

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00789/2016

Friday, this the 5th day of March 2021

C O R A M :

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

Sri.Anil Kumar D,
S/o.Damodaran,
Aged 52 years,
Auditor, A/c.8339266,
O/o.The Defence Pension Disbursing Officer,
Hill Rock Complex, Ground Floor,
College Junction, Pathanamthitta – 689 645.

...Applicant

(By Advocate Mr.P.K.Madhusoodhanan)

v e r s u s

1. Controller of Defence Accounts,
618, Annasalai, Teynampet,
Chennai – 600 018.
2. The Defence Pension Disbursing Officer,
Pathanamthitta, Hill Rock Complex,
Ground Floor, College Junction,
Pathanamthitta – 689 645.
3. The Controller General of Defence Accounts,
Ulan Batar Road, Palam,
Delhi Contonment – 110 010.
4. Director of Inquiries,
Directorate of Inquiries,
Municipal Corporation of Delhi,
Minto Road, New Delhi – 110 002.
5. Principal Controller of Defence Accounts (Pensions),
G-1/Civil Section, Draupathighat,
Allahabad – 211 014.

6. Union of India represented by its Secretary,
Ministry of Defence (Finance),
New Delhi – 110 010.

...Respondents

(By Advocate Mr.Shaiju.K.S., ACGSC [R1-6])

This application having been heard on 23rd February 2021, the Tribunal on 5th March 2021 delivered the following :

ORDER

Per : Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER

The applicant joined service as L.D.Clerk (LDC) in the then scale Rs.950-1500/- in the Municipal Corporation of Delhi (MCD), New Delhi on 03.09.1990. He was granted first financial upgradation under the Assured Career Progression (ACP) Scheme on completion of 12 years of service on 03.09.2002 in the scale of pay of Rs.4000-100-6000/-. He then applied for the position of Clerk in offices of the Defence Accounts Department (DAD) in various States including Kerala as he wanted to come back to his home state from Delhi. The advertisement issued by the Controller General of Defence Accounts (CGDA) (Respondent No.3) invited applications for filling the position of Clerk in the pay scale of Rs.3050-75-3590-80-4590/-. Annexure A-1 letter addressed to the MCD from the office of the CGDA details the approval of the request for transfer of the applicant to DAD and posting to any office located in Kerala, subject to the conditions mentioned in the Annexure of the said letter. However, this Annexure A-1 letter dated 01.01.2004 culminated with the interdepartment transfer occurring as late as 2007. The applicant was appointed as Clerk in the Defence Pension Disbursing Office (DPDO) Pathanamthitta (Respondent No.2) with effect

from 02.04.2007, on the strength of the DAD, and in relaxation of DAD Recruitment Rules (Annexure A-3). It has been clarified in the orders/letters at Annexure A-1, Annexure A-2 and Annexure A-3 taken together that the terms and conditions of appointment of the applicant was as a fresh entrant on an interdepartment transfer basis. It has been indicated that he would not get the benefit of his past service for the purpose of seniority and would be treated as fresh entrant for all purposes. His seniority in DAD would commence from the date of his joining the department. However, it has also been indicated that counting of past service for fixation of pay, pension, carry forward of leave etc. will be governed in accordance with extant orders/rules (emphasis added).

2. The applicant has been claiming from the beginning that he has not been given proper pay protection as guaranteed by the Annexure A-1 to Annexure A-3 orders/letters. He has been claiming that his basic pay as on March, 2007 ie. the month before he joined at DPDO, Pathanamthitta, was Rs.4440/-. The respondents, however, fixed his pay provisionally at Rs.4350/- plus personal pay of Rs.50/-. Besides unlike the pay protection he was entitled to, he claims that he has been denied due fitment in the higher pay scale in the DPDO, ignoring the ACP granted by the MCD to the scale of Rs.4000-100-6000. He has made a series of representations and reminders for counting his past service and re-fixation of pay. He claims that even after the 6th Central Pay Commission (CPC) his basic pay has been

taken as Rs.7800/- and Grade Pay (GP) as Rs.1900/- in the revised scale as on 01.01.2006 whereas his corresponding basic pay for the old scale of Rs.4300/- should have been Rs.8000/- as per the fitment table as per the 6th CPC. However, there was no action in the matter of his representation. Later, on completion of a further period of 8 years in the DPDO the applicant was promoted from Clerk to the grade of Auditor with effect from 01.04.2015 in the 6th CPC scale of pay of Rs.5200-20200/- (PB 1) with a GP of Rs.2800/-. The applicant then sent yet another representation dated 16.12.2015 (Annexure A-13) in which he stated that, at the time of his interdepartment transfer to DAD on 02.04.2007, he was drawing the ACP basic pay of Rs.4400/- in the scale of Rs.4000-100-6000/-, which was actually the next hierarchical pay scale of his previous department (MCD). On joining DAD, however, his pay was fixed at basic pay Rs.4350/- plus personal pay of Rs.50/- in the pay scale of Rs.3050-75-3950-80-4590, which he claims that was contrary to Condition No.14 of DoPT O.M.No.35034/1/97-Estt.(D) dated 09.08.1999. He claims that as per this O.M the pay has to be fixed in the next hierarchical pay scale of the DAD on completion of the required 12 years. As such, since the next higher pay scale as per hierarchy of the DAD was Rs.4500-125-7000 as on 02.04.2007, he should have been granted that scale with effect from the salary of April, 2007. Similarly, after the implementation of 6th CPC, the pay scale of Rs.4500-125-7000 was revised to Pay Band of Rs.5200-20200 with GP Rs.2800. As per the fitment formula prescribed in CCS (RP) Rules 2008,

his basic pay should have been fixed at Rs.8370/- in this PB as on 02.04.2007. Further, he was also eligible for second financial upgradation under MACP Scheme on completion of 20 years of regular service from the date of initial appointment ie. with effect from 03.09.2010. Instead of this, he has been wrongly fitted at a basic pay of Rs.11560/- consequent on promotion to the grade of Auditor with effect from 01.07.2015. This has not taken into account the Condition No.14 of the aforesaid O.M of DOPT as well as clarifications on the erstwhile ACP Scheme. It is also not in conjunction with Para 6 of Annexure -I of the DOPT O.M dated 19.05.2009 on MACP Scheme. Hence, he claims that his pay should be refixed at Rs.8370/- plus GP of Rs.2800/- with effect from 02.04.2007 keeping in view the ACP Scheme and at Rs.10170/- plus GP of Rs.4200/- with effect from 02.09.2010 on account of second financial upgradation under MACP Scheme.

3. In response to the Annexure A-13 representation the respondents (Respondent No.1) have issued the impugned letter at Annexure A-14 dated 10.02.2016 which the applicant seeks as relief to be set aside in this O.A. In this letter, they stated that the applicant's request of ACP on joining the DAD in the hierarchy of the DAD in the scale of Rs.4500-125-7000 (5th CPC) as on 02.04.2007 has not been acceded to, based on a clarification rendered by the headquarters in a similar case wherein it has been stated that the pay of the individuals in the Pay Band should be protected on account of

first ACP granted in erstwhile department and should be fixed in the 6th CPC Grade Pay (GP) of lower post ie. Clerk's GP of Rs.1900/- in the pay scale of Rs.3050-75-3950-80-4590 (5th CPC) as per extant rules. (emphasis added)

Further, regarding the grant of MACP on completion of 20 years of service with effect from 03.09.2010 it has been clarified that the counting of previous service towards current engagement has been counted by the respondents at Annexure R-5 only during 07/2015, and thus, his case for grant of MACP will be submitted to Screening Committee for their acceptance and revised pay fixation will be done accordingly. The applicant made another representation (Annexure A-16 dated 28.03.2016) wherein he once again reiterated that he joined DAD as a Clerk after holding post of a Lower Division Clerk in MCD. Since the ACP Scheme was operational till 30.09.2008 he was eligible for placement in the next hierarchical higher pay scale of DAD on personal basis as per rules. On the basis of this placement he would be entitled for second financial upgradation under MACP Scheme with effect from 03.09.2010, the date of completion of 20 years of service. He also stated that the provisions of FR 15 (a), and DOPT O.Ms dated 19.05.2009 and 05.11.2012 are not applicable to him. His contention is that he joined DAD in the same post ie., as a Clerk. However, no response has been given to Annexure A-16 representation by the respondents. They (Respondent No.1) issued only the Annexure A-17 impugned dated 01.07.2016 by which the applicant has been given second financial upgradation under MACP Scheme in the scale of pay of Rs.5200-20200

(PB-1) by upgrading his GP to Rs.2000/- with effect from 03.09.2010 from the earlier GP of Rs.1900/-. This order at Annexure A-17 is also sought to be set aside by the applicant in so far as it is in respect of the applicant as the second relief in the O.A.

4. In essence, the applicant has claimed that no proper pay protection has been given to him inspite of the specific undertakings in Annexure A-1 to Annexure A-3 that his past service would be counted for fixation of pay and that he would be entitled for protection of pay last drawn in erstwhile department. Further his basic pay has been wrongly fixed on the implementation of 6th CPC. He has also claimed that the decisions rendered by this Tribunal in O.A.No.205/2010 and in O.A.No.461/2011 on 21.10.2011 and 25.11.2011 respectively, have effectively held that pay includes GP as well and therefore the official on unilateral transfer is entitled to get his pay which includes Grade Pay in the erstwhile department protected, applies to him as well.

5. In response, the Respondents (for R1, R2, R3, R5 & R6) first filed a reply on 20.02.2017. In this reply they submitted that the applicant in response to their advertisement had submitted his application for consideration of his candidature for the post of Clerk. Consequent on approval by the competent authority of his candidature on interdepartmental transfer, he had been appointed in the respondent department as Clerk on

02.04.2007 in the scale of pay of Rs.3050-75-3950-80-4590 (5th CPC). At the time of his relieving from former department on 01.04.2007 the applicant was holding the substantive post of LDC which is in that Department's pay scale of Rs.3050-4590, but was drawing basic pay of Rs.4400/- in the higher pay scale of Rs.4000-100-6000 (5th CPC) as he had been granted ACP-1 on completion of 12 years service with effect from 03.09.2002. On joining the DAD on 02.04.2007 in the lower post of Clerk (emphasis added) in the pay scale of Rs.3050-75-3950-80-4590 (5th CPC scale) the applicant's pay was fixed at the corresponding stage of the pay scale at Rs.4350/- ie. Rs.4350/- + Rs.50/- (as personal pay) by fully protecting the last pay drawn of Rs.4400/- as per FR 22 read with FR 15 (a). (emphasis added) After the 6th CPC the applicant was placed in the corresponding Pay Band of Rs.5200-20200 PB-1 and pay has been revised to Rs.8100/- ie., (Rs.4350 x 1.86 = Rs.8100) with effect from 02.04.2007 ie. with effect from the date of joining the DAD. Further since a new concept of Grade Pay was introduced by the Government of India in the 6th CPC with effect from 01.01.2006 and since the applicant was holding the post of Clerk, the Grade Pay of Rs.1900/- applicable to the grade of Clerk was granted along with the pay fixation as per extant orders. (emphasis added) Later on receipt of the Service Book of the applicant from the former department (MCD) it was seen from the entry therein (which is produced at Annexure R-1) that the applicant's pay was revised to Rs.8000/- with effect from 01.01.2006 with GP of Rs.2400/- corresponding to the pre-revised pay

of Rs.4000-6000 (ACP-I scale) of that Department (MCD). Further, the Service Book revealed that the annual increment of 3% was to be granted and, thus, this increased the applicant's pay to Rs.8320 + Rs.2400/- GP (corresponding the ACP-I scale) of that department (MCD) with effect from 01.07.2006. As such, the Respondents submit that the applicant's last basic pay drawn on the date of relieving from the former department as on 01.04.2007 has to be taken as Rs.8320/-. Accordingly, his pay was revised by the respondents to Rs.8320/- with effect from 02.04.2007 ie., from the date of joining the DAD by fully protecting the basic pay notified by the former department of the applicant. In addition to the basic pay, the Respondents submit that Grade Pay of Rs.1900/- has been granted corresponding to the grade of Clerk in which the applicant was appointed on joining the DAD. Accordingly, pay of the applicant has been refixed by fully protecting the last pay drawn Rs.8320/- + GP Rs.1900/- with effect from 02.04.2007 as shown at Annexure R-2. (emphasis added)

6. Further to buttress the case for the GP of Rs.1900/- being given, the respondents have produced an O.M by DOPT (at Annexure R-3) which is relevant on the subject of transfer to lower post under FR 15 (a). This O.M has stated that in reference to the department's earlier O.M dated 14.02.2006 read along with O.M dated 04.01.2007 which clarified that on transfer to the lower post/scale under FR 15 (a), the pay of a Government servant holding a post on regular basis will be fixed at a stage equal to the pay drawn by him

in the higher grade. If no such stage is available, the pay will be fixed at the stage next below the pay drawn by him in the higher post and the difference may be granted as personal pay to be absorbed in future increments. If the maximum of the pay scale of the lower post is less than the pay drawn by him in the higher post, his pay may be restricted to the maximum under FR 22(1)(a)(3). This O.M in paragraph 2 states as follows :

“2. Further, it was clarified vide the O.M.No.13/9/2009-Estt.(Pay-I) dated the 21st October 2009 that consequent upon implementation of the revised pay structure comprising grade pays and running Pay Bands with effect from 01.01.2006 in cases of appointment of Government servants to posts carrying lower Grade Pay under FR 15 (a) on their own request, the pay in the pay band of the Government servant will be fixed at a stage equal to the pay in the pay band drawn by him prior to his appointment against the lower post. However, he will be granted grade pay of lower post. Further, in all cases, he will continue to draw his increments based on his pay in the pay band + grade pay (lower).”

Further, in paragraph 3 it is mentioned that the above O.M also provides that in case the transfer to a lower post was made subject to certain terms and conditions then the pay may be fixed according to such terms and conditions. (emphasis added)

7. As such the respondents stated that the request of the applicant for protection of last drawn Grade Pay of Rs.2400/- is not admissible in his case as he was holding the post of Clerk and corresponding grade pay for the post of Clerk is Rs.1900/- only. His service has been fully counted towards the current engagement and his last pay of Rs.4400/- drawn in that

Department was fully protected by giving him the 6th CPC pay of Rs.8320/- (Annexure R-2). The GP of Rs.2400/- pertaining to corresponding pre-revised scale of Rs.4000-100-6000 drawn in the previous department cannot be protected as the same is not covered under Pay Rules. It is also clarified that in a similar case of interdepartmental transferees, Respondent No.3 (CGDA) had directed that the pay of the individuals in the pay band should be protected on account of 1st ACP granted in erstwhile department and their pay should be fixed in the grade pay of lower post ie., Clerk's Grade Pay of Rs.1900/- as per the extant orders. This is produced as per Annexure R-4 letter dated 24.06.2015. In this letter in the case of some other two individuals who had joined the DAD as interdepartmental transferees it is clarified as follows :

“ The case has been examined and it is observed that on joining in this Department in both the cases pay of individuals was fixed with grade pay of Rs.2800/- on account of ACP granted in their erstwhile Departments instead of grade of pay Rs.1900/-. Further they were given grade pay of Rs.4200/- on account of 2nd MACP.

2. In the above connection, it is stated that pay of the individuals in the pay band should be protected on account of 1st ACP granted in their erstwhile Department and their pay should have been fixed in the grade pay of lower post ie., Clerk's Grade Pay of Rs.1900/-, as per extant rules. The instant case may be regulated accordingly.”

8. Further, it is submitted by the respondents that as regards A-17 consequent on completion of 20 years service and on fulfilling of requirements as per orders of MACP, the applicant has been granted 2nd

MACP with effect from 03.09.2010 to the next grade pay of Rs.2000/- (as per hierarchy) as per extant orders. On grant of 2nd MACP with effect from 03.09.2010 the applicant's pay has been refixed to Rs.9970/- + Grade Pay of Rs.2000/- (Annexure R-2) which is in order. The applicant has then been given the promotion on fulfilling the required service condition to the post of Auditor with effect from 01.04.2015 and also granted GP of Rs.2800/- applicable to the post of Auditor as per hierarchy. The applicant's request for grant of Grade Pay of Rs.4200/- is not covered by the Rules.

9. The respondents submit that it is the applicant who by his own volition opted to join the DAD in the lower post of Clerk. His pay has been protected on joining DAD correctly as Rs.8320/- with Grade Pay Rs.1900/- as per orders of DOPT produced at Annexure R-3. Further, the respondents stated that the contention of the applicant that FR 15 (a) is not applicable in his case is not correct. At the time the applicant joined the DAD the recommendations of 6th CPC had not been accepted by Government of India. On his date of joining he was covered under the 5th CPC orders only and it was only his last pay drawn of Rs.4400/- which had to be protected. This was done by fixing pay at Rs.4350/- + Rs.50/- personal pay. The Circular of DOPT brought out at Annexure R-3 had issued a clarification subsequent to the implementation of the 6th CPC that the appointment of Government servant to posts carrying lower Grade Pay under FR 15(a) on their own request, has to be fixed as per the conditions given in the Circular.

The applicant was offered the post of Clerk in the respondents department and he opted to accept the same by joining the lower post. As such, his request for protection of last drawn GP of Rs.2400/- is not admissible. He had already availed the financial upgradation under 1st ACP in his previous department in the scale of pay of Rs.4000-6000 and the benefits of the 1st ACP in the present department cannot be given as he had already availed in the previous department. However, his entitlement of 2nd MACP on completion of 20 years has been given.

10. As regards protection of GP the respondents reiterated that it is to be noted that the applicant had joined the respondents department before acceptance of recommendations of 6th CPC by the Government of India. On the date of joining the respondent department, the applicant was to be covered under 5th CPC orders only. Therefore, his last pay drawn of Rs.4400/- has been fully protected by fixing pay at Rs.4350/- + Rs.50 personal pay as per orders on the subject by the respondent department on 02.04.2007. The concept of GP was newly introduced as per 6th CPC recommendations though with effect from 01.01.2006; however, the orders were notified in the Government Gazette in 09/2008 only. As such, the claim of the applicant that his revised grade pay of Rs.2400/- should also be protected is not in order. He has joined the respondent department in the lower scale on his own volition and accordingly was granted GP of Rs.1900/- and consequent to grant of 2nd MACP with effect from 03.09.2010

on completion of 20 years of service his pay has been fixed with the GP of Rs.2000/-. The respondents have also brought out the clarification relating to financial upgradation under MACP Scheme to interdepartmental transfer candidates (at Annexure R-5) issued by them wherein they stated that : *“if the individual has got 1st promotion/ACP and joined the office on Inter Departmental Candidate as Clerk before 31.08.2008 then the individual would not be entitled for getting 1st financial under ACP Scheme of August 1999 as the individual has already availed benefits of 1st promotion/ACP. However, the individual would be entitled for 2nd MACP on completion of 20 years of continuous service. Service rendered in previous Department shall be counted along with the regular service in new organization for the purpose of MACP Scheme.”* This clarification has been issued on the basis of the note given by the DOPT to the DAD produced at Annexure R-6. On this basis even the ACP granted by CGDA letter dated 18.06.2008 (Annexure A-19) was subsequently withdrawn by Annexure R-5.

11. In his rejoinder the applicant has denied that he joined the DAD on 02.04.2007 in the lower post of Clerk. He submits that in cases where posting/transfer involves no change in trade/grade, the service rendered prior to such posting/transfer will be treated as continuous and the individuals may be allowed to draw the last pay drawn. The date of increment will remain unaltered. He submits that FR 15 (a) is not applicable in his case as he has not been transferred from a higher post to a

lower post but to the very same post of Clerk in DAD. The applicant has submitted that protection of pay last drawn in the erstwhile department is guaranteed in DAD by Annexures A-1 to A-3 and GP being part of basic pay the same cannot be illegally and arbitrarily denied to him. As is evident from the fitment table, the corresponding Pay Band/Scales and Grade Pay to the scale Rs.4000-6000 is Rs.5200-20200 + GP Rs.2400/-. As the applicant was holding the scale of Rs.4000-6000 with effect from 03.09.2002, on the implementation of 6th CPC with effect from 01.01.2006 he cannot be placed in GP Rs.1900/- as alleged by the respondents. The applicant was correctly given fixation and grade pay by Annexure R-1 issued by the MCD, his previous Department. Accordingly, his last basic pay drawn on the date of relieving from the former department as on 01.04.2007 has to be taken as Rs.8320/- + GP Rs.2400/-. This was given to him and illegally cancelled. The respondents in their reply statement have repeatedly stated that the applicant joined the DAD on 02.04.2007 in the lower post of Clerk. But it is submitted that he joined in the post of Clerk, which is not a lower post than what he was holding in his erstwhile department. His appointment was not to a lower post and hence the DOPT O.M dated 05.11.2012 is not applicable in his case and applies only in the case of transfer from a higher post to a lower post under FR 15 (a). Annexure R-3 only applies in the case of transfer from a higher post to a lower post under FR 15 (a) and does not apply in the case in hand. Hence the respondents cannot refix the pay of the applicant with effect from 01.01.2006 and resort to recovery of amount that

he had received years back. The applicant has attacked the withdrawal of Annexure A-19 circular by which he was given the financial upgradation in scale of pay of Rs.4500-7000, but later withdrawn with retrospective effect.

12. We have heard in detail learned counsel for the applicant Shri.P.K.Madhusoodhanan and learned counsel for the respondents Shri.N.Anilkumar, SCGSC. We have also gone through all the orders and circulars produced by both sides as well as the Court decisions cited by the applicant which are relevant in deciding this matter. At the outset we would like to identify the issues on which a decision needs to be taken, as the way the issues have been presented in the O.A is not with the required clarity of argument. To our mind, there are two broad issues which need addressing, We will take these up in the subsequent paragraphs.

13. The first issue which has to be addressed is whether the applicant's pay was to be fixed by the respondents (DAD), after his interdepartment transfer, in the scale of pay of Rs.4500-125-7000 instead of the scale of Rs.3050-75-3950-80-4590. It is the claim of the applicant that his was a case of pure interdepartment transfer at the same level/post and is therefore not to be covered as a transfer to a lower post under FR 15 (a). In this regard we have carefully gone through all the orders including the terms and conditions which were specified at Annexure A-1 to Annexure A-3, under which the applicant was transferred from the MCD to DAD. It appears to us

that the applicant after accepting the 1st ACP promotion in 03.09.2002 to the grade of Rs.4000-100-6000 in his old Department (MCD) voluntarily agreed to join in the post of Clerk in the DAD which was apparently in the lower scale of Rs.3050-75-3950-80-4590. The respondents have taken action to fix his pay, after protection in this lower scale at Rs.4350/- along with Rs.50/- personal pay and they have submitted that they have done the same on the basis of the FR 15 (a) read with FR 22. It is to be noted that at that time the extant rules under which the terms and conditions for the applicant's interdepartment transfer were specified did not specify any other condition regarding pay, other than that protection of the pay drawn in the erstwhile department was to be ensured. In the 5th CPC there were only pay scales and not the system of Pay Bands and Grade Pay brought in by the 6th CPC. Hence, at the time of his transfer and joining in the new department on 02.04.2007, the 5th CPC conditions/pay scales are to be taken as relevant. Thus, it is noted that his pay was protected as per the conditions of extant rules at that time. In addition, he had already secured his first ACP promotion in his earlier Department (MCD). He cannot claim to be again placed in the higher scale in the DAD as he clearly applied and opted to join in a lower pay scale from what he was drawing in the MCD. It is seen that he had already got the higher pay scale after the first ACP in the MCD at Rs.4000-6000 with effect from 03.09.2002, i.e., much before he responded to the advertisement of the DAD in 2004. Thus, he knew he would be going to be placed in a lower pay scale, albeit with pay protection. As stated

earlier, the concept of Grade Pay was only introduced with the coming in of the 6th CPC, along with the concept of Pay Bands, and thus, at the time, when the applicant joined on 02.04.2007, only his pay (which meant the basic pay as then defined, needed to be protected which was clearly done).

Hence we do not agree with the applicant's contention that he was to be fixed at the higher pay scale of Rs.4500-125-7000 (5th CPC) with effect from 02.04.2007 and we cannot grant this relief.

14. The second issue that needs to be decided is, whether once the 6th CPC was made effective from 01.01.2006 and the applicant drew arrears from the erstwhile Department (MCD) and also since his Service Book indicates that the MCD fixed him under the 6th CPC in PB-1 Rs.5200-20200 with a GP of Rs.2400/- with effect from 01.01.2006, whether that specific GP needs to be protected? This is in our view a more complex issue given that the DOPT circulars cited earlier, supra, are against the fixation of such interdepartmental transferees to the lower pay scales together with the higher Grade Pay of the erstwhile Departmental Pay Band protected. Also as per the Service Book produced at Annexure R-1 (written by the MCD), it is noted that the applicant's pay, based on his 5th CPC pay scale of Rs.4000-100-6000 was refixed at Rs.8000/- in the 6th CPC with effect from 01.01.2006, with a GP of Rs.2400/-. This was then in fact raised to Rs.8320/- with GP of Rs.2400/- on 01.07.2006. The applicant had joined the DAD with effect from 02.04.2007. The applicant's claim is that his GP

of Rs.2400/- which has been declared to be part of the basic pay, as per various judgments of this Tribunal needs to be protected. He submits that while he has been allowed the basic pay of Rs.8320/-, corresponding to his 5th CPC basic pay, he has been wrongly given the GP of Rs.1900/-, by the DAD instead of Rs.2400/- which he had been drawing. The DAD countered this by submitting that this was done on the basis of clarifications issued by their higher authorities, cited supra, along with various circulars issued by the DOPT also cited supra, who are the final authority in this regard. They particularly relied on the circular provided at Annexure R-3, which was to be read along with DAD's own circular/clarification at Annexure R-4. This has been again reiterated in the circular produced at Annexure R-5 based on the DOPT's clarification at Annexure R-6.

15. In response to this, learned counsel for the applicant has drawn attention to the decision of this Tribunal in O.A.No.461/2011 dated 25.11.2011 and O.A.No.205/2010 dated 21.10.2011. He has particularly drawn attention to the reasoning given by this Tribunal in O.A.No.461/2011. In the O.A. 461/2011, the applicant who was working as Upper Division Clerk (UDC) in the Central Public Works Department (CPWD), New Delhi had requested for an inter-regional transfer to the lower grade of LDC on personal ground by his willingness to forfeit the claim of service seniority. He was transferred to CPWD, Cochin and joined the post on 08.06.2009. His previous office (which was in the same

department, CPWD) had granted him 2nd financial upgradation under the ACP Scheme, with effect from 25.08.2008. Consequently, his pay was fixed at Rs.10800/- in PB (Rs.9300-34800) with GP of Rs.4200/- with effect from that date. The pay and Grade Pay was protected in the transferred office. However, the Principal Accountant General (Civil & Commercial Audit) objected to the full pay protection given to the applicant on the ground that in case of appointment of Government servants to posts carrying lower Grade Pay under FR 15 (a), on their own request, the pay in the Pay Band of the Government servant will be fixed at a stage equal to the pay in the Pay Band drawn by him prior to his appointment against the lower post but he will be granted the grade pay of lower post and he will continue to draw increments based on his pay in the Pay Band plus Grade Pay (lower). The respondents, therefore, proceeded to reduce the grade pay of the applicant and being aggrieved, he filed the O.A praying for retaining the GP of Rs.4200/- in PB of Rs.9300-34800. In this matter, this Tribunal after elaborately dealing with the various contentions has made the following points :-

(1) The posting order of the incumbent was on the basis that the pay last drawn by him will be protected as per the existing rules and his services will also be counted for pensionary benefits.

(2) The DOPT Circular/OM dated 21.10.2009 has stated that where transfer to a lower post is made subject to certain terms and conditions then the pay may be fixed according to such terms and conditions.

(3) *The protection of pay last drawn by the applicant that was guaranteed by the respondents as per the existing rules, was the protection of the basic pay on which DA was based. As per Rule 3(8) of the Revised Pay Rules, 2008, “basic pay” means pay in the the Pay Band plus Grade Pay. Therefore, the Grade Pay last drawn by the applicant is also protected. If the Grade Pay is not protected, the financial loss suffered by the applicant will be substantial and there is no whiff of such loss in the conditions of inter regional transfer of the applicant, over and above, the loss of seniority and the reversion to the post of LDC and loss of TA/DA and joining time and pay for the transit period etc. Therefore, the inter regional transfer agreement cannot be violated to the disadvantage of the applicant by taking out the Grade Pay from the protection guaranteed by the respondents. The definition of basic pay as per the Revised Pay Rules, 2008 cannot be altered by an O.A. (emphasis added)*

(4) *The CCS (RP) Rules, 2008 have overriding effect over the provisions of the Fundamental Rules. It is mentioned in Rule 15 of the said Rules that the provisions of the Fundamental Rules shall not, save as otherwise provided in these rules, apply to cases where pay is regulated under these rules, to the extent they are inconsistent with these rules. Hence, the basic pay of the applicant as per CCS (RP) Rules, 2008 cannot be reduced under FR 15 (a).*

16. The Tribunal on the above grounds allowed the O.A and directed the respondents to strictly adhere to the conditions of inter regional transfer and protect the last pay drawn by him.

17. We have closely looked at the grounds adduced in this case as well as in O.A.No.205/2010 decided on 21.10.2011 and in O.A.No.440/2012 decided on 19.06.2015. One difference between these cases and the issues under examination in the present O.A is that all these O.As seem to have been filed by applicants, who were already drawing 6th CPC scales of pay

along with concomitant Grade Pay in their erstwhile Department. In the O.A.No.461/2011 which is the main case pointed out by the applicant, the applicant was already drawing pay in PB Rs.9300-34800 with a GP of Rs.4200/-. His conditions for transfer to CPWD, Cochin as per Office Order issued in his case had, at Condition No.4 in Annexure A-5, that the pay last drawn by him will be protected as per existing rules and that his services will also counted for pensionary benefits. The O.A was allowed by the finding that the protection of pay should mean protection of basic pay drawn by him, which also includes the Grade Pay of Rs.4200/- drawn by him in the erstwhile post.

18. In the present OA, the applicant has moved from one department to another completely different department on an interdepartment transfer basis. The pay scales in the two Departments were different. What is also important is the conditions under which the two Departments have (a) released the applicant (b) absorbed the applicant. On an examination of the Annexure A-1 to Annexure A-3 orders issued by the two Departments there is a similarity in the terms and conditions as far as pay/counting of previous service etc. is being dealt with. The applicable point to be noted is that the erstwhile department (MCD), while accepting his technical resignation has stated that the official will be entitled to benefits like protection of pay, carry forward of leave and counting of past service for pension purposes etc. under relevant service rules. On the other hand, the office of the Controller

General of Defence Accounts has mentioned in its terms and conditions that the counting of past service for fixation of pay, pension, carry forward of leave etc. which would be considered in accordance with the extant orders/rules. Otherwise, it is stated that he will be treated as a fresh entrant for all purposes and his seniority would commence from the date of joining in that department.

19. We note that at the time of transfer of the applicant from MCD to the DAD and his joining on 02.04.2007, the relevant rules quoted in O.A.No.461/2011 ie. CCS (RP) Rules, 2008 had not yet come into operation. It was only after the implementation of the 6th CPC that the concept of Grade Pay came into being for the first time. Under Rule 3(8) of the CCS (RP) Rules, 2008 basic pay was defined to include pay in the Pay Band plus Grade Pay for the first time. 'Pay' in the revised pay structure meant the pay drawn in the prescribed Pay Band plus applicable Grade Pay but did not include other types of pay such as Special Pay. The point is that when the applicant moved from New Delhi to Pathanamthitta what was in the extant rules only guaranteed protection of 'basic pay' as defined then. This was protected under 5th CPC pay scales by protecting his basic pay at Rs.4400/- by fixing his pay as per the Rules at Rs.4350/- with Rs.50/- as Personal Pay. At that time nobody was aware that the concept of what pay means would change to include what came to be known as Grade Pay linked with the post. Thus, when the 6th CPC came into the picture and the

recommendations were implemented, it was necessary for the DOPT, as the apex body for deciding such matters, to clarify how in cases of interdepartment transfers 'pay' would be fixed or protected. They proceed to do so by their O.M dated 21.10.2009 and further clarified it by their O.M dated 05.11.2012. We could therefore, take the view that the findings of this Tribunal in O.A.No.461/2011, which essentially was dealing with the issue, as to whether the Grade Pay should be protected while being transferred to a lower post is not relevant in this matter. Here the applicant was transferred to the post of Clerk in a lower pay scale which we have found to have been covered correctly under FR 15 (a) read with FR 22. His pay was accordingly protected as mandated under the Rules in extant at that time. The CCS (RP) Rules, 2008 were not in operation at that time.

20. We do not, therefore, find that the protection of Grade Pay which he would have drawn, had he continued in his erstwhile department on implementation of the 6th CPC recommendation is necessitated in this case. We do not find any infirmity in fixing his Grade Pay at Rs.1900/- after the coming into force of the 6th CPC recommendations, because that was the Grade Pay attached to the post to which he had moved much earlier, namely, the post of Clerk. He only drew the Grade Pay of Rs.2400/- as arrears for the period 1.1.2006 to 2.4.2007 as the 6th CPC was made effective with effect from 1.1.2006, but clearly at the time he was transferred, he was governed by the extant conditions of the 5th CPC. We find, therefore, that his

pay was correctly fixed and no case is made to protect the Grade Pay of Rs.2400/- which is not linked to the grade to which he was employed, namely, the grade of Clerk. We find that the conditions cited in the cases earlier decided by this Tribunal are not applicable in this case and there is no contradiction with our conclusion in this one. Hence, we do not agree to the relief claimed to protect the grade pay of Rs. 2,400/- and to quash the DAD order at Annexure A-17.

21. As such, we do not allow the O.A. The respondents have correctly fixed the pay of the applicant in the appropriate pay scale and have also fixed the Grade Pay applicable, linked to the post he joined as per the terms and conditions existing at that time. His financial upgradation under MACP has been granted subsequently to the applicable Grade Pay at the due time. We, therefore, find his prayers devoid of any merit and we dismiss the O.A accordingly. No order as to costs.

(Dated this the 5th day of March 2021)

K.V.EAPEN
ADMINISTRATIVE MEMBER

P.MADHAVAN
JUDICIAL MEMBER

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List of Annexures in O.A.No.180/00789/2016

- 1. Annexure A-1** – A copy of the letter dated 01.01.2004 along with Annexure issued by the Accounts Officer, O/o.The CGDA, New Delhi.
- 2. Annexure A-2** – A copy of the office order dated 19.02.2007 issued from the office of the Municipal Corporation of Delhi.
- 3. Annexure A-3** – A copy of the Part II Office Order No.171 dated 18.05.2007 of the 1st respondent.
- 4. Annexure A-4** – A copy of the representation dated 02.04.2007 submitted by the applicant to the first respondent.
- 5. Annexure A-5** – A copy of the representation dated 01.04.2008 submitted by the applicant to the 3rd respondent.
- 6. Annexure A-6** – A copy of the representation dated 30.01.2009 submitted by the applicant to the 3rd respondent.
- 7. Annexure A-7** – A copy of the communication dated 16.08.2010 issued by the first respondent to the second respondent.
- 8. Annexure A-8** – A copy of the communication dated 24.06.2011 from the 1st respondent to the 4th respondent.
- 9. Annexure A-9** – A copy of the communication dated 23.12.2011 from the first respondent to the fourth respondent.
- 10. Annexure A-10** – A copy of the representation dated 11.08.2014 submitted to the first respondent.
- 11. Annexure A-11** – A copy of the Order PT.II.O.O.102 dated 09.04.2015 of the first respondent.
- 12. Annexure A-12** – A copy of the communication dated 11.06.2015 addressed to the 5th respondent by the 1st respondent.
- 13. Annexure A-13** – A copy of the representation dated 16.12.2015 to the first respondent.
- 14. Annexure A-14** – A copy of the letter AN/11/015/MACP/CORR dated 10.02.2016 of the first respondent.
- 15. Annexure A-15** – A copy of the order dated 30.07.2015 issued from the office of 5th respondent.

16. **Annexure A-16** – A copy of the representation dated 28.03.2016 to the 3rd respondent.
 17. **Annexure A-17** – A copy of the Part II O.O.207 dated 01.07.2016 of the first respondent.
 18. **Annexure A-18** – A copy of the file noting dated 08.02.2013.
 19. **Annexure A-19** – A copy of the communication dated 18.06.2008 issued from the 3rd respondent's office.
 20. **Annexure R-1** – A copy of the entries in the service book of the individual/applicant.
 21. **Annexure R-2** – A copy of the order vide CDA Chennai Part II O O No.334 dated 29.11.2016.
 22. **Annexure R-3** – A copy of the order of GOI, Ministry of Personnel, Public Grievances and Pensions (DOPT), New Delhi OM No.16/4/2012-Pay-I dated 05.11.2012.
 23. **Annexure R-4** – A copy of the O/o.the CGDA letter No.AN/XIV/14121/II/INC/VOL.XX(I) dated 24.06.2015.
 24. **Annexure R-5** – A copy of the CGDA Circular No.AN/XI/11051/MCAP/2010 Vol-I dated 25.02.2010.
 25. **Annexure R-6** – A copy of the DOPT Clarification dated 13.01.2010.
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