CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 521 OF 2013
with
O.A No. 541 OF 2013
&
O.A No. 544 OF 2013

Tuesday, this the 23rd day of February, 2016

CORAM:

HON'BLE Mr. JUSTICE N.K. BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE Mrs. P. GOPINATH, ADMINISTRATIVE MEMBER

I. **O.A. No. 521/2013**

1. Anandavalli S, D/o. Neelakanta Pillai. N (late),
Personal Secretary,
SEIG/MVIT/VSSC, Valiamala Complex,
Valiamal (P.O), Thiruvananthapuram – 695 547.
Residing at : "Nandanam", TC 17/625(1),
PRA-128, Pathirappally Lane, Poojappura (P.O),
Thiruvananthapuram – 695 012.

2. Subhadramma P.T,
D/o. Parameswaran Thampi.A (late),
Project Personal Secretary,
HRDD/MSA, VSSC, ISRO, (P.O),
Thiruvananthapuram – 695 022.
Residing at "Thiruvonam", ARA-40.
West Side of Chackai Railway Bridge,
Beach (P.O), Thiruvananthapuram – 695 007.

3. Ambujakshi V., D/o. Appukuty Nair. M (late),
Project Personal Secretary,
Construction & Maintenance Group,
VSSC, ISRO (P.O), Thiruvananthapuram – 695 022.
Residing at "Mayookham", 28th Mile,
Vettiyara (P.O), Navaikulam,
Thiruvananthapuram – 695 603.

4. Sarasamma P.N., D/o. Nanu P.K (late)
Project Personal Secretary,
LSMD/SMG, VSSC, ISRO (P.O),
Thiruvananthapuram – 695 022.
Residing at "Puthupally Lane, PRA – 17.
Medical College (P.O),
Thiruvananthapuram – 695 011.

5. Sreekumari Amma P.P,
D/o. Damodaran Nair. G (late),
Project Personal Secretary,
PCM/VSSC, ISRO (P.O),
Thiruvananthapuram – 695 022.
Residing at "Gokulam",
Kallampally, Mavarthalakonam,
Medical College (P.O),
Thiruvananthapuram – 695 011.

6. Sathi V, D/o. Chellappan G.(late)
Project Personal Secretary
QRPG/SR,VSSC, ISRO (P.O),
Thiruvananthapuram – 695 022.
Residing at TC 5/259(4), Indira Nagar,
Peroorkada, Thiruvananthapuram – 695 005.

7. Vasanthakumari. B, D/o. Velayudhan Nair (late),
Personal Secretary (Rtd.),
PPEG/MSA, VSSC, ISRO (P.O),
Thiruvananthapuram – 695 022.
Residing at "Souparnika", Ramapuram,
Thannimoodu (P.O), Thiruvananthapuram – 695 123.

8. Parvathy J, D/o. Chidambarakrishnan T (late),
Personal Secretary,
BMPD/PPEG, VSSC, ISRO (P.O),
Thiruvananthapuram – 695 002.
Residing at DNRA 23-D, Devi Nagar,
Kalady, Karamana (P.O),
Thiruvananthapuram – 695 002.

9. Chandrasekharan Nair V, S/o. Velayudhan Pillai. K,
Personal Secretary,
Transport Operation & Maintenance Division,
VSSC, ISRO (P.O), Thiruvananthapuram – 695 022.
Residing at Indeevaram", BP Nagar – 484,
Peyad P.I, Thiruvananthapuram – 695 573.

10. Sudhakaran Nair. A, S/o. Appukuttan Nair. C (late)
Accounts Officer, ACCTS/PRSO, VSSC, ISRO (P.O),
Thiruvananthapuram – 695 022.
Residing at "Thiruvonam", ARA-40,
West Side of Chackai Railway Bridge,
Beach (P.O), Thiruvananthapuram – 695 007.

11. Chandrika Devi R
D/o. Appukuttan Nair. P (late),
Personal Secretary (Rtd.)

QMPG, MVIT, Valiamala,
Thiruvananthapuram – 695 547.
Residing at 509, Sangeeth Nagar,
Thycaud, Thiruvananthapuram – 695 014.

12. Ambika V.K., D/o. Krishnan V.R. (late),
Senior Personal Secretary,
CMSE, VSSC, Vattiyoorkavu (P.O),
Thiruvananthapuram – 695 013.
Residing at TC 22/1855, PURA – 98,
Puthoorkonam, Manikanteswaram (P.O),
Thiruvananthapuram – 695 013.

13. George P.P, S/o. Paulose P.V,
Senior Personal Secretary,
Director's Office, VSSC, ISRO (P.O),
Thiruvananthapuram – 695 022.
Residing at TC 9/427, Chenthi,
Pongummoodu, Medical College (P.O),
Thiruvananthapuram – 695 011.

14. Pushkala L, D/o. Subramonia Iyer (late)
Personal Secretary, STR, VSSC, ISRO (P.O),
Thiruvananthapuram – 695 022.
Residing at S.P. 16/236, Äbhilash",
Kattil Lane, Kariyam, Sreekariyam (P.O),
Thiruvananthapuram – 695 017.

15. Gopalakrishnan. S,
S/o. Sreedharan Nair. K.N. (late),
Project Personal Secretary (Rtd.)
LMIG/MVIT, VSSC, Valiamala Complex,
Valiamala (P.O), Thiruvananthapuram – 695 547.
Residing at TC 2/3093 (1), PLRA – 79.
Panachamoodu Lane, Pattom (P.O),
Thiruvananthapuram – 695 004.

16. Viswanathan S, S/o. N. Subramania Iyer (late),
Project Personal Secretary (Rtd.),
MVIT Purchase, VSSC, Valiamala (P.O),
Thiruvananthapuram – 695 547.
Residing at : Flat No. B 114,
Swathi Nagar West Fort,
Thiruvananthapuram – 695 023. - Applicants

(By Advocate Mr. Ramesh Babu & Mr. N. Krishna Prasad)

Versus

1. Union of India,
represented by its Secretary,
Department of Space,
Antariksh Bhavan, New BEL Road,
Bangalore – 560 094.

2. Vikram Sarabhai Space Centre,
Represented by Director, VSSC,
ISRO (P.O), Thiruvananthapuram – 695 022. - Respondents

(By Advocate Mr. N. Anil Kumar, Sr. PCGC)

II **O.A No. 541/2013**

1. Puthukulangara Mohan, S/o. Gopalan,
SC No. 23607, Senior Project Assistant,
PRSO Accounts, 70 Acres Area, VSSC, ISRO (P.O),
Thiruvananthapuram – 22.

2. Venkita Subramonian Meenakshi Sundaram,
S/o. Meenakshi Sundaram,
SC No. 28098, Senior Project Assistant,
PSLV Project, VSSC, ISRO (P.O),
Thiruvananthapuram – 22.

3. Chellamma Nirmala, W/o. C. Sasidharan,
SC No. 24059, Senior Project Assistant,
AVN Store, VSSC, ISRO (P.O),
Thiruvananthapuram – 22.

4. Ramla Beevi, W/o. P. Azizkhan
SC No. 25433, Sr. Project Assistant,
MVIT Stores, Valiamala (P.O),
Thiruvananthapuram – 47.

5. Susannamma Devassi,
W/o. Devassia M.G, SC No. 26695,
Sr. Project Assistant, FPD/QMPG, MVIT,
Valiamala P.O, Thiruvananthapuram – 47.

6. Nambiampurathu Govindan Sarojini,
W/o. K.V. Mohanan, SC No. 26700,
Sr. Project Assistant, ICF Accounts,
MVIT, VSSC, ISRO (P.O),
Thiruvananthapuram – 22.

7. Kalikutty Omana, W/o. K. Sivaprasad Vijayan
SC No. 26700, Sr. Project Assistant,
PRSO Accounts, 7- Acres Area, VSSC,
ISRO (P.O), Thiruvananthapuram – 22.

8. J. Prasanna Kumari, W/o. Sathyadevan B (late)
SC No. 24550, Sr. Project Assistant,
VSSC Main Accounts, 70 Acres Area,
Thiruvananthapuram – 22.

9. Shirly Mariam, W/o. Parles Pereira (late)
SC No. 26735, Sr. Project Assistant,
MME Purchase RFF Area, VSSC,
ISRO (P.O), Thiruvananthapuram – 22.

10. Buella Trixy Paul, W/o. S. Paul
SC No. 20696, Sr. Project Assistant,
C&GHS, VSSC, ISRO (P.O),
Thiruvananthapuram – 22.

11. Madhavan Kowsallia Latha,
W/o. P.D. Shaji, SC No. 23265,
PSRO Purchase, RFF Area,
VSSC, ISRO (P.O),
Thiruvananthapuram – 22.

12. Devaki Amma Indira, W/o. B. Madhu
SC No. 22125, Project Assistant,
VSSC Main Accounts, 70 Acres Area,
Thiruvananthapuram – 22.

13. Rabiya Beegum Syed, W/o. M. Azeez Khan
SC No. 25474, Sr. Project Assistant,
SOG Amin, PRSO/VSSC, ISRO (P.O),
Thiruvananthapuram – 22.

14. Thenkallunkal George Annamma,
W/o. M.A. Varghese, SC No. 20293,
Sr. Project Assistant, Establishment,
PGA, VSSC, ISRO (P.O), Thiruvananthapuram- 22.

15. Syamala Sreekanthan, W/o. K. Sreekanthan
SC No. 26781, QDMF, QRMG, SR 70,
ACRE Area, VSSC, ISRO (P.O),
Thiruvananthapuram – 22.

16. Haridasan Gangadharan, S/o. Gangadharan,
SC No 22036, Sr. Project Assistant, ARD, ADTG, AERO,
VSSC, ISRO (P.O), Thiruvananthapuram – 22.

17. Radhamani Pulliplackal Raman,
SC No. 25516, Sr. Project Assistant,
C&GHS, VSSC, ISRO (P.O),
Thiruvananthapuram – 22.

18. Darda G. Fernandez, W/o. Gregory Fernandez,
SC No. 21221, Sr. Project Assistant,
VSSC Main Accounts, 70 Acres Area,
Thiruvananthapuram – 22.

19. Swarnamma Nirmala, W/o. Muraleedharan S,
SC No. 24087, Sr. Project Assistant,
PSCG/ASCG/PCM VSSC, ISRO (P.O),
Thiruvananthapuram – 22.

20. Krishnappa Viswanatha Sarma,
S/o. M. Krishnappa, SC No. 28123,
Sr. Project Assistant, VSSC Main Accounts,
70 Acres Area, Thiruvananthapuram – 22.

21. Shajahan Jalaludeen, S/o. Jalaludeen,
SC No. 26882, Sr. Project Assistant,
PPEC/AVN/VSSC, ISRO (P.O),
Thiruvananthapuram – 22.

22. Abbey Issac, W/o. P.I. Issac,
SC No. 20324, Sr. Project Assistant,
MME Admn. VSSC, ISRO (P.O),
Thiruvananthapuram – 22.

23. Kalapurackal Rajappan Valsala,
W/o. M.A Thampy, SC No. 28165,
Sr. Project Assistant, Main Accounts,
VSSC, ISRO (P.O), Thiruvananthapuram – 22. - Applicants

(By Advocate Mr. S. Narayanan Nair)

Versus

1. Union of India,
represented by its Secretary,
Department of Space, Government of India,
Antariksh Bhavan, New BEL Road,
Bangalore – 560 094.

2. Vikram Sarabhai Space Centre,
Represented by Director, VSSC,
ISRO (P.O), Thiruvananthapuram – 695 022. - Respondents

(By Advocate Mr. N. Anil Kumar, Sr. PCGC)

III. **O.A No. 544/2013**

Clement Rynold Fernandez,
S/o. P.C. Fernandez, SC No. 21062,
Senior Assistant, CDS/GSS/PGA,
VSSC, ISRO (P.O), Thiruvananthapuram – 22. - Applicant

(By Advocate Mr. S. Narayanan Nair)

Versus

1. Union of India,
represented by its Secretary,
Department of Space, Government of India,
Antariksh Bhavan, New BEL Road,
Bangalore – 560 094.

2. Vikram Sarabhai Space Centre,
Represented by Director, VSSC,
ISRO (P.O), Thiruvananthapuram – 695 022. - Respondents

(By Advocate Mr. N. Anil Kumar, Sr. PCGC)

The application having been heard on 28.1.16 the Tribunal on 23.2.16 delivered the following:

ORDER

Per: Mrs. P. Gopinath, Administrative Member

O.A. Nos. 521/13, 541/13, and 544/13 has been filed by Senior Assistant / Senior Project Assistant and Project Personal Secretary claiming placement in PB-3 with Grade Pay of Rs. 5400/- with effect from the date they completed four years after receipt of Grade Pay of Rs. 4800/- with consequential benefits. Claiming the above, the applicants have approached this Tribunal contending as follows:

The revision of pay is consequent on the recommendation of 6th CPC with effect from 1.1.2006. Hence the applicants were entitled to revised pay of Rs. 9300-34800 with corresponding Grade Pay of Rs. 4200/- in PB-2 – Senior Personal Assistant-A/Senior Project Assistant/Personal Secretary/Project Personal Secretary. That was granted to the applicants.

The applicants are covered under the ACP scheme and also in terms of revised pay order were entitled to get financial upgradation as applicable to persons in the higher post of Project Personal Secretary. In terms of Annexure A-3 order the Applicants were entitled to be placed in the scale of pay of Rs. 9300-34800 with corresponding GP of Rs. 4800 for the initial period of 4 years from 6.5.2006 and thereafter in the scale of Rs.15600-39100 with GP of Rs. 5400/-. The applicants while working as Personal Assistant were promoted to the post of Project Personal secretory as per Annexures A1 and A2. On completion of 4 years from 20/07/2008 the applicants became entitled to be included in the revised pay scale of Rs. 15600-39100 with corresponding GP of Rs.5400/-. No order was issued by the respondents pertaining to the same. Since the applicants were not assigned GP of Rs. 5400/- w.e.f. the respective dates they submitted representations in the matter. It was held by this Tribunal that the employees concerned are entitled to get the revised scale of pay of Rs.15600-39100 with GP 5400/- on completion of 4 years from the date of assigning the Grade Pay of Rs. 4800/- and not from the date of promotion. The applicants are identically placed as the applicant in OA 759/2012. The representations submitted by the applicants were rejected by the respondents. Hence this OA has been filed seeking the reliefs as mentioned earlier.

2. The respondents resisted the application contending as under:

All the applicants entered service during 1983 and 1984. Since they were not promoted to the next higher post till 1998-1999 they were granted the first financial upgradation under ACP scheme to the scale of pay

of Rs. 5500-9000 w.e.f. 9.8.1999. On completion of 24 years of regular service they were again granted second financial upgradation under the ACP Scheme to the pay band of Rs. 6500-10500 (pre-revised) with respect to their date of joining. Consequent to the implementation of the 6th CPC recommendations, the Department of Space revised the scales of pay in respect of personnel, working in ISRO/DOS vide order dated 12.9.2008. The recommendations of the 6th CPC were implemented w.e.f. 1.1.2006. The scale of pay in respect of Stenographic staff were revised as per Annexure A2. Accordingly the applicants were placed in PB 2 of Rs. 9300-34800 with GP of Rs. 4200/- w.e.f. 1.1.2006 corresponding to the pre-revised scale of Rs. 5500-9000. The department has assigned the GP of Rs. 4800 in PB 2 to those who were holding the scale of Rs. 6500-10500 (pre-revised) w.e.f. 1.1.2006. Since the applicants were assigned with the pre-revised scale of Rs.6500-10500 under ACP scheme on completion of 24 years they were granted the Grade Pay of Rs. 4800/- retrospectively with effect form the date they completed 24 years. While holding the post of Personal Assistant they were assigned with GP of Rs. 4800/- on completion of 24 years of service without any change in the designation. The employees under the category of Personal secretory/Project Personal Assistant, Sr. Project Assistant, Assistant Catering Manager and Assistant Security Officer were grated GP of Rs.5400 in PB3, who were assigned with the grade pay of Rs. 4800/- on completion of 4 years from the date they were assigned the GP of Rs. 4800/-. Smt. Sathyabhama one of the employees approached the C.A.T praying for grant of GP of Rs. 5400 on completion of 4 years in the GP of Rs. 4800/- on par with the employees who secured GP of Rs. 4800/-

on regular promotion. In Annexure. A3 it was observed by the CAT that on completion of 4 years from the date of assigning the GP of Rs. 4800/- a Personal Secretary/Project Personal Secretary, Sr. Project Assistant, Assistant Catering Manager and Assistant Security Officer are eligible for GP of Rs. 5400/-. Subsequently the department after obtaining clarification from the Government amended the OM dated 24/26.12.2009 as per which only on completion of 4 years of regular service in the appointed/promoted post, he would be entitled to get the GP of Rs. 5400/-. It is clarified that it cannot be made applicable to the applicants on completion of 4 years in the GP of Rs. 4800/- granted to them by virtue of ACP Scheme. As such the applicants are not entitled to get the benefit relying on the decision in OA 759/2010. For getting the GP of Rs. 5400/- the employees have to complete 4 years regular service in the specific post with GP of Rs. 4800/- after appointment/promotion to that post. As such the applicants' claim for grant of GP of Rs. 5400/- on account of their completing 4 years in the GP of Rs. 4800/- granted under ACP scheme without holding the relevant post for 4 years is unsustainable.

3. We have heard the learned counsel for the parties and have gone through the pleadings and documents.

4. The point for consideration is whether the applicants are entitled to get the Grade Pay of Rs. 5400/- on completion of 4 years from the date on which they were assigned the Grade Pay of Rs. 4800/-?

5. The date of joining duty as Junior Stenographer, date of grant of 2nd financial upgradation etc. pertaining to the applicants are given below:-

Name of applicants	Date of joining duty as Stenographer	Date of financial upgradation to prerevised scale of Rs. 6,500-Rs.10,500	Date of promotion as Personal Secretary/Project Personal Secretary	Eligible date for placement in the grade pay Rs. 5400/-
Anandavalli PS	01/03/84	01/03/08	02/05/11	01/03/12
Subhadramma PT	16/08/1984	16/08/2008	02/04/12	16/08/2012
Ambujakshi V	28/02/1983	28/02/2007	22/09/2009	28/02/2011
Sarasamma PN	20/02/1984	20/02/2008	22/09/2009	20/02/2012
Sreekumari Amma.P	15/02/1984	15/02/2008	22/09/2009	15/02/2012
Sathi V.	21/08/1984	21/08/2008	22/09/2009	21/08/2012
Vasanthakumari B	16/08/1984	16/0-8/2008	02/04/12	16/08/2012
Parvathy J	15/02/1984	10/02/08	04/01/11	15/02/2012
Chandrasekharan Nair.V	16/02/1984	16/02/2008	03/01/12	16/02/2012
Sudhakaran Nair.A	16/02/1984	16/02/2008	03/01/11	16/02/2012
Chandrika Devi	23/02/1984	23/02/2008	30/08/2010	23/02/2012
Ambika V.K	22/02/1984	22/02/2008	01/10/10	22/02/2012
George PP	15/03/1984	15/03/2008	01/10/09	15/03/2012
Pushkala L	13/03/1984	16/02/2008	03/10/08	16/02/2012
Gopalakrishnan S	15/07/1984	15/07/2008	22/09/2009	15/07/2012
S.Viswanathan	01/03/84	01/03/08	01/07/10	01/03/12

It is not disputed that the ACP scheme was introduced and made applicable to the respondent-department also. The scheme provides that if an employee does not obtain two regular promotions on completion of 24 years of regular service he shall qualify for the 2nd financial upgradation. There is no dispute regarding the fact that the financial upgradation under that scheme was given to the next higher grade in accordance with the existing hierarchy in a cadre/category/post. Pursuant to the recommendation of the

6th CPC there was a revision of scale in respect of ISRO Stenography Staff. The applicants rely upon the order passed by this Tribunal in Annexure A3 which was confirmed by the High Court for claiming the benefit of GP of Rs. 5400/- in PB 3. It is contended by the applicants that on completion of 4 years from the date of assigning the Grade Pay of Rs. 4800/- they were entitled to get the Grade Pay of Rs. 5400/-.

6. Annexure A3 is the order passed by this Tribunal in OA 759/2010. In Annexure A3 it was held by this Tribunal:

> *"There is nothing in Annexure R1 or Annexure A4 to suggest that the period of 4 years should be reckoned from the date of actual promotion for claiming the Grade Pay of Rs. 5400/- by the stenographic staff. Completion of 4 years from the date of assigning the Grade Pay of Rs. 4800/- makes a Personal Secretary/Project Personal Secretary and so on eligible for the Grade Pay of Rs. 5400/-. It is not the completion of 4 years from the date of promotion as Personal Secretary/Project Personal Secretary, but completion of 4 years from the date of assigning the Grade Pay of Rs. 4800/-, that is a pre-condition for granting the Grade Pay of Rs. 5400/-. Any other interpretation is mischevious, far fetched and hyper technical and illegal."*

It was also held in that case that the applicant being a Project Personal Secretary who has completed 4 years from the date of assigning the Grade Pay of Rs. 4800/- on 6.5.2006 is eligible to be granted the Grade Pay of Rs. 5400/- on 6.5.2010 in terms of Annexure R-1.

Annexure R-1 is the OM dated 24/26.12.2009 which is quoted as hereunder:

> *"The undersigned is directed to refer to DOS OM of even number dated (i) September 12, 2008; (ii) September, 28, 2008; and (iii) December, 18, 2008 on the subject mentioned above. It was mentioned in the OM (i) ad (ii) referred to above that the assignment of Grade Pay of Rs. 5400/- in PB-3 to other categories of employees than Senior Personal Secretary in PR scale of Rs. 7500-12000 would be examined and order issued separately.*

*2. The issue regarding assignment of Grade Pay of Rs. 5400/- has since been examined in detail in the Department. Taking all aspects into account,, it has now been decided to assign the Grade Pay of Rs. 5400/- in PB 3 to the following categories of employees, who were assigned with the Grade Pay of Rs. 4800/- on completion of **four years** from the date of assigning the grade Pay of Rs. 4800/- ie., 01.01.2006:-*

1. Personal Secretary
2. Project Personal Secretary
3. Sr.Project Assistant
4. Asstt.Catering Manager
5. Asstt. Security Officer

Accordingly, they shall be eligible for placement in PB-3 (Rs. 15600-39100) with a Grade Pay of Rs. 5400/- on or after Ist January, 2010. However, there shall be no fixation benefits while placing them in PB-3 with a Grade Pay of Rs. 5400/-. The procedure for granting the Grade Pay of Rs. 5400/- to the eligible employees will be subject to vigilance clearance and approval of the competent authority."

7. It is not disputed that the Annexure A3 was confirmed by the High Court. Hence in compliance with the order passed by this Tribunal in OA 759/2010, Annexure R2 order was issued as per which the applicant therein was granted the Grade Pay of Rs. 5400/-.

8. It is contended by the respondents that in Annexure R2 as per which Annexure A3 order was complied with it was specifically mentioned that the said order of compliance dated 20.12.2012 shall not be quoted as precedent. The learned counsel for the applicants would submit that the fact that Annexure A3 order was complied with by the respondents is pointed out only to show that the oder passed by the Tribunal (Annexure A3) became final and was implemented.

9. According to the respondents subsequent to Annexure A3 order a clarification was issued to the effect that the employees would be entitled to

get the Grade Pay of Rs. 5400/- only after completion of four years of regular service and not on completion of four years from the date of assignment of the Grade Pay of Rs. 4800/-. That OM (Annexure A5) dated 13.12.2012 was issued by the Government of India, Department of Space, Bangalore where it has been stated:

> *".....As per Sl.No.II(2) of Section-II of Part B to the First Schedule to CCS (RP) Rules, 2008, for grant of Grade Pay of Rs. 5400/- employees have to* ***complete four years regular service in specific posts with a Grade Pay of Rs. 4800/- after appointment/promotion thereto*** *and has no relevance to the date of acquiring the Grade Pay of Rs. 4800/- through financial upgradations under ACP/MACP. Financial upgradations granted under ACP/MACP are only placements and not to be treated as equivalent to appointment/promotion to a post....."*

10. Based on Annexure A5 OM dated 13.12.2012 the representations submitted by the applicants were rejected as per Annexures A4(a) to A4(p). All those representations were rejected stating that in order to assign the Grade Pay of Rs. 5400/- the employees must render regular service of 4 years in the Grade Pay of Rs. 4800/- in specific post. In short the contention of the respondent Department had already been clarified by Annexure A5 OM dated 13.12.2012, that for assignment of Grade Pay of Rs. 5400/- in PB 3 the employee must be in a specified post with regular qualifying service of 4 years in the GP of Rs. 4800/- after appointment/promotion thereon on or after 1.1.2006. It is contended that Annexure A5 clarification was issued by the department based on the provisions contained in the CCS (RP) Rules, 2008.

11. It is necessary to examine wherefrom the Annexure A-5 clarification draws the direction of completion of regular qualifying service of

four years. For this the respondent draws our attention to the Government of India Ministry of Finance Resolution 1/1/2008-IC dated 29.08.2008 wherein the VI CPC recommendations were after careful consideration were accepted as a package subject to certain modifications. Under the modifications para (x) (b) is applicable to the case before us which reads as follows:-

> "(x) Regarding Group 'B' cadres, the Commission's recommendations will be modified in the following manner:-
>
> (b) After 4 years of **regular service** in the Section Officer/Private Secretary / equivalent grade of Rs. 4800/- grade pay in PB-2 officers of Central Secretariat Service, Central Secretariat Stenographers Service and other similarly placed HQ Service will also be granted the non-functional grade of Rs. 5400/- in PB-3 and not in PB-2.;"

Hence, any GOI orders will draw their power of implementation / interpretation from this GOI Resolution wherein the VI CPC recommendations were accepted. While drawing the attention of the Bench to R1 O.M dated 24.12.2009 in O.A 759/2010 which did not qualify the service as "regular" service, the attention of the Bench was obviously not drawn to the GOI Resolution referred above vide which the VI CPC recommendations were accepted by the Cabinet where the service was qualified by the word "regular". This prompted the Respondent Department to correct its O.M 29011/1/2008-V of 24.12.2009 with O.M. 29011/1/2008-V dated 13.12.2012 as follows:-

> " As per Sl. No. II (2) of Section II of Part B to the First Schedule to CCS (RP) Rules 2008, **for grant of Grade Pay of Rs. 5400/- employees have to complete 4 years regular service** in specific posts with a Grade Pay of Rs. 4800/- after appointment/promotion thereto and has no relevance to the date of acquiring the Grade Pay of Rs. 4800/- three Financial Upgradations under ACP/MACP"

The above O.M further goes on to clarify that:

> "Financial Upgradations under ACP/MACP are only placements and are not to be treated as equivalent to appointment/promotion to a post. Further as per ACP/MACPs, on grant of Financial Upgradations, there shall be no change in the designations, classifications on higher status and only certain benefits which are linked to pay drawn by an employee are permitted."

Para 3 of the said O.M. goes to clarify as follows:-

> "In view of the foregoing the undersigned is directed to clarify that DOS OM dated Dec. 24/26, 2009 referred to above is applicable only to the categories of designations/posts listed under para 2 of DOS O.M dated December 24/26, 2009 bid on rendering from years regular service in the appointed/promoted post with a Grade Pay of Rs. 4800/- and not to those personnel who are assigned Grade Pay of Rs. 4800/- Financial Upgradations under ACP/MACP based on service of four years rendered from the date of Financial Upgradation. The undersigned is also directed to clarify that service rendered in Grade Pay of Rs. 4800/- granted by way of Financial Upgradation under ACP/MACP without involving change in designation/post shall not be taken into account for determining the period of 4 years for the purpose of grant of grade pay of Rs. 5400/-".

The above O.M was made applicable to:

(i) Personal Secretary
(ii) Project Personal Secretary
(iii) Senior Project Assistant
(iv) Assistant Catering Manager
(v) Assistant Security Officer

Covering applicants in O.A 544/2013, 541/13 and 521/13.

12. Since the applicants have not completed 4 years regular service in the specific post in the GP of Rs. 4800/-, the claim made by them for grant of Grade Pay of Rs. 5400/- on the eligible dates as shown in the last column in the table furnished in the OA (which have been extracted above) cannot be sustained at all. The last column in the tabular form mentioned earlier shows the eligibility date for placement in the GP of Rs. 5400/- as per which according to the applicants, the first applicant would be entitled to get the

placement in the GP of Rs. 5400/- on 1.3.2012. According to the respondents it is only after completion of 4 years regular service from the dates shown in the column just preceding the last column, each of the applicants would be entitled to get the GP of Rs. 5400/-. That submission is based on Annexure A5 OM dated 13.12.2012 issued by the respondents after Annexure A3 order was passed by this Tribunal. There can be no doubt that if Annexure A5 governs the field then certainly the applicants' claim, as now made by them, should fall to the ground. It is the very same department of the Government of India which issued earlier OM (Annexure R1), which issued the subsequent clarification (Annexure A5) based on the GOI resolution of Ministry of Finance accepting the VI CPC recommendation. The power, competency or authority of the department to issue such clarificatory OM cannot be assailed at all, the respondents contend as the same devolves from the nodal Ministry which processed and accepted the VI CPC recommendation. If Annexure A5 is valid and legal then the claim made by the applicants based on Annexure A3 cannot be sustained as it is not an inter-party judgment. In Annexure R2 it was made specific that it shall not be quoted as a precedent.

13. Doctrine of equality does not envisage negative equality. When a mistake was found out, the department can very well amend or modify the same. Generally one cannot aspire for promotion unless he satisfies the eligibility condition. Unlike in the case of normal promotion, happened to be extended under certain conditions, in all other cases, employee is expected to work in a particular post for a particular period. Sometimes the period

prescribed or required may be shorter. But one cannot aspire for promotion unless he has regularly worked for the period prescribed. The mistake committed while drafting/writing a sentence cannot fetter the hands of the department/government not to correct or rectify the same. One cannot claim it as a fundamental right to get such promotion or financial up-gradation, unless it is so intended to have been anticipated without actual service in a post for a particular period. If Government/Department can issue Rules, then the very same authority must have the power to amend/modify/clarify the same. It is not ultravires.

14. Now the only question to be considered is whether on the basis of Annexure A5 the claim made by the applicants is to be negatived. The learned counsel for the applicants would submit that if only there was an ambiguity which required clarification, the Ministry concerned can issue a clarification but so far as Annexure R1 is concerned, it is so clear that it required no clarification at all. The words used therein are so clear that the employees who were assigned with the GP of Rs. 4800/- on completion of four years from the date of assignment of Grade Pay of Rs. 4800/- would be entitled to get the Grade Pay of Rs. 5400/- in PB-3 and so those persons were eligible for placement in PB-3 Rs. 15600-39100 with a Grade Pay of Rs.5400/-, it is argued. But the counsel fails to mention that in the event of a genuine mistake in drafting and issuing an order based on a GOI Resolution, whether the respondent reserves the right to correct a genuine mistake.

15. Shri Anilkumar, Senior Panel Central Government Counsel submits that here, it is not a case where one Official Memorandum issued in

2009 is sought to be replaced or merely clarified by OM of 2012, but on the other hand such an Official Memorandum happened to be issued in 2012 in order to bring it at par with the parent Resolution dated 29.8.2008 (GI MF OM F.No. 1/1/2008-IC) from where it draws its right to issue an O.M which was not brought to the notice of the Tribunal or the High Court earlier. In the Government Resolution No. GOI MF OM F.No. 1/1/2008-IC it was stated:

> *"The government have given careful consideration to the recommendations of the commission in respect of civilian employees of the Central Government in Groups A B C and D as also those in the All India services etc. have decided that the recommendation of the commission in respect of those category shall be accepted as a package subject to the modifications mentioned in that GO."*
>
> The schedule and the pay band are omitted as unnecessary.

This GOI was issued after the 6th CPC report was submitted and accepted by the Cabinet. After much deliberation the issue as to the implementation of the 6th CPC report and the modalities and other requirements as mentioned in the government resolution was finalized and decision was taken accordingly. Clause (x) to Note 2 has been referred to in particular, which reads:

> Regarding Group B cadres the Commissions recommendations will be modified in he following manner:-
>
> (a) After 4 years of regular service in the entry grade of Rs. 4800 in PB-2, officers belong to the Delhi and Andaman & Nicobar Island Civil Service and Delhi and Andaman & Nicobar Islands Police Service will be granted the non-functional grade of Rs. 5400 in PB-3 and not in PB-2.
>
> (b) After 4 years of regular service in the Section Officer/Private Secretary/equivalent grade of Rs. 4,800 grade pay in PB-2 officers of Central Secretariat Service, Central Secretariat Stenographers Service and other similarly placed HQ services will also be granted the non -functional grade of

Rs. 5400 in PB-3 and not in PB-2.

Therefore, according to the learned counsel for the respondents what has been quoted above coupled with the Government resolution aforequoted would make the position clear as to the source of power based on which the O.Ms were issued by the department. That OM of the respondent department should be in tune with the decision taken by the Union of India as per resolution dated 29.8.2008. In other words, the Government Resolution dated 29.8.2008 would prevail over the OM if it is found that the OM was incorrectly drafted or published. The fact that an OM was incorrectly drafted will not clothe with the applicant a legal right especially when the Official Memorandum clarified the position. The source of power of issuance of that OM Annexure R3 has been dealt with in the government resolution referred to above. In other words, the Government of India resolution which is the source of power for issue of orders would be of paramount importance and should govern the field based on which the OM of respondent was subsequently issued. OM is to be drafted and published in tune with the Government resolution. That resolution has statutory force as it reflects the decision of the Cabinet. Therefore, Sr.Panel Counsel would submit that the fact that in Annexure.R1 it was incorrectly noted as "on assignment of the Grade Pay", does not mean that it does not require the regular service of four years since that is the very essential and core requirement as has been noted in Clause (x) (a) and (b) quoted above. Therefore, it is not a case where the decision rendered by this Tribunal or the High Court are indirectly overridden by a subsequent Memorandum. The GOI resolution in the matter of implementation of the 6th Central Pay

Commission to the extent it was resolved to be accepted by the government has the statutory force. That decision which has the statutory force cannot be overridden by an incorrect Office Memorandum of respondent department. It was only to bring to light the government resolution and source of power based on which the clarification was issued, these aspects have been highlighted by the learned Senior Panel counsel. The learned Senior Panel Counsel would refer to Rule 17 of Revised Pay Rules, 2008 issued by the Government, based on the resolution dated 29.8.2008, which gives the power to the rule making authority to relax/clarify those rules relating to interpretation of any of the provisions of these rules. Rule 17 says " *If any question arises relating to the interpretation of any of the provisions of these Rules, it shall be referred to the Central Government for decision".*

16. Office staff working outside secretariat comes under Schedule II. Clause II of Schedule II pertains to the Administrative Officer Grade II/Sr. Private Secretary/equivalent fall under PB-2. Column 5 therein states that an employee would be entitled to get the GP of Rs. 5400 only on completion of 4 years regular service in the GP of Rs. 4800/-. In other words, to sustain the claim of Rs. 5400/- the applicants must satisfy that they were in regular service in the Grade Pay of Rs. 4800/- and not on mere ground of assignment of the Grade Pay of Rs. 4800/-. In other words, assignment of Rs. 4800/- as Grade Pay will not be a starting point for computation of the period of 4 years. That can be done only when the employee is actually posted/appointed to that post carrying Rs. 4800/- as Grade Pay and that he must complete 4 years of service in that grade.

17. The argument vehemently advanced by the learned counsel for applicant that the department is trying to outwit the court order by issuing a subsequent OM and so that OM is to be treated as non est in the eye of law cannot be countenanced in view of the fact that there is no case that the OM was issued in order to circumvent the judgment or the order. The OM was issued in tune with Ministry of Finance GOI resolution accepting the VI CPC recommendation which is the basic document from which all departments of Government of India draw its power to implement the VI CPC recommendations. The very claim made by the applicants was based on OM dated 24/26.12.2009 which is an incorrect one. The courts cannot countenance that when it is seen that the OM was issued incorrectly, when that mistake was found out, it was for the competent authority to correct it as per Rules. It was correctly done. It was clarified by Annexure A5 O.M dated 13.12.2012. That OM was issued based on the statutory power conferred on the authority as per Rule 17 of the Revised Pay Rules, 2008. Therefore, it cannot be said that Annexure A5 of 2012 is not supported or backed up by statutory power. The source of power is Rule 17 which is to read with Resolution dated 29.8.2008 quoted earlier. Therefore, it is not a case of overruling or superseding the judgment of this Tribunal or of the High Court, as contended by the applicants.

18. The Original Applications are dismissed. No order as to costs.

(Dated, the 23rd February, 2016.)

(Mrs. P.GOPINATH)
ADMINISTRATIVE MEMBER

(N.K. BALAKRISHNAN)
JUDICIAL MEMBER

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