junior Supervisor | 1,400–2,300 | 1,600–2,660 | 216 |
| Senior Supervisor | 1,640–2,900 | 1,640–2,900 | 72 |
| Data Processing Assistant-II | 1,600–2,660 | 1,640–2,900 | 12 |
| Data Processing Assistant-I | New level | 2,000–3,500 | 12 |

- (iii) As the routine EDP work cannot be considered scientific in nature, we are not in a position to accept the demand for coverage of EDP staff by Flexible Complementing Scheme.”

(9) It is also pertinent to mention here that in Volume I Part-IV Section-I Chapter 43 of its Report, the Fifth Pay Commission made certain general recommendations on pay structure. Under the heading ‘Merger of Scales’ in para 43.5 the Commission merged a number of scales because the existing scales were too close to each other or because the Commission decided to do away with some scales altogether. The scales of Rs. 1,350–2,220 and Rs. 1,400–2,300 were also recommended to be merged because these two scales were too close to each other. Furthermore, in Annexure 43.1 the Fifth Pay Commission has given the table of the proposed scale of pay and at Sr. No. 8 thereof against the existing standard Scale of Rs. 1,350–30–1,440–40–1,800–50–2,220–1,400–40–1,800–50–2,300 the revised standard scale of pay of Rs. 4,500–125–7,000 has been proposed.

(10) Other than this, in Volume-II, Part-IV, Section II of the report the Fifth Pay Commission dealt with the pay scales for common categories whereas in Section III the pay scales for other post in different Ministries have been dealt with. The ‘other posts’ of the ‘Registrar General of India’ finds mention at para Nos. 70.5 to 70.8. At Sr. No. 70.8, with a view to streamline the grade structure and improving the career prospects in the office of the Registrar General of India, the Commission made certain recommendations regarding revision of pay scales and partial restructuring of the organisation. With regard to Electronic Data Processing Division (EDP) the following observations have been made :

“(a) xxx xxx xxx

- (b)The pay scales of other posts in EDP should be on par with the EDP personnel as under :

| | Existing | Proposed |
|------------------------|-----------------------|-----------------|
| (i) to (v) | xxx | xxx |
| (vi) Junior Supervisor | Rs. 1,600–2,660 (216) | Rs. 1,400–2,300 |

- (vii) Data Entry Operator Rs. 1,400–2,300 Grade 'B' (1152)
Rs. 1,350–2,220
- (viii) Data Entry Operator Rs. 1,200–2,040 Grade 'A' (288)
Rs. 1,150–1,500

(11) On 30th September, 1997, the Ministry of Finance, Government of India issued a notification, notifying the rules known as 'the Central Civil Services (Revised Pay) Rules, 1997 (for brevity, 'the 1997 Rules'). In Part-A of the First Schedule appended to the 1997 Rules, the recommendation of the Fifth Pay Commission regarding revision of existing standard scale of Rs. 1,350–2,200 to that of Rs. 4,500–7,000 was accepted by the Government. Other than this, in Part-C of the First Schedule appended to the 1997 Rules the revised scales of pay for certain posts in Ministeries, Departments and Union Territories have been specifically shown. The Ministry of Home Affairs finds mention at Sr. No. XV of the table contained in Part-C. The relevant extract of abovesaid Part-C and entries concerning the offices of the 'Registrar General of India' and 'Census Commissioner and Registrar General, India, Electronic Data Processing Staff', are reproduced as under :

“THE FIRST SCHEDULE

PART-C

REVISED SCALES OF PAY FOR CERTAIN POSTS IN MINISTERIES, DEPARTMENTS AND UNION TERRITORIES

The revised scales of pay mentioned in Column 4 of this part of the Notification for the posts mentioned in column 2 have been approved by the Government. However, it may be noted that in certain cases of the scales of pay mentioned in column 4, the recommendations of the Pay Commission are subject to fulfilment of specific conditions. These conditions relate *inter-alia* to changes in recruitment rules, restructuring of cadres, re-distribution of posts into higher grades etc. Therefore, in those cases where conditions such as changes in recruitment rules etc. which are brought out by the Pay Commission as the rationale for the grant of these upgraded scales, it will be necessary for the Ministeries to decide upon such issues and

agree to the changes suggested by the pay Commission before applying these scales to these posts with effect from 1st January, 1996. In certain other cases where there are conditions prescribed by the Pay Commission as pre-requisite for grant of these scales to certain posts such as cadre restructuring, redistribution of posts etc. it will be necessary for the Ministries/ Department concerned to not only accept these preconditions but also to implement them before the scales are applied to those posts. It would, therefore, be seen that it is implicit in the recommendations of the Pay Commission that such scales necessarily have to take prospective effect and the concerned posts will be governed by the normal replacement scales until then.

| Sl. No. | Posts | Present Scale (Rs.) | Revised Scale (Rs.) | Paragraph No. of Report |
|---|-------------------------------|---------------------------------|---------------------|-------------------------|
| 1 | 2 | 3 | 4 | 5 |
| XV <u>MINISTRY OF HOME AFFAIRS</u> | | | | |
| REGISTRAR GENERAL OF INDIA | | | | |
| 1 to 5. | xxx | xxx | xxx | xxx |
| 6. | Junior Supervisor | 1,400-40- 1,800-50- 2,300 | 5,000-175- 8,000 | 70.8 |
| 7. | Data Entry Operator Grade 'A' | 1,150-25- 1,500 | 4,000-100- 6,000 | 70.8 |
| 8 to 28. | xxx | xxx | xxx | xxx |
| CENSUS COMMISSIONER AND REGISTRAR GENERAL, INDIA, ELECTRONIC DATA PROCESSING STAFF | | | | |
| 29. | Data Entry Operator Grade 'A' | 1,150-25- 1,500 | 4,000-100- 6,000 | 55.103 |

| | | | | |
|-----|------------|-----------|------------|------------------|
| 30. | Junior | 1,400-40- | 5,000-175- | 55.103 |
| | Supervisor | 1,800-50- | 8,000 | |
| | | 2,300 | | |
| | xxx | xxx | xxx | xxx ² |

(12) On 6th January, 1998 (P-4), office of the Registrar General, India, Ministry of Home Affairs, Government of India, issued an office memorandum implementing the upgraded scales of pay in respect of some posts in the office of RGI and DCOs. The relevant extract of the said office memorandum reads thus :

“Subject : Central Civil Services (Revised Pay) Rules, 1997—
Implementation of the upgraded scales of pay in respect of
some posts in the office of RGI and DCOs.

The undersigned is directed to refer to the Central Civil Services (Revised Pay) Rules, 1997 and to convey the approval of the Government to the implementation of the upgraded revised scales of pay in respect of the following posts where the upgradation of the posts does not involve any revision of the recruitment rules or restructuring of the cadre. The upgraded pay scales in respect of these posts shall take effect from 1st January, 1996.

| | POST/GRADE | PRE-REVISED SCALE | | REVISED SCALE (RS.) |
|--------|-------------------------------|-------------------|----------------|---------------------|
| | | Original (Rs.) | Upgraded (Rs.) | |
| 1 | xxx | xxx | xxx | xxx |
| to | | | | |
| 4 | | | | |
| 5. | Data Entry Operator Grade 'A' | 1,150-1,500 | 1,200-2,040 | 4,000-100-6,000 |
| 6. | Data Entry Operator Grade 'B' | 1,350-2,200 | 1,400-2,300 | 4,500-125-7,000 |
| 7. | Junior Supervisor | 1,400-2,300 | 1,600-2,660 | 5,000-150-8,000 |
| 8 | xxx | xxx | xxx | xxx ² |
| to 11. | | | | |

(13) On 23rd October, 1998 (P-3), the Ministry of Railways, Government of India also passed an order revising the pay scales of certain categories of staff of the Ministry of Railways (Railway Board) while implementing Fifth Central Pay Commission's recommendations, as contained in para 55.71 and 55.272 of the Report. For the EDP Staff of the Railway Board, the following scales of pay were prescribed :

"EDP Staff (Railway Board)

| S. No. | Post | Present Scale | Revised |
|--------|---|---------------|--------------|
| 1. | Senior Data Entry Operators/Sr. Input Output Controllers | 1,400-2,300 | 5,000-8,000 |
| 2. | General Punch Room Supervisor/Input Output Supervisor/ Console Operator | 1,600-2,660 | 5,500-9,000" |

(14) A number of representations were made by the Senior Supervisors, Junior Supervisors and Data Entry Operators Grade B for upgrading their pay scales from Rs. 5,500-9,000 to 6,500-10,500, Rs. 5,000-8,000 to 5,500-9,000 and Rs. 4,500-7,000 to Rs. 5,000-8,000 respectively. In support of their requests, they cited the cases of other departments in respect of EDP cadre etc. On 28th May, 2002, an order was passed by the office of the Registrar General, India declining the said representations by holding as under :—

“In this connection it may be mentioned that the Vth Central Pay Commission Upgraded the pre-revised pay scales of the posts of Data Entry Operator Grade B and Junior Supervisor in ORGI from Rs. 1,350-2,200 to Rs. 1,400-2,300 and from Rs. 1,400-2,300 to Rs. 1,600-2,660 respectively and the corresponding replacement scales of the upgraded pay scales have been provided to these two posts. The post of Senior Supervisor have been given the replacement scale of the pre-revised pay scale of Rs. 1,640-2,900 as per the recommendations of the Vth Central Pay Commission. As such the Vth CPC's recommendations have already been implemented in full in respect of these posts.

It may also be mentioned that some Senior Supervisor, Junior Supervisors and Data Entry Operators Grade B have already filed O.As, etc. in the Courts seeking the same relief as mentioned in representations and therefore, the matter is sub-judice.

In view of the above, no further action is being taken by this office at present on the representations of Senior Supervisors, Junior Supervisors and Data Entry Operators Grade B. This position may be apprised to the concerned representationists.”

(15) Challenging the office memorandum dated 6th January, 1998 and order dated 28th May, 2002 (P-5), the applicant-petitioners filed Original Application No. 963/CH/2002 before the Chandigarh Bench of the Tribunal. Since various OAs on the same issue were pending in different Benches of the Tribunal, therefore, the same were transferred to the Principal Bench of the Tribunal at New Delhi. The Tribunal after having considered the factual matrix and in the light of various judgments of Hon'ble the Supreme Court rendered in the cases of **State of Haryana versus Jasmer Singh**, (1) **Shyam Babu Verma versus Union of India**, (2) **Union of India versus Pradip Kumar Dey**, (3) **State Bank of India versus M.R. Ganesh Babu**, (4) **Union of India versus Tarit Ranjan Das**, (5) **Sher Singh versus Union of India**, (6) and **State of Haryana versus Haryana Civil Secretariat Personal Staff Association** (7) as also the judgment of the Jaipur Bench of the Tribunal in the case of **Shyam Sunder Sharma and others versus Union of India and others** (O.A. No. 490/2001, decided on 9th May, 2003), dismissed all the OAs *vide* common order dated 18th August, 2004 (P-9).

(16) The basic argument before the Tribunal was that on earlier occasions there has been pay parity between the EDP staff working in the Ministry of Railways and similar departments and the parity cannot be disturbed in the absence of any compelling circumstances. The aforesaid argument has been rejected by following the age old conservative principle that it is a matter within the domain of the expert bodies and the Courts cannot issue directions. The Tribunal observed that "*Equal pay for equal*

(1) J.T. 1996 (10) S.C. 876

(2) (1994) 2 S.C.C. 521

(3) 2001 S.C.C. (L&S) 56

(4) J.T. 2002 (4) S.C. 129

(5) 2004 (1) SC SLJ 47

(6) J.T. 1995 (8) S.C. 323

(7) J.T. 2002 (5) S.C. 189

work is not a Fundamental Right but a constitutional goal. The Supreme Court has, more often than once, held that this is a fact which falls within the domain of the Expert Body and unless there is hostile discrimination, the Court/Tribunal should not interfere. The quality of work performed by different sets of persons holding different jobs will have to be evaluated."

(17) We have heard learned counsel for the parties at a considerable length and have also perused the paper book with their able assistance. It is true that the questions concerning pay scale has to be weighted and evaluated by Expert Bodies like Pay Commission. However, the Data Entry Operators Grade 'B' like the applicant-petitioners working in the Census Department have been given parity in pay scale with those who are working in the Ministry of Railways. A bird-eye view can be presented with the help of the following table :—

| Directorate of Census Operation Data Entry Operators Grade 'B' | | | |
|---|--|------------------------------|---------------|
| I | II | III | IV |
| Pre 1.1.1986 | With effect from 1.1.1986 | With effect from 1.1.1996 | Claim |
| Rs. 330-560 | Rs. 1200-2040 (on the recom- mendation made by the IVth Central Pay Commission and duly accepted by the Union of India) | Rs. 4500-7000 | Rs. 5000-8000 |
| | Rs. 1350-2200 w.e.f. 11.9.1989 On the directions by Courts pay scale granted w.e.f. 1.1.1986 Vth Central Pay Commission upgraded to Rs. 1400-2300 | | |

MINISTRY OF RAILWAYS

EDP Staff

| I | II | III |
|--------------|---|---------------------------|
| Pre 1.1.1986 | With effect from 1.1.1986 | With effect from 1.1.1996 |
| Rs. 330-560 | Rs. 1200-2040 However revised to Rs. 1350-2200 for Electronic Data Processing staff w.e.f. 1.1.1986 Vth Central Pay Commission recommended Rs. 1400-2300 | Rs. 5000-8000 |

(18) It has already been pointed out that various Benches of the Tribunal like Cuttack, Hyderabad, Calcutta, Ernakulam, Bangalore, Lucknow and Mumbai had declared that the Data Entry Operator Grade 'B' were entitled to pay scale of Rs. 1350-2200 w.e.f. 1st January, 1986. They all were given benefits of arrears of pay w.e.f. 1st January, 1986 to 11th September, 1989. Even Special Leave Petitions were dismissed. When the Data Entry Operators Grade 'B' including the applicant-petitioners approached the Chandigarh Bench of the Tribunal by filing various original applications claiming implementation of revised pay scale of Rs. 1350-2200 w.e.f. 1st January, 1986, the same were partially allowed on 23rd September, 1998 in the following terms :

“We thus allow all these OAs with the above mentioned directions for grant of the scale of Rs. 1,350-2,220 to the applicants with effect from 1st January, 1986. The respondents are directed to work out their pay and allowances with effect from the above mentioned date notionally and to pay them the arrears of pay and allowances with effect from the month falling within 18 months prior to the filing of their respective OAs, which are determinable from the record of these cases. On these arrears, they would be entitled to interest at the rate of 12% per annum. Their present pay and allowances will be fixed after working out the same on the basis of the revised pay scales as per directions given above.”

(19) A Division Bench of this Court while dealing with a bunch of petitions, vide judgment dated 12th May, 2000 rendered in the case of **Bharat Bhushan and others versus Union of India and others** (C.W.P. No. 19367 of 1998, Annexure P-2) granted the relief regarding arrears by observing as under :

“The instant case is really an illustration of unlimited exploitation by the executive. Narration of facts above reveals that the Tribunal all over the country had clearly declared the implementation of the revised pay scales of Rs. 1,350–2,200 in respect of Data Entry Operators is Grade B with effect from 1st January, 1986. Union of India, however, insisted that the judgments of the Tribunal would not be implemented generally in spite of the fact that petitions for special leave to Hon’ble Supreme Court had also been dismissed. Some of the orders passed by the Tribunals expressly declared that the decisions rendered by the Tribunals were in the nature of an order in rem; other Tribunals expressed that the orders were general and not on individual basis. One of the Tribunals also held that relief could not be denied in spite of the delay in approaching the Tribunals. Be that as it may, the Authorities insisted that each of the petitioners should approach a Court/Tribunal and then alone the benefit would be released to them.

The Constitution of India in its preamble, pledges to secure to citizens of this country, justice; social and economic. In spite of ours being a social welfare State one cannot understand how the executive can deny wages to a citizen for services rendered. In the instant case, the revised wages were payable with effect from 1st January, 1986 for the service which the petitioners had already rendered.”

(20) The Division Bench placed reliance on the judgment of Hon’ble the Supreme Court rendered in the case of **K.C. Sharma and others versus Union of India and others**, (8) and proceeded to grant even arrears by observing as under :

“The petitioners have been denied their financial dues which should have been released to them with effect from 1st January,

1986 for all these years. In these circumstances we feel that the petitioners should also be paid interest at the rate of 12% per annum on the arrears due to them, till the date the same are released to them. The arrears paid to the petitioners on the basis of the decision rendered by the Tribunal dated 23rd September, 1998 will be deducted from the amount payable to the petitioners.”

(21) It has also come on record that the Fourth Pay Commission had made recommendations in respect of 4000 posts of EDP staff available in 21 Ministries/Departments. There were a large number of EDP posts at different levels in different departments which were in 14 different pay scales ranging from Rs. 260–400 to Rs. 650–950. It felt the necessity of constituting a regular cadre for staff engaged in the EDP and recommendation was made to constitute a cadre of experienced employees trained in EDP and other related arrears of work. The task was required to be undertaken by the Department of Electronics for suggesting reorganisation of the existing posts and to prescribe uniform pay scales and designations in consultation with the Department of Personnel. Till then the pay scales and special pay recommended by the 4th Pay Commission in Chapter 8 and 24 of its report were to apply to the existing posts. The pay scale recommended for the post of Operator was from Rs. 330–560 to Rs. 1,200–2,040 with effect from 1st January, 1986.

(22) We have already noticed that the Committee headed by Dr. N. Sheshagiri had recommended Rs. 1,350–2,220 for EDP staff working in the pay scale of Rs. 330–560 in the Railways. That pay scale has already been given to the applicant-petitioners working in the Census Department with effect from 1st January, 1986 although the respondents wanted to give it to them with effect from 11th September, 1989. However, the applicant-petitioners have succeeded before this Court as already noticed by the Division Bench in its judgment dated 12th May, 2000 (P-2) in securing the arrears with effect from 1st January, 1986.

(23) The Fifth Central Pay Commission upgraded the scale of Rs. 1,350–2,200 to Rs. 1,400–2,300, yet the respondent-Director of Census has given the revision with effect from 1st January, 1996 to Rs. 4,500–7,000. On 6th January, 1998 (P-4) a letter has been sent to all concerned by referring to the 1997 Rules and also to convey approval of the Government of India for implementation of upgraded revised scales. On 23rd October, 1998 (P3), the Ministry of Railways, Government of India

also passed an order revising the pay scales of certain categories of staff of the Ministry of Railways (Railway Board) while implementing Fifth Central Pay Commission's recommendations. The EDP Staff working in the scale of Rs. 1,400-2,300 has been given the revised scale of Rs. 5,000-8,000. [See extracts in paras 12 & 13].

(24) Therefore, it is evident that the EDP staff working in the un-revised scale of Rs. 1,400-2,300 in the Railway Board have been given revised scale of Rs. 5,000-8,000, whereas the applicant-petitioners, who are their counterparts, have been given the revised scale of Rs. 4,500-7,000. It is one thing to say that Courts cannot assess the work and numerous other factors which weigh with the experts and the matter is left to such bodies. But it is quite another thing that expert have recommended revision for all categories of EDP staff/Data Entry Operators for all departments equally. The respondents have followed the opinion of the experts for the EDP staff working in the Ministry of Railways and has given them the revised pay scale of Rs. 5,000-8,000 but refused to give effect to its recommendation in respect of Data Entry Operators Grade 'B' belonging to the petitioner's department.

(25) In **Purshottam Lal versus Union of India, (9)**, a Constitution Bench of Hon'ble the Supreme Court culled out the proposition in similar circumstances holding it to be discriminatory and observed as under :

"15. Mr. Dhebar contends that it was for the Government to accept the recommendations of the Pay Commission and while doing so to determine which categories of employees should be taken to have been included in the terms of reference. We are unable to appreciate this point. Either the Government has made reference in respect of all Government employees or it has not. But if it has made a reference in respect of all Government employees and it accepts the recommendations it is bound to implement the recommendations in respect of all Government employees. If it does not implement the report regarding some employees only it commits a breach of Articles 14 and 16 of the Constitution. This is what the Government had done as far as these petitioners are concerned.

16. The learned counsel next contends that there has been great delay in bringing this petition and we should not exercise our discretion. There has been some delay but on the facts of this case we are of the opinion that there has not been undue delay, especially as in his letter dated 23rd March, 1967 the President, Forest Research Institute and Colleges said that the points were being examined and if necessary the Ministry would be consulted.
17. In the result the petition is allowed and it is directed that the revised pay scales of the petitioners will have effect from 1st July, 1959 in accordance with the recommendations of the Pay Commission. We further direct that the petitioners should be paid the amount payable to them as a consequence of the revision of the pay scales with effect from July, 1959. The petitioners will have the costs of this petition.”

(26) Likewise in **Employees of Tannery Footwear Corporation of India Ltd. versus Union of India**, (10) their Lordships have observed as follows :

- “15.The Committee was of the view that rationalisation of the present heterogeneous structure of pay scales was required in the interests of uniform remuneration for similar work in the different enterprises. (Page 65 para 8.16). In *Jute Corporation of India Officers' Association v. Jute Corporation of India Limited*, (1990) 2 JT SC 255, this Court has given directions for applying the revised pay-scales recommended by the said Committee to the various Public Sector Undertakings of the Government of India having the Central Government pattern of D.A. This shows that there would be parity in pay scales of the employees falling in the four categories, with which we are concerned, in the various enterprises of the Government of India which are following the Central Government D.A. pattern. There appears to be no reason why the petitioners should be denied similar parity in the matter of pay scales with the staff falling in the aforesaid four categories employed with the Cotton Corporation of India especially when such employees were

having the same pay scales in 1970. We are, therefore, of the view that the pay-scales of the employees in the unionised cadre falling in the four categories referred to above in the respondent-corporation should be revised in a way that the same are at par with the pay scales of such employees employed with the Cotton Corporation of India.

16.Here we are not concerned with equation of posts because the posts falling in the abovementioned four categories of employees in the respondent corporation as well as the Cotton Corporation of India are of the same level and employees working on these posts were having the same pay scales in 1970. There is nothing on the record to show that after 1970 there has been any change in the duties and functions of the persons holding these posts in the two corporations which may justify fixation of different pay scales for these posts in the two corporations. The pay scales of the petitioners as revised by order dated 25th April, 1986, cannot, therefore, be upheld. The respondents Nos. 1 and 3 should so revise the pay scales of the petitioners as to be at par with pay scales enjoyed by the employees falling in the same category in the Cotton Corporation of India on the date from which the said revised pay scales are to be applied. Under order dated 25th April, 1986, the revision of the pay scales of the petitioners has been made with effect from 1st August, 1983 and is valid up to 31st July, 1987. The revision in the pay scales of the petitioners should be made keeping in view the pay scales and allowances enjoyed by the employees falling in the same category in the Cotton Corporation of India on 1st August, 1983 and such revision may be made operative up to 31st July, 1987, as provided in the order dated 25th April, 1986."

(27) We are further of the view that once a post is considered equivalent to another then revision in respect of one cadre would automatically result in revision of the other post. In that regard reliance may be placed on the judgment rendered in the case of **Dr. Sukhdev Singh versus State of Punjab, (11)**.

(28) The aforesaid discussion shows that the view taken by the Tribunal is liable to be reversed because the Tribunal has mis-directed itself by concluding that the matters of pay scales have to be left to the wisdom of expert bodies. The aforesaid proposition of law is indisputable but it would not apply to the facts of the present case as is evident from the discussion in the preceding paras. There are judicial precedents in favour of the applicant-petitioners accepting parity of pay scale between them and the EDP staff working in the Ministry of Railways. When effort was made to grant the applicant-petitioners the higher pay scale with effect from 11th September, 1989 then they had succeeded before this Court in obtaining the relief of the same pay scale with effect from 1st January, 1986 as it was given to the EDP staff working in the Railways Department. The question of comparing the functions and duties of the posts in the present has not been left to the decision of the Courts but has been decided by the expert bodies and the Government itself. Had it not been so then the respondents would have definitely raised an argument before this Court when judgment dated 12th May, 2000 (P-2) was delivered with regard to variation of functions and duties of the applicant-petitioners and those of the EDP staff working with the Railways. Moreover, the Fourth and the Fifth Central Pay Commission has taken the view that the pay scales of all the EDP staff should be on par with each other. Therefore, on the recommendation of the Pay Commission, past judicial precedents in the case of the applicant-petitioners themselves and principles of law, no doubt is left that Data Entry Operators Grade 'B' working in the Directorate of Census Operations, Union Territory, Chandigarh, have to be given the same pay scale which is being given to the holder of the same post in the Ministry of Railways.

(29) As a sequel to the above discussion, this petition succeeds. The impugned judgment dated 18th August, 2004 passed by the Tribunal is set aside. The respondents are directed to revise the pay scale of the Data Entry Operator Grade 'B' equivalent to the pay scale given to the EDP staff working in the Ministry of Railways i.e. Rs. 5,000-8,000 with effect from 1st January, 1996. The needful shall be done within a period of three months from the date of receipt of a certified copy of this order.

(30) The writ petition stands disposed of in the above terms.