

**Central Administrative Tribunal
Principal Bench**

OA No.1659/2014

&

MA No.3628/2018

Order Reserved on:14.01.2020
Pronounced on:04.02.2020

**Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Mr. Pradeep Kumar, Member (A)**



1. SAS (Audit) Association,
Office of the DGA (Central Expenditure),
DGA (CR) & Pr. AG (Audit) Delhi,
Through its Secretary,
(Sh. Jai Shankar Kumar),
DGACR Building, I.P. Estate,
New Delhi-110002.
2. Jai Shankar Kumar,
S/o Shri Kamleshwari Prasad,
Aged about 36 years,
Assistant Audit Officer,
Office of Director General of Audit (CR),
DGACR Building, I.P. Estate,
New Delhi-110002.
3. Hemant Kumar,
S/o Shri Balraj Kumar,
Aged about 36 years,
Assistant Audit Officer,
Office of the Pr. AG (Audit) Delhi,
DGACR Building, I.P. Estate,
New Delhi-110002.
4. Ajay Amankar,
S/o Shri Khem Bhai,
Aged about 46 years,
Assistant Audit Officer,
Office of the Director General of Audit (CE),
DGACR Building, I.P. Estate,
New Delhi-110002.



5. Shri Ashutosh Pathak,
 S/o Shri R.S. Pathak,
 Aged about 45 years,
 Assistant Audit Officer,
 Office of the Pr. AG (Audit) Delhi,
 DGACR Building, I.P. Estate,
 New Delhi-110002.
6. Smt. Nidhi Aggarwal,
 W/o Shri Puneet Kumar Aggarwal,
 Aged about 38 years,
 Assistant Audit Officer,
 Office of Director General of Audit (CE),
 DGACR Building, I.P. Estate,
 New Delhi-110002.
7. Smt. Seema Mendiratta,
 W/o Shri Vijay Mendiratta,
 Aged about 41 years,
 Assistant Audit Officer,
 Office of Director General of Audit (CR),
 DGACR Building, I.P. Estate,
 New Delhi-110002.

.. Applicants

(By Advocate : Shri S.K. Gupta)

Versus

1. The Comptroller & Auditor General of India,
 9, Deen Dayal Upadhyaya Marg,
 New Delhi-110124.
2. The Director General of Audit (Central Expenditure),
 DGACR Building, I.P. Estate,
 New Delhi-110002.
3. The Secretary to the Govt. of India,
 Ministry of Finance,
 (Department of Expenditure),
 Govt. of India,
 New Delhi.

.. Respondents

(By Advocate : Ms. Ishita Baruah for Shri Gaurang Kanth)

O R D E R**Hon'ble Mr. Pradeep Kumar, Member (A):**

Applicants are working as Assistant Audit Officer (AAO) in Indian Audit and Accounts Department. They are represented by SAS (Audit) Association of DGA (Central Exp), DG of Audit (Central Receipt) and Principal AG (Audit) Delhi through the Secretary of the Association.

2. Association had demanded that AAOs after completion of 04 years service in PB-2+GP Rs.4800/- be granted PB-2+GP Rs.5400/- w.e.f. 01.01.2006. This was not accepted by Ministry of Finance. Accordingly, DG of Audit (CE) advised the Association vide letter dated 03.01.2014, addressed to Shri Amit Bhargav, President of Association. This letter reads:

“Subject: Representation of SAS (Audit) Association regarding grant of GP of Rs.5400 to AAO on completion of 4 years of service.

Sir,

Kindly refer to your representation dated 01.03.2013 on the above mentioned subject. In this regard, it is intimated that Hqrs. Vide their letter no.855-staff (JCM) 02/2013 dated 23.12.2015 (Copy enclosed) have stated that demand of the Association has not been accepted by the Ministry of Finance.”

3. Applicants are aggrieved at this denial and filed this OA. It is pleaded that 6th Central Pay Commission (CPC)



had recommended this upgradation to SOs of CSS and also recommended parity to personnel working in the field and Section Officers. This recommendation had not been accepted while issuing the orders by Government of India. It is also pleaded that they had had historical parity with SOs of CSS. In support, following table was submitted in OA:

Post	Before 4 th CPC	4 th CPC	5 th CPC	6 th CPC	Govt. notification
Section Officer (CSS)	650-1200	2000-3500	6500-10500	7500-12000 (pre-revised pay scale) 8000-13500 (pre-revised pay scale) on completion of 4 yrs. of service	8700-34800 (with GP of 4800) 8700-34800 (with GP of 5400 on completion of four years)
AAO	650-1040 (the post of AAO was introduced in 1984)	2000-3200	6500-10500 7450-11500 (from 2003)	7500-12000 (Pre-revised pay scale)	8700-34800 (with grade pay of 4800)

4. While they were not granted parity with SOs of CSS, the SOs working in Indian Audit and Accounts Department and who were in lower pay scales as compared to that of applicants, were merged with AAOs after 6th CPC. This created an anomaly. 6th CPC had recommended that AAOs be granted merger with Audit Officers carrying pre-revised scale of Rs.7500-12000. But instead AAOs were merged with SOs and were given PB-2+GP Rs.4800/-.

It is, however, pleaded that Group 'B' cadre of Department of Posts and Department of Revenue have been placed in PB-2+GP Rs.4800 and in PB-2+GP Rs.5400 after 4 years. Thus Group 'B' cadre of SO/AAO in IA&AD have been placed at disadvantage vis-à-vis CSS and similarly placed cadres of Department of Posts and Department of Revenue.

5. This anomaly was referred to Department of Expenditure vide Dy. CAG letter dated 19.09.2008. This was not agreed on the plea that accepting the same would disturb horizontal relativities across Government.

This was considered by Department of Expenditure, but not agreed. The reply was issued on 19.05.2013, where operative part reads:

"The above recommendations of 6th CPC have been considered by the Government and following structure for the post of Audit/Account Officers and Sr. Audit/Account Officers have been notified vide Part 'B' of CCS (RP) Rules, 2008:

S. No.	Post	Present Scale	Revised Pay Scale	Corresponding Pay Band & Grade Pay		Para No. of the Report
1	Assistant Accounts/Audit Officer	7450-11500	7500-12000	7500-12000	PB-2	4800
2.	Audit/Accounts Officer	7500-12000	8000-13500	8000-13500	PB-2	5400
3.	Senior/Audit/Accounts Officer	8000-13500	8000-13500	8000-13500	PB-3	5400

3. In view of the above, the Government has already placed the posts of Audit/Account Officer and Sr. Audit/Account Officers of IA&AD in a higher pay scale than recommended by the 6th CPC. There is no case for further



upgradation of these posts. Consequently, it would not be feasible to agree to the proposal for granting financial upgradation of the post of Assistant Accounts/Audit Officer in PB-2 with Grade pay of Rs.5400 in PB-2 after completion of four years of regular service.”

6. It is pleaded that in consideration to Recruitment Rules (RRs), minimum qualification and level of departmental examination to be cleared by AAOs, their work and responsibilities are no less as compared to those of SOs of CSS and accordingly they need to be given the higher pay scale which was recommended by the 6th CPC and which was, in turn, pursued by CAG office (para-5 supra).

7. *Per contra*, the respondents opposed the OA. It was pleaded that 6th CPC made no recommendation for grant of GP of Rs.5400/- after completion of 04 years of service in PB-2+GP Rs.4800/- to the applicants. Their claim is based simply on parity with SOs of CSS. However, there had been no such parity in the past.

Further, a specific averment made in counter-reply reads:

“2. xxx xxx Even in the lower post of the Assistant (CSS) and Senior Auditors the claim of the Senior Auditors for parity with Assistant was dismissed by the Hon’ble Supreme Court in the case of **Union of India v. Hiranmay Sen**, [(2018) 1 SCC 630]. xxx”

Further, following was specifically averred in counter reply:



“The Sixth Pay Commission in Para 7.56.9 of its Report has observed that a clear cut parity of the posts in IAAD and this exist in Central Secretariat Services has never been established in the past and it is difficult to establish any parity even now. The Pay Commission recommended that the post of Section Officer in IAAD would be placed in the next higher grade carrying the grade of Rs.4800 in PB-2 of Rs.8700-34,800 that corresponds to pre-revised scale of Rs.7500-12000. As the upgrading would place the post of Section Officer and Assistant Accounts/Audit Officer in an identical pay scale, the Pay Commission recommended that the post of Assistant Account/Audit Officer should be merged with Audit/Account Officer in PB-2 of Rs.8700-34,800 alongwith the Grade Pay of Rs.4800 that corresponds to pre-revised pay scale of Rs.7500-12000. The Pay Commission also recommended that the above structure recommended for IAAD will be extended in case of other Organised Accounts Cadre like CGA, CGDA, Railway Accounts, Postal Accounts and Telecom Accounts etc. Therefore, the parity is always between IAAD and similar post in other organized accounts cadre, and, there is no parity between the IAAD and the posts in CSS.xxx”

8. It was further averred that:

“the recommendations by the CAG office do not create a vested or a legal right in favour of the applicant. In **Union of India v. Pradip Kumar Dey**, [(2000) 8 SCC 580] the Hon’ble Supreme Court has held that recommendations of a particular department to the Pay Commission cannot be treated as recommendations of the Government and such recommendations do not confer any right to make such a claim before the court.”

9. It was pleaded that the OA is without merit and needs to be dismissed.

10. Applicants submitted rejoinder. Following was specifically brought out:

“2. The applicants relied on the judgment of Hon’ble High Court of Delhi in W.P. (C) 4606/2013 in their

order dated 14.10.2014 in the matter of **Dgof Employees Association and Anr. v. Union of India & Ors.**, where the Hon'ble High Court had issued the following directions to the respondents:



26. The petitioners were treated historically as equals to CSS/CSSS employees and enjoyed equal pay and all benefits flowing from equal pay. This was based on the previous four instances of determinations by successive Pay Commissions that they performed equal work. No other evidence of "complete identity" of work was necessary in the circumstances of the case. The materials on the record do show that the Sixth CPC stated in more than one place specifically that historical parity in pay scales ought not to be disturbed. Such being the case, this Court is of the opinion that the CAT fell into error in holding that differentiation was facially justified, and could not be gone into given the nature of restricted judicial review. Consequently, a direction is issued to the respondents to fix the members of the Petitioner Association and other similarly placed Assistants working in Ordnance Factories and in OFB in the same pay scale as was given to Assistants similarly placed in CSS/CSSS, Army Headquarters, UPSC, CAT, MEA, Ministry of Parliamentary Affairs, etc. with effect from the same date as was first given to them. Consequential pay fixation and fitment orders shall be issued within eight weeks from today. The writ petition is allowed in the above terms without any order as to costs."

11. Applicants also relied upon a judgment by this Tribunal in the matter of **S.R. Dheer & Ors. v. Union of India & Ors.**, [OA No.164/2009 dated 19.02.2009]

where the Tribunal has, *inter alia*, held as under:

"57. Resultantly, for the foregoing reasons, we have no hesitation to hold that the decision of the Government to deny Grade Pay of Rs.4800/- in PB-2 to the PSs and SOs of the CAT initially and Grade Pay of Rs.5400/- in PB-3 on completion of four years service in the grade is arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India, since they are having established historical parity with their counterparts in CSS/CSSS and, therefore, applicants are entitled to these Pay Bands with Grade Pay....."

12. Applicants also relied upon the two judgments of the Hon'ble High Court of Delhi in the following cases:



- i) **NAT. INST. OF REPUBLIC FIN & POLICY & ANR v. PRESIDING OFFICER & ORS.**, [W.P. (C) No.6349/2002, dated 01.08.2012; and
- ii) **NATIONAL INSTITUTE OF PUBLIC FINANCE AND POLICY v. NATIONAL INSTITUTE OF PUBLIC FINANCE AND POLICY EMPLOYEES UNION**, [LPA No.783/2012 dated 29.01.2016]

and pleaded that when there is certain unreasonableness, Courts can interfere with the matters relating to pay scales also which otherwise lie in the domain of Executive.

13. The applicants also preferred MA No.3628/2018 to bring on record the recommendation made by 7th CPC, which was applicable from 01.01.2016, in respect of grievance raised in the instant OA. MA was allowed. Following was averred:

“That the VII CPC in their report at para no.11.12.138 discussed the issue relating to parity in grant of GP of Rs.5400 after four years of service to the Assistant Accounts Officers of organized accounts cadre and made recommendation with these words:

11.12.139 The Commission notes that non-functional upgradation from GP 4800 to GP 5400 (PB-3), on completion of four years of service, has been accorded to a number of posts by the Report of the Seventh CPC 526 Index government in 2008 viz., Delhi and Andaman and Nicobar Islands Civil Service, Delhi and Andaman and Nicobar Islands Police Service, Officers of the Central Secretariat Service and those of Central Secretariat Stenographers Service as well as other



similarly placed Headquarters Services. This has also been extended to Group 'B' Officers of the Departments of Posts and Revenue. While extending this benefit, officers in GP 4800, both in Headquarters and in the field formations of these two organisations have been covered. In 2015, this benefit was also extended to Section Officers in the Indian Coast Guard.

11.12.140 The Commission is therefore of the view that there is no justification for excluding officers in the organised accounting departments who are at GP 4800 from this dispensation. It therefore recommends that all officers in organised accounts cadres (in the Indian Audit and Accounts Department, Defence Accounts Department, Indian Civil Accounts Organisation, Railways, Post and Telecommunications) who are in GP 4800 should be upgraded, on completion of four years' service to GP 5400 (PB-2), viz., Pay level 9, in the pay matrix."

14. Matter has been heard at length. Shri S.K. Gupta, learned counsel represented the applicant and Ms. Eshita Barua, learned counsel for Shri Gaurang Kanth, represented the respondents.

15. As per data submitted by applicants (para-3 supra), it appears that applicable pay scales of AAOs were somewhat lower with respect to those of SOs of CSS upto and including 4th CPC. While some catching up took place in 5th CPC, but it does not follow that parity needs to be maintained for all times thereafter. It will depend on changing needs and as per assessment done by expert bodies like Pay Commission.

16. It is noted that the 7th CPC had made certain recommendations in respect of the grievance which is

raised in this OA. These recommendations have been accepted also. Effect is that the grievance that has been raised in this OA w.e.f. 01.01.2006, has since been addressed and removed w.e.f. 01.01.2016.



Thus the grievance does not exist at present.

17. The reliance on **S.R. Dheer** judgment (supra) is misplaced as staff in Tribunals used to be deputed from CSS/CSSS and this judgment is in this context when parity was granted. This does not have applicability in the instant case.

18. At this stage, it is relevant to reproduce the observations made by the Hon'ble Apex Court in **Union of India v. P.V. Hariharan**, (1997) 3 SCC 568, as follows:

“Before parting with appeal, we feel impelled to make a few observations. Over the past few weeks, we have come across several matters decided by Administrative Tribunals on the question of pay scales. We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a pay Commission. Change of Pay scale of a category has cascading effect. Several other categories similarly situated, as well as those situated above the below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of “equal pay for equal work” is all being misunderstood and misapplied, freely revising



and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. **Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales.** We have come across orders passed by single Members and that too quite often Administrative Members, allowing such claims. These orders have a serious impact on the public exchequer too. It would be in the fitness of the things if all matters relating to pay Scales, i.e. matters asking for a higher pay scale or an enhanced pay scale, as the case may be on one or the other ground, are heard by a Bench comprising at least one Judicial Member. The Chairman of the Central Administrative Tribunal and the Chairmen of the State Administrative Tribunals shall consider issuing appropriate instructions in the matter.”

(Emphasis supplied)

The Tribunal does not find any hostile discrimination in the instant case.

19. In view of foregoing, Tribunal does not find any justification for interference. OA is without merit and is accordingly dismissed. No costs.

(Pradeep Kumar)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

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