

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

O.A.No.285/11

Wednesday, this the 25<sup>th</sup> day of January 2012

**C O R A M :**

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER  
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. T.G.Babuprakash,  
Deputy Office Superintendent,  
O/o. Commissioner of Central Excise & Customs,  
Central Revenue Buildings, I.S.Press Road,  
Cochin – 682 018.
2. Thomas P Philip,  
Deputy Office Superintendent,  
O/o. Deputy Commissioner of Central Excise & Customs,  
Kottayam Division, Kottayam – 686 506.
3. P.K.Saleem,  
Deputy Office Superintendent,  
O/o. Deputy Commissioner of Central Excise & Customs,  
Ernakulam II Division, Kathrakadavu P.O., Ernakulam.
4. K.Bhaskaran,  
Deputy Office Superintendent,  
O/o. Assistant Commissioner of Central Excise & Customs,  
Muvattupuzha Division, Muvattupuzha – 686 661.
5. K.Unnikrishnan,  
Deputy Office Superintendent,  
O/o. Commissioner of Central Excise & Customs,  
Central Revenue Buildings, Mananchira, Calicut.
6. M.R.Sukumaran,  
Deputy Office Superintendent,  
O/o. Assistant Commissioner of Central Excise & Customs,  
Sakthan Tampuram Nagar, Trichur – 680 001. ....Applicants

(By Advocate Mr.C.S.G.Nair)

**V e r s u s**

1. Union of India represented by its Secretary,  
Department of Expenditure, North Block,  
New Delhi.

.2.

2. Chairman,  
Central Board of Excise & Customs,  
North Block, New Delhi – 110 001.
3. Chief Commissioner of Central Excise & Customs,  
Central Revenue Buildings, I.S.Press Road,  
Cochin – 682 018.
4. Commissioner of Central Excise & Customs,  
Central Revenue Buildings, I.S.Press Road,  
Cochin – 682 018. ....Respondents

(By Advocate Mr.A.D.Raveendraprasad,ACGSC)

This application having been heard on 19<sup>th</sup> January 2012 this Tribunal on 25<sup>th</sup> January 2012 delivered the following :-

**ORDER**

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER**

The applicants (six in number) are all functioning as Dy. Office Superintendents in the Customs and Central Excise Department. The hierarchy in the administrative side in that department is as under :-

|                              |   |
|------------------------------|---|
| Lower Division Clerk         | (Group C)   |
| Tax Assistant                | (Group C)   |
| Senior Tax Assistant         | (Group B 'non Gazetted')                          |
| Deputy Office Superintendent | (Group B, Non Gazetted)<br>(Level II and Level I) |
| Administrative Officer       | (Group B, Gazetted)                               |
| Chief Accounts Officer       | (Group A)   |

2. Earlier, the Pay scales of Deputy Office Superintendent Level II and of Level I were, respectively, Rs.5000 – 8000 and Rs.5,500 – 9000. However, restructuring of the Central Excise and Customs Department took place in the year 2005 (though indicated by the applicant as in 2002) when the above said two pay scales were merged to Rs.5,500 – 9,000/-.

*[Signature]*

.3.

This post has, as its feeder grade, the post of Senior Tax Assistant and earlier, due to higher responsibilities fastened to the post of Dy. Office Superintendent, at the time of promotion from Senior Tax Assistant to Dy. Office Superintendent, provisions of Rule 22(1)(a)(i) of the F.R (grant of one notional increment at the lower scale and fixation of pay at a corresponding stage in the higher pay scale) used to be pressed into service.

3. When the VI Pay Commission Recommendations were accepted and Revised Pay Rules, 1999 were framed, there was a uniform single pay scale of Rs.9,300 – 34,800 plus grade pay of Rs.4,200/- in respect of the erstwhile pay scales of Rs.5000 – 8000, Rs.5,500 – 9,000 and Rs.6500 – 10500. The revised pay scale was given effect to, with effect from 01-01-2000. At that time, the applicants were functioning as Senior Tax Assistants, and were placed in the pay scale of Rs.9,300 – 34,800 with grade pay of Rs.4,200/-, since the pay scale of Senior Tax Assistant was also Rs.5,000 – 8,000/- prior to 01-01-2006.

4. Respondents, vide Annexure A-1 order dated 30-09-2009, promoted all the applicants from the post of Sr. Tax Assistant to Deputy Office Superintendent on various dates ranging from 01-04-2006 to 01-08-2009 in the very same pay scale of Rs.9,300 – 34,800/. They were asked to exercise option for pay fixation in terms of Department of Personnel and Training OM dated 26-09-1981 and 05-07-1999 within one month of the issue of the order.

*b*

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5. The claim of the applicants in this OA is that the grade pay, on promotion should be raised to Rs.4,600/- in view of the fact that apart from the merger of the scales of pay of Rs.5000-8000 and Rs.5500-9000, even the pay of Rs.6500-10500 had been merged and brought under one pay scale and the grade pay for the erstwhile pay of Rs.6500-10500 is Rs.4,600/-. In addition, they should be given the benefit of the provisions of FR 22(1)(a)(i) of the Fundamental Rules, which had not been granted to them.

6. Earlier, claiming the fixation of pay scales as per order dated 17-04-2009, the applicants had moved OA No.662 of 2010 which was disposed of by order dated 29-07-2010 with the following directions :-

2. On hearing the counsel appearing for the applicants, Mr.C.S.G Nair and Mr.Raveendra Prasad, appearing on behalf of the respondents on receipt of the OA, we feel that the Original Application itself can be disposed of by directing the respondents 1 to 3 to consider the matter of the applicants and pass appropriate orders thereon by way of answer to Annexure A-9 and we are also of the view that the Original Application itself can be treated as a petition filed before the above respondents. Without considering the merits of the contentions, we feel that the matter can be sent to the respondents for anxious consideration and appropriate orders thereon. Accordingly, this OA stands disposed of by directing the respondents 1 to 3 to consider the matter and pass appropriate orders within 90 days from the date of receipt of a copy of this order. The applicants shall provide a copy of the OA with documents to the respondents Nos.2&3 for forwarding the same to the 1<sup>st</sup> respondent. It is also made clear that any recovery ordered as per Annexure A-6 order dated 30.4.2010 shall be kept in abeyance until the final disposal of the petition as we have directed. No order as to costs.

7. Respondents have, in pursuance of the above direction, passed the impugned Annexure A-11 order dated 04-02-2011 which inter alia reads as under:-

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"4. The substantial part of prayer of the applicants contained in sub-clause (ii) and (iii) of the O.A.No.662/2010 is reproduced below :-

- (a) *To direct the respondents to grant the benefits of pay fixation under FR 22 (1)(a)(i) to the applicants on their promotion from the post of Senior Tax Assistant to Deputy Office Superintendent with a higher grade pay.*
- (b) *To direct the 1<sup>st</sup> respondent to grant a higher grade pay to the Deputy Office Superintendent than that is given to the Senior Tax Assistant so as to remove the anomaly now exists.*

5. The outcome of the examination and consultation process in this case is as under :-

*" In terms of the recommendations of the Sixth CPC and as per Section 1(ii) of Part B of the CCS (RP) Rules, 2008, posts in the pre-revised pay scales of Rs.5000-8000 and Rs.5500-9000 are to be merged and no promotions from the pay scale of Rs.5000-8000 to Rs.5500-9000 are to take place after Sixth CPC. As per Rule 5 of the CCS (RP) Rules, 2008, in cases where a Government servant has been placed in a higher pay scale between 1.1.2006 and the date of notification of these Rules on account of promotion, upgradation of pay scale etc. the Government servant may elect to switch over to the revised pay structure from the date of such promotion, upgradation etc., in which case benefit of FR 22 (1)(a)(i) can be allowed in the pre-revised pay scales.*

*In view of the above, it is not possible to allow benefit of FR 22 (1)(a)(i) in the revised pay scales in the instant case after 1.1.2006 nor is it possible to allow a higher grade pay to Deputy Office Superintendent."*

6. Now, therefore, in view of the position explained in the preceding paragraphs, the respondent No.2, on receipt of a reference from the respondent No.3 and having examined the matter in consultation with the respondent No.1, has decided to reject the representation of the applicants in the form of O.A.No.662/2010 regarding extending the benefits of pay fixation under FR 22 (1)(a)(i) and grant of higher grade pay to the applicants on their promotion from the post of Senior Tax Assistant to Deputy Office Superintendent."



.6.

8. This application has been filed challenging the above mentioned Annexure A-11 order inter alia on the following grounds:-

- (a) OM dated 26-09-1981 which provides for exercising of option deals with option in connection with the provisions of FR 22(1)(a)(i) and as such, the applicants are entitled to the said provisions of F.R.
- (b) Deputy Office Superintendent is a supervisory cadre and as such, FR 22(1)(a)(i) applies to the case of the applicants.
- (c) The pay scale attached to the feeder as well as promotional grade being one and the same, there is no monetary benefit in the promotion whereas, the term promotion means "to raise to a higher grade."
- (d) Prior to the introduction of RP Rules, 2008, FR 22(1)(a)(i) was pressed into service and the same cannot be denied.
- (e) In the case of MACP, the grade pay afforded for financial upgradation is Rs.4,600 and Rs.4,800 respectively though there is no enshouldering of additional responsibilities and as such, it would be discriminatory in case the same Grade Pay is not granted at the time of actual promotion, when higher responsibilities are enshouldered.



9. The prayer of the applicants is as under:-

- (ii) To direct the respondents to grant the benefits of pay fixation under FR 22 (1)(a)(i) to the applicants on their promotion from the post of Senior Tax Assistant to Deputy Office Superintendent with a higher grade pay.
- (iii) To direct the 1<sup>st</sup> respondent to grant a higher grade pay to the Deputy Office Superintendent than that is given to the Senior Tax Assistant so as to remove the anomaly now exists.
- (iv) Grant such other reliefs which this Hon'ble Tribunal may deem fit and necessary in the circumstances of the case.

10. Respondents have contested the O.A. In their reply, the respondents have, *inter alia* stated as under :-

(a) Prior to restructuring of Central Excise and Customs Department, there were posts of Deputy Office Superintendent Level-II in the scale of Rs.5000-150-8000 and Deputy Office Superintendent Level-I in the scale of Rs.5500-175-9000. The posts of Office Superintendent in the erstwhile scale of pay of Rs.2000-3200 (has been merged with the Administrative Officer in the erstwhile scale of Rs.2000-3500) is in the revised scale of Rs.6500-200-10500 w.e.f 1.1.1996. On restructuring, Deputy Office Superintendent Level I and II were merged into one post called Deputy Office Superintendent in the scale of Rs.5500-175-9000 as a feeder cadre to the grade of Administrative Officer. The post of Deputy Office Superintendent is a 100% promotion post, the feeder cadre being Senior Tax Assistant with 3 years regular service in the grade pay band Rs.9300-34800 (PB-2) with grade pay of Rs.4200/-.

(b) With regard to contentions in Para 4(5), 4(6), 4(7), it is submitted that the claim of the applicants that they have been denied the benefits of pay to supervisory posts even after

functional promotion, is not tenable due to the mere fact that 6<sup>th</sup> CPC has already placed them in high pay band/scale when compared to their pay prior to 1.1.2006. Due to the implementation of the 6<sup>th</sup> CPC the existing pay scales have been replaced by running pay bands/scales which are advantageous to the Central Government staff. Vide Part C Section 1 to the First Schedule to Central Civil Services (Revised Pay) Rules, 2008, the position is further clarified as follows : "Para (ii) on account of merger of pre-revised pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500, some posts which presently constitute feeder and promotion grades will come to lie in an identical grade. The specific recommendations about some categories of these posts made by the Pay Commission are included in Section II of Part C. As regards other posts in these three scales should be merged." Hence it becomes clear that the Government, after due contemplation, has included certain categories of posts in Ministry of Finance in Section II of Part C to the First Schedule to Central Civil Services (Revised Pay) Rules, 2008.

(c) With regard to the contention in Para 4(8), it is submitted that the matter was examined with a view to explore the possibility that whether the pay of Senior Tax Assistants on their promotion as Deputy Office Superintendent will be fixed by giving one increment as both the cadres ie. Feeder cadre and promotion cadre are in the same pay band/grade pay or under FR 22 (I)(a)(i) as there is not parity of both the posts on functional basis. The Government had examined the case and had made the following observations :- "in terms of the recommendations of the Sixth CPC, posts on the pre revised pay scales of Rs.5000-8000/- and Rs.5500-9000/- are to be merged and no promotions from the pay scales of Rs.5000-8000 and Rs.5500-9000 are to take place after Sixth CPC. In



case of those promoted between 1.1.2006 and date of notification of CCS (RP) Rules, 2008, there are provision to opt to come over to the revised pay scales from the date of promotion in which case benefit of FR 22 (1)(a)(i) can be allowed in the pre revised pay scales. In view of the above, it is not possible to allow benefit of FR 22 (1)(a)(i) in the revised pay scales in the instant case after 1.1.2006 nor is it possible to allow a higher grade pay to Deputy Office Superintendent." On the basis of the above observation/advise, Annexure A-11 speaking order dated 4.2.2011 (F.No.A-23011/40/2010-Ad.IIA) was issued by the respondents.

(d) With regard to the contentions in Para 4, it is submitted that till 21.4.2004 both DOS and Inspectors were in the same pay scale ie. Rs.5500-9000 (pre revised). However, independent of recommendations of 5<sup>th</sup> CPC the pay scale of Inspectors of Central Excise was upgraded to the pay scale of Rs.6500-10500 (pre revised) w.e.f 21.4.2004. Further the recommendations of the 6<sup>th</sup> CPC in its para "7.15.15" indicated that an anomaly has been reported in case of Senior Tax Assistants who are presently eligible for promotion as Inspector as well as Deputy Office Superintendent. It is stated that Senior Tax Assistants, if they are promoted as Deputy Office Superintendent, reach the scale of Rs.5500-9000/. However, in case of promotion as Inspector, they are placed in the scale of Rs.6500-10500 which is anomalous especially because they function under Deputy Office Superintendent before promotion as Inspector. The Commission has recommended merger of the pre revised scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 which will place the posts of Inspector and Deputy Office Superintendent in an identical pay scale. No specific recommendation is, therefore, necessary in this case.



.10.

(e) Thus, the issue of parity raised by the applicant has been extensively dealt with by the 6<sup>th</sup> CPC and reached finality which was accepted by the Govt. as it was proposed by the Commission. The commission has formulated the new pay structures taking into consideration all the anomalies which have been accepted by the Govt. As such, it is incorrect on the part of the applicant to say injustice has been done to him. While considering many such other questions of parity concerning different ministries/departments, the 6<sup>th</sup> CPC had observed that the same cannot be considered as the duties/responsibilities attached and the qualifications prescribed for these posts do not warrant a higher pay scale.

(f) With regard to the contentions in Para 5, it is submitted that at para 2.2.19 of the report of the 6<sup>th</sup> CPC, salient features and characteristics of the revised scheme of pay bands have been narrated, wherein, at sub-para (vii), details regarding bunching/merger of many pre revised scales have been given. While considering the merger of scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500, the Commission has stated that -

*Many pre revised scales are being merged. Barring the Group D posts, this merger has been done by extending the existing minimum prescribed for the highest pay scale with which the other scales are being merged. However, the grade pay for the merged scale so derived has been computed with reference to the maximum of the highest scale. This, besides ensuring a uniform benefit, will also prevent bunching. Following scales have been merged :-*



|   |   |
|---|---|
| Rs.5000-8000<br>Rs.5500-9000<br>Rs.6500-6900<br>Rs.6500-10500 | Scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 have been merged to bring parity between field offices; the secretariat; the technical posts; and the work shop staff. This was necessary to ensure that due importance is given to the levels concerned with actual delivery. It is also noted that a large number of anomalies were created due to the placement of Inspectors/equivalent posts in CBDT/CBEC and Assistants/Personal Assistants of CSS/CSSS in the scale of Rs.6500-200-10500. The scales of Rs.5500-175-9000 and Rs.6500-200-10500, in any case, had to be merged to resolve these anomalies. The scale of Rs.6500-200-6900 was an intermediary scale identical to the scale of Rs.6500-200-10500, albeit with a shorter span. Since the length of a pay scale is not very relevant in the revised scheme of running pay bands, no rationale existed for retaining the scale of Rs.6500-6900 as a distinct scale. |
|---|---|

(g) In Para 3.8.3(g), it is submitted that the Commission has further clarified that "As a measure of delayering, the Commission has recommended merger of the pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500. In a large number of cases, posts in these pay scales have existed as feeder and promotion posts.. While the Commission has tried to ensure that the promotion post is normally placed in a higher pay scale, however, in many cases, the same has not been done. Consequently, for a few categories, the erstwhile feeder and promotion posts have been merged. This is a conscious decision of the Commission and has been resorted to in cases where functional justification for maintaining two distinct levels as feeder and promotion post did not exist or where the operational efficiency was not impacted or is likely to actually improve by the merger. In all such cases, the interests of personnel in the erstwhile promotion grade have been protected by ensuring that their seniority as well as higher pay is kept intact in the revised running pay bands being recommended by the Commission".



.12.

(h) Thus, the issue of parity raised by the applicant has been extensively dealt with by the 6<sup>th</sup> CPC and reached finality which was accepted by the government as it was proposed by the Commission. The commission has formulated the new pay structures taking into consideration all the anomalies which have been accepted by the Government. As such, it is incorrect on the part of the applicants to say injustice has been done to them. The basic purpose of the 6<sup>th</sup> CPC was to evolve proper pay package for the Government employees and also to make recommendations, rationalizing the Governmental structure with view to improving the delivery mechanisms to providing better services to the common man and to provide a decent entry grade and smooth career progression without any stagnation. The objectives were to be achieved through reduction of layers within the Government structure so that the decision making and delivery is expedited. In the process, a number of comparatively less important levels have been removed. Accordingly, the posts which were otherwise comparable on the basis of the functions, nature of the job, qualifications prescribed, level of responsibility attached, have been merged including certain feeder and promotional cadres. While considering many such other parities, the 6<sup>th</sup> CPC had observed that the same cannot be considered as the duties/responsibilities attached and the qualifications prescribed for these posts do not warrant a higher pay scale. Further, the issue has already been explained in para 10 of the reply statement filed by the respondents.

11. Counsel for the applicants argued that when merger had taken place and a single broad band pay scale has been introduced and then promotion granted, in that case also the provisions of FR 22(1)(a)(i) has to apply. Again, when three pay scales have been merged (i.e. Rs.5000 –



.13.

8000, Rs.5,500 – 9000 as per 2005 restructure and Rs.6500 – 10500 as per Pay Commission recommendations, then the grade pay admissible to the single pay scale of Rs.9,300 – 34800/- should be one which is admissible in respect of the erstwhile pay scale of Rs.6,500 – 10500 and the same being Rs.4,600/-, it is this grade pay that should be granted at least from the date of promotion of the applicants to the post of Dy. Office Superintendent.

12. Counsel for the respondents has taken us through the counter and additional reply with particular reference to the portion extracted above.

13. Arguments were heard and documents perused. Two questions arise -

(a) Whether the applicants are entitled to the notional increment at the scale of pay at the feeder grade and placement at that stage in the scale admissible to the promotional post.

(b) Whether the grade pay should be enhanced from Rs.4,200 to Rs.4,600 as claimed by the applicants.

14. First, as to the provisions of F.R. 22(1)(a)(i) which read as under :-

"22.(1) The initial pay of a government servant who is appointed to a post on a time scale of pay is regulated as follows :

(a)(1) Where a government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary

or officiating capacity, as the case may be, subject to the fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which pay has accrued or rupees twenty-five only, whichever is more.

Save in cases of appointment on deputation to an ex cadre post, or to a post on ad hoc basis, the government servant shall have the option, to be exercised within one month from the date of promotion or appointment as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage of the time scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be refixed in accordance with this rule on the date of accrual of next increment in the scale of the pay of the lower grade or post. In cases where an ad hoc promotion is followed by regular appointment without break, the option is admissible as from the date of initial appointment/promotion, to be exercised within one month from the date of such regular appointment:

Provided that where a government servant is, immediately before his promotion or appointment on regular basis to a higher post, drawing pay at the maximum of the time scale of the lower post, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post held by him on regular basis by an amount equal to the last increment in the time scale of the lower post or rupees twenty-five, whichever is more."

15. In order to invoke the above provision, there must be a promotion and the promotional post should involve functions of higher responsibilities/importance. Before restructuring, the following grades provided for the respective feeder and promotional posts :-



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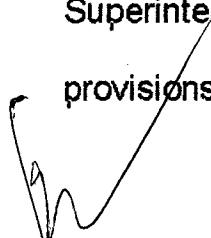
(a) Senior Tax Assistants (Rs.5,000 – 8,000) was the feeder grade to Dy. Office Superintendent Level II (Rs.5000 – 8000).

(b) Dy. Office Superintendent Level II (Rs.5000 – 8000) was the feeder grade to Dy. Office Superintendent Level I (Rs.5500 – 9000)

(c) Deputy Office Superintendent (Level I) (Rs.5500 – 9000) was the feeder grade to Office Superintendent (Pre-revised pay scale of Rs.2000 – 3200)

(d) Office Superintendent (Rs.2000 – 3200 – pre revised) was the feeder grade to the post of Administrative Officer (Rs.2000 – 3500 pre-revised).

16. Restructuring took place in the year 2005 and on restructuring, the posts of Dy. Superintendent (Level II and I) got merged to have single pay scale of Rs.5500 – 9000 and the posts of Office Superintendent got upgraded and merged merged with Administrative Officer in the pay scale of Rs.6500 – 10500. Thus, Sr. Tax Assistant carrying lower pay than Dy. Office Superintendent continued to be the feeder grade while Dy. Office Superintendent provided the feeder grade for the promotional post of Superintendent/Administrative Officer and at the time of such promotion, provisions of F.R. 22(1)(a)(i) were invoked.



.16.

17. The Sixth Pay Commission recommendations, on acceptance by the Government, came into force w.e.f. 01-01-2006 and the pay scales of Rs.5,000 – 8,000, Rs.5,500 – 9000 and Rs.6,500 – 10,500 were all brought under one single broad band pay scale of Rs.9,300 – 34,800/- (PB -2) and the grade pay attached to the same was Rs.4,200/. Thus, the posts of Sr. Tax Assistant, Dy. Office Superintendent and Administrative Officer have all been bracketed in one single pay scale. But the degree in responsibilities varied, post of Dy. Superintendent carrying higher responsibilities than those of Sr. Tax Assistant and A.Os carrying higher responsibilities than those of Dy. Superintendents. Thus, the condition attached to the provisions of FR 22(1)(a)(i) (*carrying duties and responsibilities of greater importance* ) gets fulfilled.

18. Recruitment Rule for the post of Dy. Office Superintendent was amended in 2009 with retrospective effect from 20-09-2005. This (20-09-2005) is the date when the posts of Dy. Office Superintendent Level II and Level I were merged to form a single grade of Dy. Office Superintendent with the pay scale of Rs.5,500 – 9000/. According to the same, the post is filled up by way of promotion from the post of Sr. Tax Assistant with three years of regular service in the grade in the Pay Band of Rs.9300 – 34800/. (The broad pay band is effective only from 01-01-2006, vide explanatory note to the R.Rules). Thus, if a Senior Tax Assistant was promoted to the post of Dy. Superintendent, prior to 01-01-2006, his pay scale would have changed from Rs.5,000 – 8,000 to Rs.5,500 – 9,000 and the provisions of FR 22(1)(a)(i) would have been applied at the time of his promotion. Instead, if the promotion was effective posterior to 01-04-2006,

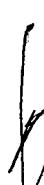


then, the individual would enjoy the same pay scale of Rs.9,300 – 34,800/- with the grade pay of Rs.4,200/- The question that arises for consideration is whether in such a case, where promotion takes place from the post of Sr. Tax Assistant to Dy. Office Superintendent, whether the provisions of F.R. 22(1)(a)(i) could be pressed into service and if so how.

19. Respondents have rejected the claim of the applicant stating the following :-

(a) It has been stated that in terms of the recommendations of the Sixth CPC and as per Section 1(ii) of Part B of the CCS (RP) Rules, 2008, posts in the pre-revised pay scales of Rs.5,000 – 8000 and Rs.5,500 – 9000 are to be merged and **no promotions from the pay scale of Rs.5000 – 8000 to Rs.6500 – 9000 are to take place after Sixth CPC.**  
(Emphasis supplied)

(b) Citing Rule 5 of the Revised Pay Rules (2008) it has been stated, "*in cases where a Government servant has been placed in a higher pay scale between 01-01-2006 and the date of notification of these Rules on account of promotion, upgradation of pay scale etc., the Government servant may elect to switch over to the revised pay structure from the date of such promotion, upgradation etc.*"



20. A look at the relevant provisions as contained in the Revised Pay Rules, 2008, relied upon by the respondents is essential. The same are as under :-

(a) **Sec. 1 (ii) of Part B** :- On account of merger of pre-revised pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500, some posts which presently constitute feeder and promotion grades will come to lie in an identical grade. The specific recommendations about some categories of these posts made by the Pay Commission are included Section II of Part B. As regards other posts, the posts in these three scales should be merged. In case it is not feasible to merge the posts in these pay scales on functional considerations, the posts in the scale of Rs.5000-8000 and Rs.5500-9000 should be merged, with the post in the scale of Rs.6500-10500 being upgraded to the next higher grade in pay band PB-2 ie. to the grade pay of Rs.4600 corresponding to the pre revised pay scale of Rs.7450-11500. In case a post already exists in the scale of Rs.7450-11500, the post being upgraded from the scale of Rs.6500-10500 should be merged with the post in the scale of Rs.7450-11500.

(b) **Rule 6** : Drawal of pay in the revised pay structure – Save as otherwise provided in these rules, a Government servant shall draw pay in the revised pay structure applicable to the post to which he is appointed;

Provided that a Government servant may elect to continue to draw pay in the existing scale until the date on which he earns his next or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale.

Provided further that in cases where a Government servant has been placed in a higher pay scale between 1.1.2006 and the date of notification of these Rules on account of promotion, upgradation of pay scale etc., the Government servant may elect to switch over to the revised pay structure from the date of such promotion, upgradation etc.

Explanation 1 – The option to retain the existing scale under the provisos to this rule shall be admissible only in respect of one existing scale.

*[Signature]*

Explanation 2 – The aforesaid option shall not be admissible to any person appointed to a post on or after the 1<sup>st</sup> day of January, 2006, whether for the first time in Government service or by transfer from another post and he shall be allowed pay only in the revised pay structure.

Explanation 3 – Where a Government servant exercises the option under the provisos to this rule to retain the existing scale in respect of a post held by him in an officiating capacity on a regular basis for the purpose of regulation of pay in that scale under Fundamental Rule 22, or any other rule or order applicable to that post, his substantive pay shall be substantive pay which he would have drawn had he retained the existing scale in respect of the permanent post on which he holds a lien or would have held a lien had his lien not been suspended or the pay of the officiating post which has acquired the character of substantive pay in accordance with any order for the time being in force, whichever is higher.

21. Of the above, (a) means that there shall be merger of the three pay scales, Rs.5000 – 8000, Rs.5,500 – 9,000 and Rs.6,500 – 10,500. In case for certain specific reasons, the three pay scales cannot be merged together, then the first two should be merged and as regards the other one, i.e. Rs.6,500 – 10,500, the same should be provided with a higher Grade Pay of Rs.4,600/- or could well be merged with Rs.7,450 – 11,500/- if one such scale exists in the hierarchy. (In this case, we are concerned only with the merger of Rs.5,000 – 8000 and Rs.5,500 – 9,000.) In this rule, there is no mention about promotion etc., Yet, the respondents have, in the impugned order, stated that no promotions from the pay scale of Rs.5,000 – 8,000 to Rs.5,500 – 9,000 are to take place after Sixth CPC. Even by implication or any other interpretation, this contention of the respondents cannot be imported from Sec 1(ii) of Part B of the Rule.



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22. In so far as (b) above is concerned, the purpose of giving opportunity to exercise option in switching over to the revised pay is that if the promotion has been granted say within a few months of 01-01-2006, if there be some benefit in the event of option to switch over to the revised pay scale after getting the promotion, such a facility should be available to the employees.

23. In the instant case, the following are certain crucial dates :-

(a) Merger of pay scales of Rs.5000 – 8000 and Rs.5500 – 9000 : 2005.

(b) Publication of the Revised Pay Rules 2008 : 29-08-2008

(c) Date of effect of Revised Pay Rules : 01-01-2006

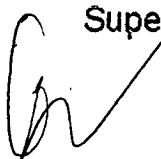
(d) Publication of Revised R.R. for the post of Dy. Office Supdt : 20-07-2009

(e) Date of effect of Revised R.R : 20-09-2005. (Revised Pay: 01-01-2006)

(f) Issue of Promotion Order to the post of Dy. Off. Supdt : 30-06-2009.

(g) Date of effect of the Promotion : 01-04-2006 to 01-04-2009.

24. The contention of the respondents is that after 01-01-2006, in view of the merger of the two posts, there cannot be any promotion in respect of posts carrying the pay scales of Rs.5000 – 8000 in the feeder grade and Rs.5500 – 9000 in the higher post. If this contention is valid, then the necessity to publish the Recruitment Rules for the post of Dy. Office Superintendent as late as in 2009 (effective from 2005) would not have



arisen. Nor is there any meaning in issuing order dated 30-06-2009 promoting a number of individuals from the post of Senior Tax Assistant (erstwhile pay scale of Rs.5000 – 8000) to Dy. Office Superintendent (erst pay scale of Rs.5,500 – 9,000). Since the Rules have been framed for the post of Dy. Superintendent as late as in 2009, and the same is by way of 100% promotion, the same confirms that promotion from Senior Tax Assistant to Dy. Superintendent is fully permissible.

25. Thus, in posting the applicants as Dy. Office Superintendents, there is an element of promotion and the post of Dy. Office Superintendent carries, admittedly, duties and functions of higher responsibilities/importance. The only thing to be kept in view is that the two posts carry the very same pay scale. When the promotional and feeder grade pay scale is identical, even in the past, provisions of FR 22(1)(a)(i) (or earlier 22-C) were invoked and the notional increment at the feeder grade granted. In this regard, the following extract from the relevant judgments are appropriate to be referred to :-

(a) 1992 (22) ATC (Del) 216 O.P.Sharma Vs. Union of India and others : "5. The case of the applicant is similar to that of B.D.Verma and also that of R.L.Khera. So the applicant is entitled to the same benefit as has been extended to both these applicants. The ratio of A.K.Khanna v. Union of India clearly applies to the present case where it has been held that there is no valid reason not to extend the benefit of the judgment to the applicants, who are similarly placed in their position with regard to a decision given earlier in a case. The relevant portion of the said judgment is reproduced below :-

*"It is true that the applicants were not parties to the civil writ petition which was allowed by this Tribunal. But there is no valid reason not to extend the benefit of that judgment to the applicant when they were similarly placed as the petitioner in T.A.No.335 of 1985 . In fact*

*instead of driving each of the Senior Computers to seek redressal of grievance before the Tribunal, when the judgment in T.A.No.335 of 1985 has become final, the respondents should have extended the benefit of that judgment to the entire class of Senior Computers similarly placed....." In *Baldev Pal v. State of Punjab* the Hon'ble Supreme Court made an observation that 'the State should extend the benefit of judgment of this Court to all who are similarly situated'. So the law so laid down is clear."*

6. Having given a careful consideration to the arguments advanced by the learned counsel for the respondents, the only objection taken being that the case of B.D.Verma is judgment in personam, and that cannot be accepted as correct preposition of law, so that applicant is also entitled to the relief claimed."

(b) 1994 (27) ATC 788 = 1994 (2) SLJ 270 A.G.Paranjape vs. Union of India : "10. The present case appears to be more straightforward in as much as the communication from the Department dated 25.7.1991 makes a declaration that in the case of appointments from Senior Clerk to that of Assistant Accountant, though the appointments are from one scale to another identical time scale, they would be covered by the provisions of OM dated 9.8.1988 and they would be entitled to fixation of pay (construing as promotion) under FR 22 (I)(a)(i) ie., earlier FR 22-C."

In the above judgment of A.G. Paranjape, the reference of F.M. OM dated 09-08-1988 made in para 10 of the judgment extracted states that wherever appointment to higher post involves assumption of higher duties and responsibilities and the personal scale of pay and the scale of pay of the higher post is identical, the pay be fixed under F.R. 22-C.

26. Thus, in the instant case also, the provisions of FR 22(1)(a)(i) shall have to be applied. Thus, in the pay scale of Rs.9,300 – 34,800/- (applicable to Sr. Tax Assistant.) which is effective from 01-01-2006, at whichever stage the pay of the applicants has been fixed, the same shall, from the date of promotion to the post of Dy. Office Superintendent, be



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incremented by grant of notional increment @ 3% of the pay, and the pay fixed in the very same scale of Rs.9,300 – 34,800/- as Dy. Office Superintendent. Answer to para 13(a) of the order is answered in favour of the applicants.

27. As regards the claim for higher grade pay of Rs.4,600/-, the claim for the same is on the ground that the pay scales of Rs.5000 – 8000, Rs.5500 – 9000 and Rs.6500 – 10500 having been merged together, the grade pay admissible to the highest scale i.e. Rs.6500 – 10500 should be granted and the same is Rs.4,600/-. This claim has no basis. For, the grade pay of Rs.4,600/- is attached to the pay scale of Rs.7450 – 11500/- as could be seen from the RP Rules. The erstwhile pay scale of Rs.6500 – 10500 (S-12) has only Rs.4,200 as the grade pay. This is the general rule. It is only when certain prescribed conditions are fulfilled that the grade pay of Rs.4,600/- is admissible to the pay scale of Rs.6500 – 10,500. This is as per para (ii) of Section I of Part B of the Rules, already extracted above. It is only under a contingency that it is not feasible to merge the pay scale of Rs.6500 – 10500 with the pay scales of Rs.5,000 – 8,000 and Rs.5,500 – 9,000 that the grade pay attached to the pay scale of Rs.6500 – 10500 would be upgraded to the next grade pay of Rs.4,600. In the alternative, in case there exists a pay scale of Rs.7450 – 11500 in the hierarchy, the said pay scale of Rs.6500 – 10500 be merged with that scale of Rs.7450 – 11500 and the grade pay of Rs.4600 is afforded. (Para (ii) of Section 1 of Part B of the R.P. Rules, 2008 refers.) Thus, the claim of the applicants for higher grade pay has to be rejected. Answer to para 13(b) above is thus answered against the applicants.

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28. In view of the above discussion, the OA is allowed to the following extent :-

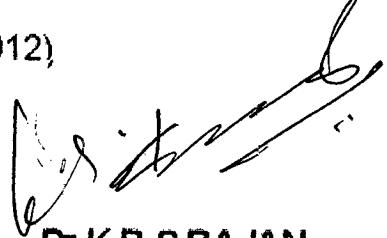
- (a) For promotion to the post of Dy. Office Superintendent from the post of Sr. Tax Assistant, provisions of FR 22(1)(a)(i) are applicable, notwithstanding the fact that the two posts carry the same pay scale, on the ground that Recruitment Rules provide for promotion to the said post of Dy. Office Superintendent and that the post carries functions of higher responsibilities/importance.
  
- (b) Consequently, the applicants who have, vide Annexure A-1 been promoted from the post of Sr. Tax Assistant (Rs.9300 – 34800 plus Grade Pay of Rs.4,200) to the post of Dy. Office Superintendent (with same scale of pay and grade pay as of Sr. Tax Assistant) should be afforded one notional increment and their pay, on promotion, be fixed after affording such notional increment.
  
- (c) In view of the provisions contained in para 3 of Annexure A-1, if the applicants exercise their option accordingly, the same be honoured and the pay fixed accordingly.
  
- (d) The difference arising out of the aforesaid pay fixation shall be paid to the applicants as arrears of pay and allowances.

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29. The above order shall be complied with, within a period of four months from the date of communication of this order. Under the circumstances, there shall be no orders as to costs.

(Dated this the 25<sup>th</sup> day of January 2012)

  
**K.GEORGE JOSEPH**  
**ADMINISTRATIVE MEMBER**

  
**Dr.K.B.S.RAJAN**  
**JUDICIAL MEMBER**

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