

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.133/2013

Monday this the 30th day of November, 2015

C O R A M :

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

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...Applicants

(By Advocate Mr.S.Radhakrishnan)

V e r s u s

1. The Comptroller & Auditor General of India
Deen Dayal Upadhy Marg
New Delhi – 110 124
2. The Principal Accountant General (A&E)
Thiruvananthapuram, Kerala ... Respondents

(By Advocate Mr.K.I.Mayankutty Mather)

This Original Application having been heard on 5th November 2015 this Tribunal on 20.11.2015 day delivered the following :

ORDER

HON'BLE Mrs.P.GOPINATH, ADMINISTRATIVE MEMBER

MA/160/13 has been filed by the applicants to condone the delay of 225 days in filing the O.A. This M.A is allowed for the reasons stated in the Miscellaneous Application.

2. The applicants are Assistant Accounts Officers and working in the Accounts wing of the office of the Principal Accountant General (A&E) . Initially they were recruited to the post of Clerks/Typists. The next higher post in the normal hierarchy in the department are the posts of Accountant, Senior Accountant and then Section Officers. Promotion to the cadre of Section Officer and Assistant Accounts Officer is granted on the basis of a qualifying examination, called Section Officers Grade Examination (SOGE). This examination is presently renamed as SAS Examination. As per the Recruitment Rules, promotion to the cadre of Section Officer and Assistant Account Officer



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can be made from any posts subject to the incumbent passing the SOG Examination. Employees in the accounts wing can also appear for the SOG Examination in Audit wing and on passing the examination, they are eligible for promotion as Section Officer and Assistant Audit Officer in the audit wing.

3 The details of the applicants, their date of joining the service, year of passing the SOG examination, date of promotion to the post of Section Officer are tabulated in para 3 of the Original Application. Before the implementation of VI Central Pay Commission Report, the Section Officers were in the pay scale of Rs.5500-9000/- . Later, on 19.2.2003 the Finance Ministry implemented parity with Central Secretariat Service in the Indian Audit & Accounts Department and as a result, the scale of pay of Section Officers were upgraded to Rs.6500-200-10,500/- and that of the Asst. Accounts Officers to pay scale of Rs.7450-11500/-.

4 The Vith CPC considered the case of the Section Officers and Accounts Officers in the office of the Accountant General and in paragraphs No.7,56.9, it was recommended as follows:-

"The post of Section Officer would, therefore, also need to be upgraded. The post will consequently will be placed in the next higher grade carrying grade pay of Rs.4800/- in the pay band PB-2 of Rs.8700/- - 34800/- that corresponds to the pre-revised pay scale of Rs.7500-12000/- .This upgradation will place the posts of Section Officer and Asst. Accounts/Audit Officer in an identical pay scale, thus necessitated the upgradation of the later category. The posts of Asst. Accounts/Audit Officer and Accounts/Audit Officer should, therefore be merged in the pay band PB-2 of Rs.8700-34800/- along with grade pay of Rs.4800/- that correspondence to the pre-revised pay scale of Rs.7500-12000/- ."

5 The posts of Section Officers and Asst. Accounts Officers were unified

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into a single cadre with grade pay of Rs.4800 and that of Accounts Officers were kept as a separate cadre with grade pay of Rs.5400/-. In the order implementing the Pay Commission Report, the Government had specified the existing and the revised scales of pay of the Organized Accounts Cadre including employees of Indian Audit & Accounts Department. In Annexure A-3, the pre-revised and revised scales of pay of the Section Officer and Asst. Accounts Officer are mentioned and from the last column of Annexure A-3, it is clear that this specification is with reference to paragraph No.7.56.9 of Annexure A-2, the VI Pay Commission Report.

6 The Central Civil Service (Revised Pay) Rules, 2008 is deemed to have come into force on the first day of January 2006. The fixation of initial pay in the revised pay structure is specified at Rule 7 of Annexure A-4, which states as follows:-

"1. The initial pay of a Government servant who elects or is deemed to have elected under Sub Rule 3 of Rule 6 to be governed by the Revised Pay structure on and from the 1st day of January 2006, shall, unless in any case the President by special order otherwise directs, be fixed separately.....

(A) In the case of all employees

(i) The pay in the pay band/pay scale will be determined by multiplying the existing basic pay as on 01.01.2006 by a factor of 1.86 and rounding off the resultant figure to the next multiple of 10." (Emphasis supplied) ."

7 In tune with CCS(RP) Rules 2008, the Ministry of Finance issued O.M F.No.1/1/2008-IC dated 30.08.2008 directing the Government servants to exercise their option for drawal of their pay in the revised pay structure in the format prescribed in the 2nd Schedule to the Rules. In Annexure A-5, at Clause 2



(ii), it is stated that:

(ii) In case of up-gradation of posts and merger of pre-revised pay scales, fixation of pay will be done as prescribed in Note 2A and 2B below Rule 7(1) and in the manner indicated in illustration 4A and 4B respectively of the Explanatory Memorandum to the CCS (RP) Rules, 2008.

8 As far as the applicants are concerned, under Rule 6(3) of CCS(RP) Rules 2008, they have deemed to have been elected to be governed by the revised pay structure with effect from 1st January 2006. Thus, the initial pay of the applicants in the revised pay structure ought to have been fixed in accordance with Rule 7 (1)(A)(i) of CCS (RP) Rules, 2008. On and from 1st January 2006, the post of Section Officer was merged with the post of Asst. Accounts Officer to the unified cadre of Asst. Accounts Officer in the scale of pay Rs.7500-12,000/- (revised pay in PB-2 with GP of Rs.4800/-). Thus, it can be seen beyond any reasonable doubt that on 01.01.2006, the applicants should be deemed to have been in the pay scale of Rs.7500-12000/- and their basic pay as on 01.01.2006 ought to have been taken as Rs.7500/- per month (minimum of the pay scale). In Annexures A-6 & A-7, their designation as on 01.01.2006 is specified as Section Officer and the pre-revised scale of pay is mentioned as Rs.6500-200-10,500/-. For the purpose of fixing the revised scale of pay as per Rule 7 of CCS (RP) Rules 2008, the basic pay of the applicants as on 01.01.2006 was taken as Rs.7100 or Rs.7300 as the case may be, in the scale of pay of Rs.6500- 10500/- instead of Rs.7500/-, the minimum of revised scale of unified cadre which came into effect on 1.1.2006. It is submitted that Rs.6500-10,500/- was the scale of pay of the Section Officers as on 31.12.2005 and on and from 01.01.2006, there is no post of Section Officer and hence there is no



scale of pay of Rs.6500-10,500/- On and from 01.01.2006, the available cadre is the unified cadre of Asst. Accounts Officer in the pay scale of Rs.7500-12000/- and for the purpose of fixation of initial pay in the revised pay structure, the respondents ought to have taken into account the minimum of the unified pay scale of Rs.7500-12000/- and applied the formulae provided under Rule 7 (1)(A) (i). The respondents while doing so have taken into account their basic pay and scale of pay as on 31.12.2005 and fixed the initial pay in the revised pay structure accordingly. In note 2 A under Rule 7(1), it is provided that where a post has been upgraded as a result of the recommendation of the VI CPC, the fixation of pay in the applicable pay band will be done in the manner prescribed in accordance with Clause 7(A) (i) & (ii).

9 The persons promoted to the cadre of SO/AAO between 01.01.2006 and 29.8.2008 were given an option to opt the upgraded pre-revised scale for the fixation of their initial pay in the revised pay structure, resulting in granting them the initial pay of Rs.13,950/- + 4800/-. But, the applicants who were existing as AAOs as on 01.01.2006 were not given this option and as a result, their initial pay was fixed on the basis of salary they were drawing as on 31.12.2005 in the pre-revised scale. Even though, the applicants were inducted to the upgraded pre-revised scale on and from 01.01.2006, when their initial pay was fixed in the revised pay structure in accordance with Rule 7(1)(A)(i), their salary as on 01.01.2006 was not taken into account and their salary as on 31.12.2005 was reckoned. Thus, the department discriminated the applicants by conferring the benefits of up-gradation to the SO/AAO who were in position as on 01.01.2006 and those were promoted from 02.01.2006.

10 Knowing that the persons who were promoted prior to 01.01.2006 and

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who were drawing a basic pay of less than Rs.7500/- as on 31.12.2005, are not granted the benefit of option, it is stated in Clause 4 of Annexure A-8 that the benefit of stepping up of pay as per Note 10 under Rule 7 of CCS (Revised Pay) Rules 2008 shall be admissible to the SO/AAO promoted prior to 01/01/2006 and drawing less pay than SO/AAO promoted after 01.01.2006 on condition that their juniors are drawing higher salary than them as on 01.01.2006. The applicants could not satisfy this condition due to the fact that 1st respondent had not promoted any juniors to the cadre of AAO between 01.01.2006 and 29.8.2008 in its accounts wing of Kerala field office, resulting in juniors drawing higher pay. In other States there are persons promoted during the specified period and they were granted an option to fix their pay in the minimum of the upgraded pre-revised scale. Consequently all the seniors were granted the benefit of stepping up of pay.

11 Applicant draws attention to Annexure A-9 Circular wherein it is clarified as follows:-

“ It is also clarified that the benefit of fixation of pay at the minimum stage of Rs.13,950/- in the revised pay structure with reference to the pre-revised upgraded scale of Rs.7500-250-12,000/- shall be admissible to only such persons whose pay in the pre-revised promoted post of SO/AAO is less than Rs.7500/-.”

12 Admittedly, the pay of the applicants in the pre-revised promoted post of SO was less than Rs.7500/- and it was either Rs.7100/- or Rs.7300/- as is



evident from Table 2 in para 12 of O.A. Thus applying Annexure A-9 clarification, the initial pay of the applicants in the revised pay structure ought to have been fixed at the minimum stage of Rs.13,950/- (corresponds to the minimum of the pre-revised upgraded scale of Rs.7500-12000/-) w.e.f 01.01.2006. But the applicants were kept out of the purview of Annexure A-9 circular. The irony of the order is that senior officers who were holding the post for years before the implementation of revised pay structure and still continuing in the same post are denied the benefit of upgradation, while their juniors promoted after implementation of VI CPC were granted upgraded pay scale by giving a specific option.

13 Explaining all these facts, the applicants submitted individual representations to the 1st respondent. It is submitted that even after a span of 6 months, the respondents have not rectified the anomaly. Every pay commission works with the basic principle that senior should obtain more than or equal pay to their juniors and the Sixth CPC is no exception. It is submitted that the cardinal principle of law that like ones should be treated alike has been negated in the case of the applicants by keeping them out of purview of circular dated 13.6.2011.

b) Declare that the applicants are entitled to get their initial pay fixed in the revised pay structure under the CCS (RP) Rules 2008 on the basis of the minimum of the revised upgraded scale of pay of Assistant Accounts Officer as on 01.01.2006.

d) Declare that fixation of initial pay in the revised pay structure by taking into account the salary they were actually drawing in the pre-revised pay scale as on 31.12.2005 as if, it is the basic pay as on 01.01.2006 is illegal, arbitrary and wrong.

(g) Direct the respondents to re-fix the initial pay of the applicants in the revised pay structure in accordance with the CCS (RP) rules at the stage of Rs.13,950/- in PB-2 with GP of Rs.4800/- w.e.f 01.01.2006 by treating the basic pay of the applicants as on 01.01.2006 at the minimum of the revised



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upgraded and unified pay scale of Rs.7500-12000/-, allowing fixation as per illustration 4A to Annexure A4(a).

14 Respondents submit that the VI Central Pay Commission recommended merger of the post of Section officer and Assistant Accounts Officer to the cadre of Assistant Accounts Officer in the scale of pay of Rs.7500-12000 with grade pay of Rs.4800/-. Pursuant to the issue of orders dated 29.8.2008 Government of India vide O.M No.1/1/2008-IC dated 13.10.2008 have clarified that in cases of up gradation of posts as a result of recommendation of the VI CPC, the fitment table attached with the O.M. dated 30.08.2008 corresponding to the pre-revised scale shall be used for the purpose of determination of pay in the Pay Band. This will be the revised pay of the Government Servant, whose posts have been upgraded consequent upon implementation of 6th CPC recommendations. Based on the above, the revised pay of the applicants who were working as Section Officers and drawing pay in the pre-revised pay structure viz., 6500-10500 as on 01.01.2006 was fixed in line with the VI Central Pay Revision Orders and further instructions issued by Government of India and Comptroller and Auditor General of India from time to time. It is submitted that the fitment table attached with the VI Central Pay Revision orders dated 30.08.2008, corresponding to the pre-revised scale of Section Officers viz, 6500-10500 was used for the purpose of determination pay in the Pay Band. To the Pay in the Pay Band so determined, the grade pay corresponding to the upgraded post of Assistant Accounts Officer viz, 7500-12000 i.e. Rs.4800/- has been allowed.

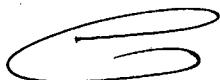
15 Subsequently, the Office of the Comptroller and Auditor General of India vide circular dated 13.06.2011 had issued guidelines for fixation of pay of Section Officers/Assistant Accounts Officers' in the revised pay structure with

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reference to the up-graded pre-revised scale of Rs.7500-12500. Accordingly the pay in the Pay Band of Section Officers/Assistant Accounts Officers working as on 01.01.2006 will be fixed with reference to the fitment table of pre-revised scale of Rs.6500-10500/7450-11500 as annexed with the Finance Ministry's O.M dated 30.08.2008 and the Section Officers/Assistant Accounts Officers will be granted the Grade Pay of Rs.4800/-. Since the minimum pay in the Pay Band in the revised pay structure corresponding to the stage of Rs.6500/7450 is more than the minimum of the Pay Band i.e; Rs.9300/-, no benefit of bunching shall be admissible. Further vide Circular O.M dated 22.09.2011, the office of the C & AG have issued clarifications regarding fixation of pay in the revised pay structure in case of persons promoted as Section Officers and Assistant Accounts Officers between 01.01.2006 and 29.08.2008. Accordingly, officials who were promoted to the cadre of Section Officer/Assistant Accounts Officer on or after 01.01.2006 were given an option facility to opt the upgraded pre-revised scale for the fixation of their initial pay in the revised pay structure.

16 The facility of option to the promoted post was given only to those officials who were promoted as Section Officer/Assistant Accounts Officer on or after 01.01.2006 i.e; after the implementation of the Pay revision w.e.f 01.01.2006. This option facility was not extended rather not applicable to the applicants as they were promoted as Section Officer/Assistant Accounts Officer much before 01.01.2006. The clarification circular O.M dated 22.9.2011 clarification O.M issued by the office of the 1st respondent is an extension of its earlier Circular dated 13.06.2011 impugned order to clarify the doubts raised by the field offices with reference to Paragraph 2(b) of circular dated 13.06.2011 regarding fixation of pay in respect of persons promoted as Section Officer/Assistant Accounts Officer between 01.01.2006 and 29.8.2008 and opt for fixation of pay from the



date of their promotion after 01.01.2006. This clarification is no way connected with the applicants who were promoted as Section Officers/Assistant Accounts Officers well before 01.01.2006 and as such kept out of the purview of this direction.

17 The request for stepping up minimum pay of Rs.13950/- with effect from 01.01.2006 received from a section of Assistant Accounts Officers were forwarded to the office of the 1st respondent on 15.03.2012 with suitable illustrations depicting the fixation of pay of AAOs falling under three different categories as envisaged in Annexure A-8. The Office of the 1st respondent vide letter dated 06.06.2012, have explained the scope for rectification of anomaly in pay of the seniors in the cadre of AAO who have been promoted as AAO prior to 01.01.2006 and drawing less pay than the juniors who were allowed the minimum of Rs.13,950/-. The matter was again referred to the Headquarters seeking further clarification in the matter. In reply, the office of the 1st respondent had categorically stated that the benefit of fixation at the stage of Rs.13950/- is admissible only to officials who have been promoted between the period 01.01.2006 and 29.08.2008 and opted to fix his/her pay from the date of his promotion and the same cannot be extended to official promoted as Assistant Accounts Officers prior to 01.01.2006. As such, the request of the applicants to fix their pay with reference to the pre-revised upgraded scale of Rs.7500-12000 is not based on any rules and hence the same cannot be acceded to.

18 Respondents submit that the VI CPC recommended merger of the post of Section officer and Assistant Accounts Officer to the cadre of Assistant Accounts Officer in the scale of pay of Rs.7500-12000 with grade pay of Rs.4800. Accordingly the revised pay of the applicants who were working as Section

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Officers and drawing pay in the pre-revised pay structure viz., 6500-10500 as on 01.01.2006 was fixed in line with the VI Central Pay Revision Orders and further instructions issued by Government of India and Comptroller and Auditor General of India from time to time. Further, Headquarters office had issued orders for rectification of anomaly in pay of the seniors in the cadre of Assistant Accounts Officer who have been promoted as Assistant Accounts Officer prior to 01.01.2006 and drawing less pay than the juniors who were allowed the minimum of Rs.13950/- . However, it is pointed out that none of the applicants were drawing less pay than their junior officials in the office. As such, the request of the applicants to fix their pay with reference to the pre-revised upgraded scale of Rs.7500-12000 is not based on any rules and hence the same cannot be acceded to.

19 Heard the counsel for applicants and respondents and perused the written submissions made.

20 The VI Central Pay Commission which merged the posts of Section Officers and Assistant Accounts Officers provided two options for pay fixation in the respondent department. For those SO/AAO in position as on 01.01.2006, fixation of pay in the revised pay structure should be based on the pay scale and pay drawn as on 31.05.2005, i.e., pay scale before up-gradation. For those SO/AAO promoted prior to 01.01.2006 and who were drawing a basic pay of less than Rs.7500/- as on 31.12.2005, the benefit of stepping up of pay as per Note 10 under Rule 7 of CCS Revised Pay Rules 2008 shall be admissible and drawing less pay than SO/AAO promoted after 01.01.2006, on the condition that their juniors are drawing higher salary than them as on 1.1.2006. Applicants do not satisfy this condition as the 1st respondent has not promoted any juniors to

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the cadre of AAO between 01.01.2006 and 29.8.2008 in its accounts wing of Kerala field office. Thus there are no juniors drawing higher pay. This situation does not exist in other States where there are juniors drawing more pay and benefit of stepping up of pay has resolved the anomaly. Thus the VIth CPC's intended benefit is working adversely for the applicants as officials promoted after them and between 01.01.2006 and 29.8.2006 are drawing more pay as they opted for fixation as per clarification (b) in Annexure A-8. Whereas applicants promoted prior to 01.01.2006 had their pay as on 31.05.2005 fixed with reference to fitment table in the pre-revised scale of Rs.6500-10500/- or Rs.7450-11500/- As per table 2 in para 12 due to this fitment table fixation the applicants instead of drawing the minimum of the revised pay scale i.e, Rs.13,950 plus grade pay, are drawing Rs.13210/- or Rs.13580/- and hence suffering a loss of Rs.740/- / Rs.370/- depending on the pay drawn in the old scale. This is a very isolated anomaly case where the VIth CPC has not given a relief and where applicants could not avail stepping up at par with juniors drawing more pay as there were no juniors drawing higher pay than applicants due to stoppage of SOG Examination in 1996..

21 It is necessary to bring this isolated anomaly to the notice of the VII CPC implementation so that the senior is not put to loss of drawing less pay than the junior.

22 It would not be the intention of any Pay Commission that beneficiaries should draw less than the minimum of the revised pay scale in which they are fitted, post CPC recommendations. The CCS Revised Pay Rules 2008 notified by Finance Ministry for the Indian Audit and Accounts Department defines "existing basic pay" as pay drawn in the existing scale of pay and "existing scale"

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as present pay scale applicable to the post held by the Government servant as on 01.01.2006. The VI CPC recommendations came into force on 01.01.2006. The VIth CPC had merged the scales of SO and AAO and given them the unified cadre of Assistant Accounts Officer in the scale of Rs.7500 – 12500. The pay of applicants in the pre-revised post of SO was Rs. 6500 – 10500 and their basic pay was Rs.7100 or Rs.7300 as evident from Table 2 in para 12.

23 Respondent avers that the option facility to opt for the upgraded pre-revised scale for fixation of initial pay in the revised pay structure was available only to those SO/AAO who were promoted on or after 01.01.2006 and hence not applicable to applicants. This is an isolated case where due to stoppage of SOG examination in 1996, the facility of up-gradation at par with juniors drawing more pay also cannot be extended. The applicants are at par with other similarly placed wound up cadres where the last batch of promotees will not have any junior drawing more pay. Applicants are aware that they are a wound up cadre and the VI CPC in its wisdom did provide options of ensuring pay parity and it is not as if it did not address the case of seniors drawing less pay.

24 The issue that arises before the Bench is whether this small group of isolated wound up cadre are entitled to get their initial pay fixed under CCS (RP) Rules, 2008 on the basis of the minimum of the revised upgraded scale of pay of AAO as on 01.01.2006. Rule 7(1) A(i) and (ii) of Ministry of Finance notification dated 29th August 2008 is referred to as being applicable to the applicants as a window of opportunity to redress their grievance. The rule reads as follows:-

25 "7(1) A In the case of all employees.

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(i) The pay in the pay band/pay scale will be determined by multiplying the existing basic pay as on 01.01.2006. (emphasis provided) by a factor of 1.86 and rounding off the resultant figure to the next multiple of 10.

(ii) if the minimum of the revised pay band/pay scale (emphasis provided) is more than the amount arrived at as per (i) above, the pay shall be fixed at the minimum of the revised pay band/pay scale. "

26 As noted from the fourth column in table 2 of para 12 of O.A which indicates the amount arrived at as per 7(A)(1) rule supra i.e. Rs.13580/13210+GP 4800 , it is less than the minimum of the revised pay band ie. Rs.13950 +GP 4800. Hence as per Rule 7(i)(A)(ii) the pay of applicants can be fixed at the minimum of the pay band i.e. at Rs.13950/- to provide relief to this isolated group.

27 The VIth CPC had not envisaged the anomaly arising out of cases such as that of the applicants. As such the recommendations could not be all comprehensive being able to visualise all possibilities of anomalies. But a detailed reading of their recommendations will provide the key to solutions to anomalies such as faced by the applicants who are a, isolated end of the road cadre, and who are not covered by solutions to visualised anomalies thought of and provided by the CPC.

28 The pay of applicants be fixed at the minimum of the revised upgraded scale of pay of Assistant Accounts Officers as on 01.01.2006 at the stage of Rs.13,950/- in P.B II with GP 4800/- w.e.f 01.01.2006.

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29 The Original Application is allowed accordingly.


(P.GOPINATH)
ADMINISTRATIVE MEMBER


(N.K.BALAKRISHNAN)
JUDICIAL MEMBER

SV