

\$~
*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 14th September, 2017

Date of Decision: 13th November , 2017

+ W.P.(C) 8437/2015 & C.M. Nos.18078,19493,28649/2015
HANSRAJ & ORS Petitioners

Through Ms. Jyoti Singh, Sr. Adv with
Mr. S. Padma Kumar and Mr.
Pradeep Dahihya, Adv.

versus

UNION OF INDIA & ORS Respondents

Through Mr. Sanjeev Narula, CGSC
with Ms. Anumita Chandra,
Adv.
Mr. R.N Singh, Adv for R- 7 to
10.

+ W.P.(C) 9921/2015 & C.M. Nos.24068-24069/2015,
10356/2016

NITIN ROSE & ANR. Petitioner

Through Ms. Jyoti Singh, Sr. Adv with
Mr. S. Padma Kumar and Mr.
Pradeep Dahihya, Adv.

versus

UNION OF INDIA & ORS. Respondent

Through Mr. Jasmeet Singh, CGSC for
UOI with Ms. Gayatri Aryan,
Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

JUDGEMENT

REKHA PALLI, J

W.P.(C) 8437/2015 & W.P.(C) 9921/2015

1. The present writ petitions assail the order dated 24.07.2015 passed by Central Administrative Tribunal, Principal Bench, New Delhi in O.A No.4503/2014, whereby the Tribunal has rejected the O.A filed by the Petitioners. The Petitioners had filed the aforesaid common O.A challenging the action of the Respondent No.1 i.e. the Ministry of Statistics & Programme Implementation whereby, vide OM dated 04.12.2014, it had decided to de-cadre twenty nine posts of Investigator Grade-II of Labour Bureau and one post of Statistical Assistant of Department of Post from the Subordinate Statistical Service (hereinafter referred to as SSS) with immediate effect. This would result in the Petitioners being reverted back to the Labour Bureau, from which they had been absorbed into the SSS. However, they were given the option of being retained in the SSS, but on the same posts in which they had been encadred.

2. The brief facts as relevant for the adjudication of the present petition may be noted. The Petitioners had been appointed as Investigator Grade-II in the Labour Bureau (Respondent No.6) under the Ministry of Labour and Employment by way of direct recruitment/promotion during the years 1997-2003. The next promotional grade as per hierarchy in the Labour Bureau is that of Investigator Grade-I. Based on the recommendations of the Vth Central Pay Commission a notification dated 30.09.1997 was issued

granting the replacement scale of Rs.5500-9000/- to the post of Investigator Grade-II and of Rs.6500-10500/- to the promotional post of Investigator Grade-I.

3. Based on the notification dated September 30, 1997, Respondent No.6-the Director General, Labour Bureau, placed the Investigator Grade-I and Investigator Grade-II of Labour Bureau the revised pay scale of Rs. 6500-10500 and Rs. 5500-9000, respectively w.e.f. 01.01.1996.

4. However, vide an order dated 20.03.1998 issued by the Office of Controller of Accounts, Ministry of Labour, the scale of Investigators Grade-II in Respondent No.6 was reduced to Rs. 5000-8000 from that of Rs. 5500-9000. The Investigators Grade-II challenged this action by filing O.A. No. 239-CH/1998 and 240-HP/1998 before the Central Administrative Tribunal, Chandigarh and Shimla Bench. Upon dismissal of these OAs by the Tribunal vide its Common Order dated 18.05.1999, a Civil Writ Petition No. 7311/1999 was preferred by these Investigator Grade-II before the High court of Punjab and Haryana challenging the Tribunal's order dated 18.05.1999. During the pendency of the Writ Petition before Punjab and Haryana High Court, the Ministry of Labour and Employment (Respondent No.5) issued an order dated 21.03.2000 placing the Investigator Grade-II in the pay scale of Rs. 5000-8000/-. The High Court vide its order dated 07.08.2000 allowed the Writ Petition by quashing the above mentioned order dated 21.03.2000 passed by Ministry of Labour and Employment (Respondent No.5).

5. The Respondent No.5 i.e. Ministry of Labour and Employment challenged the order dated 07.08.2000 passed by High court of Punjab and Haryana by way of Special Leave Petition (Civil) No. 21480/2000 before the Supreme Court. However, during the pendency of the SLP (Civil) No. 21480/2000, Respondent No.3, i.e. the Ministry of Finance issued another Notification dated 30.04.2001 modifying its earlier Notification dated 30.09.1997 revising the pay scale of Investigator Grade-II from Rs. 5500-9000 to Rs. 5000-8000 w.e.f. 01.01.1996 and, therefore, the Supreme Court disposed of the SLP (Civil) No. 21480/2000 vide its Order dated 25.09.2001, giving liberty to the Respondents, therein, i.e. the Investigators Grade-II to challenge the new notification dated 30.04.2001 issued by Ministry of Finance before an appropriate forum.

6. Accordingly Investigators Grade-II of the Labour Bureau (Respondent No.6) including Petitioners No. 1 & 2 then approached the Tribunal, Chandigarh Bench by way of O.A. No.1292-CH/2001 challenging this new notification dated 30.04.2001 issued by Respondent No.3, which OA was allowed by the Tribunal vide its order dated 09.03.2004. The Tribunal quashed the notification dated 30.04.2001 issued by Ministry of Finance and restored the upgraded pay scale of Rs. 5500-9000 w.e.f. 01.01.1996 alongwith due arrears to the Applicants therein, which included Petitioner No. 1 & 2 who were also Investigators Grade-II in Respondent No.6.

7. The order passed by the Tribunal, Chandigarh Bench was challenged by Respondent No.5 before the High Court of Punjab

and Haryana by way of C.W.P. No. 13743-CAT/2004, which Petition was dismissed by the High Court vide its Order dated 21.03.2011. This Order passed by the High court of Punjab and Haryana was not challenged by the Respondents and the same thus attained finality. The Respondents, however, implemented the same only qua the applicants in the O.A. No. 1292-CH/2001 and granted them the enhanced pay scale of Rs.5500-9000/- w.e.f 01.01.1996. In these circumstances, other similarly situated Investigators Grade-II, who had not been granted the pay scale of Rs. 5500-9000 filed O.A. No. 1311-CH/2011 before the Central Administrative Tribunal, Chandigarh Bench, which was also allowed by the Tribunal vide its order dated 04.12.2012. This order of the Tribunal was also implemented by Respondent No.5 and, accordingly, the remaining Investigators Grade-II of Labour Bureau were granted the pay scale of Rs. 5500-9000/- w.e.f. 01.01.1996 itself.

8. In the interregnum, while the aforesaid litigation initiated by the Petitioners, who were Investigators Grade-II in the Labour Bureau, for grant of pay scale of Rs.5500-9000/- w.e.f. 01.01.1996 was pending, the Central Government, based on the recommendations of the Vth Central Pay Commission (hereinafter referred as CPC), decided to constitute the SSS.

9. It would be appropriate to reproduce para 81.17 of the recommendations given by the 5th CPC which led to the constitution of the SSS. The same reads as follows:-

“81.17 A large number of posts of Junior and Senior Statistical Investigators in the scales of Rs. 1400-2300/- and Rs. 1640-2900 are spread over different ministries and offices of the Government of India. We observed that some of these posts are isolated and the chances of promotions of the incumbent in such cases are very bleak. We recommend that all such posts with statistical functions be constituted into a Subordinate Indian Statistical Service (SSS) and all recruitment to the feeder posts in India Statistical Service (ISS) be centralised and placed under the ISS cadre Controlling Authority. All post of Junior Statistical Investigator in the scale of Rs. 1400-2300 be upgraded and given the replacement scale of Rs.1600-2660. All Junior Statistical Investigators / Statistical Assistant in the scale of Rs. 1400-2300 will henceforth be called Statistical Investigator Grade-II. All posts of Senior Statistical Investigators/ Assistant at present in the pay scale of Rs. 1640-2900 may be given the replacement scale of Rs.2000-3500 and be called Statistical Investigator Grade-I. At the level of Statistical Investigator Grade-II, recruitment may be taken up with graduation in Statistics as a minimum qualification. The entrants in the scale would move through the replacement scale of Rs.1640-2900 and Rs.2000-3500 in a time bound manner. Post-graduation may be made the minimum manner. Post-graduation may be made the minimum qualification for entry to 50% of the post of Statistical Investigator Grade-I. The entrants to this level will move through the replacement scale of Rs.2375-3750 and the entry scale of ISS Group ‘A’ in a time bound manner.”

10. Before notifying the Recruitment Rules of SSS laying down its service structure and other service conditions of its employees, a tripartite meeting was held on 13.12.2001, between Respondent No. 1, 2 & 3 i.e. Ministry of Statistics & Programme Implementation, Department of Personnel & Training and Ministry of Finance, respectively, to finalise the service structure and other

aspects of the SSS. In this meeting a policy decision was taken that the total number of existing posts of the Ministries/Offices offered for inclusion in SSS would be placed in the ratio of 40:60 into Group 'B' and Group 'C' Services respectively. Accordingly, 40% of total allocated posts were to be placed in the pay scale of Rs. 6500-10500/- as Investigator Grade-I and the remaining 60% of posts in the pay scale of Rs.5000-8000/- as Investigator Grade-II. It was also decided that 30% posts of each of the two grades would be placed in the non-functional scale of Rs. 7450-11500/- and Rs. 5500-9000/-, respectively.

11. In this tripartite meeting, the issue regarding en-cadrement of the post of Assistant Superintendent from NSSO (FOD) into the SSS was also considered. The post of Assistant Superintendent had initially been granted the Vth CPC pay scale of Rs. 1600-2660/- + Rs. 75/- (as special pay for all practical purpose) and classified as a Group 'C' post but in accordance with the recommendations of the Vth CPC contained in para 81.16 of its report, these Assistant Superintendents had been given the upgraded pre-revised pay scale of Rs.1640-2900/- (Pre-revised) and an equivalent revised pay scale of Rs.5500-9000/- w.e.f. 01.01.1996. Based upon this upgradation, the issue of classification of these posts of Assistant Superintendent (FOD) as Group 'B' had been taken up with DoP&T (Respondent No.2), being the nodal agency for all Service(personnel) matters, which had conveyed its concurrence for classification of these posts as Group 'B', though with certain suggestions including the need to carry out necessary amendments in the relevant Recruitment Rules.

However, since these posts of Assistant Superintendent which were being offered for en-cadrement in SSS in December, 2001 were in the pay scale of Rs.1600-2660/- (revised scale of Rs.5500-9000/-) which was not a recognised pay scale for inclusion into SSS, a policy decision was taken by the Respondents in the same tripartite meeting held on 13.12.2001, that, for the 1388 posts of Assistant Superintendents of NSSO(FOD) in the pay scale of Rs.1600-2660/-, the pay scales be adjusted in such a manner so as to ensure that their pay scales become identical to the posts in the SSS. Accordingly, while en-cadring them into the SSS, 861 posts of Assistant Superintended in NSSO were upgraded to the pay scale of Rs.6500-10500/- and the rest were down-graded to the pay scale of Rs.5000-8000/-. The post allocation in NSSO (FOD) before and after formation of SSS was as under:-

Sl. No.	Allocation in NSSO (FOD) before SSS		Allocation in NSSO(FOD) after SSS	
	Name of Post	Number of posts	Name of post	Number of posts
1.	Superintendents [(Group 'B', Gazetted, Rs.6500-10500(Rs. 1640-2900)]	357	Statistical Investigator Grade-II [Functional] [(Group 'B', Gazetted, Rs.6500-10500]	1218
2.	Assistant Superintendents[(Group 'B', Non-Gazetted, Rs.5500-9000(Rs.1600-2660)]	1388	including SI Grade-I (NFSG).	
3.	Investigator [(Group 'C', Non-Gazetted,	1482	Statistical Investigator	2009

	Rs.5000-8000(Rs.1400-2300)]		Grade-IV [Functional] [(Group 'C', Non Gazetted, Rs.5000-8000/-] including SI Grade-III (NFSG)	
	Total	3227		3227

The posts of Assistant Superintendent from NSSO were thus encadred and included in Schedule- I, II, III & IV of Subordinate Statistical Service Rules vide Notification dated 12.02.2002 (Group 'B' & C), after ensuring that these posts had been brought at par and had become identical as envisaged under the RRs so that they did not conflict with the general recommendations contained under Para 81.17 of 5th CPC.

12. Thus the SSS which was constituted Vide Respondent No.1's O.M dated 30.01.2002, had the following four-grade structure.

- (a) Statistical Investigator Grade-IV in the pay scale of Rs. 5000-8000/- Functional (No. of posts 1612)
- (b) Statistical Investigator Grade-III in the pay scale of Rs. 5500-9000/- Non-functional (No. of posts 691)
- (c) Statistical Investigator Grade-II in the pay scale of Rs. 6500-10500/- Functional (No. of posts 1075)
- (d) Statistical Investigator Grade-I in the pay scale of Rs. 7450-11500/- Non-functional (No. of posts 461)

13. Pertinently, it may be noted that despite all departments/ Ministries/Organisations being asked to offer Statistical posts for

induction into SSS, the Labour Bureau(Respondent No.6) at this stage did not offer the post of Investigator Grade-II for en-cadrement in SSS and, in fact offered the post of Investigator Grade-I for en-cadrement in SSS.

14. After the formation of the SSS, Recruitment Rules for both Group 'B' & 'C' namely Subordinate Statistical Service (Group 'B' Gazetted) Rules, 2002 (hereinafter referred to as Group 'B' Rules) and Subordinate Statistical Service (Groups C) Rules, 2002 (hereinafter referred to as Group 'C' Rules) were notified on 12.02.2002. The Rules for Group 'B' Gazetted posts were distinct from the Rules for Group 'C' posts. The posts with Statistical Investigator Grade-I & II were placed in Group 'B' Rules, while those of Statistical Investigator Grade-III & IV were placed in Group 'C' Rules of the SSS.

15. At this stage it may be useful to reproduce Rule 8 of Group 'B' Rules dealing with the initial constitution of the Service and the same reads as under:

“8. **Initial Constitution of the Service.**

(i) *The initial constitution of the Service shall be made from amongst Group 'B' statistical function posts spread over different Ministries/Departments/Organisations of the Government of India, which have been offered for inclusion in the Subordinate Statistical Service.*

(ii) *The Controlling Authority shall constitute a Selection Committee headed by a Senior Administrative Grade Officer of Indian Statistical with three other members from different*

Ministries/ Departments/Organisations participating in the service to determine the suitability of the existing departmental candidates for appointment and absorption to Statistical Investigator Grade-II of the Service and to prepare an order of preferences for each grade.

Explanation: *The absence of a member other than the Chairman shall not invalidate the proceedings of the Selection Committee.*

(iii) Any departmental candidate referred to in sub-rule (ii) who is selected to Statistical Investigator Grade-II of the Service but does not desire to be absorbed in the Service, may continue to hold the post held by him immediately before the selection, as if he has not been selected.

(iv) The Group 'B' departmental candidates who are not absorbed at the initial constitution of the service will continue to work as at present.

Special provisions regarding departmental candidates:-

(v) Notwithstanding anything contained in rule 9, the Group 'B' departmental candidates referred to in sub-rule (iv) may be considered by the Controlling Authority for appointment to the Service at a subsequent stage or stages after the suitability of such candidates for appointment to various grades of the Service is determined.

(vi) Notwithstanding anything contained in rule 9, the Group 'B' Departmental candidates as per sub-rules (iv) and (v) above may be considered against the recognized and approved posts from other Departments which offer the posts in due course after the initial constitution, by the Controlling

Authority for appointment to the service at a subsequent date after determining their suitability.

16. Similarly, as per Rule 8 of Group 'C' Rules, the initial constitution of the Group 'C' posts was from amongst Group 'C' posts offered by Ministries/Departments/Organisations of Government of India. The Group 'C' Rules, as notified, had provisions similar to those contained in Group 'B' Rules except for the fact that Group 'C' Service consists of Statistical Investigators Grade-III and Grade-IV. Amongst these Group 'C' post, Grade-III posts were notified as non-functional, while Grade-IV posts were notified to be a functional Grade.

17. Upon promulgation of the SSS Group 'B' and Group 'C' Rules, the Respondent No. 1 once again invited options by way of a revised performa from employers. This time, the Respondent No.6/Labour Bureau, Ministry of Labour and Employment, vide its Letter dated 28.03.2002, offered 13 posts of Investigator Grade-I (in pay scale of 6500-10500) for Grade-II of the SSS and 14 posts of Investigator Grade-II (in pay scale of 5000-8000) for Grade-IV of the SSS. Keeping in view the fact that the case for grant of pay scale of Rs.5500-9000 for Investigator Grade-II was pending before the Central Administrative Tribunal, Chandigarh Bench, the Labour Bureau's letter stated that the offer of these 14 posts to Grade-IV was subject to the outcome of the pending case.

18. In accordance with the aforesaid RRs of SSS the post of Investigator Grade-I as offered by the Labour Bureau was classified as a Group 'B' post with the pay scale of Rs. 6500-10500/- and

included in Schedule IV of the SSS Group 'B' Rules, 2002. On the other hand, the post of Investigator Grade-II in Labour Bureau, which was the post held by the Petitioners and was the feeder grade for Investigator Grade-I, had been classified as a Group 'C' post in the pay scale of Rs. 5000-8000/- and included in Schedule IV of the SSS Group 'C' Rules, 2003. The encadrement of these posts offered by the Labour Bureau was done vide notification dated 04.04.2003 issued by Respondent No.1. Consequently, on 01.04.2004, Petitioners No. 6,9,10 and 11 were absorbed and appointed in SSS as Statistical Investigator Grade-IV (Group 'C') in the pay scale of 5000-8000/-.

19. After some of the Petitioners had already been en-cadred in the SSS, the Controlling Authority on 03.08.2004 issued an O.M. stipulating the following implications of non-opting for absorption in the SSS:

(i) Those incumbents, who have not desired to be absorbed in SSS or not given their option within stipulated date, shall continue to hold the substantive posts held by them on personal basis, will not be entitled for promotions in the SSS and nay ad-hoc arrangements (like ad-hoc promotions) cannot be protected.

(ii) The incumbents holding said posts will continue in the same post till they vacate the post by way of retirement or other reasons. The post vacated by these incumbents shall be filled up by SSS.

(iii) The incumbents holding said posts will continue in the same post till they vacate the post by way of retirement or

other reasons. The post vacated by these incumbents shall be filled up by SSS.

(iv) The ISS recruitment rules are likely to be amended to recognize the SSS as feeder category for promotion to JTS Grade IV of ISS. Absence of willingness for absorption in the SSS may forfeit the right of non-opt less for promotion into JTS of ISS cadre.

20. Meanwhile, upon acceptance of the VIth CPC and consequential notification of the CCS (Revised Pay) Rules, 2008 on 29.08.2008, the structure of the SSS which comprised of four grades was restructured to comprise of only two grades. As a result of this restructuring, the posts of Statistical Investigator Grade-I and Statistical Investigator Grade-II were merged into a single post of Statistical Investigator Grade-I with the Grade pay of Rs. 4600 and the posts of Statistical Investigator Grade-III and Statistical Investigator Grade-IV were merged into a single post of Statistical Investigator Grade-II with Grade pay of Rs. 4200, w.e.f. 01.01.2006.

21. After this restructuring, 15 posts of Investigator Grade-II were offered by the Labour Bureau vide letter dated 22.09.2010 for en-cadrement as Statistical Investigator Grade-II in the SSS with the Grade Pay of Rs. 4200/-. The same were, accordingly, en-cadred in the SSS vide O.M. dated 13.10.2010. Consequently, Petitioner No. 1,2,3,4,5,7,8 and 12 were also absorbed in SSS as Statistical Investigators Grade-II vide SSS order dated 01.03.2011 passed by Respondent No.1.

22. While the Petitioners thus stood encadred in the SSS in the posts of Statistical Investigator Grade-II with the pre-revised pay scale of Rs.5000-8000/-, the order dated 09.03.2004 of the Chandigarh Bench of the Tribunal in O.A. No. 1292-CH/2001, granting them the higher pay scale of Rs.5500-9000/-, was upheld by the High Court of Punjab and Haryana vide its order dated 21.03.2011. Consequently, as noted hereinabove, Respondent No.6 i.e. the Labour Bureau placed Petitioners No.f 1 and 2, who were parties to the litigation, in the higher pay scale of Rs. 5500-9000/- w.e.f. 01.01.1996.

23. Upon restoration of the pay scale of Rs. 5500-9000/- w.e.f. 01.01.1996, Petitioners No. 1 & 2, by placing reliance on the DoPT's O.M. dated 20.4.1998, requested the Respondent No. 1 to place them appropriately in the seniority list of Group 'B' posts by considering the higher pay scale awarded to them by the Labour Bureau. It was their contention that in view of the DoPT's O.M. dated 20.4.1998, which directed that posts carrying a scale of pay with a maximum of not less than Rs.9,000 but less than Rs.13,500 had to be classified as a Group 'B' post, they could no longer be placed in the seniority list of Group 'C' employees. Their plea was that in view of their enhanced pay scale of Rs.5500-9000/- they now had to be treated as having been absorbed into the SSS in a Group 'B' post.

24. Based on these representations, the Respondent No. 1, while issuing the draft seniority list of Statistical Investigator Grade-II vide O.M. dated 23.05.2012, revised the seniority of Petitioner 1 and

2 vis-a-vis their earlier seniority fixed vide O.M. dated 12.11.2008, and placed them both as senior to those officials who had been holding the post in the pay scale of Rs. 5000-8000/- prior to the constitution of the SSS. The Petitioners 1 and 2, however, were aggrieved by the fact that they had still been placed in the seniority list of a Group 'C' post instead of being placed in the seniority list of the Group 'B' post of Statistical Investigator Grade-II. The claim of the Petitioners was that since they had been placed in the pay scale of Rs. 5500-9000/-, they were entitled to be treated as holders of Group 'B' posts since, according to the DoP&T's OM dated 20.04.1998, this enhanced pay scale of Rs.5500-9000/- corresponded with Group 'B' posts. The Petitioner's request to place them in the seniority list of Group 'B' posts was, however, not accepted by the Respondents and even in the draft seniority list of Statistical Investigator Grade-II issued vide O.M. dated 02.07.2013, the Petitioners, though treated as senior to those officials who were holding the post in the pay scale of Rs. 5000-8000/-, were still placed in the seniority list of Statistical Investigator Grade-IV, a Group 'C' post, alongwith other employees in the pay scale of Rs. 5000-8000/-.

25. Another relevant factor which may be noticed is that, though the Respondent No.6 had initially implemented the judgment dated 21.03.2011 of the High Court of Punjab and Haryana, qua the parties in those Writ Petitions only, but subsequently the Chandigarh Bench of the Tribunal vide its order dated 04.12.2012 extended the benefits of the higher pay-scale of Rs.5500-9000/- to

all the persons holding the post of Investigator Grade-II of Labour Bureau. As a result of this subsequent order of the Tribunal, the Respondent No.6- Labour Bureau, restored the pay scale of Rs. 5500-9000 for all the Petitioners herein w.e.f. 01.01.1996 and not merely Petitioner No.1 & 2, as had been done initially.

26. After granting the enhanced pay scale of Rs.5500-9000/- to all the Investigators Grade-II w.e.f. 01.01.1996 the Labour Bureau i.e. Respondent No.6 also issued an OM dated 20.08.2013 directing that the post of Investigator Grade-II would now *ipso facto* be classified as Group 'B' post. While giving this direction, the Respondent No.6 relied on DoP&T's OM dated 20.04.1998 according to which all posts carrying a scale of pay with a maximum of not less than Rs.9000/- but less than Rs.13,500/- would be classified as the Group 'B' post. The Respondent No.6 thus came to the conclusion that the post of Investigator Grade-II in Labour Bureau *de jure* stood classified as a Group 'B' post w.e.f 28.04.1998.

27. Armed with this OM dated 20.08.2013 issued by Respondent No.6, the Petitioners made further representations to Respondent No.1 reiterating their request for determining their seniority in the appropriate slot of Group 'B' posts by keeping in view their enhanced pay scale of Rs.5500-9000/- in the Labour Bureau w.e.f. 01.01.1996 i.e. prior to their en-cadrement in the SSS. Based on these representations made by the Petitioners as well as the OM dated 28.08.2013 issued by Respondent No.6, the Respondent No.1, after consultation with the DoP&T and Ministry of Law, issued the impugned OM dated 04.12.2014 conveying the fact that it had

decided to de-cadre the 29 post of Investigator Grade-II of Labour Bureau and one post of Statistical Assistant of Department of Post from SSS with immediate effect. While issuing the aforesaid OM, the Respondent No. 1 also noticed the fact that these 29 posts had been offered for en-cadrement in SSS in the pay scale of Rs.5000-8000/-(Group 'C'), though subject to outcome of the court cases pending in the CAT, Chandigarh Bench and had, accordingly, been en-cadred in the pay scale of Rs.5000-8000/- as a Group 'C' post in the light of the RR's dated 12.02.2002. This OM also recorded the fact that in view of the higher pay scale extended to those 29 officials, the said post of Investigator Grade-II did not qualify to be en-cadred in SSS, and hence the en-cadrement of these incumbents had become infructuous. However, all the incumbents including the Petitioners were given an option to either get de-cadred or to remain in the SSS based on the seniority position assigned to them in the cadre of Statistical Investigator in Grade-IV in pay scale of Rs. 5000-8000/-. The conditions imposed by this OM in respect of those Statistical Investigator Grade-IV who wanted to continue in the SSS, read as under:-

- (i) Agree that pay scale of Rs.5500-9000 restored to them by Hon'ble Courts will not be a factor relevant for fixing pay or seniority.
- (ii) All representations made by the applicants be treated as withdrawn.
- (iii) The matter may not be called in question before any court of law in future.

28. In these circumstances, the Petitioners, who believed that as a result of the restoration of their pay scale, they were entitled to be placed in the SSS in the higher grade which belongs to a Group 'B' post, being aggrieved by this O.M. dated 04.12.2014 which rejected their demand, approached the Tribunal by way OA no. 4503/2014.

29. While the Petitioners' OA was pending adjudication before the Tribunal, a number of letters and OM's were exchanged between Respondent No.1,2,3 & 6 and it transpires from the record that, while Respondent No.6 kept insisting that it being the cadre controlling authority of Investigator Grade-II post at the relevant point of time on 20.04.1998, had correctly reclassified the post of Investigator Grade-II as Group 'B' w.e.f. 20.04.1998 in accordance with the DoP&T's OM dated 20.04.1998, on the other hand Respondent No.1 insisted that the Labour Bureau was no longer the cadre controlling authority of these 29 Investigator Grade-II posts which already stood en-cadred in SSS.

30. We, therefore, deem it appropriate to reproduce the relevant extract of the OM dated 17.04.2015 issued by Respondent No.1, whereby it had reiterated its stand that the Labour Bureau i.e Respondent No.6 was no longer the cadre controlling Authority for the 29 posts which already stood en-cadred in SSS, hereinbelow:-

Subsequently, as a result of unilateral decision Labour Bureau had declared the post of Statistical Investigator Gr. II as Group 'B' posts vide their O.M. dated 20.8.2013 with retrospective effect, i.e. w.e.f 20.04.1998.

As per statutory provisions contained in DoP&T Notification dated 20.4.1998 and 12.6.1998, only the Cadre Controlling Authority of the posts can re-classify their posts

as Group 'B' or C. Once these 29 incumbents of Statistical Investigator Grade-Ii [pay scale 5000-8000 (Group 'C') GP 4200] have already become part of the SSS cadre, the decision to declare them as Group 'C' or B rested with CCA of SSS. Thus, the O.M. issued by Labour Bureau on 20.8.2013 is not applicable to these 29 incumbents of Labour Bureau who are part of SSS.

Under the above backdrop, the O.M. dated 22.1.2015 issued by this Ministry in consultation with DoP&T and Ministry of Law is in conformity with the notification issued by DoP&T.

31. The claim of the Petitioners before the Tribunal was, that the Respondents having en-cadred the Petitioners in the SSS could not at a subsequent stage de-cadre them merely because their pay-scale had now been restored back to Rs.5500-9000/- by virtue of the judgment passed by the High Court of Punjab & Haryana. The Petitioners also contended that, once the SSS had been constituted on 30.01.2002 encompassing all Group 'B' and C statistical functional post in different Ministries/Departments, they could not now ask the Petitioners to go back to the Labour Bureau, only because the Respondents do not have a post in the pay-scale of 5500-9000/- in any functional Grade-In the service. The Petitioners also contended that, once the Respondents had adjusted persons occupying the post of Assistant Superintendent in National Sample Survey Organisation (NSSO) who were also drawing the pay-scale of Rs.5500-9000/- by placing them in the upgraded post of pay scale Rs.6500-10500/-, there was no justification why the same treatment could not be meted out to the Petitioners. The Petitioners

contended that there was no reason as to why the Petitioners could also not be adjusted in manner similar to the Assistant Superintendents of NSSO. According to the Petitioners, the action of the Respondents, in refusing to keep them in SSS with the higher upgraded pay scale of Rs.5500-9000/- was discriminatory and an attempt on their part to deny them the benefit of higher grade-pay granted to them by Orders of the High Court of Punjab and Haryana.

32. Before the Tribunal, the Petitioners also contended that after the grant of pay-scale of Rs.5500-9000/- to them w.e.f. 01.01.1996, they had *ipso facto* become Group 'B' officers and they could no longer be treated as Group 'C' employees, as was being sought to be done by the SSS. In this connection, the Petitioner had placed reliance on the DoP&T's Memorandum dated 20.04.1998 whereby all civil posts had been classified on the basis of the pay-scale. According to the Petitioners, any civil post with the pre-revised pay scale of Rs. 5500-9000/- had to be *dejure* treated as a Group 'B' post. In this connection, the Petitioners also referred to the OM dated 20.08.2013 issued by their original parent department i.e. Labour Bureau(Respondent No.6) whereby, the Respondent No.6 had categorized the post of Investigator Grade-II, which was the post which the Petitioner has been occupying, as a Group 'B' post w.e.f. 20.04.1998 itself. The contention of the Petitioners, thus, was that once the Labour Bureau had classified their post of Investigator Grade-II as a Group 'B' post by relying on the DoP&T's OM dated

20.04.1998, the SSS could not ignore the said classification and still treat them as holding a Group 'C' post.

33. In these circumstances, the contention of the Petitioner before the Tribunal, was that the action of the SSS was wholly illegal as they were compelling the Petitioners to either go back to the Labour Bureau in which there were, admittedly, no further promotional avenues after the creation of SSS, or to continue to work in SSS without getting any benefit of their higher pay-scale of Rs.5500-9000/- in matter of fixation of pay and seniority in the SSS, thus denying them the fruits of the litigation wherein they had succeeded to get the pay scale of Rs.5500-9000/-.

34. Per Contra, the Respondents had, while opposing the OA before the Tribunal, contended that as per the initial constitution of the SSS, the post of pay-scale of Rs.5500-9000/- with pre-revised pay scale of Rs.1400-2300/- was not bracketed in Group 'B' service of the SSS, and only posts with pay scale of Rs.6500-10500/- and Rs.7450-11500/- were included in the Group 'B' Gazetted Service of the SSS. It was thus contended that even after grant of higher scale of Rs.5500-9000/-, the Petitioners could not be treated as Group 'B' employees in SSS. It was also contended that even otherwise, when the SSS was constituted, there was no identical post in the SSS to which persons holding the pay scale of Rs.5500-9000/- could be encadred. It was thus contended that persons like the Petitioners herein, holding the pay-scale of Rs.1400-2300/- later revised to Rs.5500-9000/- could not have been en-cadred in SSS. The Respondents had also contended before the Tribunal, that after

the grant of the revised pay scale of Rs.5500-9000/- to the Petitioners by virtue of the Court orders, the matter had been considered in detail in consultation with the DoP&T as well as the Ministry of Finance and Department of Legal Affairs and a conscious policy decision had been taken to de-cadre these un-identical posts from the SSS. It was further contended that, keeping in view the time lapse since the en-cadrement of the Petitioners, it had been decided to provide them with an opportunity to remain in SSS if they so desired, but with the condition that they would continue to be regulated by the Recruitment Rules of SSS and their *inter se* seniority would remain, as it existed at the time of their en-cadrement.

35. Before the Tribunal, the Respondents had also contended that most of the Petitioners had, even otherwise, given unconditional options for en-cadrement in the Group 'C' posts of SSS and only in a few cases the options given by the Petitioners had been made subject to the outcome of the case pending in the Central Administrative Tribunal, Chandigarh, Punjab. It was thus contended that the Petitioners could not subsequently challenge their encadrement in Group 'C' posts of the SSS.

36. The Respondents had further contended before the Tribunal that in any event after the implementation of the Sixth Central Pay Commission Report, the pay-scales of Rs.5000-8000/- & Rs.5500-9000/- had been-w.e.f.01.01.2006, merged in a single Grade Pay of Rs.4200 and those Rs.6500-10500/- and Rs.7450-11500/- merged in the single Grade Pay of Rs.4600/- (both for Group 'B' and C). It

was pointed out that, consequently, the 2002 Rules had become unworkable and, therefore, the entire structure of SSS had been re-structured vide a notification dated 29.08.2008. As a result the number of grades in SSS stood reduced from four to two and it was, therefore, contended that there being only two grades now in the amended Recruitment Rules of 2013, none of the incumbents of statistical functional posts, with the grade-pay of Rs.4200/- had been promoted on regular basis as Statistical Investigator Grade-I (Grade Pay of Rs.4600/-). It was further contended by the Respondents that, since the post of Investigator Grade-II of Labour Bureau had been classified as Group 'C' in the relevant RRs of the post, the said post had been correctly placed in Group 'C' of the SSS Rules, 2002. It was further brought out that even in the Labour Bureau these posts of Investigator Grade-II were the feeder post to the post of Investigator Grade-I (Rs.6,500-10,500/-) and the same had, accordingly, been incorporated correctly in Schedule IV of SSS Group 'C' Rules and the same could not in any event be categorized as a Group 'B' post, since their promotional post i.e. Investigator Grade-I was already incorporated in Schedule IV of SSS Group 'B' posts.

37. The Respondents had also contended that the entire exercise of constitution of SSS in 2002 was a well considered exercise undertaken after considering the availability of statistical posts in various Ministries/Departments, which could not be tinkered with at this stage. It was thus contended that the Petitioners could not be absorbed at the level of Statistical Investigator Grade-II, under the

revised cadre structure. In defending their decision to give an option to the Petitioners to be de-cadred, the Respondents had also contended before the Tribunal that on account of pay-scale of Rs.5500-9000/- (pre-revised Rs.1400 - 2300/-) being granted to the post of Investigator Grade-II of Labour Bureau, the post no longer continued to be an identical or equivalent statistical functional posts recognised for en-cadrement into the SSS. It was contended that only those statistical functional post as existed in the pay-scale of Rs.5000-8000/- (pre revised Rs. 1400-2300/-) and Rs.6500-10500/- (pre revised 1640-2900/-) could be included in the SSS.

38. The Tribunal after considering the detailed submissions of the parties came to the conclusion that, once the Government had decided to create a Subordinate Statistical Service with two separate Rules for Group 'B' gazetted service and Group 'C' Service by culling out Group 'B' and Group 'C' Statistical posts from different departments, it was not for the Court to interfere with the policy decision of the Government. The Tribunal found that two basic grades, i.e. Statistical Investigator Grade-IV in the pay-scale of Rs.5000-8000/- and Statistical Investigator Grade-III in the pay-scale of Rs.5500-9000/- had been created as Group 'C' posts of SSS for which specific Group 'C' Rules were notified. The ratio of distribution between these two posts was also fixed to be 70% in the functional grade of Statistical Investigator Grade-IV in the pay-scale of Rs.5000-8000/- and 30% in the non-functional grade of Statistical Investigator Grade-III in the pay-scale of Rs. 5500-9000/- . The Tribunal held that this being the initial constitution of service

as notified in 2002 under Article 309 of the Constitution of India, the Government was bound to follow these Rules and could not induct persons by ignoring those Rules.

39. The Tribunal also found no merit in the plea of the Petitioners that, after the grant of pay scale of Rs.5500-9000/- (revised pay scale of PB-2 with Grade Pay of Rs.4200/-), they were clearly Group 'B' staff and they could not be forced to join a Group 'C' post of SSS. The Tribunal held that even if it is taken that the Petitioners were in a Group 'B' post in their parent department, the Petitioners were much junior to many other employees in the original gradation list of SSS who had also been absorbed in the pay scale of Rs.5000-8000/- in Group 'C' posts and, therefore, held that their claim that they belong to Group 'B' service and that they should be accorded Group 'B' status in SSS, was a farfetched plea. The Tribunal also considered the OM dated 20.08.2013 issued by the Labour Bureau (Respondent No.6), wherein Respondent No.6 had come to the conclusion that in the light of Central Civil Services (Revised Pay) Rules, 1997 granting scale of pay of Rs. 5500-175-9000/- to Investigators Grade-II of Labour Bureau, the post of Investigator Grade-II in Labour Bureau *de jure* stood classified as Group 'B' post w.e.f. 20th April, 1998 in accordance with DoP&Ts OM dated 20.04.1998. The Tribunal, however, held that the said classification would be applicable only in Labour Bureau(Respondent No.6) and could not be made applicable to SSS and that too in contravention of Group 'B' Rules of SSS.

40. The Tribunal, accordingly, vide its impugned order, dismissed the OA by holding that the posts of Investigator Grade-II in Labour Bureau, which was admittedly a Group 'C' post in the pay scale of Rs.5000-8000/- at the time of initial constitution of SSS, could not be reclassified as a Group 'B' post in SSS as, even with the enhanced pay scale of Rs.5500-9000/-, it did not fulfill the eligibility requirements of Group 'B' Rules of SSS. The Tribunal also found no infirmity in the decision of the Respondents to give an option to the Petitioners to either get de-cadred from SSS or to continue in the same post in which they had been en-cadred in the SSS.

41. Being aggrieved by the decision of the Tribunal, the Petitioners have preferred the present Writ Petition. On behalf of the Petitioners, Ms. Jyoti Singh, learned senior counsel has reiterated the submissions made before the Tribunal. While drawing attention to the conditional options submitted by some of the Petitioners, wherein they had stated that their encadrement was subject to pending cases, she contends that once the Petitioners had, at the time of encadrement itself, made it clear that their posts were being offered subject to the outcome of the pending litigation, the Respondents cannot deny them the benefits to which they are entitled to pursuant to the upgradation of their pay scale to Rs.5500-9000/-. She further submits that, the action of the Respondents in directing the Petitioners to either accept their seniority below those officers who were in the pay-scale of Rs.5500-9000/- at the time of encadrement in the SSS, or to go back to the Labour Bureau is

wholly illegal as, according to her, there is no provision for decadrement in the SSS and all those persons who form part of the initial constitution of the SSS cannot be subsequently decadred.

42. Learned Senior Counsel for the Petitioners, also draws our attention to various letters, wherein the request of certain officers to be de-cadred had been rejected by stating that the encadrement once done, could not be revoked. Further, the submission of the senior counsel for the Petitioners is that, the stand of the Respondents that there was no provision for inducting persons in the pay-scale of Rs.5500-9000/- at the time of constitution of SSS was contrary to record. She draws our attention to the fact that, Assistant Superintendants from NSSO(FOD) who were also in the pay-scale of Rs.5500-9000/- in NSSO had been admittedly encadred in Group 'B' posts in the SSS and she, therefore, contends that the Petitioners are also entitled to be given the same treatment. It is, therefore, contended by her that the plea of the Respondents that there is no possibility to retain the Petitioners with the upgraded pay-scale of Rs.5500-9000/- is fallacious. According to her, the action of Respondents in denying the same treatment to the Petitioners as given to Assistant Superintendants of NSSO is discriminatory and violative of Article 14 & 16 of the Constitution.

43. Ms. Singh, further argues that, once the pay scale of the post-which the Petitioners were holding at the time of their encadrement in the SSS has been upgraded to Rs.5500-9000/-, the Respondents were duty bound to upgrade the post in accordance with the DoP&Ts OM dated 20.04.1998, which classifies this as a Group 'B'

post. She submits that the Respondent's refusal to grant them the benefits of the upgradation of their pay scale amounts to virtually denying them the benefit of upgradation in pay scale awarded by a court of law.

44. Ms. Singh further argues that even otherwise once their parent department i.e. Labour Bureau had upgraded the post of Investigator Grade-II from Group 'C' to Group 'B' with retrospective effect from 20.04.1998, the Respondents 1-3 were duty bound to treat them as holders of a Group 'B' post at the time of their encadrement. She, thus submits that the Respondent could not continue to treat the Petitioner as holders of Group 'C' posts.

45. Per contra, Mr. Sanjeev Narula while defending the impugned judgment submits that the SSS was a new service created pursuant to the recommendations of the 5th CPC. He submits that at that point of time itself all the Petitioners were well aware that they were being inducted in the Group 'C' post of Statistical Investigator Grade-IV and, therefore, once they had consciously opted to be encadred in a Group 'C' post of the new service for whatsoever reasons and perhaps for a brighter future, they cannot now contend that their post should be treated as a Group 'B' post merely because their pay-scale was subsequently enhanced by the Labour Bureau.

46. He further submits that, at the time of initial constitution of the SSS the Respondents had, after considering the various posts being offered to them by various Departments/Ministries/Organisations for encadrement in SSS, fixed the number of post in different cadres and taken a conscious decision to place Assistant Superintendent

coming from NSSO in grade to with the higher scale of Rs.6500-10500/-. He submits that once the process of constitution of SSS is completed, there is no provision now for encadring the Petitioners in a different post than in which they were encadred at the time of its constitution. He further submits that even the post of Statistical Investigator Grade-III with the pay-scale of Rs.5500-9000/- which was provided for in the SSS at the time of its initial constitution was a non-functional post as per the Group 'C' Rules of SSS. Accordingly, there was no provision for direct induction in the SSS even in this Group 'C' post of Statistical Investigator Grade-III. He submits that, in fact, all the incumbents who were holding the post of Investigator Grade-III in the pay-scale of Rs.5500-9000/- in the SSS were only those who had been promoted from the scale of Rs.5000-8000/- and he, therefore, submits that the Petitioners could not be adjusted even in the post of Statistical Investigator Grade-III in the SSS, as such an induction, would be contrary to the Statutory Rules.

47. Mr. Narula also submits that when the SSS was created there were separate Rules both for Group 'B' and Group 'C' posts. He submits that in Group 'B' service there were only two Grades namely for Rs.7450-11500/- and Rs.6500-10,500/-. He, further, submits that even otherwise the classification of the posts in the SSS has to be guided by statutory rules. He, therefore, submits that once the SSS Rules for Group 'C' posts clearly show that post in the pay-scale of Rs.5000-8000/- and those in the pay-scale of Rs.5500-9000/- also were Group 'C' posts, the Petitioners could not

in any manner, whatsoever, claim that, their posts should be upgraded to Group 'B' post.

48. Mr. Narula, further submits that, though in normal circumstances there is no provision for de-cadrement, but keeping in view the peculiar facts of the case, the Respondents had, in a most fair manner, given the option to the Petitioners that if they so desired they could go back to Labour Bureau in case they were not satisfied with the posts which they were holding in SSS. He also submits that though the post of Investigator Grade-II has been upgraded to a Group 'B' post, this has been done by the Labour Bureau (Respondent No.6) vide its OM dated 20.08.2013. The OM categorised this post as a Group 'B' post w.e.f. 20.04.1998 only for the Labour Bureau and the Respondents 1 to 3 have not accepted the said categorisation for purposes of the SSS, as the said classification is contrary to the Statutory Rules of the SSS.

49. In support of his plea that the Court ought not to interfere with the creation and constitution of services, Mr. Narula relies on the following judgments:-

- I. *Mrigank Johri & Ors. v. Union of India & Ors.*
- II. *Indu Shekhar Singh & Ors. v. State of UP & Ors*
- III. *Dr. M.A.Haque & Ors. v. Union of India & Ors.*
- IV. *Guman Singh & Ors. v. State of Rajasthan & Ors.*
- V. *Dr. Rajinder Singh v. The State of Punjab & Ors.*
- VI. *Mallikarjuna Rao & Ors. v. State of Andhra Pradesh & Ors.*
- VII. *Malcom Lawrence Cecil D'souza v. Union of India & Ors*

VIII. Union of India & Ors. v. M.K. Sarkar.

50. We have also heard Mr. R.N Singh, the learned counsel appearing for Respondent No. 7-10 i.e. the private Respondents, who, while adopting the submissions made by Mr. Sanjeev Narula, submits that the Petitioners claim is contrary to the statutory rules which have been framed under article 309 of the Constitution. According to him, the Petitioners, having chosen to be en-cadred in the Group 'C' post governed by SSS Group 'C' Rules, cannot now contend that they should be treated as holders of a Group 'B' post in the SSS. He further submits that, even otherwise, the post of Statistical Investigator Grade-III in the pay scale of Rs.5500-9000/- in the SSS was a promotional post for Investigator Grade-IV and merely because the Petitioners have now been granted the pay scale of Rs.5500-9000/- by the Labour Bureau, though their pre-revised pay scale remains Rs.1400-2300/-, they cannot claim a right to be posted against Group 'B' post which posts were, admittedly, governed by a different set of rules in the SSS. He further submits that once the invitation of Respondent No.1 itself was for Group 'C' posts pursuant to which the Petitioners, after having given an undertaking that they were willing to be absorbed in SSS in a Grade corresponding to the pay scale of Rs.5000-8000/- as per the appropriate service rules of SSS, cannot now turn around and challenge the same. He further submits that the Assistant Superintendents of NSSO(FOD) who were in the pay scale of Rs.5500-9000/- (pre-revised) had been absorbed in the pay scale of Rs. 6500-10500/- at the time of inception of SSS itself. He submits

that for this purpose the available 1388 post of Assistant Superintendent Group 'B' were restructured in such a manner that 861 posts out of the 1388 were upgraded in the pay scale of Rs.6500-10500/-, and the remaining 527 posts were down-graded to the pay scale of Rs.5000-8000/- Group 'C'. He thus submits that the Petitioners who were all en-cadred in Group 'C' post having the pay scale of Rs.5000-8000/- as per the SSS Group 'C' rules cannot compare themselves with the erstwhile Assistant Superintendents of NSSO(FOD) as their encadrement had taken place at the time of inception of SSS by taking a considered decision to upgrade certain posts. He further submits that, in any event, the Petitioners were in a lower pre-revised pay scale of Rs.1400-2300/- viz-a-viz the Assistant Superintendent of NSSO and would, even otherwise, be ineligible for induction in SSS with this pre-revised scale.

Mr. Singh places reliance on the following judgments:-

1. *Guman Singh v. State of Rajasthan, 1971 (2)SCC 452*
2. *Dr. M.A. Haque v. Union of India, 1993 (2)SCC 213*
3. *Civil Appeal No. 5984/1998*
4. *Ekta Shakti Foundation v. UoI (AIR 2006 SC 2609)*

51. Having heard the learned counsels for the parties and considered the submissions made by them, we find that, though the pleadings in the case run into over 1850 pages, the issue involved in the matter is fairly simple. The only question which needs our consideration is whether the Petitioners who were encadred as Group 'C' employees in the SSS can subsequently, upon enhancement of their pay scale with retrospective effect in their

parent department, insist that they must be deemed to have been encadred as Group 'B' employees in the SSS. The undisputed position which emerges from the record and lengthy submissions of the parties is that at the time of their encadrement in SSS all the Petitioners were, admittedly, in the pay scale of Rs.5000-8000/-, which was found to be matching with the post of Statistical Investigator Grade-IV created in the newly constituted SSS and, on that basis, they had been inducted into SSS on different dates between 2004 to 2011. The issue, thus, would be as to whether after grant of higher pay scale to them by virtue of court orders in their capacity as Statistical Investigator Grade-II in the Labour Bureau, can the Petitioners claim that, because their enhanced scale now corresponds to a Group 'B' service as per DoP&T's OM dated 28.04.1998, they must be treated as holders of Group 'B' posts in the SSS also. As a corollary, a connected issue would be whether the Petitioners having been specifically inducted in a Group 'C' service with full knowledge that, they are being inducted in a Group 'C' service, can subsequently insist that, they must now be placed in the Group 'B' service of the SSS, even though there are neither any vacancies as per the rules, nor their enhanced pay scale is matching with the entry grade of Group 'B' service in the SSS.

52. Another un-disputed fact which emerges from the record is that, the Petitioners as Investigators Grade-II in the Labour Bureau were, admittedly, holding Group 'C' posts as per the RR's dated 23.12.1994 and 31.07.2006 and their posts were up-graded to Group 'B' posts by the Labour Bureau only on 28.08.2013 i.e. after the

Petitioners already stood absorbed in the SSS. It is thus apparent that when the Petitioners were en-cadred into SSS either in 2004 or 2010, they were holders of Group 'C' posts only and were, therefore, en-cadred into SSS into the Group 'C' service of SSS.

53. There is also no dispute about the fact that, on induction of the Petitioners in the SSS they were accorded *inter se* seniority in the cadre of Statistical Investigator Grade-IV and were placed below Statistical Investigator Grade-III in the seniority lists issued by the SSS from time to time. It is also an undisputed position that the posts of Statistical Investigator Grade-III and IV in the SSS were both Group 'C' posts. It is also an admitted position that as per Group 'C' Rules of SSS, the post of Statistical Grade-III was a non-functional post, thus clearly bringing out the fact that the said post could be filled only by way of promotion from the holders of post of Statistical Investigator Grade-IV. Another factor which emerges from the record is that, when the SSS was created and the Recruitment Rules for both Group 'B' and 'C' service were notified, the number of posts for each of the grades was clearly specified in the Recruitment Rules itself.

54. The claim being raised by the Petitioners for being treated as part of Group 'B' service of the SSS would obviously upset the entire notified structure of the SSS. The issue, thus, would be, whether the Petitioners by claiming encadrement in the Group 'B' Gazetted service of SSS, can be allowed to topple this entire notified statutory structure. Before we deal with this question it would be apt to examine the notified structure of the SSS at the time

of its initial constitution which, for the sake of convenience, is being noted hereinbelow in a tabular form:-

3. The notified Structure of Subordinate Statistical Service (SSS) was as under:

Post	Category	Pay Scale (5 th CPC)	No. of posts
Statistical Investigator or Grade-I	Non-functional (Group 'B', Gazetted)	Rs. 7450-11500	467
Statistical Investigator or Grade-II	Functional (Group 'B', Gazetted)	Rs. 6500-10500 (Pre-revised 1640-2900)	1091
Statistical Investigator or Grade-III	Non-functional (Group 'C', Non-Gazetted)	Rs. 5500-9000	701
Statistical Investigator or Grade-IV	Functional (Group-C, Non-Gazetted)	Rs. 5000-8000 (Pre-revised 1400-2300)	1635

55. We also deem it apt to refer to the upgradations and replacement of the various relevant pay scales from time to time which are being noted hereinbelow in a tabular form:-

1. General upgraded/replacement pay scales under 5th CPC [01.01.1996-31.12.2005]:

Sl. No.	Pre-revised pay scale (4 th CPC)	Up-graded in pre-revised pay scale (4 th CPC)	Normal replacement pay scale (5 th CPC)	Upgraded replacement pay scale granted (5 th CPC) under para 81.15 to 81.17.
1	Rs. 1400-2300	Rs. 1600-2660	Rs. 4500-7000	Rs. 5000-8000

2	Rs. 1600-2660	Rs. 1640-2900	Rs. 5000-8000	Rs. 5500-9000
3	Rs. 1640-2900	Rs. 2000-3500	Rs. 5500-9000	Rs. 6500-10500

2. Pay scales granted in Labour Bureau under 5th CPC [01.01.1996—31.12.2005]:

Investigator Grade-I	Rs. 1640-2900 (4 th CPC)	Normal replacement pay scale of Rs. 5500-9000 (5 th CPC) Under para 74.13 and 74.18.	Upgraded replacement pay scale granted Rs. 6500-10500 Under 74.13 and 74.18
Investigator Grade-II	Rs. 1400-2300 (4 th CPC)	Normal replacement pay scale of Rs. 4500-7000 (5 th CPC) under para 74.13 and 74.18	Upgraded replacement pay scale of Rs. 5500-9000. Scale actually given by government 5000-8000

56. We find that the main plea raised by the learned senior counsel for the Petitioners is that, once the pay scale of the Petitioners has been enhanced by virtue of judicial orders they have to be classified as holders of a Group 'B' post, by considering their enhanced pay scales as per the classification mandated in the DoP&T's OM dated 20.04.1998. The Respondents cannot now coerce them to either give up the benefit of this higher pay scale, or go back to their original parent department i.e. Labour Bureau. Her contention thus being that, once the Petitioners had been en-cadred in the SSS they had to be treated as part of the initial constitution of the cadre and there is no provision in the SSS Rules for de-cadreing employees

like the Petitioners, who were part of the initial constitution of the service.

57. We have given our thoughtful consideration to this submission of the learned Senior counsel for the Petitioners and find that though the Petitioners may be entitled to be treated as Group 'B' employees as per the DoP&T's OM dated 28.04.1998, the question would still be whether a newly constituted service, namely the SSS, can be forced to induct persons like the Petitioners into the Group 'B' service at this stage, and that too when these persons were initially admittedly inducted into the Group 'C' service. Can the use of expression "*subject to the outcome court case pending in CAT, Chandigarh Bench*" at the time of initial offering of the post, be stretched to this extent, to imply that in case the pay scale of such a post is subsequently enhanced, the post would have to be encadred in a different service i.e. the Group 'B' service instead of Group 'C' service of the SSS. In our considered opinion, the answer is a clear 'No'.

58. The conditional offer of the posts of the Petitioners for inclusion in SSS only had the effect of safeguarding the interest of the Petitioners vis-à-vis their parent department i.e. the Labour Bureau. The SSS was a new service under constitution when the said posts were offered for inclusion and the unilateral inclusion of the said condition while offering the Petitioners posts in the Labour Bureau for encadrement did not bind the Cadre Controlling Authority of the SSS. It is precisely for this reason that the Petitioners have been given the offer to return with their posts to the

Labour Bureau, so that they may avail of the higher pay scale of Rs.5500-9000/- as well as their Grouping as Group 'B'.

59. In our view, when the Government takes a considered decision to frame a service in a particular manner by creating fixed number of posts for all the different grades created therein, there would be no cause for the Court, except in very compelling circumstances, to interfere with the said policy decision of the Government. It is evident that the policy decision regarding filling up of the various posts created under the Rules of the SSS was done after considering the various posts offered to them by different Ministries/Departments/Organisations. The Respondent No.1 had taken a well considered decision, and it would be totally unworkable if the Courts were to interfere and insist that persons inducted in Group 'C' service should now be inducted in a Group 'B' service, merely because their pay scale has now been enhanced with retrospective effect and is still not matching any of the Group 'B' posts in the SSS.

60. In our view the action of the Respondents, in giving the Petitioners an option to either continue in the post in which they were inducted in SSS with the grant of a higher pay scale on personal basis to them, or to go back to Labour Bureau (Respondent No.-6) if they so desire, is more than fair in such circumstances.

61. It is also true that though in normal circumstances, as contended by Ms. Singh-learned senior counsel for the Petitioners, that a person en-cadred in a service at the time of its constitution or at any subsequent stage cannot be de-cadred, but, keeping in view

the exceptional circumstances due to which the pay scale of the Petitioners is no longer matching with the pay scale of the post in which they were inducted, the only available option to the Respondents was to give the Petitioners a choice to go back to the Labour Bureau if they so desired and work in a Group 'B' post in the Labour Bureau, or continue in the SSS at the post in which they were absorbed.

62. We have also considered the plea of the learned senior counsel for the Petitioners that, once the Respondents had en-cadred Assistant Superintendent from NSSO holding the similar pay scale of Rs.5500-9000/- in Group 'B' posts in the SSS, there was no reason as to why the Petitioners should not be treated in a similar manner. Her plea, therefore, is that refusal of the Respondents to en-cadre the Petitioners, who are holding the same pay scale as held by Assistant Superintendent (NSSO), in Group 'B' posts is discriminatory and in clear violation of Article 14 and 16 of the Constitution. On the other hand the contention of Mr. Narula, learned counsel for the Respondents is that decision to en-cadre an Assistant Superintendent(NSSO) in the Group 'B' service was a conscious policy decision of the Government of India taken even before notification of the SSS.

63. We find that there was a difference in the pre-revised scale of Assistant Superintendent of NSSO(FOD) and of Statistical Investigator Grade-II in Labour Bureau. The pre-revised pay scale of Assistant Superintendent of NSSO was Rs.1600-2660/-, whereas that of the post of Statistical Investigator Grade-II held by the

Petitioners in the Labour Bureau was Rs.1400-2300/-. Thus, it becomes evident that at the time of the constitution of the SSS itself, a conscious policy decision had been taken to encadre Assistant Superintendent of NSSO in Group 'B' posts of the SSS. The methodology used for their induction in Group 'B' posts was that all the existing 1388 posts of Assistant Superintendents of NSSO (FOD) in the pay scale of Rs.1600-2660/- (Revised Rs.5500-9000/-) were abolished by upgrading 861 posts in the pay scale of Rs.6500-10500/- , and downgrading the remaining 527 posts to the pay scale of Rs.5000-8000/-. The upgraded posts were included under Schedule I and II of SSS Group 'B' Rules dated 12.02.2002, while the downgraded posts were included under Schedule I and III of SSS Group 'C' Rules dated 12.02.2002.

64. We also find force in the contention of the learned counsel for the Respondents, that as per the Group 'B' service rules, only two posts were provided in the Schedule I of the Group 'B' rules-the same being that of Statistical Investigator Grade-I and Grade-II with the pay scale of Rs.7450-225-11500/- & Rs.6500-200-10500/- respectively. Therefore even with the admitted pay scale of higher pay scale of Rs.5500-9000/-, the Petitioners could not by any means be en-cadred in the Group 'B' service of SSS. In fact, on their own showing, the Petitioners' enhanced pay scale does not fit into the prescribed pay scales of Group 'B' posts in the SSS. Therefore, we are unable to accept the plea of the learned senior counsel for the Petitioners that, merely because they have been classified as holders of Group 'B' posts by the Labour Bureau,

which classification itself, we find has been challenged by the Respondents 1, 2 & 3, they have a right to be inducted in Group 'B' service of the SSS.

65. There is also merit in the submission of Mr. R.N. Singh, learned counsel for the Respondents No. 7-10 that, once the invitation to the Petitioners by the SSS was for Group 'C' post, the Petitioners cannot contend that they should be en-cadred into Group 'B' posts with retrospective effect. Even otherwise, we also find merit in the submissions of Mr. Singh, that the post of Statistical Investigator Grade-III, which is the only post which is having a matching pay scale of Rs.5500-9000/- as has now been granted to the Petitioners in the Labour Bureau, is a non-functional post and can be filled only by promotion and, therefore, the Petitioners cannot be allowed to be directly inducted into these posts as per the Group 'C' Rules of the SSS.

66. We have also considered the judgments relied upon by the learned counsel for the Respondents and we deem it appropriate to refer to the case of ***Dr. Rajinder Singh v. The State of Punjab & Ors.*** (2001) 5 SCC 482, wherein Supreme Court observed in para 8 as under:-

“8. The settled position of law is that no Government Order, Notification or Circular can be a substitute of the statutory rules framed with the authority of law. Following any other course would be disastrous inasmuch as it would deprive the security of tenure and right of equality

conferred upon the civil servants under the constitutional scheme. It would be negating the so far accepted service jurisprudence. We are of the firm view that the High Court was not justified in observing that even without the amendment of the rules, the Class II of the service can be treated as Class I only by way of notification. Following such a course in effect amounts to amending the rules by a Government Order and ignoring the mandate of Article 309 of the Constitution.”

67. It would also be appropriate to refer to the decision of the Supreme Court in the case of ***P.U Joshi & Ors v. The Accountant General, Ahmedabad & Ors.*** (2003) 2 SCC 632, wherein the Supreme Court has reiterated the well settled legal position that questions relating to constitution pattern, nomenclature of posts, cadres etc., pertain to the field of policy and are within the exclusive discretion and jurisdiction of the State. In the case of P.U. Joshi (*supra*), the Supreme Court in para 10 observed as under:-

“10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the

exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State

to amend, alter and bring into force new rules relating to even an existing service.”

68. Thus, we find that once the statutory rules of the SSS both for Group ‘B’ and Group ‘C’ prescribed a particular method for en-cadrement as well as prescribed specific pay scales for induction, no direction can be given to the Respondents to en-cadre the Petitioners and to induct them either as Statistical Investigators Grades-III, a Group ‘C’ post or as Statistical Investigators Grade-II, a Group ‘B’ post since they admittedly do not fulfill the requirement of the statutory rules. Though we find merit in the plea of the learned senior counsel for the Petitioners that the benefit of the enhanced pay scale cannot be denied to them, but on this ground alone, we cannot give a direction to the SSS to treat them as holders of Group ‘B’ posts in the SSS as we find that their encadrement in Group ‘B’ posts would be wholly contrary to the statutory rules of the SSS. In these circumstances, we are of the view that the only manner in which the Petitioners, if they so desire, can be treated as holders of Group ‘B’ posts is by going back, upon de-cadrement, to their parent department, the Labour Bureau, which has now, admittedly, treated their said post as a Group ‘B’ post. In our view this methodology worked out by the Respondent is just and fair and does justice to all the parties involved. The Petitioners having been declared as holders of Group ‘B’ post in the Labour Bureau cannot be compelled to continue to work in a Group ‘C’ posts in the SSS and so have

rightly been given the option to go back to Labour Bureau, if they so desire.

69. Having considered the matter from all possible angles, we find absolutely no merit in the present Petition. There is no infirmity in the order passed by the Tribunal. The writ petition is dismissed, with no order as to costs.

C.M. Nos.18078,19493,28649/2015 in W.P(C) No.8437/2015
C.M. Nos.24068-24069/2015, 10356/2016 in W.P.(C) 9921/2015

In view of the Writ Petitions having been dismissed, these applications are rendered infructuous and dismissed as such.

REKHA PALLI, J

VIPIN SANGHI, J

November 13th, 2017
saurabh