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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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disposal date-7/03/2000
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SECTION OFFICER (Judl.)

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO.

84/2000

OF 199

Applicant(s) Sri Hironmay Sen and ors.

Respondent(s) Union of India and ors.

Advocate for Applicant(s) Mr. A. K. Phukan

Advocate for Respondent(s) Mr. A. Roy, Mr. K. Manir, Smt. S. Sarma

Notes of the Registry	Date	Order of the Tribunal
	28.2.2000	There is a reference to the application.
493277 25.2.2000 D. S. Sarma 25/2/2000	2.3.2000	On the prayer of Mr M.Chand learned counsel on behalf of Mr A.Roy, learned Sr.counsel for the applicants the case is adjourned to 7.3.2000 for consideration of admission.
pg	7.3.2000	Heard Mr.A.Roy, learned Sr. counsel for the applicant and Mr.A.Deb Roy, Sr.C.G.S.C. for the respondents. Perused the application. Application is admitted. Issue notice to the respondents by registered post. Returnable by 4 weeks.

Note: No joint prayer has been made in the single application.

25/2/2000

contd/-

Notes of the Registry	Date	Order of the Tribunal
<p>Service of notice prepared and sent to D. Section for passing of the same to the respondent through Regd. post with A.D. vide No. 1027 to 1329 Dtd- 6-4-2000</p> <p>12-7-2000</p> <p>No. written statements</p>	7.3.2000	<p>List on 7.4.2000 for filing of written statement and further orders.</p> <p>Permission to join in a single application is granted vide order dated 7.3.2000 in M.P.No.79 of 2000.</p> <p>Member(J)</p> <p>Member(A)</p>
	7.4.00	<p>On the prayer of Mr.A.Deb Roy, Sr.C.G.S.C. two weeks time is allowed for filing of written statement. List on 28.4.00 for filing of written statement and further orders.</p> <p>Member</p>
	28.4.00	<p>Two weeks time is allowed on the prayer of Mr.B.S.Basumatary, Addl.CGSC on behalf of Mr.A.Deb Roy, for filing of written statement. List on 5.5.00 for filing of written statement and further orders.</p> <p>Member</p>
	5.5.00	<p>W/S has not been filed. There is no D.B. Adjud to 30.5.00.</p> <p>1370</p> <p>61</p>
	30.5.00	<p>There is no Bench today. Adjud to 28-6-00.</p> <p>1370</p> <p>61</p>
	28.6.00	<p>There is no Bench today. Adjud to 13-7-00.</p> <p>1370</p> <p>61</p>

Notes of the Registry	Date	Order of the Tribunal
	13.7.00	<p>Present : The Hon'ble Mr S.Biswas, Administrative Member.</p> <p>Mr K.Munir, learned counsel for the applicant and Mr A.Deb Roy, learned Sr. C.G.S.C for the respondents are present. It is mentioned that five dates have already been taken in the case to file written statement. The learned counsel for the respondents prays that ^{some} all the parties are at Delhi and therefore it requires some more time. One month further time is granted.</p> <p>List on 14.8.2000 for order.</p> <p><i>S. Bish</i> Member(A)</p>
	pg	
	14.8.00	<p>There is no work. Adj'd to 25.9.00.</p> <p><i>16/0 h.</i></p>
	25.9.00	<p>Present : The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman.</p> <p>Written statement has been filed. Case is ready for hearing.</p> <p>List on 18.12.2000 for hearing.</p> <p><i>[Signature]</i> Vice-Chairman</p>
	pg	
	18.12.00	<p>No representation. List on 8.1.2001 for hearing.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>
	trd	

18.8.2000

Written statement has been filed by the respondents No. 1-4.

Room The case is ready for hearing. *NS* 22/9/2000

The case is ready for hearing.

[Signature]
15.12.2000

Notes of the Registry	Date	Order of the Tribunal
<p>19.2.2001</p> <p>Copy of the order has been sent to the D/Sec. for only the sum to the Sr. C.G.S.C. for the Respondent.</p> <p>HS</p>	8.1.01	<p>Present : Hon'ble Mr. Justice D.N.Chowdhury, Vice-Chairman. Hon'ble Mr. K.K.Sharma, Member (A).</p> <p>Heard Mr. A. Roy, learned Sr. counsel for the applicants and Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents. Hearing to continue permitting learned Sr. C.G.S.C. to make further submissions tomorrow.</p> <p>List on 9.1.2001 for further hearing.</p> <p><i>K.K.Sharma</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p> <p>trd</p>

Notes of the Registry	Date	Order of the Tribunal
<p>0</p> <p>mk</p>	<p>9.1.2001</p>	<p>Heard learned counsel for the parties. Hearing concluded. Order reserved.</p> <p><i>ICU Shau</i> Member (A)</p> <p><i>[Signature]</i> Vice-Chairman</p>
<p><u>19.2.2001</u></p> <p>Copy of the Judgment has been sent to the office for issuing the same to the applicant as well as to the Sr. C.G. for the Respt.</p> <p>al</p> <p>nkm</p>	<p>19.1.2001</p>	<p>Judgment pronounced. The application is allowed. The respondents are ordered to pay cost of Rs.5000/- (Rupees five thousand only).</p> <p><i>ICU Shau</i> Member(A)</p> <p><i>[Signature]</i> Vice-Chairman</p>

Notes of the Registry	Date	Order of the Tribunal

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CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./XXX. No. 85 of 2000

DATE OF DECISION 19.1.2001

Shri Hiranmoy Sen and 148 others PETITIONER(S)

Mr A.K. Phukan, Mr A. Roy, Mr K. Monir and
Smt S. Sarmah ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

The Union of India and others RESPONDENT(S)

Mr A. Deb Roy, Sr. C.G.S.C. ADVOCATE FOR THE
RESPONDENTS

THE HON'BLE MR JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

THE HON'BLE MR K.K. SHARMA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the judgment ? No
4. Whether the judgment is to be circulated to the other Benches ? Yes

Judgment delivered by Hon'ble Vice-Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.85 of 2000

Date of decision: This the 19th day of January 2001

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

The Hon'ble Mr K.K. Sharma, Administrative Member

Shri Hiranmoy Sen and 148 others

.....Applicants

The applicants are Senior Auditors in the
Office of the Accountant General (Audit),
Assam, Meghalaya etc. at
Shillong and Guwahati.

By Advocates Mr A.K. Phukan, Mr A. Roy.,
Mr K. Monir and Smt S. Sarmah.

- versus -

1. The Union of India, represented by
The Comptroller & Auditor General of India,
New Delhi.
2. The Comptroller & Auditor General of India,
New Delhi.
3. The Secretary to the Government of India,
Ministry of Finance,
Department of Expenditure,
New Delhi.
4. The Principal Accountant General (Audit),
Assam, Meghalaya, Arunachal Pradesh and Mizoram,
Shillong.

.....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

.....

O R D E R (ORAL)

CHOWDHURY.J. (V.C.)

The decision of the respondents communicated through D.O.
No.PCC/FT/97 dated 4.2.2000 by the Deputy Director (Legal), Office
of the Comptroller and Auditor General of India, New Delhi informing
the Government decision declining to revise the pay scale of Senior
Auditors in the Indian Audit and Accounts Department is the subject

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matter of this proceeding which has arisen in the following circumstances:

The applicants, 149 in number, are Senior Auditors in the Office of the Principal Accountant General (Audit), Assam, Meghalaya etc. at Shillong and Guwahati under the Indian Audit and Accounts Department, Government of India (hereinafter referred to as IA and AD). The applicants were initially appointed in the erstwhile composite office of the Accountant General, Assam, Meghalaya etc., Shillong as Auditors in the pay scale of Rs.330-560 or as Selection Grade Auditors in the pay scale of Rs.425-800. In the later part of 1983 proposals were made for restructuring of IA and AD with a view to step up the functional performance and the same was forwarded to the Comptroller and Auditor General of India, **respondent No.2**. The proposal envisaged a higher level of specialization and functionalisation in the cadre for audit and better pay scales for those cadres. The Government assented to the said proposal. In March 1984, the composite offices of the States' Accountant General were bifurcated into two separate offices with two distinct and separate cadres, one for the Audit functions. Under the scheme, 80% of the Auditors in the separated Audit office who were entrusted with the actual audit work, were sanctioned higher pay scale of Rs.425-800 at par with the Assistants Grade of Central Secretariat Service. Consequently, the applicants were appointed on permanent transfer to the higher functional grade post of Auditors in the pay scale of Rs.425-800 in the separated office of the Accountant General (Audit), Assam, Meghalaya etc., Shillong and Guwahati with effect from 1.3.1984.

2. The applicants stated and contended that their duties and responsibilities were no less onerous than the Assistants in the Central Secretariat Service. On the other hand, their duties and functions and the measures of responsibilities undertaken by them were qualitatively higher than those of the said Assistant and therefore, the applicants were granted the higher pay scale of Rs.425-800. The erstwhile pay scales of the Assistants of Central Secretariat Service was also the same, i.e. Rs.425-800 (pre-revised) and therefore, the Senior Auditors of IA and AD enjoyed parity of the pay scales with the Assistants of the Central

Secretariat.....

Secretariat from the date of creation of their cadres, i.e. 1.3.1984.

3. The Fourth Central Pay Commission placed the senior Auditors of IA and AD in the same group as the Assistants and Stenographers of Central Secretariat carrying the pay scale of Rs.425-800 and recommended the revised scale of Rs.1400-2600 for both Assistants and Stenographers of Central Secretariat and the senior Auditors of IA and AD, which was initially accepted and given effect by the Government with effect from 1.1.1986. The Assistants of the Central Secretariat moved the Central Administrative Tribunal, Principal Bench, by filing O.A.No.1538/1987 claiming higher pay scale and the Principal Bench by its Judgment and Order dated 23.5.1989 allowed the application and pursuant thereto, the Government of India by O.M. dated 30.7.1990 issued orders for revision of the scale of pay for the Assistants and Stenographers in the Central Secretariat and accordingly prescribed the revised scale of pay of Rs.1640-60-2600-EB-75-2900 for the pre-revised scale of pay of Rs.425-15-500-EB-560-20-700-EB-25-800 with retrospective effect, i.e. with effect from 1.1.1986. Since the aforesaid order introduced a partial revision in the same pre-revised scale of pay disturbing the existing parity and internal relativity in the pay scale of senior Auditors of IA and AD with the Assistants of Central Secretariat, these applicants submitted their representation claiming higher revised scale of pay in terms of the O.M. No.2/1/90-C.L._IV dated 30.7.1990. Failing to get appropriate response from the respondents a large section of the present applicants moved this Tribunal praying for pay parity and for extending the higher revised pay scale of Rs.1640-2900 with retrospective effect from 1.1.1986. The aforesaid O.A. was registered and numbered as O.A.No.45 of 1992.

4. The respondents submitted their written statement opposing the claim of the applicants, wherein the respondents also took the stand that the subject matter of the O.A. was under consideration of the National Council (Joint Consultative Machinery) and therefore, the Government could not unilaterally decide the matter and therefore, the application was premature. The respondents also contended that the

benefit.....

benefit of the higher pay scale that was granted by the order dated 30.7.1990 was not extendable to other bodies in the pre-revised scale of pay of Rs.425-800 in other Government Department and that the applicants also did not fulfill the requirement regarding some classifications and the method of recruitment. The respondents in their written statement sought to justify their action by contending that the nature of duties and responsibilities of the Assistants of Central Secretariat were different from the applicants. The respondents further contended that the applicants and Assistants and Stenographers of Central Secretariat constituted two different and distinct classes and therefore, it was permissible to prescribe different pay scales for them. The Tribunal disposed of O.A.No.45/1992 by its order dated 2.11.1994 and turned down the contention of the respondents refusing to grant parity in pay scale to those applicants and upheld the claim of the applicants. The Tribunal by the said judgment held that refusing to grant pay parity to those applicants was not rational and held that injustice had been caused to those applicants and made the following specific observations:

- i) The applicants are entitled to get parity in their revised pay scale with the Assistants and Stenographers of Central Secretariat Service on the principle of 'Equal pay for Equal work'.
- ii) Refusal by the respondents to grant the parity in pay scale to the applicants is in violation of Articles 14, 16 and 39(d) of the Constitution.
- iii) By refusing the parity in pay scale to the applicants the respondents have acted arbitrarily and illegally.
- iv) There is no effective and convincing reason to deny the Senior Auditors of IA and AD are required to be treated as of the same class as found by the 4th Central Pay Commission.
- v) The Assistants of the Central Secretariat Service and the Senior Auditors of IA and AD are required to be treated as of the same class as found by the 4th Central Pay Commission.
- vi) There did not exist any rational or reasonable criteria to differentiate the two sets of posts.
- vii) The differentiation gives rise to disturbance or internal relativity in the pay scales leading to an anomaly which is required to be removed by the respondents.
- viii) As the applicants are unequally treated their grievances of discrimination is fully justified."

The Tribunal while adjudicating the aforesaid O.A. framed the following specific issues:

- i) Whether the applicants are entitled to get parity of pay scale with the Assistants and Stenographers Grade-C of the Central Secretariat Service on the principle of Equal pay for Equal work and on the basis of other grounds raised by them;
- ii) whether the refusal to grant the applicants pay parity by the respondents is in violation of Articles 14, 16 and 39(d) of the Constitution of India;
- iii) Whether the respondents have acted contrary to the recommendation of the Fourth Pay Commission arbitrarily and illegally?
- iv) Whether any relief can be granted to the applicants and if so, what relief?"

The Tribunal answered the issue Nos.1, 2 and 3 in the affirmative, but as regards issue No.4, the Tribunal directed the respondents to look into the matter and take an appropriate decision afresh without postponing the issue to the report of the Fifth Central Pay Commission.

5. The aforesaid decision of the Tribunal was not assailed at any stage. On the other hand, the respondents submitted various petitions before the Tribunal by way of Misc. Petitions, namely M.P.Nos. 68/95, 105/95, 26/96, 68/96, 69/96, 100/96 and 121/96, wherein the respondents prayed for extension of time for compliance with the decision of the Tribunal. The Tribunal by its order dated 4.7.1996 in M.P. No.100/96 finally closed the petition with the hope that the respondents would sincerely abide by their own promise to take final decision within 31.3.1996 and implement the directions contained in the order dated 2.11.1994 in O.A.No.45/1992. After a long lapse, a Misc. Petition was presented in the aforesaid O.A. which was registered and numbered as M.P.No.121/1996, by the Principal Accountant General (Audit), Assam, Meghalaya etc., Shillong, inter alia mentioning that it had been decided by the Government not to increase the pay scale of the Senior Auditors from Rs.1400-2600 to Rs.1640-2900 on the following considerations:

- "i) That the pay scale of Assistants was increased from Rs.1400-2600 to Rs.1640-2900/- on the specific merit of the case, based on the orders of the CAT, Principal Bench, New Delhi.

ii) That the demand of the employees in the National Council of Joint Consultative Machinery to restore parity with the Assistants of the Central Secretariat had been considered on merits and it was decided to record a disagreement on this issue.

iii) That it is apparent that any isolated decision regarding refixation of the pay scale of Senior Auditors will have repercussions on the pay pattern of the Senior Accountants not only in the Indian Audit and Accounts Department but also in other ornaised Accounts Departments in Government of India, namely Indian Railway Accounts, Indian Civil Accounts, Indian Defence Accounts, P&T Finance and Accounts etc. It is also likely to have chain reaction in respect of other similar categories of posts in the Central Government.

v) That in the light of the interlinked parity issues that necessarily crop up in conceding this demand, the issue of grant of higher pay scale to Senior Auditors necessarily has to be taken in the context of the demand for parity of Senior Accountants with the Assistants of the Central Secretariat Service and other similar categories who are also like to claim parity. It is not possible to take a decision extending the pay scale now enjoyed by Assistants in the Central Secretariat applying the parity principle, to all categories claiming parity. It has also been mentioned that the matter had been specifically referred to the Fifth Pay Commission and could not be taken up for final order of the Government in the light of the report and recommendations of fifth pay Commission."

6. The applicants submitted written objection to the Misc. Petition and referred to the stand taken by the respondents in the various M.P.s consequent to the judgment of the Tribunal and the order passed by the Tribunal on those M.P.s. It was also inter alia pleaded that the grounds for refusal mentioned in this application were already considered by the Tribunal which were rejected by the order of the Tribunal dated 2.11.1994. In course of the aforesaid proceeding, the Tribunal by its order dated 24.9.1996 directed the respondents to submit the copy of the order/decision mentioned in the M.P. refusing to grant pay parity with that of the Assistants in the Central Secretariat to the applicants and in pursuant thereto a copy of the Government decision dated 2.7.1996 was produced, wherein it was stated that in view of the Tribunal's order the previous Government had approved the higher revised pay scale of

Rs.1640-2900 for the senior Auditors of IA and AD, but subsequently the above decision was reversed by the new Government who, in consultation with the JCM had taken a view that any decision to refix the pay scale of senior Auditors would have implications in the pay pattern of senior Accountants in the organised Accounts Department and also would have chain reaction and accordingly the same was rejected. The Tribunal disposed of the M.P.No.121/96 on 11.2.1997 observing, inter alia, that if the applicants were aggrieved by the Government decision they shall approach the Tribunal for redressal.

7. The applicants thereafter filed O.A.No.63 of 1997. The respondents entered appearance and filed their written statement, contending, inter alia that following a request by the representatives of the JCM that a decision similar to the decision in the case of senior Auditors might be taken in the case of senior Accountants also, the demand was considered on merit in the National Council of the JCM and a disagreement was recorded. It was further contended that as refixation of pay scale of senior Auditors would have repercussions on the pay pattern of the senior Accountants in the other department of Government of India, it was not possible to take a decision extending the pay scale enjoyed by the Assistants of the Central Secretariat to the senior Auditors. Virtually, all the pleas that were taken earlier in O.A.No.45/1992 and the pleas that were taken in the M.P.s were again taken in O.A.No.63/97.

8. The Bench after hearing both the parties and considering the rival contentions and also taking note of the earlier judgment passed on 2.11.1994, the Tribunal held that the earlier judgment of the Tribunal attained its finality and therefore, it was binding on the respondents and

also.....

also that the respondents, in the facts of the case, failed to comply with the judgment. The Tribunal in its judgment also observed the nature of work, classifications, responsibilities of senior Auditors were found to be same or similar with the Assistants of the Central Secretariat Service and they had also been given the same scale of pay. It also observed that the Fourth Central Pay Commission also confirmed the said situation. The Tribunal further held that merely because some more employees would claim similar benefits it could not be ground to deny the applicants their right to claim parity of pay scales, more particularly when the respondents did not prefer any appeal against the judgment and order dated 2.11.1994. The Tribunal accordingly directed the respondents to consider the true spirit and direction given in the judgment dated 2.11.1994 in O.A.No.45/92 and to pass necessary and appropriate orders regarding parity of pay within the period specified.

9. The Government thereafter took the decision which is impugned in this proceeding which was communicated vide D.O. letter dated 4.2.2000 expressing its inability to confer parity of pay scale with the Assistants of the Central Secretariat. Hence this application.

10. The respondents submitted their written statement and disputed the claim of the applicants.

11. The key question in this proceeding is the admissibility for pay parity of the applicants with the Assistants in the Central Secretariat Service. The question is no longer Res integra in view of the decisions rendered by the Tribunal in O.A.No.45/92 dated 2.11.1994 as well as as Judgment and Order dated 14.9.1999 passed in O.A.No.63/97. The Bench in clear terms, in O.A.No.45/92 came to a positive conclusion that the applicants were entitled to get parity in

the.....

the revised scale of pay with the Assistants and Stenographers in the Central Secretariat Service and that refusal of the respondents to grant the parity in pay scale to the applicants was in violation of Articles 14, 16 and 39(d) of the Constitution of India. The Tribunal also held that by refusing the parity in pay scale the respondents had acted arbitrarily and illegally.

12. In view of the clear pronouncement made by the Tribunal in its judgment there was/is any room for getting away and to take a decision contrary to the judgments rendered by the Tribunal. The application also involves as to whether the Tribunal in its two judgments left any elbow room to make any manoeuvre by the respondents.

13. In O.A.No.45/92 the Tribunal finally adjudicated the issues raised directly and substantially between the same parties. The issues involved in the aforementioned O.A. were the issues in which the Tribunal has had the exclusive jurisdiction. The decision rendered by the Tribunal has attained its finality and binding on the parties and the decision rendered by it shall operate as Res judicata against subsequent disputes within the same parties before the Court or Tribunal. A decision on merit rendered between the parties cannot be permitted to be reopened on any ground whatsoever. Neither law nor logic, nay any administrative exigency or political compulsion should withstand the implementation of the lawful decision of the competent authority that has attained finality. The Tribunal conclusively decided that the applicants were entitled to get parity in the pay scale with the Assistants and Stenographers of the Central Secretariat on the principle of 'equal pay for equal work'. It was also held that the denial of the same by the respondents amounted to violation of Articles 14, 16 and 39(d) of the Constitution, and therefore, the respondents acted arbitrarily and illegally. The Tribunal found that there was no justifiable, effective and convincing reason to deny the

parity.....

parity in pay scale to the senior Auditors of IA and AD and the applicants were required to be treated as of the same as found by the Fourth Central Pay Commission. The direction was issued by the Tribunal. The issues raised were affirmatively adjudicated upon and the respondents were ordered to look into the matter and take an appropriate decision, naturally, to remove the infirmities and to remove the illegality. The two decisions mentioned above, did not leave any ambiguity and the respondents were left with no choice, but to implement the order. As mentioned earlier, the Tribunal in no uncertain terms held that the applicants were entitled to get parity in their revised pay scale on the principle of 'equal pay for equal work'. The 'equal pay for equal work' for both men and women is a Constitutional objective set out with the Directive Principles of State Policy. The Constitution aims at the fusion of fundamental rights and the directive principles of the State Policy. Together they create the conscience of the Constitution. Article 39 though included in the chapter of Directive Principles of the State Policy, it is fundamental in nature. The principle of 'equal pay for equal work' is not an abstract doctrine. It is indeed open to the State to prescribe different scales of pay for different classes/cadres having regard to the duties and responsibilities. Where two classes of employees perform identical or similar duties and carry out similar functions with some measure of responsibility, having same qualification, it would be entitled to equal pay. Where the State denies them the equality of pay, its actions could be violative of Articles 14 and 16 and the Court would strike down those as discriminatory. In the instant case, the Tribunal analysed the rationale behind the State action in prescribing two scales of pay and found invidious discrimination was practised without there being any rational classification.....

classification. The Tribunal gave a decisive and clearcut finding on the issues and held as such. The respondent authority as elluded earlier had no choice, but to give effect to.


13. Rule of law is the basic feature of the Indian polity. It embraces some internal quality of public law. Rule of law enjoins that there should be certainty and there should be some predictablity. Official action is to congruent with the legislative purpose. In applying the ground of legality Courts and Tribunals are effectively acting as the interpreter of the Parliament's will. Parliamentary sovereignty, executive necessity and rule of law are not anachronistic. The Parliament enacted the Administrative Tribunals Act to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union, etc. The judgment rendered by the Tribunal is final and binding. The judgment in question was not assailed in any higher forum. The respondent authority after the decision rendered, since not assailed in any legal institution, owed the duty to implement the order. The responsibility to maintain law lies on all individuals and institutions. The responsibility is same on the three organs of the State. The Constitution has separated and defined the functions of the respective fields. It has to perform the functions entrusted to it and respect the functions of others. None is free from errors and so also the Tribunal cannot claim infallibility. It is said that a Judge who has not committed a mistake is yet to be born. Indian jurisprudence, in fact, acknowledge the fallibility of the


Courts.....

Courts and Tribunals and provides for both internal and external checks to rectify the errors. The Constitution as well as the Act entrusts the Tribunal of interpreting and administering the law whose view is final and binding on all till it is corrected, modified by a higher forum or by permissible legislative measure. Any attempt designed to question the legality is likely to subvert the law and only invite anarchy. Law is not autonomous, but rests on the support of those it governs. The law is the servant of the sense of rightness in the community.

14. We have given our anxious consideration on the issue and in our considered opinion the reasons cited in the impugned order dated 4.2.2000 only reflect the extraneous considerations, overlooking the relevant considerations. The reasons cited in clause 9 on the purported ground of alleged disagreement in the JCM cannot be upheld on the basis of the earlier finding on the issue by the Tribunal in O.A.No.45 of 1992. The impugned order dated 4.2.2000 is accordingly set aside and the respondents are directed to implement the order of the Tribunal dated 2.11.1994 in O.A.No.45/92 as well as the order dated 14.9.1999 in O.A.No.63/1997 forthwith and to give all consequential benefits to the applicants forthwith.

15. The application is allowed and the respondents are ordered to pay cost of Rs.5000/- (Rupees five thousand only).


(K. K. SHARMA)
ADMINISTRATIVE MEMBER


(D. N. CHOWDHURY)
VICE-CHAIRMAN

25 FEB 2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH.
GUWAHATI.

(An application under Section 19 of the Administrative Tribunal Act. 1985.)

O.A. NO. 85 Of 2000.

Sri Hironmoy Sen and Others. ... Applicants.
— Versus—
Union Of India and Others. ... Respondents.

I N D E X.

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Date of Filing. :

Registration No. :

Filed by - Khizirul Haq
advocate

REGISTRAR.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH.
GUWAHATI.

O.A. NO. OF 2000.

BETWEEN

1. Shri Hiranmoy Sen.
2. " Sisir Ranjan Chaudhury.
3. " Pijush Kanti Dhar.
4. " Mangobinda Chaudhury.
5. " Bhuban Chandra Bania.
6. " Margaret Lyngdoh.
7. " Helen Diengdoh.
8. " Q, Bridge Star Maingiang.
9. " Sandip Kumar Das.
10. " Gopika Ranjan Goswami.
11. " Ranabir Chakravorty.
12. " Kamakhya Kumar Ganguly.
13. " Anil Chandra Das.
14. " Redskilton Nongkynrih.
15. " F Garnet Lyngdoh.
16. " Kalyan Kumar Chakraborty.
17. " Debora Sohkia.
18. " John Wallang.
19. " Alfred Royce Bang.
20. " Venetia Dolly Mawrie.
21. " Pranesh Ranjan Deb.
22. " Shangain Donbor Buhroy.
23. " Nirmelendu Bhattacharjee.
24. " Anupam Biswas.
25. " Glorinda Jyrwa.
26. " Augustine Royce Bang.
27. " Phersto Niangti.
28. " Kroshek D. Khiewtam.
29. " Anup Kumar Gupta Chaudhury.
30. " Debasish Banerjee.

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31. " Nitya Gopal Karmakar.
32. " Persara Mary Nongbri.
33. " Sunirmal Purakayastha.
34. " Jyoti Rajkhowa.
35. " Sanjit Purakayastha.
36. " Nirmal Kumar Das.
37. " Gopal Deb.
38. " Piston Sing Rynjah.
39. " Namar Bahun Syiem.
40. " Ratish Ranjan Dhar.
41. " Ranendra Das.
42. " S. Shallyncy D.Syiem.
43. " Sitendu Bhattacharjee.
44. " Slad Sing Nongkhaw.
45. " L. Lyngkhai.
46. " C.S. Row Riengsete.
47. " Trosline Lyngdoh.
48. " H.Sawian.
49. " Madhusree Dutta.
50. " Kynreit Jyrwa.
51. " Nirendra Narayan Chaudhury.
52. " Bijon Kanti Roy.
53. " Taru Roy.
56. " Yuribell Roy.
57. " Alexender Shabong.
58. " Saradindu Bhattacharjee.
59. " Ricky Mirten.
60. " Phailin Thangkhiew.
61. " Hillol Sekhar Gupta.
62. " Madallin Sohtun.
63. " Alban Roy Lyngdoh.
64. " Elodrick Stone Shullai.
65. " Dalade Rynjah.
66. " Barun Dey.
67. " Pijush Chandra Shome.
68. " Nihar Kanti Bhattacharjee.
69. " M. Bhattacharjee.
70. " Subrata Sen.
71. " Nilakanta Shannyashi.
72. " Liladhar Gautam.
73. " Ardhendu Sekhar Bhattacharjee.
74. " Dilip Kumar Sarma.
75. " Prabin Chakravorty.

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76. Shri Khanindra Chandra Das.
77. " Dhirendra Chandra Hazarika.
78. " Dhirendra Kumar Mazumdar.
79. " Harendra Prasad Kataki.
80. " Haridev Pathak.
81. " Haladhar Das.
82. " Suresh Kumar Das.
83. " Sarbananda Dakua.
84. " Sarat Chandra Chaudhury.
85. " Dadhi Ram Das.
86. " Ratindra Nath Daimari.
87. " Mugilal Dawo.
88. " Jogendra Nath Patowary.
89. " Prafulla Chandra Pathak.
90. " Balendra Basumatary.
91. " Dhirendra Nath Das.
92. " Golakeswar Das.
93. " Dharmeswar Das.
94. " Bidyut Kumar Paul.
95. " Samarendra Kumar Paul.
96. " Ram Krisna Das.
97. " Bhogeswar Panging.
98. " Benoy Kumar Das.
99. " Karuna Kanta Lahkar.
100. " Bipul Lahkar.
101. " Madhab Chandra Kakati.
102. " Prabhas Chandra Nath.
103. " Nagendra Chandra Nath.
104. " Srikanta Kalita.
105. " Jagadish Chandra Talukdar.
106. " Dhirendra Nath Rabha..
107. " Nepal Chandra Sarkar.
108. " Sarat Chandra Das.
109. " Basab Chandra Bharali.
110. " Phanindra Chandra Goswami.
111. " Partaha Sarathi Gupta.
112. " Mitul Chakravorty.
113. " Nanigopal Paul.
114. " Dilip Kumar Dhar.
115. " Binode Chandra Sinha.
116. " Subal Kumar Paul.
117. " Soumitra Das.

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118. Shri Kumar S. Purakayastha.
119. " Salam Kumar Sing.
120. " Swapan Kumar Bose.
121. " Pradip Kumar Dutta.
122. " Nirmal Kumar Malakar.
123. " Nandita Kar.
124. " Anupama Chakravorty.
125. " Raj Kumar Taye.
126. " Kamal Chandra Dutta.
127. " Pratul Baruah.
128. " Chitta Ranjan Dey.
129. " Bidhu Bhusan Das.
130. " Balai Kumar Chnda.
131. " Nihar Kanti Das.
132. " Suchitra Ghose.
133. " Sudipta Dasgupta.
134. " Jatindra Mohan Roy.
135. " Biprajit Purakayastha.
135. " Suranjan Chaudhury.
136. " Subhas Chandra Sarkar.
137. " Parimal Chakravorty.
138. " Ajit Das.
139. " Ratindra Chakravorty.
140. " Prabira Rani Das.
141. " Debabrata Saha.
142. " Anukul Chandra Dhar.
143. " Paran Chandra Sarkar.
144. " Pradip Dasgupta.
145. " Sekhar Das.
146. " Ajay Bahuguna.
147. " Sanchita Mukherjee.
148. " Pratul Khahlari.
149. " Rajnarayan Adhyapak.

All are senior Auditors in
the Office Of the Accountant
General (Audit) Assam, Meghalaya
etc. at Shillong and Guwahati.

..... APPLICANTS.

Contd.....

Haradran Das

- V E R S U S -

1. Union of India,
Represented by the Comptroller
& Auditor General of India,
New Delhi.
2. The Comptroller and Auditor
General of India,
New Delhi- 110 002
3. Secretary to the Government of India,
Ministry of Finance,
Department of Expenditure,
New Delhi.
4. The Principal Accountant General (Audit)
Assam, Meghalaya, Arunachal Pradesh
and Mizoram, Shillong.

... Respondents.

DETAILS OF APPLICATION :

1. Particulars of the Order against which the application is made :

The application is made against the decision of the Government of India communicated vide D.O. No PCC/FT/ 97 dated 4.2.2000 issued by R. Srinivasan, Deputy Director (Legal), Office of the Comptroller and Auditor General of India, New Delhi refusing to grant the pay Scale of Rs. 1,640- 2900/- to the Senior Auditors of the Indian Audit and Accounts Department (The applicants) for the pre-revised pay scale of Rs. 425.00-800.00 at par with the Assistants of the Central Secretariat Service inspite of the direction contained in the Judgement and Order dated 02.11.1994 passed in O.A. No-45 of 1992 and Judgement and Order dated 14.09.1999

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passed in O.A. No-63 of 1997 by the Central Administrative Tribunal, Guwahati Bench, Guwahati.

2. Jurisdiction of the Tribunal:

The applicants declare that the subject matter of the order against which the applicants want redressal within the jurisdiction of the Tribunal.

3. Limitation :

The applicants further declare that the application is within limitation period prescribed in Section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the Case :

4.1). That the applicants are citizens of India and are permanent residents of both in Assam and Meghalaya.

4.2). That the applicants are Senior Auditors working in the office of the Principal Accountant General (Audit), Assam, Meghalaya etc., at Shillong and Guwahati under the Indian Audit and Accounts Department, Government of India (hereinafter referred to as IA & AD).

4.3). That the applicants were initially appointed in the erstwhile composite office of the Accountant General, Assam, Meghalaya etc., Shillong as Auditors (Pay Scale Rs. 330-560) or as Selection Grade Auditors (Pay Scale Rs. 425.00 - 800.00). The applicants states that in the later part of 1983 proposal for restructuring of IA & AD with a view to improve its functional performance was forwarded by the Comptro-

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ller and Auditor General of India, the respondent No-2. The Proposal envisaged a higher level of specialisation and functionalisation in the cadre for audit and also better pay scale for those cadres. The said proposal duly received the concurrence of the Government. In March, 1984 the composite offices of the States Accountant General were bifurcated into two separate offices with two distinct and separate cadres - one for the Audit functions. Under the scheme, 80% of the Auditors in the separated Audit offices who were entrusted with the actual audit work, were sanctioned higher pay scale of Rs. 425.00 - 800.00 at par with the Assistants Grade of Central Secretariat Service. Consequently, the applicants were appointed on permanent transfer to the higher functional grade post of Auditors in the pay scale of Rs. 425.00 - 800.00 in the separated office of the Accountant General (Audit), Assam, Meghalaya etc., Shillong and Guwahati with effect from 1.3.1984.

The applicants state that their duties and responsibilities were in no way less onerous than the Assistants in the Central Secretariat Service. On the other hand their duties and functions and the measures of responsibilities undertaken by them were qualitatively higher than those of the said Assistant and therefore the applicants were rightly granted the higher pay scale of Rs. 425.00 - 800.00.

A copy of the Establishment Order No-18 issued on 1.3.1984 on appointment to officiate as Auditors in the pay scale of Rs. 425.00-800.00 and the copy of circular No NG/47/1984 dated 2.6.1984 reviewing the designation of Auditors in the pay scale of Rs. 425.00-800.00 to the designation of Senior Auditors are annexed hereto as ANNEXURE- I and ANNEXURE-II respec-

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tively.

4.4). That the erstwhile pay scale of Assistants of Central Secretariat Service was also the same i.e., Rs. 425.00 - 800.00 (Pre-revised) and therefore the Senior Auditors of I.A. & A.D. enjoyed parity in their pay scale with the Assistants of Central Secretariat from the date of creation of their cadres i.e., 1.3.1984.

4.5). That the Central Pay Commission had placed the senior Auditors of I.A & A.D. in the same group as the Assistants and Stenographers of Central Secretariat carrying the pay scale of Rs. 425.00 - 800.00 and recommended the same revised scale of Rs. 1400-2600 for both Assistants and Stenographers of Central Secretariat and the Senior Auditors of I.A. & A.D. which was initially accepted and given effect by the Government from 1.1.1986.

A copy of para 8.41 to Para 8.44 of the 4th Central Pay Commission Report is annexed hereto as ANNEXURE-III.

4.6). That in July, 1990, in pursuance of an order dated 23.5.1989 passed by the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi on O.A. No-1538/87 (Direct Recruit Assistants' Association of Central Secretariat Vs. Union of India) arising out of a claim of the Assistants of the Central Secretariat for a higher pay scale, the Government have issued orders vide Ministry of Personnel, Public Grievances and Pensions, Department of

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Personnel and Training O.M. No 2/1/90-C.L.-IV dated 30.7.1990 to revise the pay scale of Rs. 425.00 - 800.00 in respect of Assistants and Stenographers of Central Secretariat to Rs. 1640.00 - 2900.00 with retrospective effect from 1.1.1986. This higher revised scale was allowed for the comparable posts in other departments and organisations also but the applicants Senior Auditors of I.A. & A.D. were not allowed the benefit of higher revised scale although they had earlier parity in their pay scale with the Assistants of Central Secretariat and the 4th Central Pay Commission also considered them as similarly placed as the Assistants of Central Secretariat.

A copy of O.M. No 2/1/90-CS-IV dated 30.7.1990 issued by the Department of Personnel and Training is annexed hereto as ANNEXURE-IV.

- 4.7). That the aforesaid O.M. No 2/1/90-CS-IV dated 30.7.1990 thus introduced a partial revision in the same pre-revision scale whereby the existing parity and internal relativity in the pay scale of senior Auditors of I.A. & A.D. with the Assistants of Central Secretariat was disturbed and an anomaly was introduced in the revised pay scale of Senior Auditors.
- 4.8). That the representations submitted by the applicants claiming the extension of higher revised scale to them evoked no response from the Government. The denial of the pay scale of Rs. 1640.00 - 2900.00 to the applicants was wholly arbitrary and discrimina-

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without any real or facts and thus violative of Article 14 and 16 of the Constitution of India. Ultimately a major section of the present applicants filed O.A. No 45 of 1992 before this Hon'ble Tribunal in February, 1992 with a prayer for relief by way of a direction to the Government to extend the higher revised pay scale of Rs. 1640.00 -2900.00 to the applicants with restrospective effect from 1.1.1986.

The applicants state that in their Written statement the respondent interalia took the stand that the subject matter of the original application was under consideration in the National Council (Joint Consultative Machinery) and therefore it could not be decided by the Government unilaterally and that therefore, the application was prematured. They further contended that the benefits of the higher pay scale has granted by the order dated 30.7.1990 was not extendable to other bodies in the pre-revised scale of Rs. 425.00-800.00 in other Government Department and that the applicants also did not fulfill the requirement of the said office memorandum regarding some classifications and method of recruitment. They also sought to justify the impugned action by contending that the nature of duties and responsibilities of the Assistants in the Central Secretariat were different from the applicants. They however admitted that with a view to develop and organisation patern suited to the altered needs of Audit and improve the maintenance of the accounts of the said Government transaction, the I.A. & A.D. was bifurca-

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ted with effect from 1.3.1984 into two separate streams under Accountant General that cadres of their own with higher pay scale to Audit side against the common category pay scale for Accountant side and higher pay was granted to the Senior Auditors with effect from 1.3.1984 by the Government of India in comparison with their counterparts in Accountants office in view of their arduous nature of job and responsibilities. The respondent contended that the applicants and Assistants and Stenographers of Central Secretariat constitutes two different and distinct classes and therefore it is permissible to prescribe different pay scale for them. It may be relevant to state here that from the pendency of the said original application the respondent informed the Hon'ble Tribunal that the case of the Senior Auditors of I.A. & A.D. was delinked from the general issue in the National Council J.C.M. and thereafter the Government of India after considering the demand of the Senior Auditors rejected the same.

4.9). That O.A. No-45 of 1992 filed by the applicants was disposed of by this Hon'ble Tribunal vide its Judgement and Order dated 2.11.1994. The Hon'ble Tribunal rejected all the contentions of the respondents to deny parity in pay scale to the applicants and was pleased to consider and uphold the merit of the claim of the applicants on the following facts.

- 1) Historically there existed parity in the pay scale of Senior Auditors of I.A. & A.D. with the pay scale of Assistants of Central Secretariat.

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- ii). Educational qualification at the entry level of both the category of posts in the same.
- iii) The duties of Senior Auditors of I.A. & A.D. are no less onerous than those of the Assistants of Central Secretariat Service.
- iv) There exist no rational basic for differentiation in the revised pay scale of the Senior Auditors.
- v) The action of the respondents is arbitrary and discriminatory.

A copy of the Judgement and Order dated 2.11.1994 passed by this Hon'ble Tribunal on O.A. No-45 of 1992 is annexed hereto as ANNEXURE-V.

4.10). That in the aforesaid order dated 2.11.1994 passed in O.A. No-45 of 1992, the Hon'ble Tribunal was pleased to determine the elements of irrationality and injustice caused to the applicants and was also pleased to make the specific observations as follows :-

- i) The applicants are entitled to get parity in their revised pay scale with the Assistants and Stenographers of Central Secretariat Service on the principle of 'Equal pay for Equal work'.
- ii) Refusal by the respondents to grant the parity in pay scale to the applicants is in violation of Articles 14, 16 and 39(d) of the Constitution.

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iii) By refusing the parity in pay scale to the applicants the respondents have acted arbitrarily and illegally.

iv) There is no effective and convincing reason to deny the applicants the same treatment as given to the Secretariat Staff as regards revised pay scale.

v) The Assistants of the Central Secretariat Service and the Senior Auditors of I.A. & A.D. are required to be treated as of the same class as found by the 4th Central Pay Commission.

vi) There did not exist any rational or reasonable criteria to differentiate the two sets of posts.

vii) The differentiation gives rise to disturbance or internal relativity in the pay scales leading to an anomaly which is required to be removed by the respondents.

viii) As the applicants are unequally treated, their grievances of discrimination is fully justified. ✓

4.11) That in O.A. No-45 of 1995 the following 4 issues were formulated for decision viz -

i) Whether the applicants are entitled to get parity of pay scale with the Assistants and Stenographers Grade-C of the Central Secretariat Service on the principle of Equal pay for Equal work and on the basis of other grounds raised by them ;

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ii) whether the refusal to grant the applicants pay parity by the respondents is in violation of Articles 14, 16 and 39(d) of the Constitution of India ;

iii) Whether the respondents have acted contrary to the recommendation of the Fourth Pay Commission arbitrarily and illegally ?

iv) Whether any relief can be granted to the applicants and if so, what relief ?

The Hon'ble Tribunal in passing the Judgement and Order dated 2.11.1994 answered the issue No (i), (ii) and (iii) in affirmative, but so far the issue No (iv) is concerned recommended to the Government to re-examine the question and take a suitable decision afresh without postponing the issue to the report of the 5th Central Pay Commission and expressed hope that the reasons which had persuaded the Hon'ble Tribunal to make the recommendation would receive due and expeditious attention from the respondents. The respondents did not assail the aforesaid judgement and order in any higher Forum and therefore it became final and binding on the parties.

4.12) That the respondents however lingered over the matter for about two years by way of availing extension of time granted by the Hon'ble Tribunal in Misc. Applications viz M.P. 68/95, M.P. 105/95, M.P. 26/96, M.P. 68/96, M.P. 69/96, M.P. 100/96 and M.P. 121/96. The respondents in the various petitions filed for extension of time gave the impression and assurance that the Government was considering the matter in the light of the decisions of the Hon'ble Tribunal; and particularly in their petition dated 25.10.95 filed in M.P. 105/99 it

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was inter alia stated that the matter was then in advance stage of consideration in consultation with the Government by respondent No-2; and further in a communication dated 24.1.96 given to the Tribunal supported by the learned Central Govt. Standing Council appearing for the respondents contended that the question of parity has already been considered by the respondents and further processing of the case is in progress as final approval has to be given., which has been observed by the Hon'ble Tribunal in order dated 22.6.1996 passed in M.P. 26/96.

- 4.13) That the Hon'ble Tribunal lastly by order dated 4.7.96 passed in M.P. 100/96 filed by the Respondents was pleased to observe - "It is hoped that the respondents would sincerely abide by their own promise to take final decision within 31.3.1996 and to implement the directions contained in the order dated 2.11.1994 in O.A. No-45/92."

A copy of the Order dated 4.7.96 passed in M.P. 100/96 is filed hereto and marked as ANNEXURE- VI.

- 4.14) That after protracting the matter over 22 months from the date of the order passed by the Hon'ble Tribunal in O.A. No-45/92 a miscellaneous application being M.P. No-121/96 has been filed in the Hon'ble Tribunal by the Principal Accountants General (Audit), Assam, Meghalaya etc., Shillong, inter alia mentioning that it had been decided by the Government not to increase the pay scale of the Senior Auditor from Rs. 1400-2600/- to Rs.1640/- -2940 on the following considerations :-

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- [1) That the pay scale of Assistants was increased from Rs. 1400 - 2600/- to Rs. 1640 - 2900/- on the specific merit of the case, based on the orders of CAT, Principal Bench, New Delhi.
- ii) That the demand of the employees in the National Council of Joint Consultative Machinery to restore parity with the Assistants of the Central Secretariat had been considered on merits and it was decided to record a disagreement on this issue.
- iii) That it is apparent that any isolated decision regarding refixation of the pay scale of Senior Auditors will have repercussions on the pay pattern of the Senior Accountants not only in the Indian Audit and Accounts Department but also in other organised Accounts Departments in Government of India, namely Indian Railway Accounts, Indian Civil Accounts, Indian Defence Accounts, P & T Finance and Accounts etc. It is also likely to have chain reaction in respect of other similar categories of posts in the Central Government.
- iv) That in the light of the interlinked parity issues that necessarily crop up in conceding this demand, the issue of grant of higher pay scale to Senior Auditors necessarily has to be taken in the context of the demand for parity of Senior Accountants with the Assistants of the Central Secretariat Service and other similar categories who are also likely to claim parity. It is not possible to take a decision extending the pay scale now enjoyed by Assistants in the Central Secretariat applying the parity principle, to all categories claiming parity.

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It has also been mentioned that the matter had been specifically referred to the Fifth Pay Commission and could not be taken up for final order of the Government in the light of the report and recommendations of fifth pay Commission.)

That the applicant submitted a Written Objection to the above Misc. Petition wherein they set out in short the stand taken by the respondents in the various Misc. Petition following the Judgement and Order dated 2.11.94. They categorically stated that the respondent prayed for extension of time representing that the case of the applicants was under active consideration and at an advance stage and that the Government had already taken a decision in principle to grant the higher pay scale to the senior Auditors at par with the Assistants in the Central Secretariate and that the process for final approval of the same had been undertaken. Though the applicant from time to time opposed the prayer for extension, the Hon'ble Tribunal acting on the said representation granted time for implementation of the directions contained in the

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Judgement and order dated 2.11.94. The applicants in their Written Objection and referring to the Judgement and Order dated 2.11.94 pointed out that the issue relating to the parity in pay scale of Senior Auditors in the I.A. & A.D. with the Assistants of the Central Secretariate had been delinked from the Joint Consultative Machinery (J.C.M.) and that the Hon'ble Tribunal in the said Judgement had held that the Senior Auditors were granted higher pay scale w.e.f. 1.3.84 in comparison with their counter part in the Accounts Office in view of their arduous nature of job and responsibilities and in recognition of the special nature of works, skill and aptitude for audit functions. It was further pointed out that the Senior Auditors were already in a higher pay scale than the Senior Accountants prior to the recommendation of the 4th Central pay Commission and that therefore, the issue of parity of the pay scale of the Senior Auditors vis-a-vis the Assistants of Central Secretariat could not be linked with that of the pay scale of Senior Accountants whose claim had been rejected by the Hon'ble Central Administrative Tribunal Ernakulam Bench by its Judgement dated 8.6.94 in O.A. 157 of 1991. The applicants while referring to the observation of the Hon'ble Tribunal has made in its judgement and order dated 2.11.94 upholding their claim for parity in pay scale with the Assistants in the Central Secretariat also pointed out the Hon'ble Tribunal had directed the respondent to re-examine the matter in view of its observation without postponing the issue till the report of the 5th Central Pay Commission and that therefore, the Government decision to refer the matter to the 5th Central pay commission was violative of the Hon'ble Tribunal Judgement and order dated 2.11.94. The applicants stated

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therein that the respondent deliberately delayed the matter to refer it to 5th Pay Commission and that too when the Pay Commission hearing was already over and that its report is due to be submitted. They also stated in their objection that as was cleared from D.O. 12(2)/FC/95 dated 15.1.96 issued by the Joint Secretary, Department of Expenditure and U.O. No 12(3)-IC/95 dated 2.7.96 a decision had been taken by the Government in principle to upgrade the pay scale of the Senior Auditors as per the direction of this Hon'ble Tribunal and that the decision to refer the issue of higher pay scale in respect of Senior Auditors and Senior Accountants to the 5th Central Pay Commission had been opposed by the respondent No-2 in his D.O. No 38-CAG/1996 dated 4.7.96. The applicant contended that the decision of the Government not to increase the pay scale of the Senior Auditors to Rs. 1640-2940/- and to refer the issue to the 5th Central Pay Commission after linking the same with the issue of higher pay scale of Senior Accountants was opposed to the direction of this Hon'ble Tribunal as contained in the Judgement and order dated 2.11.94.

It is pertinent to mention that the grounds for refusal mentioned above had already been considered by the Hon'ble Tribunal and rejected by the Judgement and order dated 2.11.1994 in O.A. 45/92.

A copy of the letter dated 15.1.96 and 4.7.96 have been annexed to this application and marked as ANNEXURE- VII.

- 4.15) That the Hon'ble Tribunal by order dated 24.9.96 directed the learned Central Govt. Standing Counsel, appearing for the respondents to submit a copy of the order/decision as

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mentioned in the M.P. refusing to grant parity of pay scale with that of the Assistants of Central Secretariate to the applicants within 15.10.96 with a copy to the applicants.

- 4.16) That in pursuance to the order dated 24.9.96 in M.P. 121/96 the respondents submitted on 12.12.96 a copy of the Government's decision contained in the Ministry of Finance (Department of Expenditure) U.O. Ref. No 12(3) I.C./95 dated 2.7.96, wherein it has been stated that in view of the Hon'ble Tribunal's order the previous Government had approved the higher revised pay scale of Rs. 1640 - 2900/- for the Senior Auditors of I.A. & A.D. But subsequently the above decision has been reversed by the New Government who, in consultation with the representatives of Joint Consultative Machinery (JCM) have taken a view that any decision to refix the pay scale of Senior Auditors will have implication in the pay pattern of Senior Accountants in the organised Accounts Department and also will have chain reaction. With this view the claim of the applicants has been rejected and the entire issue of higher pay scale to Senior Auditors has been linked with pay scale of Senior Accountants and the issue of parity in their pay scale with the Assistants of Central Secretariat has been referred to the 5th Central Pay Commission.

A copy of the Government's order dated 2.7.96 is filed hereto and marked as ANNEXURE- VIII.

- 4.17) That thereafter, the Hon'ble Tribunal in disposing of the Misc. Petition No-121/96 on 11.2.97 interalia held

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that if the applicants were aggrieved by the Government decision they may file an appropriate application for their redressal.

A copy of the order dated 11.2.1997 passed in M.P. 121/96 is filed hereto and marked as ANNEXURE- IX.

4.18) That the applicants state that as contained in the Notice of restructuring of cadres in I.A & A.D. issued on 31.12.1983, the Senior Auditors in the separated Audit Offices were considered for higher pay scale of Rs. 425.00 - 800/- (Pre-revised) in view of the special nature of work, skills and aptitude required for audit function and with clear stipulation that actual audit work will be done by them. Therefore the position as has been approved in 1983 to meet the departmental recruitment and devolution of higher duties and responsibilities on the applicants cannot now be reversed on the presumption of implication in the pay pattern of Senior Accountants in Organised Accounts Department who were not at par with the Senior Auditors at the time of restructuring of cadres. Moreover, the same view has not been taken while implementing the higher revised pay scale to the Assistants and Stenographers of Central Secretariat Services and also to the other categories of employees who were similarly placed as the Senior Auditors. The Government's decision was therefore discriminatory. In this connection, the applicants beg to invite a reference to para 14(vii) of the order dated 2.11.1994 passed by the Hon'ble Tribunal on O.A.-45 of 1992.

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A copy of the Joint Notice No Estt.I(M)/
5112 dated 31.12.1983 and No Admn.1/3553
dated 31.12.1983 on the restructuring of
cadres is annexed hereto as ANNEXURE-X.

- 4.19) That the applicants beg to state that the issue relating to parity in revised pay scale of Senior Auditors with the Assistants of Central Secretariat had already been delinked from M.C.M. items and it was decided by the Government to reject the demand of the applicants. Therefore taking of the view of the JCM representatives on this issue after an order has been passed by the Hon'ble Tribunal was illegal and lacked bonafide. In this connection, the applicants beg to invite a reference to para-3 and para 10 of the Order dated 2.11.1994 passed by the Hon'ble Tribunal on O.A. No 45 of 1992.
- 4.20) The Hon'ble Central Administrative Tribunal, Ernakulam Bench in its order dated 8.6.1994 has already rejected the claim of the Senior Accountants for parity in their pay scale with the Assistants of Central Secretariat. On the other hand, the claim of the applicants has been upheld by the Hon'ble Tribunal and therefore their issue of parity in the revised pay scale of Senior Auditors could not have been linked with the Senior Accountants. In this Connection, the appellants beg to invite a reference to para 7 (vi) of the order passed by the Hon'ble Tribunal on O.A. No-45 of 1992.
- 4.21) That the 5th Central Pay Commission in their D.C.P. No 50/4/94-PC Co-ord) dated 17.1.1996 had earlier clarified that it will not make any recommendation

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with respect to rectification of past anomalies which are to be settled by the concerned Administrative Ministries at their level. By referring the matter to the 5th Central pay Commission even after the above communication the respondents deliberately made the applicants suffer injustice and prejudice for further period although the anomalies in their pay scale had been determined by this Hon'ble Tribunal in its judgement and order dated 2.11.94.

A copy of the D.O.F. No 30/4/94-PC(Co-ord) dated 17.1.1996 is annexed hereto and marked as ANNEXURE-XI.

- 4.22) That pursuant to the Judgement and Order dated 23.5.1989 of the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi passed on O.A. No 1538/97, and the Government reconsidered the claim of higher pay scale as made by the Assistants of the Central Secretariat and took decision to revise the pay scale of the Assistants to Rs. 1640 - 2900/- .

Similarly, the Assistants and Stenographers in Central Administrative Tribunals have also been allowed the higher revised pay scale of Rs. 1640 -2900/- on the order of the Hon'ble Central Administrative Tribunal, Principal Bench. Similarly the other departments in which the parity in question has been implemented on order of the various benches of the Hon'ble Tribunal are Border Security Force (BSF), Indo-Tibetan Border Police (ITBF), Central Industrial Security Force (CISF), Bureau of Police & Research Development (BPRD), Central Bureau of Investigation (CBI) Income Tax and Directorate of Field Publicity (DFP). Therefore there was no reason to deny the higher revised pay scale of Rs. 1640- 2900/- to the applicants who were similarly placed and more particularly where the Hon'ble

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Hon'ble Tribunal in its judgement and order dated 2.11.94 had duly observed that the applicants were entitled to the parity of pay scale with the Assistants and Stenographers of the Central Secretariat Service on the Principle of "Equal pay for Equal Work".

4.23) That the applicants states that there had been parity in the pay scale of the Senior Auditors of I.A. & A.D. with that of the Assistants of the Central Secretariate from the date of creation of the post with higher classification and pay scale i.e, from 1.3.1984 and that parity was maintained by the 4th Central pay Commission as well as by the Government of India even after revision of pay Scale with effect from 1.1.1986 ; and when the respondents filed various Miscellaneous petition since 2.11.94 after the Judgement and Order passed in O.A. No-45/92 they virtually conceded to implement the parity of pay scale of the applicant with that of the Assistants of Central Secretariate now they are estopped from revising the decision.

4.24) That the applicants state that the action of the respondents was arbitrary and discriminatory on the face of the record. Following the Judgement and Order dated 2.11.94 in O.A. No-45/92 they initially kept on representing before the Hon'ble Tribunal that they were taking steps in order to implement the directions contained in the said Judgement and eventually protest the Government order dated 2.7.1996 rejecting the claim and the application and referring the issue to the 5th Central Pay Commission. The applicants state that in course of the proceeding before the Hon'ble Tribunal arising out of the Misc. Petition filed by the respondent praying for

Atul Dev

extension of time and finding that the respondents were in fact not genuinely interested to implement the Judgement and order of the Hon'ble Tribunal, the applicants had also filed an application under Section 17 of the Administrative Tribunal Act, 1985 (hereinafter referred to as the Act) read with Section-11 and 12 of the Contempt of Court Act, 1971 for drawing appropriate Contempt proceeding against the authority named therein for deliberate violation and disobedience of the Judgement and Order dated 2.11.94. The said application was registered as Contempt Petition 2 of 1996. This Hon'ble Tribunal however, by order dated 22.2.1996 observed that as it had extended the time for implementation of the original direction by 3 months (from 22.2.1996) as ordered in Misc. Petition 26 of 1996 not proceeding for contempt was required to be initiated at that stage. No order was therefore passed in the Contempt Petition initiating such proceeding but the Hon'ble Tribunal observed that it would be without prejudice to the right of the applicants to move the Hon'ble Tribunal for similar action if the time so granted has expired. As it transpires the respondent had other ideas and as is apparent from the order dated 2.7.1996 they rejected the claim of the Senior Auditors for parity of pay wrongly linking the same with the claim of the Senior Accountants and referring the issue to the 5th Central Pay Commission in violation of the directions contained in the Judgement and order dated 2.11.94.

- 4.25) That situated thus, the applicants, in terms of the order dated 11.2.97 filed a fresh application under Section 19 of the Act reiterating in details the above facts with all relevant supporting documents and prayed for a declaration that they were entitled to pay scale Rs. 1640.00 -

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2900.00 and for the directions to the respondents to extend the benefits of the said scale to them with retrospective effect. The applicants state that the said application was registered as O.A.No-63/97. For the sake of brevity, the application do not set out the facts and contention raised therein and crave leave of this Hon'ble Tribunal and refer to the record of O.A. No-63/97 at the time of hearing of this application.

In due course the respondent entered appearance and filed their Written Statement contending inter alia that following a request by the representation of the Joint Consultative Machinery (hereinafter referred to as the JCM) that a decision similar to the decision in case of the Senior Auditors may be taken in the case of Senior Accountants also, the demand was considered on merit in the National Council of the JCM and a disagreement was recorded. It was further contended that as refixation of pay scale of Senior Auditors would have repercussions on the pay pattern of the Senior Accountants in the other department of Government of India. It was not possible to take a decision extending the pay scale enjoyed by the Assistants in the Central Secretariat to the Senior Auditors and therefore the matter had been referred to the 5th Pay Commission and would be taken up for final order in the light of report and recommendation of the 5th pay Commission. The respondent further contended that the Commission did not recommended equality of scale of pay for the Assistants and the Senior Auditors and instead recommended replacement scale corresponding to the scale of pay of Rs. 1600-2600 to the Senior Auditors. The respondent stated that in view of the above, the claim of the Senior Auditors for parity with the Assistants

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of Central Secretariate was rejected by the Government. The respondents however admitted that the Senior Auditors of the I.A. & A.D. were in receipt of pre-revised scale of Rs. 425.00 - 800.00 w.e.f. 1.3.1984 consequent upon the restructuring of I.A. & A.D. but took a stand that though the Government had earlier taken a decision in principle to upgrade the scale of pay of the Senior Auditors in I.A. & A.D. from 1400 - 2600/- to Rs. 1640-2900 from the date of order of this Hon'ble Tribunal i.e, 2.11.94. It by that, did not concede parity with the Assistants of Central Secretariat Service and all such matters were left for the consideration of the 5th Pay Commission.

The applicants state that the contention raised by the respondent in the Written Statement were substantially the same as in the original application of O.A. No-45/92 which were considered by the Hon'ble Tribunal before passing the Judgement and Order dated 2.11.94.

- 4.26) That apart from other contention of the respondents which were wholly untenable the one with regard to consideration of the issue of parity of pay scale of the Senior Auditors in the I.A. & A.D. by the National Counsel of the JCM was not passed on existing facts. As stated earlier from the pendency of O.A. No-45/92, the respondent informed the Hon'ble Tribunal that the issue of parity of pay scale relating to the Senior Auditors in the I.A. & A.D. had been delinked from the National Counsel of the JCM. As a matter of fact the claim of parity of pay scale as made by the Senior Accountants of the other department of the Government of India has no reliefs or nexus that the claim of the Senior Auditors in as much as the Senior Accountants were in the pay scale of 425.00- 700.00 even

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prior to 4th Central Pay Commission recommendation whereas the Senior Auditors of the I.A & A.D. were enjoying the pay scale of 425.00 - 800.00 then. Whereas the 4th Central Pay Commission recommended Rs. 1400.00 - 2600/- as the revised pay scale corresponding to Rs. 425.00 - 800.00 it recommended Rs. 1400-2300/- as the revised pay scale corresponding to Rs. 425.00-700.00. Therefore the Senior Accountants of the other department of the Government of India were not at par with the Senior Auditors of I.A. & A.D. with regard to the pay scale and for that purpose also on the count of duties and responsibilities and therefore, there was no justification to clubbed the Senior Auditors for parity of pay with that of the Senior Accountants. Moreover the claim of parity of pay scale as made by the Senior Accountants had been rejected by the Ernakulam Bench of the Tribunal by the Judgement and Order dated 8.6.94 in O.A. No-157/91 whereas the claim of the Senior Auditors (Applicants) were upheld by this Hon'ble Tribunal in O.A. No-45/92. Therefore, the stand of the respondent that the issue with regard to parity of pay was considered in the National Council (JCM) and that disagreement was recorded and further that the matter was referred to the 5th Central Pay Commission is not only untenable but also betrays bias of the respondent against the applicants as well as attempt to mislead this Hon'ble Tribunal.

- 4.27) That this Hon'ble Tribunal after hearing both the parties and considering their rival contention in details and also taking note of the findings in the Judgement dated 2.11.94 passed in O.A. No-45/92, that the earlier judgement of the Tribunal was final and binding on the respondent and in the facts and circumstances of the case the respondent did not comply with the same. This Hon'ble Tribunal observed that the nature of job, clarifications, responsibilities of the

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Senior Auditors were found to be same or similar with the Assistants in the Central Secretariat Service and they had also been given the same scale of pay. It further observed that the 4th Central Pay Commission also confirmed the said situation. This Hon'ble Tribunal held that merely because some more employees will claim the similar benefits it cannot be a ground to deny the applicants, their right to claim parity of pay scale more particularly when the respondent did not prefer any appeal against the judgement and order dated 2.11.94. This Hon'ble Tribunal therefore held that the departure of the Government from its earlier decision in principle to grant the benefits of higher pay scale to the Senior Auditors at par that the Assistant of the Central Secretariat was unjustified and by the Judgement and order dated 14.9.1999, while disposing of the O.A. No-63/97 directed the respondent to consider the true spirit and direction given in the Judgement dated 2.11.94 passed in O.A. No-45/92 and to pass necessary and appropriate orders regarding parity of pay within a period of 4 months from the date of receipt of the order.

A copy of the Judgement and Order dated 14.9.99 has been annexed to this application and marked as ANNEXURE - XII.

- 4.28) That the aforesaid Judgement and Order was duly communicated to the respondent and the applicants waited in bonafide expectation that the respondent would act in terms of the direction of the Hon'ble Tribunal and therefore grievances with regard to disparity of pay scale as raised in the original application would be redressed.

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4.29) That as the matter rested at that the applicants was shocked and surprised to come to know about the decision of the Government communicated vide D.O. No PCCF/ET/97 dated 4.2.2000 issued by Shri R. Srinivasan, Deputy Director (Legal), Office of the Comptroller and Auditor General of India, New Delhi not to revised the pay scale of Senior Auditors in the I.A. & A.D. As it appears from the record the applicants were informed of the above decision vide Memo No DAG(A)/CON-C/OA-63 of 97/1056 dated 4.2.2000 issued by Senior Deputy Accountant General (ADM), Office of the Accountant General (Audit), Meghalaya etc. Shillong.

A copy each of the Communications dated 4.2.2000 have been annexed to this application marked as ANNEXURE-XIII.

4.30) That on a plain reading of the letter dated 4.2.2000 it appears that the grounds on which the claim of the applicants (Senior Auditors) have been rejected the same as raised in O.A. No-63/97 on behalf of the respondent. In the said letter the respondent were admitting that in December, 1995 the Finance Minister had taken a decision in principle to grant the pay scale Rs. 1640.00 - 2900.00 (Pre-revised) to the Senior Auditors of I.A. & A.D. subject to the Cabinet approval which could not be obtained because of the announcement of General Election of the Lok Sabha and as the Model Code of Conduct was in force. The letter further disclosed that the new Government thereafter remitted the issue to the 5th Central Pay Commission which did not recommended parity in the pay scale of the Senior Auditors and Assistants in the Central Secretariat Service and instead recommended that the matter may

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may be examined by the Anomally Committee. Thereafter the Committee of Secretariat (Fast Track Committee) did not find the demand for parity acceptable and recommended that the Senior Auditors may be granted replacement scale corresponding to the pre-revised scale of Rs. 1600.00 -2660.00 as recommended by the 5th Central Pay Commission. It further transpires from the said letter that the Government approved the said recommendation of the Fast Track Committee and it was because of this that a disagreement was recorded between the Staff and the Official side at the National Counsel JCM and that the disagreement having been approved by the JCM National Counsel in December, 1999, it has become necessary to issue to the Board of Arbitration in terms of the Joint Consultative Machinery scheme. The letter mention that it was in the above circumstances that it was decided not to revised the pay scale of the Senior Auditors in the I.A. & A.D.

- 4.31) That the applicants at the outset make it clear that there was never any question of revision of their pay scale as mentioned in the said impugned order. The decision therefore proceeds on a wrong premises. The issue is with regard to parity of their pay scale with that of Assistants and Stenographers in the Central Secretariat Service. The whole approach of the respondent is therefore wrong with ulterior motive. Besides the various grounds mentioned in the letter dated 4.2.2000 upto the stage of the recommendation of the Fast Track Committee were raised by the respondent in the earlier original application and have been rejected by this Hon'ble Tribunal on merit. The respondent did not filed any appeal against the same and therefore the said judgement have become binding on them. With regard to the disagreement at the National Counsel JCM, the applicants reiterate that

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they are of the Senior Auditors in the I.A. & A.D. are not parties to the same and their issue arising out of their claim for parity of pay scale is not the subject matter of the proceeding before the National Counsel JCM as referred to in the letter 4.2.2000. The necessity of referring the issue to the Board of Arbitration has no connection whatsoever with the claim of the Senior Auditors. As already stated the respondent, during the pendency of O.A. No-45 of 1992 had already informed the Hon'ble Tribunal that the issue of parity of pay scale of the applicants/ Senior Auditors had been delinked from the National Counsel JCM. Therefore this grounds is not only irrelevant and extreneous so far as the Senior Auditors in the I.A. & A.D. are concerned but also is ex-facie not based on existing facts and has been taken only to mislead this Hon'ble Tribunal. The applicants state that the ground mentioned in the letter 4.2.2000 are therefore wholly untenable and have the effect of impeding and obstructing the process of administration of Justice and the impugned decision not only is in contemptuous disregard to this Hon'ble Tribunal, but also amount to abuse of the process of this Hon'ble Tribunal. The impugned decision of the Government of the above fact and circumstances, is not sustainable in law as well as on facts and being violative of Article 14, 16 and 39(d) of the Constitution of India is liable to be set aside and quashed. The impugned decision is on the face of the record arbitrary and without any authority of law as the same amount to sit over the judgement and orders of the Hon'ble Tribunal which have become final and conclusive and is therefore, liable to be declared unconstitutional null and void. In the above premises the applicants are entitled to a appropriate directions to the respondents to

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grant the parity of pay scale with that of the Assistants in Central Secretariat Service with retrospective effects and all consequential benefits.

5. Grounds for reliefs with Legal Provisions:

- i) For that the impugned decision of the Government communicated vide letter dated 4.2.2000 is patently opposed to the directions contained in the Judgement dtd. 2.11.94 and 14.9.99 and thus being grossly illegal, arbitrary and without any authority of law is liable to be set aside and quashed.
- ii) For that the respondent not having assailed the earlier judgement of this Hon'ble Tribunal in any higher Forum, the same have become final and binding on them and therefore, the impugned decision being per se beyond their authority would be destructive of Rule of law if allowed to stand and on that ground alone, the same is liable to set aside and quashed.
- iii) For that this Hon'ble Tribunal having held in O.A. No-45/92 and O.A. No-63/97 that the Senior Auditors (Applicants) were entitled to parity of pay scale with the Assistants in the Central Secretariat Services, the Government acted without jurisdiction and any section of law to refer the same issued to the 5th Central Pay Commission and therefore any decision of the Commission thereafter being wholly irrelevant and nonest, the impugned decision passed thereon is patently illegal and is thus liable to be set aside and quashed.
- iv) For that it being an admitted position that the Government had in December, 1995 taken a decision in Principle to grant parity of pay scale to the Senior Auditors

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with the Assistants of the Central Secretariat Services which was much before the Election were announded and the Model Code of Conduct in connection therewith in place the denial of benefits of such decision on the purported ground of Election and the Code of Conduct is not basis and is wholly arbitrary, whimsical, unfair and unjust vitiating the ultimate decision communicated by the letter dated 4.2.2000.

- v) For that keeping in view the role of a Central Pay Commission and the nature of its functions and the ambit of its powers, it cannot in any way sit over the judgement of this Hon'ble Tribunal having held that the applicants were entitled to parity of pay scale as claimed by them, the decision of the Government to refer the same issue of the 5th Central Pay Commission was wholly arbitrary and malafide with the sole objective of depriving the applicants of the benefits of the judgement of this Hon'ble Tribunal and therefore, the impugned decision is ex-facie illegal, unconstitutional, null and void.
- vi) For that this Hon'ble Tribunal having held in O.A. No-45/92 and O.A. No-63/97 that the applicants were entitled to parity of pay scale as claimed by them, it was beyond the authority of 5th Central Pay Commission to prescribed the pay scale 1600-2660/- for the Senior Auditors to take effect prospectively as well as to recommend to have the matter examined again by the Anomally Committee and in that view of the matter the impugned decision dated 4.2. 2000 is liable to be set aside and quashed.
- vii) For that it having been made categorically cleared by the Hon'ble Tribunal in its judgement dated 2.11.94

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that the respondent should reexamine the issue in the light of the observation made by it without postponing the issue till the 5th Central Pay Commission the action of the Government in referring the issue to the 5th Central Pay Commission without itself taking a decision thereof and thereby allowing the said Commission to exercise a supervisory jurisdiction over this Hon'ble Tribunal which is clearly not permissible in law, is illegal and unconstitutional and as such the impugned decision is liable to be declared null and void.

viii) For that the Hon'ble Tribunal, on a detailed consideration of the rival contention of the parties having held that the applicants were entitled to parity of pay scale as claimed by them the decision of the Fast Track Committee that the applicants demand for parity of pay scale was not acceptable its recommendation for replacement scale corresponding to the pre-revised scale of Rs. 1600.00 - 2660.00 being wholly opposed to the judgement and order of this Hon'ble Tribunal is not sustainable in law and therefore the impugned decision contained in the letter 4.2.2000 is liable to be declared illegal and unconstitutional.

ix) For that the recommendation of the Fast Track Committee being on the face of the record illegal and without any authority of law, the purported approval thereof by the Government only betrays a mechanical biased, discriminatory and malafide attitude of the respondent and the same being an antithesis of the concept of fairplay in said action. It is violative of Article-14, 16 and 39(d) of the Constitution of India and as such the impugned decision dated 4.2.2000 is liable to be set aside and quashed.

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- x) For that it being apparent on the face of the record that the issue relating to parity of pay scale before the National Counsel JCM referred to in the letter dated 4.2.2000 does not involved the Senior Auditors of I.A. & A.D. The recording of disagreement in the said Forum approval thereof by the Government and consequent decision to refer the issue to the Board of Arbitration are wholly irrelevant so far as the Senior Auditors of I.A. & A.D. are concerned and therefore, the attempt made on the part of the respondent to project it as consideration for not granting pay parity to the applicants inspite of judgement of this Hon'ble Tribunal is nothing but a malafide exercise of power amounting to abuse of the process of the Tribunal and therefore, the decision dated 4.2.2000 is liable to be set aside and quashed.
- xi) For that the Government having taking a decision in principle to grant parity of pay scale to the applicants as claimed by them and this Hon'ble Tribunal having upheld the claim of the applicants, the applicants have legitimate expectation of being granted the same benefits and therefore the respondent are estopped in law in denying the said benefits on irrelevant and extreneous consideration and on that count also the impugned decision contained in the letter 4.2.2000 is grossly illegal and arbitrary and is liable to be set aside and quashed.
- xii) For that the claim of Senior Accountants of other department of Government of India besides having no nexus with the claim of parity of pay scale made by the applicants and further as the claim of the Senior Accountants had been rejected by the Central Administrative Tribunal, Ernakulam Bench in O.A.

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No-157 of 1991 the attempt on the part of the respondent to link up the claim of the Senior Auditors and the Senior Accountants is apparently with a malafide intention and therefore the impugned decision being vitiated by fraud on power, it is liable to be set aside and quashed.

- xiii) For that it being apparent from the record that the 5th Central Pay Commission refused to make in recommendation with respect to passed anomalies without categorically rejecting the claim of the Senior Auditors, the impugned decision of the Government not to grant parity of pay scale to the Senior Auditors on the purported ground that the 5th Central Pay Commission rejected their claim is wholly based on existence and fact and is ex-facie malafide and therefore the same is liable to be set aside and quashed.
- xiv) For that it being apparent that the impugned decision of the Government contained in the letter dated 4.2.2000 is with the sole purpose of frustrating the Judgement and Orders of this Hon'ble Tribunal. It amount to abuse of the process of the Tribunal as well as obstructions of the process of Administration of Justice and being grossly contemptuous and destructive of the Rule of law. It calls for immediate intervention of this Hon'ble Tribunal with appropriate directions to grant the parity of pay scale to the applicants as claimed by them with all consequential benefits.
- xv) For that ~~the~~ in terms of Section 27 of the act and Rule-24 of the Central Administrative Tribunal (Procedure) Rules 1987, directions contained in the Judge-

Haldar Rao

ment and orders of this Hon'ble Tribunal which are final and binding on the respondent and are executable under the law in the same manner in which any final order is passed by the Government and therefore, it is a fit case where the Hon'ble Tribunal had issued a appropriate direction to the respondent to implement its earlier judgement and orders and grant the applicants the parity of pay scale with the Assistant in the Central Secretariat Service with retrospective effect together with all consequential benefits.

6. Details of remedies exhausted :

That the applicants state that they have no other alternative and other efficacious remedy than to file this application. Representations through proper channel were submitted by the applicants to the 'C' & AG's of India at first in August, 1990 which was forwarded by the Accountant General (Audit), Assam, Meghalaya etc. Shillong vide Estt-1/Audit/14-38/90-91/3046 dated 7.9.90 and then again in July, 1990 which was forwarded vide Estt-1/Audit/14-38/90-91/2239 dated 24.7.91 urging upon him for restoration of the original parity in pay scale by extending the revised pay scale. But no relief was granted. Even inspite of decision of this Tribunal in O.A. No-45/92 dated 2.11.94 and 15.9.99 in O.A. No-63/97 no relief was given to the applicants.

7. Matters not previously filed or pending with any other Court :

The respondents by their communication dated 1.12.96 with referent to the Government's decision contained in the Ministry of Finance (Department of Expenditure) U.O.

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Reference No 12(3) IC/96 dated 2.7.1996 took a decision contrary to the decision of the Hon'ble Tribunal given in O.A. No-45/92. In this view of the matter the Hon'ble Tribunal by order dated 11.2.94 passed in M.P. 121/96 and in O.A. No-45/92 held that the aggrieved applicant may file an appropriate application for redressal of their grievance. The applicant therefore filed O.A. No 63 of 1997 on the same facts. This Hon'ble Tribunal by Judgement and Order 14.9.99 allowed the claim of the applicants. The respondents however, have rejected the claim of the applicants vide letter being D.O. No PCC/FT/97 dated 4.2.2000. No further matter on the issue is pending before any other Court.

8. Relief Sought :

In view of the facts and circumstances stated in paragraph 4 above, the applicants pray for the following reliefs :-

- a) Declaration that the decision of the Government rejecting the claim of the applicants and conveyed vide letter No DOPCC/FT/97 dated 4.2.2000 is illegal and unconstitutional is in violation of the judgement and order dated 2.11.94 in O.A. No-45 of 1992 and the Judgement and order 14.9.99 in D.A. No-63/97 and is therefore void and inoperative in law.
- b) direction to the respondents to extend the benefit of the scale of pay of Rs. 1640-2900 to the applicants with retrospective effect.
- c) Cost of the application.
- d) Any other relief or reliefs to which the applicants are entitled to as the Hon'ble Tribunal may deem fit and

Halaehar Das

proper.

9. Interim Order prayed :

Pending disposal of this application as observation be made that pendency of this application shall not a bar for the respondents to grant pay scale of Rs. 1640-2900/- in parity with the Assistants of the Central Secretariat. More so, in view of the Section 19(4) of the Administrative Tribunal Act. The applicants also pray that the instant application be disposed of expeditiously.

10.

11. Particulars of the I.P.O. :

i) I.P.O. No	: 06 493377
ii) Date	: 25/2/2000
iii) Payable at	: Guwahati.

12. List of enclosures :

As stated in the Index.

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VERIFICATION

I, Shri Haladhar Das, Son of Late Hara Prasad Das, aged about 46 years, Senior Auditor, Working in the Office of the Principal Accountant General (Audit), Assam, Meghalaya etc., Shillong do hereby verify that the statements made in paragraphs 1, 2, 3, 4(Pt), 5, 6, 7 are true to my knowledge and those made in paragraphs 4(Pt) are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 25th day of February, 2000.


SIGNATURE

OFFICE OF THE ACCOUNTANT GENERAL (AUDIT): ASSAM, MIZORAM,
ARUNACHAL PRADESH AND MIZORAM, SHILLONG-1.

No. Estt. Order No. 18 Dated Shillong the 1st March 1994.

On permanent transfer from the Offices of Accountant General(A), Assam, Meghalaya, Arunachal Pradesh and Mizoram the following persons are appointed to officiate until further orders as Auditor in the pay scale of Rs. 425-800/-p.m. in the Office of the Accountant General (Audit), Assam, Meghalaya, Mizoram and Arunachal Pradesh, Shillong as Auditor in the Office of the Accountant General (Audit), Shillong. The appointment will take effect from the date on which they join their new posts:

1. Shri K.K. Man.
2. " N. Dey
3. " Amit kanti Ghosh.
4. " S.C. Sen.
5. " Mahendra Prasad
6. " Joy Gopal Sen.
7. " S.K. Sen
8. " S.k. Ghatak.
9. " P.C. Bhattacharjee
10. " K.K. Bhattacharjee.
11. " B...Tham
12. " D. Mitra
13. " Jayanta Kumar Choudhury
14. " S. Chakraborty (II)
15. " F.K. Pyrbat
16. " S...Dutta
17. " S.C. Chakraborty
18. " U.K. Purkayastha
19. " Nripesh Ch. Deb
20. " Anil Kr. Bhattacharjee (I)
21. " Pramod Ch. Das
22. " Jogendra Ch. Das. Padma Dhar Das.
23. " Ranjit Choudhury
24. " Geeta Chakraborty
25. " Radhika Mohan Suklabaidya
26. " Rama Kanta Laskar
27. " Apdtsnamoy Bhattacharjee
28. " Sanat Kr. Das
29. " B.N. Biswas
30. " Jitendra Ch. Guha
31. " P.R. Dasu
32. " Nirmal Kr. Das (I)
33. " S. Bhattacharjee
34. " J.S. Chon
35. " J.M. De
36. " S.C. De
37. " Pradhan
38. " B.B. Choudhury
39. " S.R. Chakraborty
40. " R. Khoy
41. " A.A. Bhattacharjee
42. " J.M. Nath
43. " H.B. Chakraborty.
44. " H.B. Chakraborty.

Certified to be true copy
Shigun
 ADVOCATE

CIRCULAR NO. HOE/47/1984

No. 576-N.4/51-84

OFFICE OF THE COMPTROLLER &
AUDITOR GENERAL OF INDIA,
NEW DELHI - 110002.

Dated the 2nd June, 1984

To

All Heads of Department in I.A. & A.D.

Sub:- Change of designation.

Sir,

I am directed to state that the question of revising the designations of certain posts in reorganised offices has been under consideration for sometime past and it has now been decided to revise the designations as shown below with immediate effect:

<u>Scale of Pay</u>	<u>Existing Designation</u>	<u>Revised Designation</u>
Rs. 330-560	Junior Auditor	Auditor
Rs. 425-800	Auditor	Senior Auditor ✓
Rs. 425-700	SG Accountant	Senior Accountant ✓

The post of Senior Accountant will continue to be non-functional Selection Grade post.

Hindi version will issue separately.

Yours faithfully,

(H. VISWANATHAN)
ADMINISTRATIVE OFFICER (H)

No. 577-N.4/51-84

Dated: 2.6.84

Copy to:

- (i) All Officers and Sections in Headquarters.
- (ii) Complaints (two copies) and O&M Division (Manual revision unit- two copies).
- (iii) The Secretary General, All India H.C. Audit and Accounts Association, 4-B/6, Ganga Ram Hospital Marg, New-Delhi-110060.

(H. VISWANATHAN)
ADMINISTRATIVE OFFICER (H)

Certified to be true copy
Shri Ram Kumar
ADVOCATE

Rs.425-700 covers categories like junior engineer in telecommunication, CPWD, etc., head clerk, train examiner and chargemen grade D in the railways and chargemen (Engg.) grade II. Appointment to these categories of posts is by and large on promotion from the scales of Rs.260-480 and Rs.330-560. In some of the categories, however, like junior engineer in telecommunications and CPWD and superintendent in directorate general border roads (DGBR), appointment is also made by direct recruitment. Categories like tradesman grade 'E' and scientific assistant grade 'A' in atomic energy department, senior chargemen in Ministry of Defence are also covered by this scale. The duties of these posts are also supervisory in nature.

8.39. The scale of Rs.455-700 is predominantly for posts of station master, chief booking clerk, assistant yard master, assistant station master in the railways and appointment to these categories is made by promotion from the scale of Rs.425-640 and in some cases from the scale of Rs.330-560. Their duties include inspection and maintenance of service within the assigned working unit and are generally supervisory in nature. Keeping in view the levels from which promotions are made to these posts as also the broadly comparable supervisory duties, we recommend that posts in the scales of Rs.425-640, Rs.425-700 and Rs.455-700 may be given the scale of Rs.1400-40-1800-EB-50-2300. The scale of Rs.530-610 applicable to some posts of laboratory assistant in the railways and union territories has been dealt with elsewhere.

(a) Rs.530-20-630

8.40. The scale of Rs.530-630 which was introduced as a selection grade for primary school teachers subsequent to the Third Pay Commission report has been separately discussed in chapter 11.

(a) Rs.425-15-560-20-700-25-800; (b) Rs.425-15-560-20-700-25-750; (c) Rs.440-15-560-20-700-25-750; (d) Rs.470-15-530-20-650-25-750; (e) Rs.440-20-500-25-750

8.41. The scale of Rs.425-800 covers posts of assistant and stenographer in different ministries/departments, auditor under C&AG, etc. The recruitment is either through competitive examination or by promotion from the scale of Rs.330-560.

8.42. There are three other scales which are segments of the scale of Rs.425-800 and these are Rs.425-750, Rs.440-750 at (c) and Rs.440-750 at (e). The categories of posts covered by the scale of Rs.425-750 are engineering assistant in doordarshan and all India radio, selection grade inspector of telegraph and assistant superintendent (telegraph and telephone) in P&T and stock verifier in railways. The scale of Rs.440-750 at (c) and the scale of Rs.440-750 at (e) are for trained graduate teachers, the scale of Rs.440-750 at (e) having been introduced subsequent to the report of the Third Pay Commission, appointment to all these posts is partly by promotion from the scales of Rs.330-560 and Rs.425-640 and partly by direct recruitment.

8.43. The scale of Rs.470-750 covers categories of posts like scientific assistant in departments of atomic energy and space, tradesman in the department of space, section controller in the railways, assistant foreman in the department of energy and grade IV officers of the central information service (CIS). Appointment to these categories of posts is mostly by promotion from the level of Rs.330-560 and Rs.425-700. There is also direct recruitment for certain categories of posts like reporter in all India radio, scientific assistant in department of space and for grade IV of CIS.

8.44. Considering the duties and responsibilities of these posts and the fact that promotions to these are made from more or less similar levels, we recommend that all categories of posts presently covered by the scales of (a) Rs.425-800; (b) Rs.425-750; (c) Rs.440-750; (d) Rs.470-750 and (e) Rs.440-750 may be grouped together and given the scale of Rs.1400-40-1600-50-2300-EB-60-2600. In respect of the categories of posts in the scale of Rs.470-750 where graduates in science are directly recruited, we recommend that a suitable higher start may be given in the scale of Rs.1400-40-1600-50-2300-EB-60-2600.

(a) Rs.550-20-650-25-800; (b) Rs.550-20-650-25-750; (c) Rs.550-20-650-25-700; (d) Rs.550-25-750

8.45. There are four scales of pay which start at Rs.550 viz. Rs.550-800; Rs.550-750 at (b); Rs.550-700 and Rs.550-750 at (d). The scale of Rs.550-800 covers posts of control inspector in security press and junior printing supervisor under the department of economic affairs and pattern maker-cum-designer in the handloom directorate, etc. Appointment to these posts is mostly by promotion from the scales of Rs.425-640 or Rs.425-700. The other two scales starting at Rs.550 are

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U.O. 12/50-45.1V
 Government of India
 Ministry of Personnel, Public Grievances and Pensions
 Department of Personnel & Training

How dated, dated 31st July, 1980

OFFICE MEMORANDUM

Subject: Revision of Scale of Pay of Assistant Grade of Central Secretariat Service and Grade 'C' Stenographers of Central Secretariat Stenographers Service.

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The undersigned is directed to say that the question regarding revision of scale of pay for the post of Assistant in the Central Secretariat etc., has been under consideration of the Government in terms of order dated 23rd May, 1980 in OA No. 1538/87 by the Central Administrative Tribunal, Principal Bench, New Delhi for some time past. The President is now pleased to prescribe the revised scale of Rs. 1640-60-2600-EB-75-2900 for the pre-revised scale of Rs. 425-15-500-EB-15-560-20-700-EB-25-800 for duly posts included in the Assistant Grade of Central Secretariat Service and Grade 'C' Stenographers of Central Secretariat Stenographers Service with effect from 1.1.1986. The same revised pay scale will also be applicable to Assistants and Stenographers in other Organizations like Ministry of External Affairs which are not participating in the Central Secretariat Service and Central Secretariat Stenographers Service but where the posts are in comparable grades with same classification and pay scales and the method of recruitment through Open Competitive Examination is also the same.

2. Pay of the Assistants and Grade 'C' Stenographers in position as on 1.1.1986, shall be fixed in terms of Central Civil Service (Revised Pay) Rules 1986. The employees concerned shall be given option to opt for the revised scale of pay from 1.1.1986 or subsequent date in terms of Rule 5 ibid, read with Ministry of Finance O.M. No. 7(52)-E.II/86 dated 22.12.1986 & 27.5.1988 in the form appended to Second Schedule of the rule ibid. This option should be exercised within three months of the date of issue of this O.M. The option once exercised shall be final.

3. Formal amendment to CSS(RP) Rules, 1986 will be issued in due course.

4. This issues with the concurrence of Ministry of Finance, (Department of Expenditure) vide their U.O. No. 7(43)/IC/89 dt. 30.7.90.

(Gurukul Singh Mehta)
 Under Secretary to the Govt. of India

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 20/08/80

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(Shillong Circuit)

Original Application No. 45 of 1992

Date of decision : 2 Nov-1994

The Hon'ble Justice Shri M.G. Chaudhari, Vice Chairman.

The Hon'ble Shri G.L. Sanglyine, Member (Administrative).

Shri Ranjit Choudhury & Others
Senior Auditors
Office of the Accountant General (Audit)
Assam-Meghalaya etc. at Shillong and Guwahati

..... Applicants

By Advocates Shri B K Sharma, Shri M K Chaudhuri and
Shri A K Roy.

—versus—

1. Union of India
represented by the Comptroller &
Auditor General of India, New Delhi
2. Comptroller & Auditor General of India
New Delhi-110 002
3. The Accountant General (Audit)
Assam, Meghalaya, Arunachal Pradesh
and Mizoram and Shillong.

..... Respondents

By Advocate Shri A K Choudhury, Addl. C.G.S.C.

ORDER

CHAUDHARI. J. V.C.

The applicants are Senior Auditors working in the office of the Accountant General (Audit), Assam-Meghalaya etc. at Guwahati and Shillong. Their claim for upward revision of their pay scale to Rs. 1640-2900 with retrospective effect in parity with the staff of Central Secretariat, Government

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Shri A K Choudhury
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of India has been denied by the respondents. Hence they have approached the Tribunal seeking that relief. The application was filed on 28.2.1992. It was heard by us during our sitting at Shillong.

2. The applicants were initially appointed in the erstwhile composite office of the Accountant General, Assam and Meghalaya etc. at Shillong as Auditors. In the year 1984 a separate cadre was created for audit in the field offices of the Indian Audit and Accounts Department (IA & AD). Consequently, with effect from 1st March 1984 the applicants were permanently transferred to the posts of Auditors in the separated Audit office of the Assam-Meghalaya etc. at Guwahati and Shillong. The posts were redesignated as Senior Auditors vide Circular issued by the Comptroller and Auditor General dated 2.6.1984.

3. The applicants were initially appointed in the erstwhile composite office as Auditors in the pay scale of Rs. 425-700. They were transferred after separation of the cadres to the posts of auditors carrying scale of Rs. 425-800. The applicants describe these posts as higher functional grade posts.

4. The case of the applicants in short is that the erstwhile pay scale of the Assistants of the Central Secretariat was also the same, namely, Rs. 425-800 and therefore the Senior Auditors of IA & AD enjoyed parity in their pay scales with Assistants of Central Secretariat from the date of creation of their posts on 1.3.1984. The Fourth Central Pay Commission in its report prescribed the same revised pay scale for pre existing scale of Rs. 425-800 for both, Assistants of Central Secretariat and Senior Auditors of IA & AD. The recommendation was accepted by the Government of India. However, they have issued orders on 31.7.1990 only in

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respect of Assistants of Central Secretariat with effect from 1.1.1986 thereby revising their pay scale to Rs. 1640-2900. The applicants Senior Auditors of IA & AD are however not given that benefit. They have therefore to continue in the lower pay scale of Rs. 1400-2600. They filed representations claiming the extension of the benefit of revised pay scale of Rs. 1640-2900, to the Government of India through the Accountant General (Audit). However they did not receive any reply nor their demand was acceded to although benefit of revision was extended to the employees of some other departments under the administrative control of different Ministries of the Government of India. In the premises the applicants allege that the refusal of the Government of India to give them the benefit of revised pay scale on parity with the staff of the Central Secretariat Service is discriminatory, capricious and in violation of the constitutional provisions. They complain that thereby they are given a differential treatment and by introducing a partial revision in the same pre-revised pay scale disturbance in parity and internal relativity in the pay scales has occurred. They contend that they stand on par with the staff of Central Secretariat Service which has been given the benefit of revised pay scale, for the following reasons :

- i. Historically the posts of the applicants and the Assistants of the Central Secretariat Service were on par. ✓
- ii. The minimum educational qualification in the entry level for the direct recruit Assistants of Central Secretariat Service and the Auditors of IA & AD is the same namely graduation. ✓
- iii. The Senior Auditors are drawn from the posts of Auditors after qualifying at the departmental examination with limited number of chances and after acquiring functional knowledge for at least three years as Auditors. ✓

They seek to point out that the Senior Auditors are expected to acquire professional experience required for audit functioning. On the

other hand, the Assistants of Central Secretariat Service are not required to meet any such condition. In fact 50% of the Assistants in the Central Secretariat Service are filled by promotion from eligible UDC with five years of approved service who are none other than the promotees from Clerks Grade for which the required minimum qualification is matriculate/undergraduate as against the requirement of qualification of graduation for Senior Auditors. However, even so for the purpose of revision of pay scales the staff of the Central Secretariat Service is preferred to the Senior Auditors. The differentiation thus introduced in respect of the two sets of posts as regards pay scale is irrational and unreasonable. It violates the principle of equal pay for equal work. It also disregards the recommendation of the Fourth Pay Commission. The principle of fair comparison and internal relativity has been ignored.

5. Initially the respondents filed a short reply and raised preliminary objection to the maintainability of the application contending that the subject matter of the application is under consideration in the National Council (JCM) and therefore it cannot be decided by the Government unilaterally and since under the JCM scheme pay and allowances is an item for which compulsory arbitration is provided the application was premature and deserved to be dismissed. That was controverted by the applicants by filing a rejoinder contending therein that the JCM is not departmental remedy and it cannot override the jurisdiction of the Tribunal. At one stage the Tribunal was informed that the respondents were contemplating to apply to the Chairman of the Central Administrative Tribunal for transferring all the cases pending before different benches involving the same issue to one bench. In view of the above, we called for clarification vide minutes dated 21.9.1994 as to whether any decision has been taken by the JCM which will govern all the Senior Auditors of the Audit Branch generally, whether the JCM will be in a position to consider



the case of the applicants if this Tribunal is inclined to direct^{iv} it to do so and whether the respondents have decided or not to approach the Principal Bench ^{for} of transfer of all similar cases before one bench. We were informed by the learned counsel for the respondents in writing that there was no proposal to approach Principal Bench for transfer of the cases, that the case of Senior Auditors of IA & AD was delinked from the general issue in the National Council as the committee of National Council (JCM) which was constituted have decided in its meeting to recommended to the National Council (JCM) that a disagreement may be recorded and that after delinking of the case, the Govt. of India considered the demand of the Senior Auditors and it has been rejected by the Government. The communication from the office of the Comptroller and Auditor General of India dated 5.10.1992 containing the above information has been placed on record. In view of the same the counsel for both sides have been heard at length.

6. In the written statement the respondents have inter-alia contended as follows :

The Tribunal has no jurisdiction to determine the pay scale to which the applicants are entitled as that is the executive function of the administration and courts ought not normally to interfere in such matters. The revised pay scale was prescribed under the Government of India, Ministry of Personnel Grievances and Pension O.M. No. 2/90-CS-IV dated 31.7.1990 for the duty posts included in the Assistant Grade of Central Secretariat Service, Grade 'C' stenographer's of Central Secretariat Service and for Assistants and Stenographers in other organisations where the posts are in comparable grades with same classification and pay scales and the method of recruitment through open competitive examination is also the same. That was done in compliance with the order of the Central Administrative Tribunal, Principal Bench. The post of Senior Auditor is filled by promotion



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from the cadre of Auditor leaving three years of regular service in the cadre and not by recruitment through open competitive examination and as such the condition regarding method of recruitment as envisaged by G.I. O.M. dated 31.7.1990 (Supra) is not fulfilled in the case of the applicants. The Government of India have also clarified ^{that} ~~in that~~ the above stated order dated 31.7.1990 is not applicable to other bodies in the pre-revised scale of Rs. 425-800 in other Government departments etc. where the method of recruitment is not through open competitive examination as in the case of Assistants (Stenographers of the Central Secretariat Service conducted by the UPSC). Thus according to the respondents the applicants do not fulfil the requirements of the O.M. regarding the same classification and method of recruitment. They reiterate that the method of recruitment to the post is not through the same open competitive examination conducted by the Staff Selection Commission for Assistants of the Central Secretariat Service etc. and since the recruitment to the post of Senior Auditor is not made through the same examination the demand for extension of the benefit of the O.M. 31.7.1990 made by the applicants is not tenable. The respondents further state that the recommendation of the Fourth Central Pay Commission was considered by the Government. They seek to point out that Assistants who are members of Central Secretariat assist the Ministries in formulation and implementation of policies of the Central Government so also the stenographers Grade 'C' of Central Secretariat Service and Assistants of Central Secretariat Service are historically being treated on par in terms of pay scale. This parity was maintained by the Fourth Pay Commission also. Consequent to the revision of the pay scales of Assistants, in order to set right the anomaly pointed out by the Principal Bench of the Central Administrative Tribunal, as a logical corollary, the scale of pay of Grade 'C' Stenographers was also revised to Rs. 1640-2900. Thus according to the respondents the order



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(i.e. dated 31.7.1990) is neither discriminatory nor violative of the principle of 'Equal Pay for Equal Work'. The respondents point out that with a view to develop an organisational pattern suited to the altered needs of audit and to improve the maintenance of the accounts of the State Govt. transactions the IA & AD was bifurcated with effect from 1.3.1984 into two separate streams under Accountants General with cadres of their own with higher pay scale to audit side against the common category pay scale for Account side and higher pay was granted to the senior auditors with effect from 1.3.1984 by the Govt. of India in comparison with their counter parts in Accounts office in view of their arduous nature of job and responsibilities. It is contended that the nature of job and conditions of service of Assistants in the Central Secretariat and Senior Auditor in the IA & AD are different in the matter of recruitment, promotion, duties and responsibilities and they are not comparable and that mere pay parity in the pre-revised scale of Assistant and Senior Auditor is not the only criterion for treating the two posts as same so far as service condition is concerned. The respondents also contend that as Senior Auditors is a feeder cadre for the grade of Section Officer of the IA & AD the applicants cannot claim the pay scale of Rs. 1640-2900 granted to the Section Officers. The respondents contend that the Senior Auditor in IA & AD and the Assistants of the Central Secretariat Service constitute two distinct classes as the nature of duties and responsibilities of the two categories is not identical, the method of their recruitment and future promotional prospect of the two categories is also different and as the Assistants of Central Secretariat are important functionaries in the Secretariat. It is stated that the note they record in the files is an important aid to taking policy decision. On the other hand the Senior Auditors perform functions, which cannot be termed as an aid in formulation of policy

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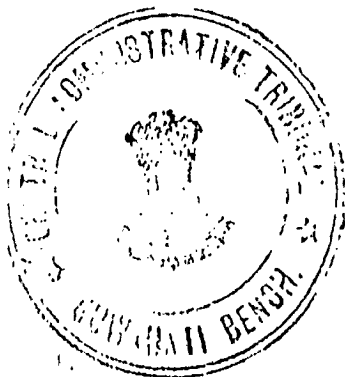
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decision. The respondents further state that since the applicants and the Assistants and Stenographers of Central Secretariat constitute two different and distinct classes, the Govt. can prescribe different pay scales and there is no violation of any Constitutional Provision in doing so. Thus the respondents submit that the applicants are not entitled to any relief and the application is liable to be dismissed. It is not necessary to set out the rejoinder of the applicants.

7. Before proceeding to deal with the merits of the contentions raised by the parties which are reiterated by their respective counsel, it will be convenient to take a note of the decisions to which the learned counsel have made reference during the course of their submissions.

1. In the case of Central Secretariat Direct Recruit Assistants Association vs. Union of India and Others O.A. No. 1538/87 wherein the pay scale of Rs. 1400-2600 for the post of Assistant in the Central Secretariat Service notified by the Govt. on the basis of the recommendations of the Fourth Central Pay Commission was challenged, it was held by the Principal Bench of Central Administrative Tribunal by order dated 23.5.1989 that as the respondents have only accepted the recommendations of the Pay Commission the action of the respondents cannot be assailed as being arbitrary or violative of Articles 14, 16 and 39(d) of the Constitution, nor any discrimination has been made by the Commission when it enhances the pay scales of certain officials nor discrimination can be attributed to the respondents when they accepted and implemented the recommendations of the Commission and though the pay scales are not determined by the classification in CCA Rules but vice versa, nevertheless the disturbance of the internal relativities was a legitimate grievance of the applicants (in that case) which had to be considered. The learned Members of the Bench came to the conclusion prima facie that there was an anomaly which could be properly considered by the respondents as it required detailed consideration. The anomaly was directed to be referred to the "Anomaly Committee" for disposal in accordance with the procedure laid down in the O.M. dated 25.1.88.



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The disturbance of internal relativities was held to occur for three reasons :

Firstly, the Direct Recruit Assistants were in the highest pre-revised pay scale of Rs. 425-800. Secondly, they were the first rung of important functionaries in the Central Secretariat and thirdly, they stood out separately as a group among the officials covered by the (Central Fourth Pay) Commission's recommendations paras 8.41 to 8.44 of its report.

The applicants seek to derive advantage from this decision. It is ^{their} the case that their position is similar in as much as they were in the pre-revised pay scale of Rs. 425-800. Their duties as Senior Auditors involve special nature of work, skills and aptitude for effective audit functioning and that the Commission has also placed them on par with other categories carrying the pay scale of Rs. 425-800 and therefore they are similarly situated as the Direct Recruit Assistants and that in their case also anomaly arises and since the respondents have removed anomaly in the case of the Central Secretariat Assistants following this decision, they should be directed to remove the same in respect of the present applicants also. The respondents also rely on this decision in support of their contentions to a large extent.

- ii. In the case of B. Bhaskar and Others vs. Union of India and Others in O.A. No. 427/HP/91 decided on 8.10.91 the Chandigarh Bench of the Tribunal was dealing with the application filed by Himachal Pradesh Civil Audit and Accounts Association and Others praying for parity of pay with the Assistants of the Central Secretariat in the scale of Rs. 1640-2900. It appears that as at that stage the respondents had not taken any final decision no order was passed on the application while directing the respondents to take a final decision.



iii. In the case of T.R. Vijoy Kumaran and Others vs. Union of India and Others in O.A. No. 634/92 similar question fell for consideration before the Ernakulam Bench of the Tribunal. Similar Grounds as are raised by the present applicants were urged by the Senior Accountants working in the Accountant General's Office at Trivandrum. They claim parity of pay scale with the Assistants of the Central Secretariat Service. It appears that the representation of the applicants in the case was pending with the respondents. The Tribunal vide decision dated 28.4.1993 directed the respondents to consider the representation and take a decision in accordance with the law in the light of the Report of Fourth Pay Commission and bearing in mind the principles laid down by the Supreme Court on the question of Equal Pay for Equal Work.

iv. Again in the case of P. John and Others vs. Union of India and Others in O.A. No. 1022/91 decided on 28.5.1992 the Ernakulam Bench of the Tribunal made a direction to the respondents to ensure that the question regarding grant of pay scale of Rs. 1640-2900 to the Senior Auditors of the Indian Audit and Accounts Department is taken up for consideration and finalising by the JCM. That was a case filed by Senior Auditors in the office of the Accountant General(Kerala) for parity with Assistants of Central Secretariat Service and other Ministries of Government of India.

The respondents rely on these decisions.

v. In the case of S.R.Dheer and Others vs. Union of India and another(ATR 1993 (1) CAT 480) the question related to the claim of Assistants and Stanographers Grade 'C' working in the Central Administrative Tribunal for parity of pay scale with their counter parts in the Central Secretariat Service and Central Secretariat Stanographers Service namely scale of Rs. 1640-2900. The Principal Bench in its decision dated 4.2.1993 observed that the law is well settled on the point that Equal Pay cannot be denied on the ground that mode of recruitment was different. The argument of the respondents that there was rational basis for discrimination in the pay scales because the Assistants/Stanographers



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Grade 'C' stand as a class apart because of element of direct recruitment through Staff Selection Commission was rejected. It was found in that connection that the differentiation in the scale was not made on the basis of value judgement by those who were charged with administration in fixing the scales of pay and other conditions of service. It was held that the order dated 31.7.1990 enables the extension of the revised pay scale to other organisations where the posts were in comparable grades with same classification and pay scales. Whether the recruitment was made in one way or the other would hardly be relevant from the point of view of Equal Pay for Equal Work.

It was also held that the foundation for establishing the parity would lie in the nature and functions and the work of the two groups of persons, one in the Secretariat and the other in the Tribunal and that there was no disparity in pay scales in the said group prior to Fourth Pay Commission, which recommended the same scale for the said groups in recognition of similarity in nature of functions. It was noted that no additional duties and responsibilities were found to be entrusted to the Assistants/Stenographers Grade 'C' thereafter in the Secretariat so as to make a distinction.

Reference was made to the decision of the Supreme Court in the case of Bhagwan Dass & Others AIR 1987 SC page 2049. The respondents were therefore directed to consider the revision of pay scale of Assistants/Stenographers Grade 'C' in the Tribunal to Rs. 1640-2900 with effect from 1.1.1986, at least notionally from 1.1.1986 and effectively from a date not later than 1st January, 1992 (one year prior to the date of filing of the amended application). (We are informed that the pay has been accordingly revised).

A very strong reliance is placed by the applicants on this decision.

- vi. In the case of George Thomas and Others vs. Union of India and Others, O.A. No. 157/91 decided on 8.6.1994, The Ernakulam Bench of the Central Administrative Tribunal



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however negatived the claim of Senior Accountants in the Accountant General's office for parity in the scale of pay with the pay scale of Central Secretariat Assistants etc. After referring to the decisions of the Supreme Court in State of Uttar Pradesh and Others vs. J.P. Chaurasia (AIR 1989 SC page 19), the observations of the Supreme Court in the decision in Union of India and others vs. Shri Tapan Tapan Patashremji and Others C.A. 233/91, the decision in Federation of All India Customs and Central Excise Stenographers and Others vs. Union of India and Others AIR 1988 SC page 1291 and in Union of India vs. Secretary, Civil Audit and Accounts Association (1992 SCL page 530), it was held that having regard to the note of caution struck by the Supreme Court and having regard to the state of law, it was not within the province of the Tribunal to prescribe the scale of pay as prayed for. It was observed that it is not the function of the court to pronounce on such matters namely whether work is equal and whether the employees in question are similar and those are the matters for administrative Government and policy makers to decide. It was however left open to the applicants to raise their grievances before the Fifth Pay Commission. Eventually the application was dismissed.

The respondents rely on this decision:

- vii. The applicants further rely upon the observations of the Ernakulam Bench in the case of T.R. Vijaykumaran and others vs. Union of India, O.A. No. 634/92 decided on 28.4.93, wherein the Senior Accountants in the A.G.'s office, Trivandrum were aggrieved by the denial of parity of pay and grant of higher scale which has been given to Assistants of Central Secretariat and other Ministries. It appears that the representation of the applicants was still pending with the A.G. Hence respondents were directed to consider the matter in the light of the Report of IV Pay Commission amongst other grounds.

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8. A survey of the aforesaid decisions shows that in none of the cases except in the case of the Assistants and Stenographers Grade 'C' working in the Central Administrative Tribunal that relief as prayed was fully granted on the basis of similar contentions as are raised by the applicants. As far as the decision of the Principal Bench in the case of Central Secretariat Direct Recruit Assistants Association is concerned, only a limited direction was given to the respondents to remove the anomaly as regards disturbance of internal relativity. The respondents respected the judgement and delinked the case of the Central Secretariat Direct Recruit Assistants but have declined to grant similar relief to the applicants. However merely from that circumstance it would not automatically follow that a case of discrimination stands established. It is however clear that the respondents have not considered the anomaly in the case of the applicants and have rejected their claim.

9. In the above background the points that arise for our consideration are as follows :

1. Whether the applicants are entitled to get parity of pay scale with the Assistants and Stenographers Grade 'C' of the Central Secretariat Service on the principle of Equal Pay for Equal Work and on the basis of other grounds raised by them ?
2. Whether the refusal to grant the applicants pay parity by the respondents is in violation of Articles 14, 16 and 39(d) of the Constitution of India ?
3. Whether the respondents have acted contrary to the recommendation of the Fourth Pay Commission arbitrarily and illegally ?
4. Whether any relief can be granted to the applicants and if so, what relief ?

We now proceed to examine these points.



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10. We are somewhat surprised at the stand of the respondents.

On the one hand they have raised the preliminary objection to the maintainability of the application on the ground that under JCM Scheme 'Pay and Allowances' is an item for which compulsory arbitration is provided and on the other hand they have rejected the demand of the applicants without waiting

for such arbitration. In the communication dated 29.9.1994

in response to our queries it is stated that no decision has yet been taken by the National Council (JCM) on the issue and

the Sub-committee of National Council (JCM) in which the

representations of official side and staff side were present

and it was agreed to record a disagreement in the National

Council after the Council accepts the report of the said

Committee and that the report yet to be taken up by the National

Council. After so pointing out it is further stated :

"5th Pay Commission constituted by the Govt. of India is examining

the entire gamut of Pay structure of the Govt. servants. Further,

on the directions of the Central Administrative Tribunal,

Chandigarh Bench in O.A. 457/91(427/91 ?) the question whether

the representation of the applicants for parity in pay scales

could be considered separately was examined in consultation with

the Department of Legal Affairs, Govt. of India. On obtaining

the advice of the Department of Legal Affairs, the issue was

delinked and considered by the Government. But, the demand was

rejected".

That however was the position earlier also as can be seen from the communication from the Office of the Comptroller and

Auditor General of India dated 5.10.1992. The written statement

was declared on 30.4.1993 and even so the preliminary objection

has been repeated. We find no merit in the preliminary objection

and reject it.



11. The case of the applicants rests on the following factors :

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1. Historically there was parity of scale. ✓
2. Educational qualification at the entry level is the same. / ✓
3. The duties of applicants as assistants in Audit Department are no less onerous than those of the Secretariate Staff. |
4. There is no rational basis for differentiation in scales. //
5. The action of the respondents is arbitrary and // discriminatory.

These aspects may now be examined in detail.

12. Historical parity

- i. It is averred that the erstwhile pay scale of the Assistants of the Central Secretariate was the same namely, Rs. 425-800 and therefore the Senior Auditors of IA & AD enjoyed parity in their pay scale with Assistants of Central Secretariate from the date of creation of their posts on 1.3.1984. It is further averred by the applicants that the Fourth Central Pay Commission had recommended the revised pay scale of Rs. 1400-2600 for the existing pre-revised scale of Rs. 425-800 and suggested the same pay scale for both Assistants of Central Secretariate and Senior Auditors of IA & AD. It is pointed out that the said recommendation was accepted by the Govt. of India and has been given effect to from 1.1.1986 vide Govt. of India, Ministry of Finance, Department of Expenditure Resolution No. 14(I)/IC/86 dated 13.9.1986 and Notification No. F 15(1)-IC/86 dated 13.9.1986. These averments have not been controverted by the respondents vide para 5 of the written statement.
- ii. The respondents however have glossed over this position in para 8 of the written statement by replying upon only

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that part of the report of 4th Pay Commission (in para 9.17) which noted that the Assistants who are members of CSS are assisting the Ministries in formulation and implementation of policies of the Central Government and have stated that Stenographers Grade 'C' of CSSS and Assistants of Central Secretariate are historically being treated on par in terms of pay scale and since there arose an anomaly as pointed out by the Principal Bench that was removed by revising the scale of pay of Grade 'C' Stenographers to Rs. 1640-2900. The respondents have however evaded to explain as to why same course cannot be logically adopted in respect of the Senior Auditors who were on par earlier with Secretariate counterpart and when the Fourth Pay Commission had clubbed them together.

iii. In the written argument submitted on behalf of the respondents it is stated that the parity between the Senior Auditors of IA & AD and Assistants in CSS had existed only between 1.3.1984 and 31.12.1985 and there was nothing historical about it as was the case with Grade 'C' Stenographers of CSSS. This submission also appears to be half hearted because by establishment order No. 18 issued on 1.3.1984 the Auditors were redesignated and placed in the scale of pay of Rs. 425-800 as Senior Auditors. The pay scale of the Assistants of the Central Secretariate was also the same i.e. Rs. 425-800. The Fourth Pay Commission recommended revised pay scale of Rs. 1400-2600 for the existing pre-revised scale of Rs. 425-800 for both. How then can it be logical to say that historically there was no parity? Historically would mean in the context of the pre-revised scale which

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was the spring board for Revision and the grouping was found to be equal by the Fourth Pay Commission. We are therefore inclined to hold that historically there was parity in the pay scale of applicants and Assistants in Central Secretariat. That however cannot be the sole criterion to determine whether applicants are entitled to be given parity in the revised scale. That would depend on other factors which may now be considered.

13. Qualification

i. It is averred by the applicants that the minimum educational qualification at the entry level for Direct Recruit Assistants of Central Secretariate and the Auditors of IA & AD happens to be same i.e. a degree of Arts, Science ~~or~~ and Commerce from any recognised University. The posts of Senior Auditors are posts to which incumbents are primarily drawn from the cadre of Auditors who qualify in the departmental examination with limited number of chances and also after they have acquired functional knowledge of at least 3 years as Auditors.

ii. These averments contained in para 4 (m) of the application have not been controverted by the respondents. They have however contended that the conditions of recruitment are different in the two cadres. They point out that there is no Direct Recruitment to the cadre of Senior Auditors. All the posts are filled in by promotion from the cadre of Auditors having 3 years continuous service in the grade. That however does not appear to be wholly correct as the applicants have stated that for such promotion qualifying at a departmental



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examination with limited number of chances is essential for the promotion. They have also stated that failure to pass in the departmental examination would result in either reversion to the lower post of Clerk or cessation of appointment. These statements have not been denied by the respondents. That shows that mere length of service of 3 years is not alone sufficient for promotion. The respondents have ~~mislead~~ ^{instead} referred to the requirement of qualifying at departmental examination for further promotions from Senior Auditors post. It therefore follows that in so far as qualification for recruitment is concerned both the cadres are similarly placed. It is not shown that the Secretarial cadre of Assistants has to undergo more arduous test than the applicants. The applicants thus cannot be considered ineligible to be given the same pay scale. Moreover this contention did not find favour with the Principal Bench in S.Dheer's case (Supra).

14. The nature of duties and differentiation in scales.

1. The applicants aver that the objective in creating a separate cadre for audit was to develop expertise and efficiency required for auditorial functioning. They rely on the various provisions contained in Accountant Generals' Manual of Instructions for recruiting of cadres and contend that these indicate that higher pay scale sanctioned by the Government of India was in view of special nature of work, skills and aptitude required for audit functioning. They point out that the Govt. recognised that the two different streams of posts namely Senior Auditors of IA & AD and Assistants of Central Secretariate have to perform equal/identical work when equal pay scale was sanctioned with

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effect from 1.3.1984 for both. The applicants further rely on the circumstance that the Fourth Pay Commission has maintained the parity and that the Govt. of India had equated the two sets of posts in consideration of the expertise and efficiency required for auditorial function. They contend that the nature of duties and functions as well as measure of responsibilities is similar. Again referring to the report of the Fourth Pay Commission, they point out that the Commission has adopted (in para 8.41 of its report) the principle of fair comparison and internal relativity in case of Inspectors of Central Excise and same would be the position of Senior Auditors.

ii. Relying upon the Order dated 31.7.1990 of the Ministry of Personnel wherein it is stated that the same revised scale of pay will be applicable to all other similarly situated employees in other organisations the applicants submit that in the light of the specific recommendation of the Fourth Pay Commission it necessarily implies that the revised scale of pay should also be given to them. They cite the instances of revision of pay scales of Assistants of Indian Council of Agricultural Research vide Order dated 24.8.1990, the Assistants working in North Eastern Hill University at Shillong (under the University Grants Commission) ^{by} Office Order dated 3.9.1990 and Assistants of I.C.M.R vide order dated 18.4.1994. They further refer to the note of the All India Audit and Accounts Association which refers to a comprehensive study of job evaluation conducted by the consulting and applied Division of the Administrative Staff College, Hyderabad at the instance of 3rd Central Pay Commission in regard to the posts of

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Assistants of Central Secretariate and UDC Auditors by applying point rating system according to which the UDC auditors scored more points than the Assistants of Central Secretariate. The applicants contend that the duties attached to them as Senior Auditors being higher than those of auditors their own rating would be still higher.

iii. The applicants deny that the Assistants or Stenographers Grade 'C' in Secretarial service aid in policy making of the Ministries. They maintain that the services they (applicants) render are no less important.

iv. The applicants have tried to illustrate that they are equal or similarly situated Assistants in Central Secretariate by giving a comparative table as below :

Cadres of post: in Central Secretariate	Cadres of post in IA & AD	Pre-revised scale upto 31.12.1985	Revised pay scale w.e.f. 1.1.1986
L.O.Clerk	Clerk	Rs. 260-400	Rs. 950-1500
U.D.C.	Auditor	Rs. 330-560	Rs. 1200-2040
Assistant	Sr. Auditor	Rs. 425-800	Rs. 1400-2600

None As.

Their grievance is that there was no justification for choosing the Assistant in Central Secretariate to be given benefit of higher scale of Rs. 1640-2900 by O.M. dated 31.7.1990 denying the same benefit to them since all along they were placed in the same scale and which fact according to them would suggest that nature of their duties is same and they are similarly situated. The applicants therefore attribute discrimination to the respondents. They contend that by reason of giving differential treatment to them by introducing two types of revision in the



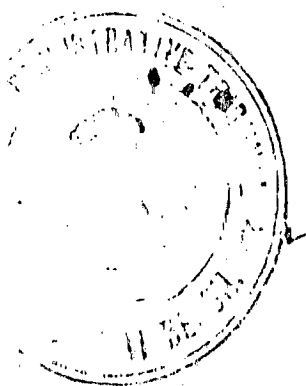
same pre-revised scale causing disturbance in parity and internal relativity in the pay scales the discrimination is apparent. They contend that the differential so introduced as regards pay scale is irrational and unreasonable.

v. The respondents controvert each of the above grounds put forth by the applicants. They contend that in compliance with the decision of the Principal Bench the Order dated 31.7.1990 was issued prescribing the revised scale to the CSS as well as other organisations like Ministry of External Affairs, where the posts are in comparable grades with same classification and pay scale and which have same method of recruitment namely through open competition. The gravamen of their contention is that as the Senior Auditors in JA & AD are not recruited through open competitive examination as required under the method of recruitment as envisaged in O.M. dated 31.7.1990 the applicants cannot be treated as similarly situated class of employees as the Secretarial staff.

vi. The respondents do not specifically contend that the Assistants who are the members of CSS are assisting the Ministries in formulation and implementation of the policies of the Govt. but guardedly refer to para 9.17 of the Report of the Fourth Central Pay Commission in that regard. It is interesting to note that the respondents do rely on this part of the report as it supports their contention though they do not accept the recommendation of the Commission as applicable to the applicants as regards revision of pay scales.

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vii. The respondents however state in para 9 of the written statement that the Govt. of India granted higher pay to Senior Auditors with effect from 1.3.1984 in comparison with their counterparts in Accounts Offices in view of their arduous nature of job and responsibilities. The respondents admit that as per Manual of Instruction for restructuring of cadres in IA & AD issued by the Comptroller and Auditor General the primary purpose of restructuring of the offices was to develop an organised pattern suited to attend needs of audit and to improve the maintenance of the accounts of the State Govt. transactions and the Senior Auditors were sanctioned higher scale i.e. Rs. 425-800 in audit side in comparison with their counterparts in the Accounts side in recognition of the special nature of work, skills, and aptitude required for audit function. Yet their grievance is that the Fourth Pay Commission in its report clubbed the Assistants of CSS and the Senior Auditors of IA & AD together. Hence the Govt. of India had to redetermine the revised scale of Assistants taking into consideration the higher duties and responsibilities assigned to the cadre of Assistants. We find this explanation to be one sided because it simply justifies why the benefit of higher scale was extended to the Assistants but does not explain as to why same consideration could not apply to the applicants. It is not stated that the duties and responsibilities of the Senior Auditors are not 'higher duties' or that the responsibilities assigned to them are lighter.

viii. The respondents contend that the benefit given by ICAR or University Grants Commission cannot be taken into account as it is contrary to the instructions issued in ..

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the O.M. dated 31.7.1990 and infact steps are directed to be taken to withdraw these benefits.

ix. Thus according to the respondents the Senior Auditors in the IA & AD and the Assistants of the Control Secretariate Service constitute two distinct classes as the duties and responsibilities of the two categories are not identical, the method of their recruitment is different and future promotional prospects of the two categories are also different. As these are two different and distinct classes, according to the respondents, the Govt. can prescribe different pay scales. The respondents therefore deny that there has been violation of any Constitutional Provision in doing so. The respondents deny that the ^{O.M.} ~~Mo.O.~~ dated 31.7.1990 is discriminatory or capricious.

x. The factual details are not in dispute. The narrow question is as to whether the applicants are similarly situated class of employees as the Secretariate staff. We find that there is no effective and convincing reason shown by the respondents to deny the applicants the same treatment as given to the Secretarial staff as regards revised pay scale. The following circumstances persuade us to that view :

1. Historically there was parity in scales.
2. The Fourth Pay Commission recommended uniform scales. There is no convincing reason shown to depart therefrom.
3. The contention of the respondents that the Senior Auditors do not come through open competitive examination in our view is not germane to decide the similarity in the nature of the two posts having regard to the common educational qualification prescribed at entry level and the essentiality of the departmental examination to be passed and requisite length of service prescribed for



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promotion to the post of Senior Auditors. This also did not find favour with the Principal Bench case of S. Dheer & Others (Supra) as stated earlier.

4. The Accountant Generals' office was bifurcated admittedly to provide better and efficient audit service suited to the altered needs of audit and improve the maintenance of the accounts of the State Govt. transactions. The nature of work of the Senior Auditors therefore cannot be regarded in comparison ^{to be} of lesser importance than that of the Assistants in Central Secretariate or of Stenographers Grade 'C' in CSSS.
5. The circumstance that the Secretariate staff aids the Ministries in formulation of policies as they put up notes on concerned topics is part of their job. It is not demonstrated by the respondents that that involves any special knowledge or specialised training. As compared to it the Senior Auditors have to qualify at a departmental examination after gaining experience and knowledge at least for 3 years to achieve professional expertise for audit functioning which is not disputed. It cannot therefore be conceived that the nature of work of Senior Auditors is of lesser significance in running the State-craft in comparison with Secretariate staff. Even according to the respondents the job of the applicants is of arduous nature and responsibilities.
6. The other organisations namely ICAR, University Grants Commission as well as ICMR found comparability of Assistants working under them and Secretariate staff reasonable. Although that may not be binding upon the respondents it can surely be looked ^{upon} up to understand that the work of Senior Auditors in Audit Department is of no less importance than of the Assistants in the Secretariate.
7. The decision of the Principal Bench of Central Administrative Tribunal in the case of S Dheer & Others (Supra) is also illustrative on the point.

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7. The emphasis in the written statement is on justifying the grant of revised scale to the Secretariat staff. To that extent we are not called ^{upon} to reflect. What is of crux is whether any convincing reason is shown to regard the nature of duties of the Senior Auditors to be less important or dissimilar to deny them the same benefit. The respondents point out that the Section Officers of IA & AD have lost a case for grant of parity in the pay scale with the Section Officers of the CSS in the Hon'ble Supreme Court in K Vasudevan Nair vs. Union of India & Others AIR 1991(1) SC 493. That however in our view is a different matter and is not germane to the question under consideration save and ^{except} ~~except~~ the difficulty that may arise if revised scale is given to the applicants who then may jump to the scale of Section Officers viz. 1640-2900 which is a promotional post. That however cannot be an answer to the legitimate claim of applicants. It is for the respondents to sort out that difficulty.

8. It is pertinent to note that the Principal Bench CAT in the case of Central Secretariate Service Direct Recruit Assistants Association (Supra) had found that disturbance of internal relativities was a legitimate grievance which had to be considered. It was noted that the Assistants could allege a disturbance of internal relativity only in relation to such posts as are included in the same group. It was also said in para 32 of the judgement that :

" From the analysis given above, we are firmly of the view that the Commission cannot be faulted on recommending the pay scale of Rs. 1400-2600 for Assistants. For, this is the general revised pay scale to replace the five pre-revised scales considered by the Commission in paras 8.41 to 8.44 of its Report and it applies to Assistants and others covered by these five pre-revised pay scales unless some special recommendation has been made elsewhere in the Report ".

With respect, we think that similar is the situation in the instant case. It is material to note in that connection that in the written statement the respondents have stated that in para 8.41 of its report the Fourth Pay Commission

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has clubbed Assistants of Central Secretariate and Senior Auditors of IA & AD together in the pre-rev scale of Rs. 425-800. The respondents acted on the basis of the above judgement so far as Secretarial staff is concerned. We are not satisfied that any special reason has been shown to differentiate the Senior Auditors.

xi. In view of the above circumstances we are inclined to reject the contention of the respondents that the Assistants of the Central Secretariate and the Senior Auditors in the IA & AD constitute two distinct classes. We are inclined to hold that they are required to be treated as of the same class as found by the Fourth Pay Commission. We are not satisfied that any rational or reasonable criteria is shown to exist to differentiate the two sets of posts. Consequently we are inclined to hold that there arises disturbance of internal relativities in the pay scales leading to an anomaly which is required to be removed by the respondents. As a consequence we are also inclined to hold that as the applicants are unequally treated their grievance of discrimination is fully justified. We are inclined to hold that the nature of work in the two sets of posts attracts the principle of Equal Pay for Equal Work and its standards ^{violated}. We are also inclined to hold that the recommendation of 4th Pay Commission has not been followed and in doing so respondents have acted arbitrarily and illegally.

15. In arriving at above conclusions and for the purpose of foregoing discussion we have taken note of the documents submitted as annexures to the pleadings.

At annexure I to the application is establishment order dated 1.3.1984 issued upon bifurcation of the office of the Accountant General transferring personnel as Auditors to Audit Wing. At Annexure-II is the order dated 2.6.1984 redesignating auditors as Senior Auditors in the scale of Rs. 425-800. At annexure III is the O.M. issued by the Ministry of Personnel, Public Grievances, and Pensions, Department of Personnel and Training dated 31.7.1990. At annexure IV & V are copies of



representations filed by some of the applicants to the Comptroller and Auditor General of India seeking the extension of benefit of revised scale of Rs. 1640-2900 with effect from 1.1.1986. At annexure VII is the copy of order dated 6.6.1991 of the North Eastern Hill University revising the pay scale of Assistants to Rs. 1640-2900. An extract of order of ICMR dated 18.4.1994 published in 'Swamy's' News is also produced whereunder scale of Rs. 1640-2900 has been given to Assistants and Gr. 'C' Stenographers of ICMR. The applicants have relied upon the decisions already mentioned.

16. The respondents have placed on record the Notice issued by the Accountant General in December 1983 reorganising the combined Accounts and Audit Offices in two wings as Annexure R.1. At annexure R 2 is the O.M. dated 3.1.1991 issued by the Ministry of Personnel in which it is clarified that 'there has been no anomaly in case of posts of Assistants and Stenographers or other posts in the prescribed scale of Rs. 425-800 where the method of recruitment is not through the same open competitive examination as in the case of certain services mentioned therein'. We have dealt with this aspect and have not accepted this basis to be warranted. They have relied upon certain decisions as already mentioned.

17. The submissions urged by Mr. B K Sharma, the learned Counsel for the applicants and Mr. A K Choudhury, the learned Addl. C.G.S.C. for the respondents have been duly considered by us and the above discussion has been made in the light of their respective submissions. Hence we do not mention them separately. We may add that we found considerable substance in the submissions urged by Mr. Sharma on behalf of the applicants. We may further add that since the question involved had to be decided mainly on the legal aspects some amount of repetition has inevitably entered in the above discussion.



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18. We would accordingly answer Point Nos. 1, 2, and 3 (see p. above) in the affirmative and turn to Point No. 4 as to Relief.

19. Relief

That brings us to the question of relief. Although consistent with our conclusions we would be justified in making a positive order in terms of the relief prayed by the applicants we find it difficult to do so for the following reasons.

In State of Uttar Pradesh and Others Vs. J.P. Chaurasia (AIR 1989 SC 19) the Supreme Court observed :

"the equation of posts or equation of pay must be left to the executive Government. It must be determined by expert bodies like the Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts ... Court should not try to tinker with such equivalence unless it is shown that it was made with extraneous considerations".

Similar view is taken in Federation of All India Customs and Central Excise Stenographers Vs. Union of India AIR 1988 SC 1291 and in Union of India Vs. Secretary Madras Civil Audit and Accounts Association (1992 SCLJ 530). A note of caution has also been struck by the Supreme Court. It is said that it is a policy matter involving financial burden. No court or Tribunal should compel the Govt. to change its policy, involving expenditure. It has also been ruled by the Supreme Court that :

"The problem about equal pay cannot always be translated into a mathematical formula. If it has a rational nexus with the object to be sought for, as reiterated before, a certain amount of value judgement of the administrative authorities who are charged with fixing the pay scale has to be left with them and it cannot be interfered with by the Court unless it is demonstrated that either it is irrational or based on no basis or arrived mala fide, either in law or in fact" (AIR 1988 SC P 1291) = (JT 1988(2) SC 519).

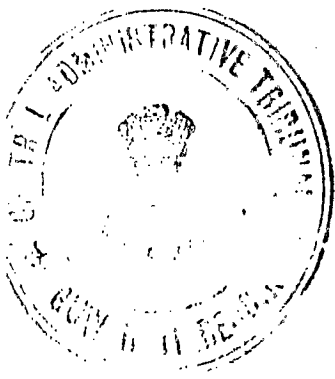


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It is true that the respondents have made a value judgement which was within their exclusive province negating the claim of Senior Auditors of IA & AD for higher scale. It is also true that the Fifth Central Pay Commission is expected to deal with the problem comprehensively. Yet we feel that injustice has been caused to the applicants. Our endeavour so far has been to point out that element of irrationality in the decision of respondents does not stand ruled out and that needs reconsideration of the matter. In this connection the learned counsel for the applicant refers to the latest decision of the Supreme Court in 1994 SCC(L & S) P 869 and submits that as the action of the respondents is found violative of Article 14 of the Constitution the pay scales fixed by them can be judicially interfered with as the principle of equal pay for equal work is breached as recommendation of the expert body i.e. Pay Commission has not been followed and therefore we should grant the relief.

We however feel that we will be better advised to leave the matter for fresh and proper decision by the respondents. The respondents can always review their own decision when necessary. We would therefore recommend to the respondents in the interest of justice to re-examine the question and take a suitable decision afresh without postponing the issue to the report of the Fifth Central Pay Commission. We do not make such a direction or stipulate a time limit as we have no doubt that the reasons that have persuaded us to make the recommendation as reflected in the foregoing discussion will receive due and expeditious attention from the respondents. The fresh decision whichever way it may be taken however shall be communicated to the applicants.

In the result, subject to the recommendation made above to the respondents the application is disposed of. It is made clear



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that this order will not preclude the applicants in any manner to represent their case before the 5th Central Pay Commission whether a fresh decision is taken or not by the respondents as recommended by us.

In the circumstances of the case there will be no order as to costs.

Sd/- M.G. CHAUDHARI
VICE CHAIRMAN

Sd/- G.L. SANGLYNE
MEMBER (ADMN)

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Same 17/11

Section Officer (J)

आपूर्ति विभाग (आपूर्ति केंद्र)

Central Administration (General)

विभाग (आपूर्ति केंद्र)

Government of India

पुणे हद्दी, पुणे जिल्हा, पुणे जिल्हा-5



(Annexure #1)
98

107/96 (0045/92)

RA No.
CP No.

Union of Andhra Pradesh

APPLICANT(S)

P. Chaudhary & ors

RESPONDENT(S)

Mr. S. A. K. ... Advocate for the applicant.

Mr. ... Advocate for the Respondents.

Office Notes

Court's Orders

4.7.96

Learned Sr.C.C.S.C Mr S.All for the petitioners (respondents in O.A) moves this petition seeking for extension of time for a further period of 2 months upto 31.8.96 to implement the direction contained in the order dated 2.11.1994 of this Tribunal passed in O.A.No. 45/92. Shri. S.R. Choudhury, one of the applicants in the O.A., appears for the opposite party and submits a written objection. He opposes any further extension of time.

Extension of time had been granted to the respondents from time to time to implement the order dated 2.11.1994 keeping in view of the nature of direction in our order dated 2.11.1994, the magnitude involved in the exercise towards implementation of the order and the fact that the issue involved is of all India basis. However, the respondents had not implemented our direction even within the time so allowed. The reason given in the present petition is that

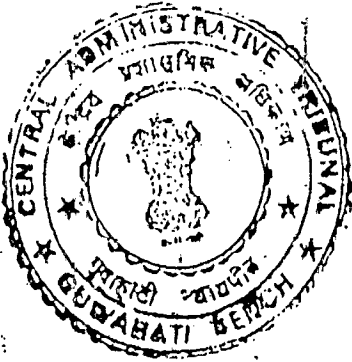


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Shri ...
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M.P.100/96(in O.A.45/92)

4-7-96

the matter is engaging the serious attention of the new Government and a final decision is likely to be taken shortly. Learned Sr.C.G.S.C. submits that in the circumstances it will be fair to allow the respondents further opportunity to implement the order dated 2-11-1994. Considered the petition and the written objection together with the submissions of both sides. The petitioners (respondents in the O.A.) are allowed the time as prayed for in this petition. It is hoped that the respondents would sincerely abide by their own promise to take final decision within 31-8-1996 and to implement the directions contained in the order dated 2-11-1994 in O.A. No.45/92. Misc.Petition is disposed of.



Sd/- MEMBER (ADMN)

Certified to be true copy -

[Handwritten signature]

COURT OFFICER

न्यायालय अधिकारी

Central Administrative Tribunal

केन्द्रीय प्रशासनिक अपील निकाय

Guwahati Bench, Guwahati-6

गुवाहाटी न्यायालय, गुवाहाटी-6

D. Swarup
Joint Secretary.

D.O.No.12(3)/IC/95
Government of India,
Ministry of Finance,
Department of Expenditure,
New Delhi, the 15.1.1996.

Dear Shri Lahiri,

Please refer to Shri Rayalu's D.O. letter No.733-IC/166-92 dated 3rd November, 1995 regarding revision of the payscale of Senior Auditors at par with that of the Assistants in the Central Secretariat. The scale of pay for the post of Assistants in the Central Secretariat Service was revised to Rs.1640 - 2900 vide Deptt. of Personnel & Trg OM No.2/1/90-CS IV dated 31.7.90 based on the directions of CAT that, prima facie, there was an anomaly in the scale of pay. It was also decided that this scale could be adopted by other organisations not participating in Central Secretariat Service but where posts in comparable grades with same qualifications, payscales and method of recruitment through open Competitive Examination was the same. As the posts in IA & AD did not satisfy these conditions, the revision of the payscale of Senior Auditors could not be accepted.

2. The matter has been examined de novo in the light of the observations and directions of the CAT, Guwahati Bench and Chandigarh Bench as contained in their orders dated 2.11.94 and 16.12.94 respectively. Based on the specific observations of the CAT that the Fourth Central Pay Commission has recommended the same scale of pay for Senior Auditors and Assistants and that there is no convincing reason to deny the same treatment as given to the Sectt.Assistants to the Senior Auditors, it

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K. J. M. M. M.
ADVOCATE

has been agreed, in principle, to upgrade the scale of pay for the post of Senior Auditors in IA & AD from Rs.1400 - 2600 to Rs.1640 - 2900 from the date of order of the Tribunal, Guwahati Bench viz.2.11.94. As the directions of the Administrative Tribunal is in respect of Senior Auditors alone, the revised scale shall be applicable to the Senior Auditors only and not to the Senior Accountants. It may also be clarified that the 'in principle' decision to revise the scale of Senior Auditors to Rs.1640 - 2900 does not imply that the Government has conceded parity with the Assistants in the CSS. All such matters may be left for consideration of the Fifth Central Pay Commission.

3. A draft note for seeking approval of the Cabinet to the proposed revision of the pay scale may now please be got prepared and sent to us for further action.

With regards.

Yours sincerely

Sd/-

(D. Swarup)

Shri P. K. Lahiri,
Deputy CAG of India,
10, Bahadur Shah Zafar Marg,
New Delhi.

Comptroller & Auditor General of India,
and Member U N Board of Auditors
10, Bahadur Shah Zafar Marg,
New Delhi - 110002

July 4, 1996

My dear Finance Minister,

I invite your attention to Ministry of Finance U O No. 12(3)-IC/95 dated 2.7.96 regarding parity in the pay scale of Senior Auditors of this Department with that of Assistants in the Central Secretariat Service.

The Indian Audit and Accounts Department was restructured in 1984 with separate offices for audit and accounts functions. This was done after a process of deliberation stretching over several years and after the matter had been considered by a Committee of Ministers comprising of Ministers of Finance, Home and Labour. Government had then agreed in September 1983 to grant 80 per cent Auditors who do actual audit work, a scale of pay of Rs.425 - 800 at par with Assistants of the CSS. The Fourth Central Pay Commission after considering the duties and responsibilities recommended identical scales of pay for the Assistants and Senior Auditors. The Commission also recommended that Senior Accountants should be given similar treatment.

Subsequently, in 1990 a decision was taken by the Government to provide Assistants with a higher scale of Rs.1640 - 2900. Soon, thereafter, in July 1991 my office recommended a like revisions for senior Accountants and Senior Auditors. Unfortunately, no decision was taken by Government on this recommendation for a period of two years despite the matter being periodically raised.

Being aggrieved by this delay, Senior Auditors approached the Central Administrative Tribunal at Guwahati and Chandigarh.

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About two years back, both the benches decided that injustice has been caused to Senior Auditors and directed the Government in the interest of justice to re-examine the question of parity of scales. Upon my office bringing the issue to the notice of the Government and pointing out the intrinsic merits in granting the higher scale to Senior Auditors, Government in their letter dated 15.1.96 conveyed their agreement in principle to the proposal of parity and asked for a Cabinet Note which was prepared and sent by my office in January, 1996.

We are now informed that the Government has decided to refer the matter to the Fifth Central Pay Commission. Firstly, the Pay Commissions hearings are over there is no further occasion for the Commission to take up this matter at this stage. Secondly, this decision is at variance with the directions of the Tribunal and to that extent legally incorrect. Thirdly, the Pay Commission can hardly compensate for the loss of Pay during the current financial year because whatever recommendations it makes, are likely to be prospective.

In this background, I feel that the Government should honour the decision of the Tribunal and assign the Assistants' scale of pay to Senior Auditors. It may well be that others have a similar claim but at the moment what distinguishes the Senior Auditors from the rest is CAT's direction and Committee of Ministers' decision of 1984 that Senior Auditors deserve a higher scale. I believe withholding the higher scale for Senior Auditors due to claims by similarly placed officials in other organised Accounts Departments would hardly be in the interest of enhancing either the prestige or the confidence which Government Servants have in this institution.

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In this background, may I request you that in accordance with the judgement of the CAT, Senior Auditors be assigned the same scale as Assistants in the Secretariat.

With regards.

Yours sincerely

Sd/-

(V.K. SHUNGLU)

Shri P. Chidambaram,
Finance Minister,
North Block,
NEW DELHI - 110 001.

Ministry of Finance
Department of Expenditure
Implementation Cell

Office of the Comptroller & Auditor General of India
may please refer to the correspondence resting with D.O.No.072/IC/
166-92 dated 30 May '96 from Assistant Comptroller & Auditor General
of India to JS(Per) regarding implementation of the orders of CAT
Guwahati and Chandigarh Benches dated 2nd November '94 and 16th
December '94 respectively in the case of parity of the payscale of
Senior Auditors of IA & AD with the Assistants of the CSS.

2. For sometime past Senior Auditors and Senior Accountants
have been demanding revision of payscale from the existing scale
of Rs.1400/- - 2600/- to Rs.1640/- - 2900/- w.e.f. 1.1.86 at par the
Assistants of the CSS. On the recommendations of the C & AG the
proposal was examined on several occasions and could be not agreed
to. In the case of Assistants of CSS revised payscale was agreed to
remove an anomaly in the payscale in accordance with prescribed
procedure on the directions of the CAT, New Delhi. Moreover, our
general policy has been not to interfere with the pay scales recom-
mended by the 4th Pay Commission and any piece-meal revision of pay of
specific categories leads to distortions and repercussions on
similar categories in other organisations.

3. The matter was also raised by the staff side and discussed
in the National Council of the JCM and disagreement has been reached
with the staff side and matter is being processed separately for
recording a formal disagreement in accordance with the JCM Scheme.

4. Aggrieved by this the Senior Auditors of IA & AD
approached CAT Benches of Guwahati and Chandigarh for revision of

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Shri Anil Kumar
ADVO-A.E.

Contd...2/-

5. The CAT by their order dated 2nd November '94 and 16th December '94 ordered that Government should review the matter and take a decision on merits without waiting for Report of the 5th Central Pay Commission.

5. The proposal was examined on merits on the directions of the CAT and the then FM had agreed to the proposal to revise the payscale subject to the approval of the Cabinet. The Cabinet Note prepared by the C & AG was also approved by then FM and MOS(PP). However, due to announcement of the general elections then FM had desired that in view of Model Code of conduct of elections, the proposal will have to be deferred till the new Government takes over.

6. In the meantime the representatives of JCM met the Finance Minister and Secretary(Expenditure) and had desired that similar decision may be taken in the case of Senior Accountants also as 4th Pay Commission had recommended parity in the payscale of Senior Auditor and Senior Accountants. Since there is no direction from the CAT regarding revision of payscale of Senior Accountants and C & AG had also not recommended revision of payscale of Senior Accountants, it has been felt that any decision to re-fix the payscale of Senior Auditor will have implications on the pay pattern of Senior Accountants and also will have chain reaction.

7. Accordingly the matter had been placed before the new Finance Minister and view has been taken that entire issue of higher payscale to Senior Auditor/Senior Accountant and their demand of parity with the Assistants of CSS may be specifically referred to 5th Pay Commission especially keeping in view the fact that when the CAT gave the orders in November/December '94 the Report of the 5th

Contd...3/-

Pay Commission was not in sight and the Report is now expected to be available in the next few months.

8. In view of the position explained above, CAG is requested to file a Counter - Affidavit in Guwahati Bench to the effect that the matter has been examined carefully and it has been decided that there is no case on merit for increasing the payscale of Senior Auditors and Senior Accountants and that the Government has further decided to specifically refer the demand of the Senior Auditors and Senior Accountants to the Fifth Pay Commission.

9. The above may carefully be explained to the CAT Benches through the Counter Affidavit in consultation with Government Counsel and Ministry of Law. Care must be taken to apprise the Honourable CAT Benches that there was/is no intention on the part of the Government to disobey the orders of the CAT. Due to the elections and process of formation of Government there has been unavoidable lapse of time and government has now decided to refer the matter to the 5th Pay Commission. The draft affidavit may also be shown to us before issue.

10. This issues with the approval of Finance Minister.

Smt Revathi Iyer,
Assistant Comptroller & Auditor
General(N), Office of the C&AG
of India, 10, Bahadur Shah Zafar
Marg, New Delhi.

Sd/-
(T. S. Bhatia)
Under Secretary(IC)
2.7.1996

M/O Finance D/O Exp.U.O.No.12(3)-IC/95, dated.2.7.96.

ANNEX.

107

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

Misc. Petition No. 121/D6(D.A.45/92)

Union of India & Ors. ...

Applicants.

Versus

R. Chaudhury & Ors. ...

Respondents.

- P R E S E N T -

THE HON'BLE JUSTICE SHRI D.M. BARUAH, VICE-CHAIRMAN
THE HON'BLE SHRI G.L. SANGLYINE, MEMBER(A)

For the Applicants : Mr. S. Ali, Sr. C.G.S.C.

For the Respondents: Mr. G.P. Bhowmik, Advocate.

11.2.97

Mr S. Ali, Sr. C.G.S.C has filed this M.P communicating that the decision had been taken by the respondents. Mr A.K. Phukan, learned counsel appearing for the applicant, opposite parties on the other hand submits that the decision was contrary to the directions given by the Tribunal, besides they have also violated the directions given by the Tribunal. If the applicants ^{are} aggrieved by the decision they may file an appropriate application for their redressal.

M.P. disposed of.

Sd/- VICE-CHAIRMAN

Sd/- MEMBER(A)

Memo. No. 511

Dated 14.2.97

Copy for information and necessary action to :

1. Smt. A.L. Gogpathi, Principal Accountant General (Audit), Assam, Meghalaya etc. Shillong-793001.
2. Shri Ranjit Choudhury, Sr. Auditor, O/o the Accountant General (Audit), Assam, Meghalaya etc. Shillong-793001.
3. Mr. S. Ali, Sr. C.G.S.C., CAT, Guwahati Bench.
4. Mr. A.K. Phukan, Advocate, Gauhati High Court.

13.2.97
SECTION OFFICER(J).

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Shigindhor
ADVOCATE

NOTICE

[For display and circulation in the Accountant General Offices]

No. Estt (M). 1/5112

No. Adm. 1/3533

Office of the Accountant General, Meghalaya,
Arunachal Pradesh and Mizoram, Shillong.

Office of the Accountant General,
Assam, Shillong and Gauhati.

Dated 31st December, 1983.

Dated 31st December, 1983.

NOTICE

With a view to promote efficiency and improve quality of work and also to effect economy, the Comptroller and Auditor General of India has decided to reorganise the combined Audit and Accounts Offices into separate (i) Accounts & Entitlement Offices, and (ii) Audit Offices under Accountants General with cadres of their own. Keeping in view the special functional needs of the two cadres, recruitment, training and placement policies are also being redesigned.

2. On the recommendation of the Comptroller and Auditor General of India, Government of India have sanctioned the following pay-scales for the staff in the Audit Offices :

Auditor	20%	Rs. 330-560
	80%	Rs. 425-15-500-EB-15-560-20-700-EB-25-800 ✓
Section Officer	20%	Rs. 500-900
	80%	Rs. 650-30-740-35-880-EB-40-1040

These pay scales which are in recognition of the special nature of work, skills and aptitude required for the audit function are linked with the stipulation that actual audit will be done by the auditor in the higher grade while the lower grade will be for training and routine duties etc. After allowing time for necessary preparation work these new pay scales for audit cadres will be effective from 1st March, 1984.

Service conditions in the accounts cadres

3. In the A. & E. Offices the existing posts of Auditors and S. G. Auditors will be redesignated as Accountants and S. G. Accountants. Also, the Section Officers and S. G. Section Officers will be redesignated S. O. (Accounts) and S. G. S. O. (Accounts). The pay scales will be as existing, but certain benefits for the accounts cadres which are proposed to be introduced are :

- All future recruitment to the grade of accountants will be by promotion from clerks-- 50% on seniority-cum-fitness basis and 50% through the departmental examination for accountants. Accordingly a training programme is being introduced to equip the existing clerks for their new role. Clerks recruited on or after 1.3.1984 will also have to pass a simple examination in accounts.
- 10% of the Accountants and S. G. Accountants who are engaged in more important and complex functions will be eligible for a special pay of Rs. 35/- per month in accordance with Govt. of India orders.
- Upto 20% of the vacancies in the cadre of section officers (Accounts) will be filled by promotion from S. G. Accountants with exceptional performance to their credit. They will be designated as supervisors and will be eligible for the selection grade like section officers (Rs. 775-1000).

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Khigind Noni
ADVOCATE

Service conditions in the audit cadres

24. In the Audit Offices the designations against the four grades mentioned in para 2 above will respectively be Junior Auditor, Auditor, Section Officers (Audit) and Assistant Audit Officer (Group B Gazetted). For the time being vacancies in the higher grades (Rs. 425-900 and Rs. 630-1040) arising after 1.3.1981 will be filled by promotion of persons in the corresponding lower grades who are eligible and qualified, on seniority-cum-fitness basis. Since the higher grades are functional it is proposed to frame recruitment rules governing the conditions of eligibility and method of selection for future promotions to these higher grades in audit cadres. Pay on placement in these higher grades in the new scales will be fixed in accordance with the provisions contained in FR 22-C.

Departmental Examinations

3. The various existing examinations for confirmation, incentives and promotion to various grades are being redesigned keeping in view the specialised job requirements of the accounts and audit cadres. There will now be separate Departmental Examinations for accountants and auditors. Those who have already passed the existing Departmental Confirmatory Examination will not have to take this examination and will continue to be entitled to the qualification pay of Rs. 15%. Those who have secured exemption in particular papers in the existing examination will be permitted to enjoy the benefit of such exemption in the corresponding paper in the new departmental examination if such a paper is there. In the A & E Offices it will not be obligatory for accountants to take or pass in this examination. However, clerks who wish to secure accelerated promotion to the accountants' grade and accountants who would like to earn the qualification pay of Rs. 15 p.m. and aspire to be supervisors would naturally wish to take this examination. In the Audit Offices passing of a Departmental examination for auditors will be necessary for confirmation and as a pre-requisite for promotion to the grade of Rs. 425-800. This Departmental examination will also incorporate the contents of the existing Revenue Audit Examination for auditors. Hence, from 1984 onwards there will not be any Revenue Audit Examination for accountants or for auditors.

6. There will also be separate S. O. Grade examinations for accounts and audit cadres. Those who have already passed in the existing S. O. G. E. will not be required to take new examination. Those who have passed in Part I of the existing examination will be exempted from Part I of the proposed examination. Exemptions secured in particular papers of Part I or Part II of the existing examination will be permitted to be carried forward to the corresponding paper(s), if any, in the corresponding parts of the new examination for promotion to S. O. Grade.

Improvements in promotion prospects of Group D Staff

7. In order to provide promotion opportunities to Group 'D' staff a new cadre of record sorters (Rs. 225-300) is being created by upgrading 15% of the Group 'D' posts. Promotion to this grade will be by seniority-cum-fitness and there will also be a selection grade (Rs. 260-350) in this. This scheme with wider benefit for larger numbers will replace the existing scheme of promotion of very limited number of non-matriculate Group 'D' staff as Clerks. Consequently the Departmental qualifying examination for non-matriculate Group 'D' is being discontinued. Those who have already passed in the examination and are awaiting promotion will be given the option to choose the new scheme for promotion as record sorter or to remain on the waiting list until they are promoted as clerks. Once a qualified Group 'D' has opted for promotion as record sorter he will not be eligible for promotion as a clerk based on his qualification in the departmental examination.

General conditions of service

8. The preceding paragraphs outline only the salient features of the changes in service conditions proposed to be introduced on the reorganisation of the IAAD w. e. f. 1st March, 1984. The precise details are being incorporated in a supplement to the existing Manual of Standing Orders (Administrative) in the form of a Manual of Instructions for Restructuring of Cadres in IAAD issued under the authority of C & AG. Copies of this Manual, which is intended for internal use of IAAD, will be available for consultation in all coordinating sections. To the extent the service conditions are modified these have been codified in the Manual of Instructions; all other existing provisions, to the extent they have not been so modified, continue to be applicable as hitherto.

Procedure for allocation of officers and staff to the Audit and Accounts cadres

9. All officers and members of staff will be given an opportunity to indicate their preference. All regular employees borne on the strength of this office are requested to indicate their choice in the attached proforma and return the same to Sr. D. A. G. (Admin.), Office of the A. G. Meghalaya, etc. before 31st January, 1984. Allocations will be made to the two cadres according to suitability and administrative requirements without due regard to seniority. Every effort will be made to allocate persons according to their choice, if expressed. All selections for the posts in the Audit Office will be made by Screening Committees for the various grades.

10. Auditors working as supervisors will be considered for allocation to the audit cadre only if they seek reversion as auditor/S. G. auditor. Auditors who have passed the SOGE but who have not so far been promoted as S.Gs. will be given preference for allocation to Audit Office over auditors who have not passed this examination; but the inter-se seniority of the auditors selected for Audit Office will be maintained.

11. The Screening Committees will draw up lists of persons selected for allocation to the Audit Office for each of the functional grades (viz. assistant officers, section officers, auditors etc.) The lists will be according to the existing seniority of the persons within each of these functional grades. According to the number of posts in the corresponding grades available on 1st March, 1984 the senior most persons will be allocated and transferred to the Audit Office. If the number of persons selected is in excess of the number of posts/vacancies in the Audit Office, the remaining persons will continue to remain in the A & E Office and draw pay in the existing scales; they will be transferred to the Audit Office according to their position in the waiting lists, i.e. according to their seniority, as and when vacancies arise in the Audit Office. Cadre-wise waiting lists of persons so selected but not transferred on 1.3.84 will be exhibited on the notice boards. Placement in the waiting list will not, however, confer any rights on the persons so listed and the position will be reviewed after one year. Those selected and transferred to the Audit Office will not be entitled to revert to the A & E Office and will sever all connections with the parent office. Such persons will carry with them their permanent status and lien, if any, to the new office. They will be liable to perform all duties and functions connected with audit including assignment to peripatetic audit parties. Persons who are on the waiting lists will cease to be on the waiting list for any grade if they are promoted to any other functional grade in the A & E Office; they will accordingly not be eligible for transfer to the Audit Office or for transfer to the waiting list of another grade. For this purpose, promotion to a non-functional selection grade will not be a disability. The benefit of any incentive increment or S. O. G. E. special pay or qualification pay secured during the pendency of the waiting list will be carried to the Audit Office, but passing the Departmental Examination for Accountants or in any part of the SOGE (Accounts) secured after 1.3.84 will not exempt the person from qualifying in the Departmental Examination for Auditors or the corresponding part of the SOGE (Audit). If there are any common papers the transferred persons will be exempted from taking those papers again if exemption had been secured or if the complete accounts examination has been successfully negotiated.

12. All regular employees are requested to read the above instructions, terms and conditions carefully and return the proforma indicating their preference by 31st January, 1984 to the Sr. D. A.G. (Admin.) Office of the A. G. Meghalaya, etc.

13. The object of the scheme is to avoid disturbance of any of the existing staff through transfers.

14. The tentative distribution of existing sanctioned posts between the Accounts and Audit Offices is being separately displayed (circulated) for general information.

15. The posts in the Audit Office will involve substantial touring as the quantum of Central audit will be insignificant.

16. The cadres in the Accounts Offices upto Selection Grade Accountants will be common for Assam, Meghalaya, Arunachal Pradesh and Mizoram. Similar audit cadres for these States/U. T. will be common upto Auditors.

17. The cadres of Section Officers and Accounts Officers in the Accounts Offices of Assam, Meghalaya, Arunachal Pradesh, Mizoram, Manipur, Nagaland and Tripura will be common with the cadre control vested in Accountant General, Assam. Similarly the cadres of SO (Audit), Assistant Audit Officers and Audit Officers will be common and cadre control vested in Accountant General (Audit), Assam, Meghalaya, Arunachal Pradesh and Mizoram.

18. The cadres of Stenographers and P.As. are proposed to be rationalised to provide promotional avenues to Clerks who prefer this cadre. The pay scales as approved by Government of India for Stenographers will be Rs. 360-550, P. As. Rs. 425-700 and Sr. P. As. Rs. 650-1040.

C. K. Joseph,
Accountant General,
Meghalaya, Arunachal Pradesh, and Mizoram, Shillong.

S. Sampath Narayanan
Accountant General,
Assam, Shillong.

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D.O.F.No.50/4/94-PC(Coord)

भारत सरकार

पांचवां केन्द्रीय वेतन आयोग

ब्लॉक-1, भीकाजी कामा प्लेस

आर.के. पुरम, नई दिल्ली-110066

Government of India

Fifth Central Pay Commission

Trikot-I, Bhikaji Cama Place,

R. K. Puram, New Delhi-110066

महाराज कृष्ण काव

वरदत्त सचिव

M. K. KAW

Member Secretary

Tel.No. 687 5665

Fax No. 687 4493

January 17, 1996

Dear Shri *Somiah*

A number of references are being received by the Fifth Central Pay Commission, both from the Administrative Ministries as well as various judicial authorities, in which the underlying assumption seems to be that the Fifth Central Pay Commission would also go into past anomalies with a view to their rectification with effect from past dates.

It is clarified that the Pay Commission has no intention of reopening past cases or in making any recommendation with respect to rectification of anomalies with retrospective effect. All our recommendations with regard to the grant of pay scales, allowances etc. will have prospective effect from our recommended date only.

It is, therefore, requested that past cases may kindly be settled by the concerned Administrative Ministries at their level. The above restriction on the scope of the Commission's jurisdiction may also be clarified to the concerned judicial authorities, whenever such matters come up for hearing.

With kind regards,

Yours sincerely,

702

M. K. KAW

Shri C.G. Somiah,
Comptroller & Auditor General,
10, Bahadurshah Zafar Marg,
NEW DELHI.

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Shigand Nouri
ADVOCATE

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 53 of 1997.

Date of Order : This the 14th Day of September, 1999.

The Hon'ble Mr Justice D.N.Baruah, Vice-Chairman.

The Hon'ble Mr G.L.Sanglyine, Administrative Member.

Shri Hironmoy Sen and 267 others

All the applicants are Senior Auditors
in the office of pr. Accountant General
(Audit), Assam, Meghalaya etc. at
Shillong and Guwahati.

. . . Applicants.

By Advocate S/Shri A.K.Phukan and
M.Munir.

- Versus -

1. Union of India
represented by the Comptroller
and Auditor General of India,
New Delhi.
2. The Comptroller and Auditor General
of India, New Delhi - 110002.
3. Secretary to the Government of India,
Ministry of Finance,
Department of Expenditure,
New Delhi.
4. The Principal Accountant General (Audit)
Assam, Meghalaya, Arunachal Pradesh
and Mizoram, Shillong.

. . . Respondents.

By Advocate Shri A.Deb Roy, Sr.C.G.S.C.

ORDER

BARUAH J.(V.C)

268 applicants have approached this Tribunal by filing this present application. Permission under the provision of Rule 4(5)(a) of the Central Administrative Tribunal(Procedure) Rules 1987 has been granted to the applicants to proceed in this single application. The applicants in this O.A. have prayed for a declaration that the applicants are entitled to the scale of pay of Rs.1640-2900/-(pre-revised) i.e. before 5th Pay Commission and have further prayed for a direction to the respondents to extend

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Shri A.K. Phukan
ADVOCATE

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the benefit of the said scale with retrospective effect equal to the Assistants of the Central Secretariat. For the purpose of disposal of this present application short facts may be narrated as follows :

The applicants are at present working as Senior Auditors in the office of the Principal Accountant General(Audit), Assam and Meghalaya. The scale of pay of the Senior Auditors earlier was similar to that of the Assistants of the Central Secretariat. Some Assistants of the Central Secretariat being dissatisfied with the scale of pay filed an Original Application No.1538 of 1987 before the Principal Bench of the Central Administrative Tribunal claiming higher scale of pay on the grounds mentioned in the said application. The said O.A. was disposed of by the Principal Bench by order dated 23.5.1989 directing the respondents that the anomaly identified in the judgment should be referred to by the first respondent to the Anomaly Committee as mentioned in para 45 of the order for disposal in accordance with the procedure prescribed. Pursuant to the said decision the Government of India issued Office Memorandum No.2/1/90-CS-IV dated 31.7.1990 raising the scale of pay of the Assistants of Central Secretariat. We quote the relevant portion of the said Office Memorandum :



" The President is now pleased to prescribe the revised scale of Rs.1640-60-2600-EB-75-2900/- for the re-revised scale of Rs.425-15-500-EB-15-560-20-700-EB-25-800/- for duty posts included in the Assistant Grade of Central Secretariat Service and Grade 'C' Stenographers of Central Secretariat Stenographers Service with effect from 1.1.1986. The same revised pay scale will also be applicable to Assistants and Stenographers in other Organisations like Ministry of External Affairs which are not participating in the Central Secretariat Service and Central Secretariat Stenographers Service but where the posts are in comparable grades with same classification and pay scales and the method of recruitment through Open Competitive Examination is also the same."

[Signature]

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However, neither the Principal Bench nor the Office Memorandum made any distinction with the Senior Auditors regarding the responsibility, status, nature of work and educational qualification etc. which are the guiding factors for making distinction of one post to another. There was no observation that the Senior Auditors were in any way less than that of the Assistants in the Central Secretariat. In fact the applicants in the O.A.No.1538/87 never raised the issue that their responsibility, status and nature of work were higher than the Senior Auditors. The present applicants claim that the responsibility, status, educational and other qualifications of the Senior Auditors are at par with the Assistants of the Central Secretariat and therefore they are entitled to get the benefit of the Office Memorandum dated 31.7.1990 in similar way. The representations had been made by the applicants to the authorities, however to no avail of.

2. Being aggrieved the applicants filed O.A.No.45/92 claiming inter alia that they should be given the same benefit of Annexure-IV Office Memorandum dated 31.7.1990 on the grounds mentioned therein. It was also contended that the Government arbitrarily discriminated them from that of the Assistants with no reason whatsoever. In the aforesaid O.A. the applicants contended that they were at par with the staff of the Central Secretariat Service which had been given the benefit of the increased scale of pay as referred to in Annexure IV Memorandum dated 31.7.1990. The said O.A.45/92 was disposed of by order dated 2.11.1994. While disposing of the O.A. this Tribunal summarised their contentions in para 4 of the judgment as follows :

- *i. Historically the posts of the applicants and the Assistants of the Central Secretariat Service were on par.
- ii. The minimum educational qualification in the entry level for the direct recruit Assistants of Central Secretariat Service and the Auditors of IA & AD is the same namely graduation.

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111. The Senior Auditors are drawn from the posts of Auditors after qualifying at the departmental examination with limited number of chances and after acquiring functional knowledge for at least three years as Auditors."

To sum up the contentions of the applicants that the educational qualification for entry into the service and the responsibility of the job are identical with that of the Assistants of the Central Secretariat. This Tribunal considered the pleadings and framed the following issues for consideration as referred to in para 9 of the judgment as follows :

- "1. Whether the applicants are entitled to get parity of pay scale with the Assistants and Stenographers Grade 'C' of the Central Secretariat Service on the principle of Equal Pay for Equal Work and on the basis of other grounds raised by them ?
2. Whether the refusal to grant the applicants pay parity by the respondents is in violation of Articles 14, 16 and 39(d) of the Constitution of India ?
3. Whether the respondents have acted contrary to the recommendation of the Fourth Pay Commission arbitrarily and illegally ?"

Before deciding those points this Tribunal observed in para 11 of the judgment that the case of the applicants rested on the following grounds :

- "1. Historically there was parity of scale.
2. Educational qualification at the entry level is the same.
3. The duties of applicants as assistants in Audit Department are no less onerous than those of the Secretariat Staff.
4. There is no rational basis for differentiation in scales.
5. The action of the respondents is arbitrary and discriminatory."

Thereafter on the first ground this Tribunal held hereunder :

" We are therefore inclined to hold that historically there was parity in the pay scale of applicants and Assistants in Central Secretariat. . . . "

Regarding qualification also this Tribunal found that they were similarly placed with the Assistants. The nature of

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duties and responsibilities were also not less than the Assistants in the Central Secretariat. On coming to the conclusion the Tribunal thus decided the matter in favour of the applicants holding that they were of equal status having same qualification and the responsibility and therefore they were entitled to get the similar treatment and accordingly directed to re-consider the matter in the light of the observations made in the judgment and made following directions :

"We however feel that we will be better advised to leave the matter for fresh and proper decision by the respondents. The respondents can always review their own decision when necessary. We would therefore recommend to the respondents in the interest of justice to re-examine the question and take a suitable decision afresh without postponing the issue to the report of the Fifth Central Pay Commission. We do not make such a direction or stipulate a time limit as we have no doubt that the reasons that have persuaded us to make the recommendation as reflected in the foregoing discussion will receive due and expeditious attention from the respondents. The fresh decision whichever way it may be taken however shall be communicated to the applicants."

No appeal was preferred before the Hon'ble Supreme Court against this judgment meaning thereby, the respondents had accepted the judgment. Therefore, it can be taken as a final judgment so far as the present applicants are concerned. Even after the judgment the respondents did not extend the benefit of Annexure-IV Memorandum dated 31.7.1990 to the applicants notwithstanding clear indication regarding the status of the applicants and that of the Assistants. Hence the applicants have filed this application.

3. In due course the respondents have filed written statement. We have heard both sides. Mr A.K. Phukan, learned Senior counsel appearing on behalf of the applicants assisted by Mr M. Munir submits that the Government did not take into consideration of the judgment of this Tribunal passed in the said O.A. 45/92. Mr Phukan also submits that this judgment was

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followed by the Chandigarh Bench of this Tribunal. In fact the judgment has reached its finality in this regard. Learned counsel further submits that this Tribunal in the aforesaid judgment made it clear that historically the Senior Auditors had been enjoying the same status and the scale of pay with that of the Assistants of the Central Secretariat. This Tribunal further observed that the responsibilities and qualification of the posts were also same, because in order to become a Senior Auditor he should not only be a graduate but is required to undergo certain training etc. and the job to perform by the Senior Auditors are of responsible in nature. According to the learned counsel, Senior Auditors are equal to Central Secretariat Service. Besides, Mr Phukan tries to emphasise that those points having been finally settled, the Government has no jurisdiction to take a different view by saying that if the similar pay is granted to the Senior Auditors, the Government would be required to give ^{such benefit} to other similarly situated persons. Mr A. Deb Roy, learned Sr. C.G.S.C for the respondents on the other hand submits that the matter was first considered after the order of the Tribunal passed in O.A.45/92 but no final decision could be taken because of model code of conduct as the election was announced. After the election, the new Government took a different view.

We have perused the pleadings and the written arguments submitted by the parties. The applicants in their application have categorically stated that the Government took a decision to give the same scale of pay with that of the Assistants but this could not be implemented because of the announcement of the general election. Later on new Government decided otherwise. In the written statement, the respondents have stated about it. In para 3 of the written argument, the respondents have stated as follows :

"In compliance of the Hon'ble Tribunal's order the question of higher pay scale to

contd..7

the Sr. Auditors was re-examined and an 'in-principle' decision was taken to grant the higher pay scale equivalent to the pay scale of Assistant in CSS from the date of judgment of this Hon'ble Tribunal, viz 2.11.1994. The matter was being processed further when holding of General Elections was announced. It was decided by the Government that the proposal might be deferred till the new Govt. takes over, in view of the Model Code of Conduct."

(Emphasis added)

Again in para 12 of the written statement the respondents also repeat the same thing. We quote the relevant portion of that para :

"... However, the Government clarified that the decision to revise the scale of Senior Auditors did not imply that the Government had conceded parity with the Assistant in the Central Secretariat Service and that all such matters were to be left for consideration of Fifth Pay Commission. For this purpose a Cabinet Note was prepared by the Respondent No.2 which was also approved by the then Finance Minister and Minister of State (Personnel and Pensions). But due to the announcement of general election, the then Finance Minister had desired that in view of model code of conduct of the elections, the proposal would have to be deferred till the new Government took over."

The statement made in this paragraph quoted above is however somewhat different from the written submission made by the learned Sr.C.G.S.C. During the course of hearing the learned counsel for the applicant has produced a note dated 2.7.1996 prepared by the Ministry of Finance, Department of Expenditure under the signature of the Under Secretary in-charge. In para 5 of the said note it is stated as follows :

"The proposal was examined on merits on the directions of the CAT and the then FM had agreed to the proposal to revise the pay scale subject to the approval of the Cabinet. The Cabinet Note prepared by the C & AG was also approved by then FM and MOS (PP). However due to announcement of the general elections then FM had desired that in view of Model Code of Conduct of elections, the proposal will have to be deferred till the new Government takes over."

contd.:8

Same thing was repeated again by letter No. 12(3)/IC/95 dated 15.1.1996 which was written by the Joint Secretary to the Deputy CAC of India. In para 2 of the said letter also there is a reference regarding the granting of Scale of pay equal to Assistants in Central Secretariat. We quote the relevant portion of the said letter :

"...it has been agreed, in principle, to upgrade the scale of pay for the post of Senior Auditors in IAGAD from Rs.1400-2600/- to Rs.1640-2900/- from the date of order of the Tribunal, Guwahati Bench viz. 2.11.94..."

These two letters have not been disputed by Mr Deb Roy.

From all those it appears that the Government had taken a decision in principle to give the benefit of higher pay at par scale with that of Assistants of the Central Secretariat.

But the decision could not be implemented in view of the announcement of the general election. In this regard we find that the written submission given by the learned Sr. C.G.S.C is similar to that of those letters even though in written statement we find some difference. Taking all

together we can safely come to the conclusion that the Government had taken a decision to give parity of scale with that of the Assistants of the Central Secretariat.

Unfortunately this was reversed when the new Government came to power. It is a well settled principle that a decision can be revised by the Government, but there must be some plausible or reasonable ground for doing so. In the written statement it is spelt out that if the applicants are given the benefit of the Annexure-IV Office Memorandum, the Government will have to pay to the others also. Law is well settled in this regard also. If the qualification, nature of duties and responsibilities are similar, the similar benefit must be given. Merely because some more employees will come and claim the similar benefit, in our opinion cannot be a ground for denying the right. If that is so the

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Government ought to have come forward at that time itself when the Assistants pay was raised by the order of the Principal Bench of the Tribunal. They were satisfied with the judgments and therefore did not prefer any appeal before the Supreme Court. Therefore it is not reasonable to say that similar employees will come and claim the same benefit. We therefore have no hesitation of coming to the conclusion that the respondents did not properly scrutinise the findings of this Tribunal given in O.A.45/92 dated 2.11.1994 and also the spirit of the judicial pronouncements. Mr Deb Roy while supporting the action of the respondents has cited some decisions of the Supreme Court that the Tribunal/Courts should not play a role of an employer by interfering with the pay scale. This is, in our opinion, a well settled principle. But we feel that the order passed by this Tribunal which reached its finality, has not been fully complied with. The Tribunal having come to the conclusion that the nature of job, qualification, responsibility of the Senior Auditors are same or similar with that of the Assistants historically, they had been given the same scale of pay. Even the expert body like Fourth Central Pay Commission also gave similar scale. Government had already taken decision. We find no justifiable ground to make a departure from that decision of the Government earlier taken. Accordingly we direct the respondents to consider the true spirit and direction given in the judgment dated 2.11.1994 passed in O.A.45/92 and to pass necessary and appropriate orders regarding the parity of pay. This must be done as early as possible, at any rate, within a period of 4 months from the date of receipt of this order.

Application is accordingly disposed of. However, considering the entire facts and circumstances of the case we make no order as to costs.

My name
30/9
Deputy Registrar (A)
Central Administrative Tribunal,
Guwahati Bench

SD/- VICE-CHAIRMAN
SD/- MEMBER(A)

OFFICE OF THE ACCOUNTANT GENERAL (AUDIT),
MEGHALAYA ETC., SHILLONG
IMPORTANT

Memo No DAG(A)/Con-C/OA 63 of 97/1056

Dated 04 February 2000

The Government of India very carefully considered the grant of higher pay scale to Sr. Auditors in the light of judgement dated 14.9.99 delivered by the Hon'ble CAT Guwahati Bench on OA 63 of 97 and decided not to revise the pay scale of the Senior Auditors in the IA&AD. Pursuant to Headquarters orders communicated vide DO No PCC/H/97 dated 4.2.2000, all the applicants of OA 63 of 97 are hereby informed of the decision of the Government of India (copy of Hqrs letter communicating the said decision enclosed).


Sr Deputy Accountant General (Admin)

*Confirmed to be true
Shishu Kumar*

SPEED 103T



D.O.NO

PCCET-97

भारत के नियंत्रक-महालेखापरीक्षक का कार्यालय

10, बहादुरशाह जफर मार्ग,

नई दिल्ली - 110 002

OFFICE OF THE

COMPTROLLER & AUDITOR GENERAL
OF INDIA

10, BAHADUR SHAH ZAFAR MARG,

New Delhi 110 002

दिनांक / DATE 4 2 2000

- 266 -

R.SRINIVASAN
DEPUTY DIRECTOR (LEGAL)
TELE. 323 9335

Dear Sir,

Please refer to your D.O. letter No. Sr.DAG(A)/Con-C/OA 63 of 97/16-11 dated 21.1.2000 regarding grant of higher pay scale to Sr. Auditors in the IA&AD based on the judgement dated 14.9.99 of CAT, Guwahati bench.

2. In compliance with the order dated 14.9.99 of Guwahati Bench of the Tribunal passed in O.A. 63/97, the Ministry of Finance, Govt. of India has considered the claim of Sr. Auditors for entitlement to the scale of pay of Rs 16-10-2900 (pre-revised) on par with the Assistants of the Central Secretariat. You may kindly inform the applicants, collectively and individually, as follows :

- (i) Government had very carefully considered the judgement dated 2.11.94 of the Hon'ble Tribunal in OA 45/92 and the subsequent order passed in OA 63/97.
- (ii) An in-principle decision was, no doubt, taken by the then Finance Minister earlier in December, 1995 to accept, subject to the approval of the Cabinet, the proposal of the Comptroller & Auditor General of India to grant the pay scale of Rs 1640-2900 [pre-revised] to the Senior Auditors in the Indian Audit & Accounts Department. This in-principle decision did not, however, imply that the Government had conceded parity in the pay scale of Senior Auditors and the Assistants in the Central Secretariat Service.
- (iii) The necessary Cabinet approval, which was a condition precedent for implementing the in-principle decision, could not be obtained because General Elections to the Lok Sabha had been announced in the meantime and the Model Code of Conduct was in force.
- (iv) On further consideration on assumption of office by the new Government, it had been considered appropriate to remit this issue to the Fifth Central Pay Commission, which had been constituted in the meantime.

टेलीफोन / Phone : 3231440, 3231761
टेलीग्राफ / Telex : 031-65981, 031-65847

मिनि / Telegram : ARGEL NEW DELHI
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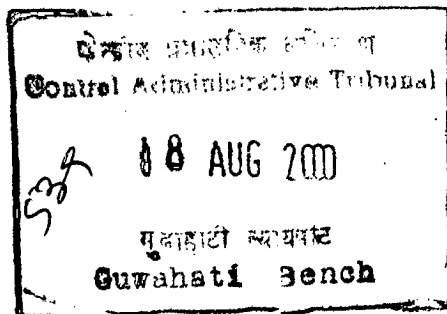
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- (v) The Pay Commission has also been recognised by the various Benches of the Hon'ble Tribunal as the competent expert body to determine pay scales and related benefits of the Central Govt. employees.
- (vi) ~~The Fifth Central Pay Commission did not recommend parity in the pay scale of the Senior Auditors and Assistants in the Central Secretariat Service. Since the issue related primarily to the rectification of a perceived past anomaly, the Commission had recommended that the matter may be examined by the Anomalies Committee.~~
- (vii) In pursuance of this recommendations, this issue was remitted to the Committee of Secretaries (Fast Track Committee). After detailed consideration of all relevant factors, the Committee had not found it possible to accept the demand for parity with the Assistants in the Central Secretariat Services and had recommended that the Senior Auditors may be granted only the replacement scale corresponding to the pre-revised scale of Rs. 1600-2660 as recommended prospectively by the Fifth Central Pay Commission.
- (viii) The recommendation of the Fast Track Committee was also considered at the highest level in Government and was approved by the Cabinet.
- (ix) ~~It was presumably in recognition of this fact that the demand for parity was also raised by the Staff Side on the JCM National Council. After detailed deliberations, it had been mutually agreed between the Staff and Official Sides to record a disagreement. The recording of the disagreement had also been approved by the JCM National Council recently in December, 1999. It will, therefore, be necessary to refer this issue to the Board of Arbitration in terms of the Joint Consultative Machinery Scheme.~~
- (x) In the circumstances, it has been decided not to revise the pay scale of Senior Auditors in the IA&AD.

3. The above orders passed by the Government may be immediately intimated to all the applicants, collectively and individually and a confirmation sent to us. Another copy of this FAX is also being sent to you separately by speed post.

Respectfully

Yours sincerely,

Shri Rochila Saiwari
Accountant General (Audit)
Meghalaya, Arunachal Pradesh & Mizoram
SHILLONG- 791001



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

O.A. NO. 85/2000

H.Sen and Others Applicants

Vrs.

Union of India and others. Respondents

WRITTEN STATEMENT ON BEHALF OF RESPONDENTS 1 to 4

The humble Respondents beg to submit their written statement as follows :-

1. A.L. Sharma, presently working as Deputy Accountant General in the Office of the Accountant General (Audit) Meghalaya, Arunachal Pradesh and Mizoram, Shillong do hereby state that I am fully conversant with the facts of the case and am authorised on behalf of the answering Respondents to file this reply.

PRELIMINARY SUBMISSIONS

1. The Senior Auditors in the Indian Audit and Accounts Department were granted pay scale of Rs.1400-2600 pursuant to

the recommendations of Fourth Pay Commission from 1.1.1986. The post of Assistants in Central Secretariat Service was also in the same pay scale. Subsequently, on the basis of the orders of the Central Administrative Tribunal, Principal Bench, New Delhi Ministry/Government revised the pay scale of Assistants to Rs.1640-2900, vide Department of Personnel & Training O.M. dated 31.7.1990. Aggrieved by the decision of the Government in the case of Assistants of CSS, Sr. Auditors filed O.A. No.45/92 before this Hon'ble Tribunal.

2. This Hon'ble Tribunal, vide its order dated 2.11.1994 passed in O.A. No.45/92 made the following directions :-

“We would, therefore, recommend to the respondents in the interest of justice to re-examine the question and take a suitable decision afresh without postponing the issue to the report of the Fifth Pay Commission. The fresh decision, whichever way it may be taken however shall be communicated to the applicants. It is made clear that this order will not preclude the applicants to represent their case before the Fifth Central Pay Commission whether a fresh decision is taken or not by the respondents as recommended by us.”

Following the above-mentioned order of this Hon'ble Tribunal the matter was thoroughly considered in the light of the directions given by this Hon'ble Tribunal, and it was decided by Government at that time on merits that there was no case for increasing the pay scale of Senior Auditors. Accordingly, a Misc. petition No.121/96, was filed before

this Hon'ble Tribunal in August, 1996, clearly indicating the various considerations which had weighed with the Government while arriving at the decision not to increase the pay scale of Senior Auditors. The applicants were also informed of the decision.

This Hon'ble Tribunal had also been informed that although the Government had decided not to grant a higher pay scale to the applicants, yet the matter had been referred to the Fifth Central Pay Commission. In other words, Government did not postpone a decision to the report of the Fifth Pay Commission but took a decision in the matter even before it was referred to the Fifth Central Pay Commission. The idea of referring the matter to the Fifth Central Pay Commission subsequently (that is, after taking a decision in the matter) was that this matter might also be considered by an expert body like the Central Pay Commission alongwith all other matters falling within the purview of the Central Pay Commission. In the normal course, the matter would in any case have been referred to the Central Pay Commission as it was within their purview. In this context it may also be pointed out that in the order dated 2.11.1994 in OA No. 45/92 this Hon'ble Tribunal had itself observed that the said order would not "preclude the applicants in any manner to present their case before the Fifth Central Pay Commission whether a fresh decision is taken or not by the respondents." The Fifth Pay Commission considered the issue and refrained from making any specific recommendations since

the demand related primarily to a past anomaly. They suggested that the matter could be examined afresh by the Anomalies Committee. As far as pay scale for the future were concerned, the Fifth Pay Commission recommended only the replacement scale corresponding to Rs.1600-2660. The matter was considered by a Committee of Secretaries on a fast track basis and the demand for the scale of Rs.1640-2900 was not agreed to by Government. The Sr. Auditors have, therefore, been placed in the scale of Rs.5000-8000 corresponding to the replacement scale of Rs.1600-2660 as recommended by the Fifth Pay Commission. The Senior Auditors filed a fresh Original Application No.63/97, concerning the same matter, before this Hon'ble Tribunal. The O.A. No.63/97 was disposed of by this Hon'ble Tribunal by its order dated 14.9.1999 which inter-alia contained the following directions:-

“Accordingly, we direct the respondents to consider the true spirit and directions given in the judgement dated 2.11.1994 passed in O.A. No.45/92 and to pass necessary and appropriate orders regarding the parity of pay. This must be done as early as possible, at any rate, within a period of 4 month from the date of receipt of this order.”

5. The above direction was again considered by the Govt. and the decision to reject the demand for higher pay scale was communicated to the applicants in O.A. 63/97 vide the order dated 4.2.2000.

6. Even before this Hon'ble Tribunal passed its order dated 14.9.1999, in OA No.63/97, the issue of pay parity between Senior Auditors and Assistants of Central Secretariat had been thoroughly considered and Government had taken a decision at the highest level not to agree to such parity. As already brought out, the matter was considered in great detail by the Committee of Secretaries set up by the Government to consider some of the recommendations of the Fifth Central Pay Commission on a Fast Track basis. Among other things, the Committee of Secretaries specifically also considered the order dated 2.11.1994 of this Hon'ble Tribunal. The said order was before the Fast tract Committee of Secretaries and references to it are also made in the Report of the Committee of Secretaries. In their report dated 1.10.1997, the Committee of Secretaries have observed that there is no justification for accepting the demand for revision of the pay scale of Senior Auditors/Senior Accountants vis-à-vis Assistants of CSS. The Committee of Secretaries accordingly recommended that the Senior Auditors/Senior Accountants may be granted the replacement scale as recommended by the Fifth Central Pay Commission. The Union Cabinet at its meeting held in October 1997 approved the said recommendation of the Committee of Secretaries.
7. In view of the above submissions, the present application is devoid of merit and deserves to be dismissed.

PARAWISE REPLY

8. That with reference to the statements made in para 1 of O.A, it is submitted that the impugned order dated 4.2.2000 is just, legal and valid requiring no interference by this Hon'ble Tribunal.
9. That with regard to the statements made in para 2 of the O.A., it is respectfully submitted that the Hon'ble Tribunal has no jurisdiction in the matter to determine the pay scale to which the applicants are entitled, as the Hon'ble Supreme Court in catena of judgements has held that it is the function of the Government to determine pay scale to a post.
10. That the contents of Para 3 require no comments.
11. That the contents of Paras 4.1 to 4.3 require no comments. However, the statement that the responsibilities of Sr. Auditor are higher than that of Assistants of CSS is not admitted.
12. That with reference to the Para 4.4 it is submitted that both the Assistant of CSS and Sr. Auditors of IA&AD were in the identical pay scale for the period from 1.3.84 to 31.12.85.
13. That the contents of Paras 4.5 & 4.6 require no comments
14. That the contentions made in Para 4.7 are denied. It is denied that the Department of Personnel & Training O.M. dated 31.7.1990 disturbed the internal relativity of the pay scale of Sr. Auditor vis-à-vis the Assistants of CSS and introduced an

anomaly. The two posts of Sr. Auditors in IA&AD and Assistants in CSS are in different Offices/Organisation and there can be no question of comparing the internal relativity. Accordingly, no anomaly, as alleged, has been introduced.

15. The contentions made in Para 4.8 are denied. It is denied that the rejection of the demand for higher pay scale was arbitrary and violated the provisions of Article 14 and 16 of the Constitution of India. It is respectfully submitted that at the time when general issue of higher pay scale to audit staff and also other accounting staff in other Organised accounting cadres was pending in the JCM National Council, the issue of higher pay scale to applicants (Sr. Auditors in the OA.) was delinked on the specific directions of CAT, Chandigarh bench in O.A. 427/HP/1991. The issue was considered and rejected by the Govt. The demand of the applicants have been considered on more than one occasion at the highest level of the Govt. and it has not been found accede to the demand. The issue was considered by the Fifth Central Pay Commission and Committee of Secretaries (Fast Track Committee) constituted pursuant to the recommendations of Fifth Pay Commission. Both the bodies did not find justification in granting higher pay scale of Rs. 1640-2900 to the post of Sr. Auditors. It is also respectfully submitted that the demand for parity in scale raised by the Staff side of Joint Consultative Machinery of National Council (represented by Federations/Associations belonging to IA&AD, P&T, Railways, Ministries/

Departments, etc.), after detailed deliberations, has been mutually agreed between the Staff side and the Official side to record a disagreement. The recording of disagreement has also been approved by the JCM National Council in its meeting held on 4th December 1999.

16. The averments made in Paras 4.9 to 4.17 are not admitted as contended by the applicants. It is respectfully submitted that following the judgement and order dated 2.11.94 passed by this Hon'ble Tribunal in O.A. 45/1992, the matter was thoroughly considered in the light of the directions given in the said order, and it was decided by the Govt. at that time on merits there was no case for increasing the pay scale of Senior Auditors. The respondents also filed a Misc. Petition No. 121/96 in August 1996, clearly indicating the various considerations that had weighed with the Govt. while arriving at the decision not to increase the pay scale of Sr. Auditors. This Hon'ble Tribunal disposed of the said Misc. Petition No. 121/96 by its order dated 11.2.1997. This Hon'ble Tribunal came to the conclusion that in case the applicants in O.A. No. 45/92 were still aggrieved then they might file a fresh application. Apparently, this Hon'ble Tribunal was satisfied at that time that the respondents in OA No. 45/92 had fully complied with this Hon'ble Tribunal's order dated 2.11.94. A copy each of this Hon'ble Tribunal order dated 2.11.1994 and 11.2.1997 are is annexed hereto as Annexure R-I & R-II. It is further submitted that the in-principle decision taken in December, 1995 would not imply that the government had

conceded parity in the pay scale of Sr. Auditors and Assistants in CSS. The necessary Cabinet approval, which was a condition precedent of implementing the decision in principle could not be obtained because General Elections to the Lok Sabha had been announced in the meantime and the Modal Code of Conduct was enforced. It is further submitted that on further consideration on assumption of office by the new government in 1996, it was considered appropriate to remit the issue to the Vth Central Pay Commission, which had been constituted in the meantime.

17. The averments made in Para 4.18 are not admitted. It is respectfully submitted that on restructuring of cadres in IAAD, the Sr. Auditors were placed in the scale of Rs. 425-800 similar to the pay scale applicable to Assistants of CSS. Subsequently, based on the order dated 23.5.1989 passed in OA 1538/87 by CAT, Principal Bench, New Delhi, Department of Personnel and Training issued OM No. 2/1/90-CS IV dated 30.7.1990 revising the pay of Assistants of CSS and Grade 'C' Stenographers of CSSS to Rs. 1640-2900 from 1.1.86. The OM inter alia provided that the same revised pay scale will also be applicable to Assistants and Stenographer in other organisation which are not participating in the Central Secretariat Service but where the posts are in comparable grades with same qualification and pay scales and the method of recruitment through open competitive Examination is also the same. As the Sr. Auditors did not fulfill the criteria for the revised pay scales as that of Assistants, their pay scale was not revised. Therefore, there is no discrimination in the action of the respondents, as alleged or otherwise.

18. The contents of Para 4.19 are denied. As submitted earlier, it is reiterated that at the time when general issue of higher pay scale to Senior Auditors in IAAD and the other accounting staff in organised accounting cadre was pending before the JCM National Council, on the specific directions given in order dated 8th October, 1991 in OA No. 427/HP/90-91, the issue of higher pay scale to the applicants (Senior Auditors) was delinked. The matter was considered by the Government and it was decided to reject the demand of the applicants. The general issue however, continued to remain before JCM (National Council). Therefore, it is denied there is any illegality in stating that it was mutually decided to agree between the Staff and the Official sides to record a disagreement on the issue.
19. The contents of Para 4.20 require no comments.
20. The contents of Para 4.21 are denied. It is denied that the respondents' deliberately referred the matter to the 5th Pay Commission. The Respondents had referred the issue of higher pay scale to Sr. Auditors/Sr. Accountants and not the issue of anomaly to the 5th Pay Commission. The idea of referring the matter to the Fifth Central Pay Commission was that this matter might also be considered by an expert body like the Central Pay Commission alongwith all other matters falling within the purview of the Central Pay Commission. In the normal course, the matter would in any case have been referred to the Central Pay Commission as it was within their

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purview. In this context it may also be pointed out that in the order dated 2.11.1994 in OA No. 45/92 this Hon'ble Tribunal had itself observed that the said order would not "preclude the applicants in any manner to represent their case before the Fifth Central Pay Commission whether a fresh decision is taken or not by the respondents".

21. In response to the averments are made in Para 4.22, it is respectfully submitted that as Senior Auditors did not fulfill the criteria for the higher pay scale mention in the O.M. dated 31.7.1990. The higher pay scale of Rs.1640-2900 allowed to Assistants and Stenographer Group "C" in both Central Secretariat Service, and in other offices not participating in Central Secretariat Service, could not be allowed to Senior Auditors, as the Sr. Auditors did not come within the scope of the O.M. dated 31.7.1990. The decision of the Government is therefore, just and legal.
22. In response to Para 4.23 and 4.24 it is submitted that the Senior Auditors were placed in the same Pay Scale of Assistants in Central Secretariat Service for a short period from 1.3.84 to 31.12.85. The pay scale of Assistants in CSS was revised to 1640-2900 from 1.1.1986 in pursuance of the directions given by Central Administrative Tribunal, Pr. Bench, New Delhi. It is submitted that the respondents filed Misc. Application before this Hon'ble Tribunal seeking extension of time for implementing its directions dated 2.11.1994, as the matter was continuously under consideration of the Govt., requiring interministerial consultations. In this

connection, the respondents crave leave to refer to rely upon the submissions made in Para 16 above. It is therefore, denied that the action of the respondents was arbitrary and discriminatory are alleged or otherwise.

23. The contents of Para 4.25 require no comments.
24. The contentions of Para 4.26 are denied. It is denied that there is bias on the part of the respondent in referring the matter to the 5th Pay Commission. It is also denied that the respondents had intention to mislead the Hon'ble Tribunal. As submitted earlier in para 20 above, it has been decided to refer the entire issue of higher Pay Scale of Sr. Auditors/Sr. Accountants and there is demand for parity with Assistants of CCS to the 5th Pay Commission especially keeping in view the fact that this Hon'ble Tribunal gave its order in December, 1994 when the Report of the Pay Commission was not in sight. It is submitted that the 4th Pay Commission had placed both the Senior Auditors and the Senior Accountants in the same pay scale; observing that both audit and account functions compliment each other. Therefore, an isolated decision in respect of Sr. Auditors would have a cascading effect in other similar categories of posts. Further, there has been persistent demand from the JCM that Sr. Accountants should be given the same pay scale as Senior Auditors.
25. The contents of Paras 4.27 to 4.29 require no comments.
26. The contention made in Para 4.30 are denied. It is respectfully submitted that the directions given by this Hon'ble Tribunal in

order dated 14.9.99 passed in OA No.63/97 were carefully considered by the Government and the decision of the Government was conveyed to the applicants vide letter dated 4.2.2000.

27. The contents of Para 4.31 are denied. It is respectfully submitted that this Hon'ble Tribunal in both its order dated 2.11.94 and 14.9.99 had directed the respondents to consider and pass necessary orders. In compliance of this Hon'ble Tribunal the above mentioned orders, the respondents considered the demand of higher pay to Senior Auditors and could not find justification for granting the same pay scale allowed to Assistants of Central Secretariat Service. It is further submitted that the general issue of higher pay scale to Senior Auditors/Sr. Accountants was discussed in the JCM National Council and it was decided to record disagreement on the issue in the last meeting held on December, 1999. In this connection, the respondents crave leave and rely upon the submission made in Para 12 above.

REPLY TO GROUNDS

28. The grounds mentioned in Paras 5(1) to 5(xv) have not justification. It is submitted that the directions given in the Hon'ble Tribunal order dated 2.11.1994 passed in O.A. 45/92 and order dated 14.9.99 passed in OA 63/97 were considered and Govt. in the highest level has not accepted the demand for higher pay scale to the Sr. Auditors in IAAD at par with the pay scale of Assistants in CSS. It is respectfully submitted that there is catena of judgements by the Hon'ble Supreme

Court that parity in employment on the doctrine of 'Equal Pay for equal work' has to be applied with caution and it is for the expert bodies like the Pay Commission to determine the equality required for applying this doctrine. The judgements of the apex Court in State of Madhya Pradesh Vs. Pramod Bhariya (1993) 1 SCC 539, State of U.P. Vs. J.P. Chaurasia (1989) 1 SCC 121, Federation of All India Customs and Central Excise Stenographers (Recognised) Vs. Union of India (1989) 3 SCC 91 are relevant. Similar view has been expressed by the Full bench of the Central Administrative Tribunal, Ernakulam Bench in Jacob Abraham and others Vs. UOI and others (1994) 28 ATC(FB) 177 that it is not only for the expert body like Pay Commission to determine the equality but the financial considerations are relevant for determining the relief, if any, granted by the Tribunal. In Union of India Vs. P.V. Hariharan JT(1997) 3 SC 569, the Hon'ble Supreme Court has observed. "We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Govt., which normally acts on the recommendations of a Pay Commission. Change of Pay Scale of a category has a cascading effect. Several other categories similarly situated put forward their claim on the basis of such change. The Tribunal should realise that interfering with pay scale is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue".

It is therefore, respectfully submitted that the grounds put forth by the applicants has no legal force.

29. That with regard to the statements made in Para 6 of the OA, the Respondents have no comments.
30. That with regard to the statements made in Para 7 of the OA, the Respondents have no comments.
31. That with regard to the statements made in Paras 8 and 9 of the OA, the respondents beg to state that in the context of the submissions made hereinabove, the application is devoid of merit and the applicants are not entitled to any relief/interim relief. It is, accordingly, prayed that the OA may be dismissed with costs.

Amrit Lal Sharma

DEPONENT

*Deputy Accountant General (Admin)
@ the A.G. (Audit) Meghalaya, Eto.
Shillong-793001*

VERIFICATION

I, Amrit Lal Sharma, working as Deputy Accountant General (Administration), residing at Shillong do hereby verify all the facts stated above are true and correct to the best of knowledge and information as derived from the Official record and nothing has been withheld therefrom.

Amrit Lal Sharma

DEPONENT

*Deputy Accountant General (Admin)
@ the A.G. (Audit) Meghalaya, Eto.
Shillong-793001*

16
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(Shillong Circuit)

Original Application No. 45 of 1992

Date of decision : 2 Nov-1994

The Hon'ble Justice Shri M.G. Chaudhari, Vice Chairman.

The Hon'ble Shri G.L. Sanglyine, Member (Administrative).

Shri Ranjit Choudhury & Others
Senior Auditors
Office of the Accountant General (Audit)
Assam-Meghalaya etc. at Shillong and Guwahati

..... Applicants

By Advocates Shri B K Sharma, Shri M K Chaudhuri and
Shri A K Roy.

—versus—

1. Union of India
represented by the Comptroller &
Auditor General of India, New Delhi
2. Comptroller & Auditor General of India
New Delhi-110 002
3. The Accountant General (Audit)
Assam, Meghalaya, Arunachal Pradesh
and Mizoram and Shillong.

..... Respondents

By Advocate Shri A K Choudhury, Addl. C.G.S.C.

ORDER

CHAUDHARI. J. V.C.

The applicants are Senior Auditors working in the
office of the Accountant General (Audit), Assam-Meghalaya etc.
at Guwahati and Shillong. Their claim for upward revision of
their pay scale to Rs. 1640-2900 with retrospective effect
in parity with the staff of Central Secretariat, Government

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of India has been denied by the respondents. Hence they have approached the Tribunal seeking that relief. The application was filed on 28.2.1992. It was heard by us during our sitting at Shillong.

2. The applicants were initially appointed in the erstwhile composite office of the Accountant General, Assam and Meghalaya etc. at Shillong as Auditors. In the year 1984 a separate cadre was created for audit in the field offices of the Indian Audit and Accounts Department (IA & AD). Consequently, with effect from 1st March 1984 the applicants were permanently transferred to the posts of Auditors in the separated Audit office of the Assam-Meghalaya etc. at Guwahati and Shillong. The posts were redesignated as Senior Auditors vide Circular issued by the Comptroller and Auditor General dated 2.6.1984.

3. The applicants were initially appointed in the erstwhile composite office as Auditors in the pay scale of Rs. 425-700. They were transferred after separation of the cadres to the posts of auditors carrying scale of Rs. 425-800. The applicants describe these posts as higher functional grade posts.

4. The case of the applicants in short is that the erstwhile pay scale of the Assistants of the Central Secretariat was also the same, namely, Rs. 425-800 and therefore the Senior Auditors of IA & AD enjoyed parity in their pay scales with Assistants of Central Secretariat from the date of creation of their posts on 1.3.1984. The Fourth Central Pay Commission in its report prescribed the same revised pay scale for pre existing scale of Rs. 425-800 for both, Assistants of Central Secretariat and Senior Auditors of IA & AD. The recommendation was accepted by the Government of India. However, they have issued orders on 31.7.1990 only in

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respect of Assistants of Central Secretariat with effect from 1.1.1986 thereby revising their pay scale to Rs. 1640-2900. The applicants Senior Auditors of IA & AD are however not given that benefit. They have therefore to continue in the lower pay scale of Rs. 1400-2600. They filed representations claiming the extension of the benefit of revised pay scale of Rs. 1640-2900, to the Government of India through the Accountant General (Audit). However they did not receive any reply nor their demand was acceded to although benefit of revision was extended to the employees of some other departments under the administrative control of different Ministries of the Government of India. In the premises the applicants allege that the refusal of the Government of India to give them the benefit of revised pay scale on parity with the staff of the Central Secretariat Service is discriminatory, capricious and in violation of the constitutional provisions. They complain that thereby they are given a differential treatment and by introducing a partial revision in the same pre-revised pay scale disturbance in parity and internal relativity in the pay scales has occurred. They contend that they stand on par with the staff of Central Secretariat Service which has been given the benefit of revised pay scale, for the following reasons :

- i. Historically the posts of the applicants and the Assistants of the Central Secretariat Service were on par.
- ii. The minimum educational qualification in the entry level for the direct recruit Assistants of Central Secretariat Service and the Auditors of IA & AD is the same namely graduation.
- iii. The Senior Auditors are drawn from the posts of Auditors after qualifying at the departmental examination with limited number of chances and after acquiring functional knowledge for at least three years as Auditors.

They seek to point out that the Senior Auditors are expected to acquire professional experience required for audit functioning. On the



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other hand the Assistants of Central Secretariat Service are not required to meet any such condition. In fact 50% of the Assistants in the Central Secretariat Service are filled by promotion from eligible UDC with five years of approved service who are none other than the promotees from Clerk's Grade for which the required minimum qualification is matriculate/undergraduate as against the requirement of qualification of graduation for Senior Auditors. However, even so for the purpose of revision of pay scales the staff of the Central Secretariat Service is preferred to the Senior Auditors. The differentiation thus introduced in respect of the two sets of posts as regards pay scale is irrational and unreasonable. It violates the principle of equal pay for equal work. It also disregards the recommendation of the Fourth Pay Commission. The principle of fair comparison and internal relativity has been ignored.

5. Initially the respondents filed a short reply and raised preliminary objection to the maintainability of the application contending that the subject matter of the application is under consideration in the National Council (JCM) and therefore it cannot be decided by the Government unilaterally and since under the JCM scheme pay and allowances is an item for which compulsory arbitration is provided the application was premature and deserved to be dismissed. That was controverted by the applicants by filing a rejoinder contending therein that the JCM is not departmental remedy and it cannot override the jurisdiction of the Tribunal. At one stage the Tribunal was informed that the respondents were contemplating to apply to the Chairman of the Central Administrative Tribunal for transferring all the cases pending before different benches involving the same issue to one bench. In view of the above, we called for clarification vide minutes dated 21.9.1994 as to whether any decision has been taken by the JCM which will govern all the Senior Auditors of the Audit Branch generally, whether the JCM will be in a position to consider

the case of the applicants if this Tribunal is inclined to direct it to do so and whether the respondents have decided or not to approach the Principal Bench ^{for} of transfer of all similar cases before one bench. We were informed by the learned counsel for the respondents in writing that there was no proposal to approach Principal Bench for transfer of the cases, that the case of Senior Auditors of IA & AD was delinked from the general issue in the National Council as the committee of National Council (JCM) which was constituted have decided in its meeting to recommended to the National Council(JCM) that a disagreement may be recorded and that after delinking of the case, the Govt. of India considered the demand of the Senior Auditors and it has been rejected by the Government. The communication from the office of the Comptroller and Auditor General of India dated 5.10.1992 containing the above information has been placed on record. In view of the same the counsel for both sides have been heard at length.

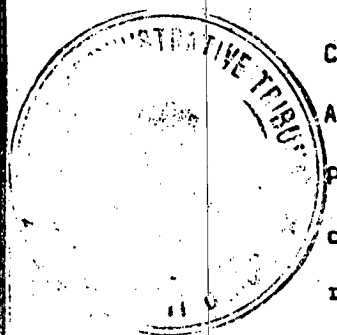
6. In the written statement the respondents have inter-alia contended as follows :

The Tribunal has no jurisdiction to determine the pay scale to which the applicants are entitled as that is the executive function of the administration and courts ought not normally to interfere in such matters. The revised pay scale was prescribed under the Government of India, Ministry of Personnel Grievances and Pension G.M. No. 2/90-CS-IV dated 31.7.1990 for the duty posts included in the Assistant Grade of Central Secretariat Service, Grade 'C' stenographer's of Central Secretariat Service and for Assistants and Stenographers in other organisations where the posts are in comparable grades with same classification and pay scales and the method of recruitment through open competitive examination is also the same. That was done in compliance with the order of the Central Administrative Tribunal, Principal Bench. The post of Senior Auditor is filled by promotion



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from the cadre of Auditor having three years of regular service in the cadre and not by recruitment through open competitive examination and as such the condition regarding method of recruitment as envisaged by G.I. O.M. dated 31.7.1990 (Supra) is not fulfilled in the case of the applicants. The Government of India have also clarified ^{that} ~~in that~~ the above stated order dated 31.7.1990 is not applicable to other bodies in the pre-revised scale of Rs. 425-800 in other Government departments etc. where the method of recruitment is not through open competitive examination as in the case of Assistant (Stenographers of the Central Secretariat Service conducted by the UPSC). Thus according to the respondents the applicants do not fulfil the requirements of the O.M. regarding the same classification and method of recruitment. They reiterate that the method of recruitment to the post is not through the same open competitive examination conducted by the Staff Selection Commission for Assistants of the Central Secretariat Service etc. and since the recruitment to the post of Senior Auditor is not made through the same examination the demand for extension of the benefit of the O.M. 31.7.1990 made by the applicants is not tenable. The respondents further state that the recommendation of the Fourth Central Pay Commission was considered by the Government. They seek to point out that Assistants who are members of Central Secretariat assist the Ministries in formulation and implementation of policies of the Central Government so also the stenographers Grade 'C' of Central Secretariat Service and Assistants of Central Secretariat Service are historically being treated on par in terms of pay scale. This parity was maintained by the Fourth Pay Commission also. Consequent to the revision of the pay scales of Assistants, in order to set right the anomaly pointed out by the Principal Bench of the Central Administrative Tribunal, as a logical corollary, the scale of pay of Grade 'C' Stenographers was also revised to Rs. 1640-2900. Thus according to the respondents the order



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(i.e. dated 31.7.1990) is neither discriminatory nor violative of the principle of 'Equal Pay for Equal Work'. The respondents point out that with a view to develop an organisational pattern suited to the altered needs of audit and to improve the maintenance of the accounts of the State Govt. transactions the IA & AD was bifurcated with effect from 1.3.1984 into two separate streams under Accountants General with cadres of their own with higher pay scale to audit side against the common category pay scale for Account side and higher pay was granted to the senior auditors with effect from 1.3.1984 by the Govt. of India in comparison with their counter parts in Accounts office in view of their arduous nature of job and responsibilities. It is contended that the nature of job and conditions of service of Assistants in the Central Secretariat and Senior Auditor in the IA & AD are different in the matter of recruitment, promotion, duties and responsibilities and they are not comparable and that mere pay parity in the pre-revised scale of Assistant and Senior Auditor is not the only criterion for treating the two posts as same so far as service condition is concerned. The respondents also contend that as Senior Auditors is a feeder cadre for the grade of Section Officer of the IA & AD the applicants cannot claim the pay scale of Rs. 1640-2900 granted to the Section Officers. The respondents contend that the Senior Auditor in IA & AD and the Assistants of the Central Secretariat Service constitute two distinct classes as the nature of duties and responsibilities of the two categories is not identical, the method of their recruitment and future promotional prospect of the two categories is also different and as the Assistants of Central Secretariat are important functionaries in the Secretariat. It is stated that the note they record in the files is an important aid to taking policy decision. On the other hand the Senior Auditors perform functions, which cannot be termed as an aid in formulation of policy

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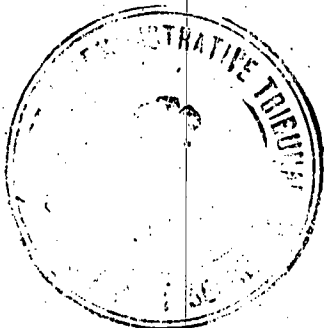


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decisions. The respondents further state that since the applicants and the Assistants and Stenographers of Central Secretariat constitute two different and distinct classes, the Govt. can prescribe different pay scales and there is no violation of any Constitutional Provision in doing so. Thus the respondents submit that the applicants are not entitled to any relief and the application is liable to be dismissed. It is not necessary to set out the rejoinder of the applicants.

7. Before proceeding to deal with the merits of the contentions raised by the parties which are reiterated by their respective counsel, it will be convenient to take a note of the decisions to which the learned counsel have made reference during the course of their submissions.

1. In the case of Central Secretariat Direct Recruit Assistants Association vs. Union of India and Others D.A. No. 1538/87 wherein the pay scale of Rs. 1400-2600 for the post of Assistant in the Central Secretariat Service notified by the Govt. on the basis of the recommendations of the Fourth Central Pay Commission was challenged, it was held by the Principal Bench of Central Administrative Tribunal by order dated 23.5.1989 that as the respondents have only accepted the recommendations of the Pay Commission the action of the respondents cannot be assailed as being arbitrary or violative of Articles 14, 16 and 39(d) of the Constitution, nor any discrimination has been made by the Commission when it enhances the pay scales of certain officials nor discrimination can be attributed to the respondents when they accepted and implemented the recommendations of the Commission and though the pay scales are not determined by the classification in CCA Rules but vice versa, nevertheless the disturbance of the internal relativities was a legitimate grievance of the applicants (in that case) which had to be considered. The learned Members of the Bench came to the conclusion prima facie that there was an anomaly which could be properly considered by the respondents as it required detailed consideration. The anomaly was directed to be referred to the "Anomaly Committee" for disposal in accordance with the procedure laid down in the O.M. dated 25.1.88.



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The disturbance of internal relativities was held to occur for three reasons :

Firstly, the Direct Recruit Assistants were in the highest pre-revised pay scale of Rs. 425-800. Secondly, they were the first rung of important functionaries in the Central Secretariat and thirdly, they stood out separately as a group among the officials covered by the (Central Fourth Pay) Commission's recommendations paras 8.41 to 8.44 of its report.

The applicants seek to derive advantage from this decision. It is ^{their} the case that their position is similar in as much as they were in the pre-revised pay scale of Rs. 425-800. Their duties as Senior Auditors involve special nature of work, skills and aptitude for effective audit functioning and that the Commission has also placed them on par with other categories carrying the pay scale of Rs. 425-800 and therefore they are similarly situated as the Direct Recruit Assistants and that in their case also anomaly arises and since the respondents have removed anomaly in the case of the Central Secretariat Assistants following this decision, they should be directed to remove the same in respect of the present applicants also. The respondents also rely on this decision in support of their contentions to a large extent.

- ii. In the case of B. Bhaskar and Others vs. Union of India and Others in O.A. No. 427/HP/91 decided on 8.10.91 the Chandigarh Bench of the Tribunal was dealing with the application filed by Himachal Pradesh Civil Audit and Accounts Association and Others praying for parity of pay with the Assistants of the Central Secretariat in the scale of Rs. 1640-2900. It appears that as at that stage the respondents had not taken any final decision no order was passed on the application while directing the respondents to take a final decision.

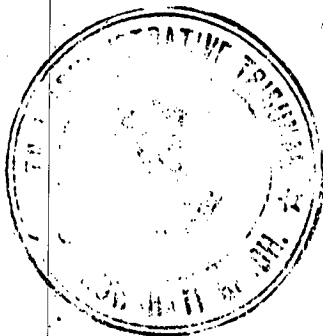


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iii. In the case of T.R. Vijoy Kumaran and Others vs. Union of India and Others in O.A. No. 634/92 similar question fell for consideration before the Ernakulam Bench of the Tribunal. Similar Grounds as are raised by the present applicants were urged by the Senior Accountants working in the Accountant General's Office at Trivandrum. They claim parity of pay scale with the Assistants of the Central Secretariat Service. It appears that the representation of the applicants in the case was pending with the respondents. The Tribunal vide decision dated 28.4.1993 directed the respondents to consider the representation and take a decision in accordance with the law in the light of the Report of Fourth Pay Commission and bearing in mind the principles laid down by the Supreme Court on the question of Equal Pay for Equal Work.

iv. Again in the case of P. John and Others vs. Union of India and Others in O.A. No. 1022/91 decided on 28.5.1992 the Ernakulam Bench of the Tribunal made a direction to the respondents to ensure that the question regarding grant of pay scale of Rs. 1640-2900 to the Senior Auditors of the Indian Audit and Accounts Department is taken up for consideration and finalising by the JCM. That was a case filed by Senior Auditors in the office of the Accountant General(Kerala) for parity with Assistants of Central Secretariat Service and other Ministries of Government of India.

The respondents rely on these decisions.

v. In the case of S.R.Dheer and Others vs. Union of India and another(ATR 1993 (1) CAT 480) the question related to the claim of Assistants and Stenographers Grade 'C' working in the Central Administrative Tribunal for parity of pay scale with their counter parts in the Central Secretariat Service and Central Secretariat Stenographers Service namely scale of Rs. 1640-2900. The Principal Bench in its decision dated 4.2.1993 observed that the law is well settled on the point that Equal Pay cannot be denied on the ground that mode of recruitment was different. The argument of the respondents that there was rational basis for discrimination in the pay scales because the Assistants/Stenographers



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Grade 'C' stand as a class apart because of element of direct recruitment through Staff Selection Commission was rejected. It was found in that connection that the differentiation in the scale was not made on the basis of value judgement by those who were charged with administration in fixing the scales of pay and other conditions of service. It was held that the order dated 31.7.1990 enables the extension of the revised pay scale to other organisations where the posts were in comparable grades with same classification and pay scales. Whether the recruitment was made in one way or the other would hardly be relevant from the point of view of Equal Pay for Equal Work.

It was also held that the foundation for establishing the parity would lie in the nature and functions and the work of the two groups of persons, one in the Secretariat and the other in the Tribunal and that there was no disparity in pay scales in the said group prior to Fourth Pay Commission, which recommended the same scale for the said groups in recognition of similarity in nature of functions. It was noted that no additional duties and responsibilities were found to be entrusted to the Assistants/Stenographers Grade 'C' thereafter in the Secretariat so as to make a distinction.

Reference was made to the decision of the Supreme Court in the case of Bhagwan Dasa & Others AIR 1987 SC page 2049. The respondents were therefore directed to consider the revision of pay scale of Assistants/Stenographers Grade 'C' in the Tribunal to Rs. 1640-2900 with effect from 1.1.1986, at least notionally from 1.1.1986 and effectively from a date not later than 1st January, 1992 (one year prior to the date of filing of the amended application). (We are informed that the pay has been accordingly revised).

A very strong reliance is placed by the applicants on this decision.

In the case of George Thomas and Others vs. Union of India and Others, O.A. No. 157/91 decided on 8.6.1994, The Ernakulam Bench of the Central Administrative Tribunal

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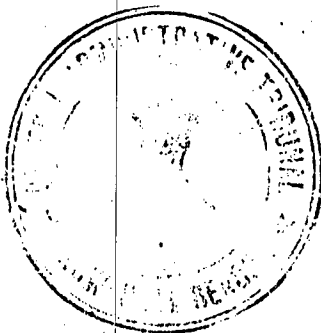
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however negated the claim of Senior Accountants in the Accountant General's office for parity in the scale of pay with the pay scale of Central Secretariat Assistants etc. After referring to the decisions of the Supreme Court in State of Uttar Pradesh and Others vs. J.P. Chaurasia (AIR 1989 SC page 19), the observations of the Supreme Court in the decision in Union of India and others vs. Shri Tapan Tapan Patashramji and Others C.A. 233/91, the decision in Federation of All India Customs and Central Excise Stenographers and Others vs. Union of India and Others AIR 1988 SC page 1291 and in Union of India vs. Secretary, Civil Audit and Accounts Association (1992 SCL page 530), it was held that having regard to the note of caution struck by the Supreme Court and having regard to the state of law, it was not within the province of the Tribunal to prescribe the scale of pay as prayed for. It was observed that it is not the function of the court to pronounce on such matters namely whether work is equal and whether the employees in question are similar and those are the matters for administrative Government and policy makers to decide. It was however left open to the applicants to raise their grievances before the Fifth Pay Commission. Eventually the application was dismissed.

The respondents rely on this decision.

- vii. The applicants further rely upon the observations of the Ernakulam Bench in the case of T.R. Vijaykumaren and others vs. Union of India, O.A. No. 634/92 decided on 28.4.93, wherein the Senior Accountants in the A.G.'s office, Trivandrum were aggrieved by the denial of parity of pay and grant of higher scale which has been given to Assistants of Central Secretariat and other Ministries. It appears that the representation of the applicants was still pending with the A.G. Hence respondents were directed to consider the matter in the light of the Report of IV Pay Commission amongst other grounds.



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A survey of the aforesaid decisions shows that in none of the cases except in the case of the Assistants and Stenographers Grade 'C' working in the Central Administrative Tribunal that relief as prayed was fully granted on the basis of similar contentions as are raised by the applicants. As far as the decision of the Principal Bench in the case of Central Secretariat Direct Recruit Assistants Association is concerned, only a limited direction was given to the respondents to remove the anomaly as regards disturbance of internal relativity. The respondents respected the judgement and delinked the case of the Central Secretariat Direct Recruit Assistants but have declined to grant similar relief to the applicants. However merely from that circumstance it would not automatically follow that a case of discrimination stands established. It is however clear that the respondents have not considered the anomaly in the case of the applicants and have rejected their claim.

4. In the above background the points that arise for our consideration are as follows :

1. Whether the applicants are entitled to get parity of pay scale with the Assistants and Stenographers Grade 'C' of the Central Secretariat Service on the principle of Equal Pay for Equal Work and on the basis of other grounds raised by them ?
2. Whether the refusal to grant the applicant pay parity by the respondents is in violation of Articles 14, 16 and 39(d) of the Constitution of India ?
3. Whether the respondents have acted contrary to the recommendation of the Fourth Pay Commission arbitrarily and illegally ?
4. Whether any relief can be granted to the applicants and if so, what relief ?

We now proceed to examine these points.

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10. We are somewhat surprised at the stand of the respondents.

On the one hand they have raised the preliminary objection to the maintainability of the application on the ground that under JCM Scheme 'Pay and Allowances' is an item for which compulsory arbitration is provided and on the other hand they have rejected the demand of the applicants without waiting for such arbitration. In the communication dated 29.9.1994 in response to our queries it is stated that no decision has yet been taken by the National Council (JCM) on the issue and the Sub-committee of National Council (JCM) in which the representations of official side and staff side were present and it was agreed to record a disagreement in the National Council after the Council accepts the report of the said Committee and that the report yet to be taken up by the National Council. After so pointing out it is further stated :

"5th Pay Commission constituted by the Govt. of India is examining the entire gamut of Pay structure of the Govt. servants. Further, on the directions of the Central Administrative Tribunal, Chandigarh Bench in O.A. 457/91(427/91 ?) the question whether the representation of the applicants for parity in pay scales could be considered separately was examined in consultation with the Department of Legal Affairs, Govt. of India. On obtaining the advice of the Department of Legal Affairs, the issue was delinked and considered by the Government. But the demand was rejected".

That however was the position earlier also as can be seen from the communication from the Office of the Comptroller and Auditor General of India dated 5.10.1992. The written statement was declared on 30.4.1993 and even so the preliminary objection has been repeated. We find no merit in the preliminary objection and reject it.



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11. The case of the applicants rests on the following factors :

1. Historically there was parity of scale.
2. Educational qualification at the entry level is the same.
3. The duties of applicants as assistants in Audit Department are no less onerous than those of the Secretariate Staff.
4. There is no rational basis for differentiation in scales.
5. The action of the respondents is arbitrary and discriminatory.

These aspects may now be examined in detail.

12. Historical parity

1. It is averred that the erstwhile pay scale of the Assistants of the Central Secretariate was the same namely, Rs. 425-800 and therefore the Senior Auditors of IA & AD enjoyed parity in their pay scale with Assistants of Central Secretariate from the date of creation of their posts on 1.3.1984. It is further averred by the applicants that the Fourth Central Pay Commission had recommended the revised pay scale of Rs. 1400-2600 for the existing pre-revised scale of Rs. 425-800 and suggested the same pay scale for both Assistants of Central Secretariate and Senior Auditors of IA & AD. It is pointed out that the said recommendation was accepted by the Govt. of India and has been given effect to from 1.1.1986 vide Govt. of India, Ministry of Finance, Department of Expenditure Resolution No. 14(I)/IC/86 dated 13.9.1986 and Notification No. F 15(1)-IC/86 dated 13.9.1986. These averments have not been controverted by the respondents vide para 5 of the written statement.

11. The respondents however have glossed over this position in para 8 of the written statement by replying upon only

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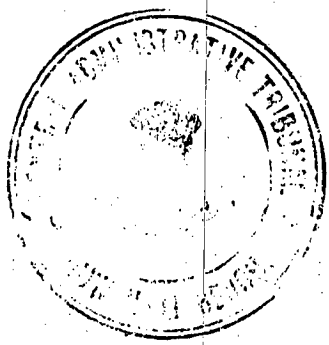
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that part of the report of 4th Pay Commission (in para 9.17) which noted that the Assistants who are members of CSS are assisting the Ministries in formulation and implementation of policies of the Central Government and have stated that Stenographers Grade 'C' of CSSS and Assistants of Central Secretariate are historically being treated on par in terms of pay scale and since there arose an anomaly as pointed out by the Principal Bench that was removed by revising the scale of pay of Grade 'C' Stenographers to Rs. 1640-2900.

Respondents' arguments

The respondents have however evaded to explain as to why same course cannot be logically adopted in respect of the Senior Auditors who were on par earlier with Secretariate counterpart and when the Fourth Pay Commission had clubbed them together.

iii. In the written argument submitted on behalf of the respondents it is stated that the parity between the Senior Auditors of IA & AD and Assistants in CSS had existed only between 1.3.1984 and 31.12.1985 and there was nothing historical about it as was the case with Grade 'C' Stenographers of CSSS. This submission also appears to be half hearted because by establishment order No. 18 issued on 1.3.1984 the Auditors were redesignated and placed in the scale of pay of Rs. 425-800 as Senior Auditors. The pay scale of the Assistants of the Central Secretariate was also the same i.e. Rs. 425-800. The Fourth Pay Commission recommended revised pay scale of Rs. 1400-2600 for the existing pre-revised scale of Rs. 425-800 for both. How then can it be logical to say that historically there was no parity? Historically would mean in the context of the pre-revised scale which



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was the spring board for revision and the grouping was found to be equal by the Fourth Pay Commission. We are therefore inclined to hold that historically there was parity in the pay scale of applicants and Assistants in Central Secretariat. That however cannot be the sole criterion to determine whether applicants are entitled to be given parity in the revised scale. That would depend on other factors which may now be considered.

13. Qualification

i. It is averred by the applicants that the minimum educational qualification at the entry level for Direct Recruit Assistants of Central Secretariate and the Auditors of IA & AD happens to be same i.e. a degree of Arts, Science ^{OR} and Commerce from any recognised University. The posts of Senior Auditors are posts to which incumbents are primarily drawn from the cadre of Auditors who qualify in the departmental examination with limited number of chances and also after they have acquired functional knowledge of at least 3 years as Auditors.

ii. These averments contained in para 4 (m) of the application have not been controverted by the respondents. They have however contended that the conditions of recruitment are different in the two cadres. They point out that there is no Direct Recruitment to the cadre of Senior Auditors. All the posts are filled in by promotion from the cadre of Auditors having 3 years continuous service in the grade. That however does not appear to be wholly correct as the applicants have stated that for such promotion qualifying at a departmental

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examination with limited number of chances is essential for the promotion. They have also stated that failure to pass in the departmental examination would result in either reversion to the lower post of Clerk or cessation of appointment. These statements have not been denied by the respondents. That shows that mere length of service of 3 years is not alone sufficient for promotion. The respondents have ~~mislead~~ ^{instead} referred to the requirement of qualifying at departmental examination for further promotions from Senior Auditors post. It therefore follows that in so far as qualification for recruitment is concerned both the cadres are similarly placed. It is not shown that the Secretarial cadre of Assistants has to undergo more arduous test than the applicants. The applicants thus cannot be considered ineligible to be given the same pay scale. Moreover this contention did not find favour with the Principal Bench in S.Dheer's case (Supra).

14. The nature of duties and differentiation in scales.

i. The applicants aver that the objective in creating a separate cadre for audit was to develop expertise and efficiency required for auditorial functioning. They rely on the various provisions contained in Accountant Generals' Manual of Instructions for recruiting of cadres and contend that these indicate that higher pay scale sanctioned by the Government of India was in view of special nature of work, skills and aptitude required for audit functioning. They point out that the Govt. recognised that the two different streams of posts namely Senior Auditors of IA & AD and Assistants of Central Secretariate have to perform equal/identical work when equal pay scale was sanctioned with



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effect from 1.3.1984 for both. The applicants further rely on the circumstance that the Fourth Pay Commission has maintained the parity and that the Govt. of India had equated the two sets of posts in consideration of the expertise and efficiency required for auditorial function. They contend that the nature of duties and functions as well as measure of responsibilities is similar. Again referring to the report of the Fourth Pay Commission, they point out that the Commission has adopted (in para 8.41 of its report) the principle of fair comparison and internal relativity in case of Inspectors of Central Excise and same would be the position of Senior Auditors.

ii. Relying upon the Order dated 31.7.1990 of the Ministry of Personnel wherein it is stated that the same revised scale of pay will be applicable to all other similarly situated employees in other organisations the applicants submit that in the light of the specific recommendation of the Fourth Pay Commission it necessarily implies that the revised scale of pay should also be given to them. They cite the instances of revision of pay scales of Assistants of Indian Council of Agricultural Research vide Order dated 24.8.1990, the Assistants working in North Eastern Hill University at Shillong (under the University Grants Commission) Office Order dated 3.9.1990 and Assistants of I.C.M.R vide order dated 18.4.1994. They further refer to the note of the All India Audit and Accounts Association which refers to a comprehensive study of job evaluation conducted by the consulting and applied Division of the Administrative Staff College, Hyderabad at the instance of 3rd Central Pay Commission in regard to the posts of

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Assistants of Central Secretariate and UDC Auditors by applying point rating system according to which the UDC auditors scored more points than the Assistants of Central Secretariate. The applicants contend that the duties attached to them as Senior Auditors being higher than those of auditors their own rating would be still higher.

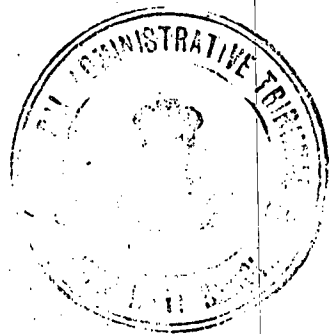
iii. The applicants deny that the Assistants or Stenographers Grade 'C' in Secretarial service aid in policy making of the Ministries. They maintain that the services they (applicants) render are no less important.

iv. The applicants have tried to illustrate that they are equal or similarly situated Assistants in Central Secretariate by giving a comparative table as below :

Cadres of posts in Central Secretariate	Cadres of post in IA & AD	Pre-revised scale upto 31.12.1985	Revised pay scale w.e.f. 1.1.1986
L.D.Clerk	Clerk	Rs. 260-400	Rs. 950-1500
U.D.C.	Auditor	Rs. 330-560	Rs. 1200-2040
Assistant	Sr.Auditor	Rs. 425-800	Rs. 1400-2600

None As

Their grievance is that there was no justification for choosing the Assistant in Central Secretariate to be given benefit of higher scale of Rs. 1640-2900 by O.M. dated 31.7.1990 denying the same benefit to them since all along they were placed in the same scale and which fact according to them would suggest that nature of their duties is same and they are similarly situated. The applicants therefore attribute discrimination to the respondents. They contend that by reason of giving differential treatment to them by introducing two types of revision in the



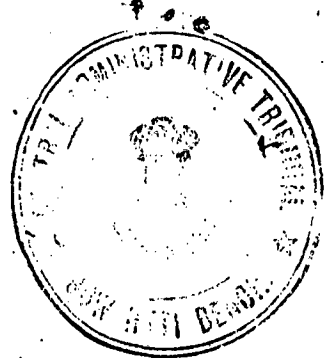
same pre-revised scale causing disturbance in parity and internal relativity in the pay scales the discrimination is apparent. They contend that the differentia so introduced as regards pay scale is irrational and unreasonable.

v. The respondents controvert each of the above grounds put forth by the applicants. They contend that in compliance with the decision of the Principal Bench the Order dated 31.7.1990 was issued prescribing the revised scale to the CSS as well as other organisations like Ministry of External Affairs, where the posts are in comparable grades with same classification and pay scale and which have same method of recruitment namely through open competition. The gravamen of their contention is that as the Senior Auditors in IA & AD are not recruited through open competitive examination as required under the method of recruitment as envisaged in O.M. dated 31.7.1990 the applicants cannot be treated as similarly situated class of employees as the Secretarial staff.

vi. The respondents do not specifically contend that the Assistants who are the members of CSS are assisting the Ministries in formulation and implementation of the policies of the Govt. but guardedly refer to para 9.17 of the Report of the Fourth Central Pay Commission in that regard. It is interesting to note that the respondents do rely on this part of the report as it supports their contention though they do not accept the recommendation of the Commission as applicable to the applicants as regards revision of pay scales.

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vii. The respondents however state in para 9 of the written statement that the Govt. of India granted higher pay to Senior Auditors with effect from 1.3.1964 in comparison with their counterparts in Accounts Offices in view of their arduous nature of job and responsibilities. The respondents admit that as per Manual of Instruction for restructuring of cadres in IA & AD issued by the Comptroller and Auditor General the primary purpose of restructuring of the offices was to develop an organised pattern suited to attend needs of audit and to improve the maintenance of the accounts of the State Govt. transactions and the Senior Auditors were sanctioned higher scale i.e. Rs. 425-800 in audit side in comparison with their counterparts in the Accounts side in recognition of the special nature of work, skills, and aptitude required for audit function. Yet their grievance is that the Fourth Pay Commission in its report clubbed the Assistants of CSS and the Senior Auditors of IA & AD together. Hence the Govt. of India had to redetermine the revised scale of Assistants taking into consideration the higher duties and responsibilities assigned to the cadre of Assistants. We find this explanation to be one sided because it simply justifies why the benefit of higher scale was extended to the Assistants but does not explain as to why same consideration could not apply to the applicants. It is not stated that the duties and responsibilities of the Senior Auditors are not 'higher duties' or that the responsibilities assigned to them are lighter.

viii. The respondents contend that the benefit given by ICAR or University Grants Commission cannot be taken into account as it is contrary to the instructions issued in ..

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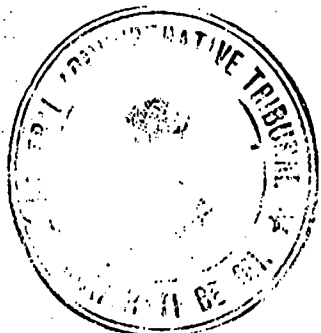


the O.M. dated 31.7.1990 and infact steps are directed to be taken to withdraw these benefits.

ix. Thus according to the respondents the Senior Auditors in the IA & AD and the Assistants of the Central Secretariate Service constitute two distinct classes as the duties and responsibilities of the two categories are not identical, the method of their recruitment is different and future promotional prospects of the two categories are also different. As these are two different and distinct classes, according to the respondents, the Govt. can prescribe different pay scales. The respondents therefore deny that there has been violation of any Constitutional Provision in doing so. The respondents deny that the ^{O.M.} Mo.O. dated 31.7.1990 is discriminatory or capricious.

x. The factual details are not in dispute. The narrow question is as to whether the applicants are similarly situated class of employees as the Secretariate staff. We find that there is no effective and convincing reason shown by the respondents to deny the applicants the same treatment as given to the Secretarial staff as regards revised pay scale. The following circumstances persuade us to that view :

1. Historically there was parity in scales.
2. The Fourth Pay Commission recommended uniform scales. There is no convincing reason shown to depart therefrom.
3. The contention of the respondents that the Senior Auditors do not come through open competitive examination in our view is not germane to decide the similarity in the nature of the two posts having regard to the common educational qualification prescribed at entry level and the essentiality of the departmental examination to be passed and requisite length of service prescribed for



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promotion to the post of Senior Auditors. This contention also did not find favour with the Principal Bench in the case of S. Dheer & Others (Supra) as stated earlier also.

4. The Accountant Generals' office was bifurcated admittedly to provide better and efficient audit service suited to the altered needs of audit and improve the maintenance of the accounts of the State Govt. transactions. The nature of work of the Senior Auditors therefore cannot be regarded in comparison ^{to be} of lesser importance than that of the Assistants in Central Secretariate or of Stenographers Grade 'C' in CSSS.
5. The circumstance that the Secretariate staff aids the Ministries in formulation of policies as they put up notes on concerned topics is part of their job. It is not demonstrated by the respondents that that involves any special knowledge or specialised training. As compared to it the Senior Auditors have to qualify at a departmental examination after gaining experience and knowledge at least for 3 years to achieve professional expertise for audit functioning which is not disputed. It cannot therefore be conceived that the nature of work of Senior Auditors is of lesser significance in running the State-craft in comparison with Secretariate staff. Even according to the respondents the job of the applicants is of arduous nature and responsibilities.
6. The other organisations namely ICAR, University Grants Commission as well as ICMR found comparability of Assistants working under them and Secretariate staff reasonable. Although that may not be binding upon the respondents it can surely be looked ^{upon} up to understand that the work of Senior Auditors in Audit Department is of no less importance than of the Assistants in the Secretariate.
7. The decision of the Principal Bench of Central Administrative Tribunal in the case of S Dheer & Others (Supra) is also illustrative on the point.

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7. The emphasis in the written statement is on justifying the grant of revised scale to the Secretariat staff. To that extent we are not called ^{upon} to reflect. What is of crux is whether any convincing reason is shown to regard the nature of duties of the Senior Auditors to be less important or dissimilar to deny them the same benefit. The respondents point out that the Section Officers of IA & AD have lost a case for grant of parity in the pay scale with the Section Officers of the CSS in the Hon'ble Supreme Court in K Vasudevan Nair vs. Union of India & Others AIR 1991(1) SC 493. That however in our view is a different matter and is not germane to the question under consideration save and ^{except} ~~except~~ the difficulty that may arise if revised scale is given to the applicants who then may jump to the scale of Section Officers viz. 1640-2900 which is a promotional post. That however cannot be an answer to the legitimate claim of applicants. It is for the respondents to sort out that difficulty.
8. It is pertinent to note that the Principal Bench CAT in the case of Central Secretariats Service Direct Recruit Assistants Association (Supra) had found that disturbance of internal relativities was a legitimate grievance which had to be considered. It was noted that the Assistants could allege a disturbance of internal relativity only in relation to such posts as are included in the same group. It was also said in para 32 of the judgement that :

" From the analysis given above, we are firmly of the view that the Commission cannot be faulted on recommending the pay scale of Rs. 1400-2600 for Assistants. For, this is the general revised pay scale to replace the five pre-revised scales considered by the Commission in paras 8.41 to 8.44 of its Report and it applies to Assistants and others covered by these five pre-revised pay scales unless some special recommendation has been made elsewhere in the Report ".

With respect, we think that similar is the situation in the instant case. It is material to note in that connection that in the written statement the respondents have stated that in para 8.41 of its report the Fourth Pay Commission

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has clubbed Assistants of Central Secretariate and Senior Auditors of IA & AD together in the pre-revised scale of Rs. 425-800. The respondents acted on the basis of the above judgement so far as Secretarial staff is concerned. We are not satisfied that any special reason has been shown to differentiate the Senior Auditors.

xi. In view of the above circumstances we are inclined to reject the contention of the respondents that the Assistants of the Central Secretariate and the Senior Auditors in the IA & AD constitute two distinct classes. We are inclined to hold that they are required to be treated as of the same class as found by the Fourth Pay Commission. We are not satisfied that any rational or reasonable criteria is shown to exist to differentiate the two sets of posts. Consequently we are inclined to hold that there arises disturbance of internal relativity in the pay scales leading to an anomaly which is required to be removed by the respondents. As a consequence we are also inclined to hold that as the applicants are unequally treated their grievance of discrimination is fully justified. We are inclined to hold that the nature of work in the two sets of posts attracts the principle of Equal Pay for Equal Work and its ^{violated} stands violated. We are also inclined to hold that the recommendation of 4th Pay Commission has not been followed and in doing so respondents have acted arbitrarily and illegally.

15. In arriving at above conclusions and for the purpose of foregoing discussion we have taken note of the documents submitted as annexures to the pleadings.

At annexure I to the application is establishment order dated 1.3.1984 issued upon bifurcation of the office of the Accountant General transferring personnel as Auditors to Audit Wing. At Annexure-II is the order dated 2.6.1984 redesignating auditors as Senior Auditors in the scale of Rs. 425-800. At annexure III is the O.M. issued by the Ministry of Personnel, Public Grievances, and Pensions, Department of Personnel and Training dated 31.7.1990. At annexure IV & V are copies of



representations filed by some of the applicants to the Comptroller and Auditor General of India seeking the extension of benefit of revised scale of Rs. 1640-2900 with effect from 1.1.1986. At annexure VII is the copy of order dated 6.6.1991 of the North Eastern Hill University revising the pay scale of Assistants to Rs. 1640-2900. An extract of order of ICMR dated 18.4.1994 published in Swamys' News is also produced whereunder scale of Rs. 1640-2900 has been given to Assistants and Gr. 'C' Stenographers of ICMR. The applicants have relied upon the decisions already mentioned.

16. The respondents have placed on record the Notice issued by the Accountant General in December 1983 reorganising the combined Accounts and Audit Offices in two wings as Annexure R.1. At annexure R 2 is the O.M. dated 3.1.1991 issued by the Ministry of Personnel in which it is clarified that 'there has been no anomaly in case of posts of Assistants and Stenographers or other posts in the prescribed scale of Rs. 425-800 where the method of recruitment is not through the same open competitive examination as in the case of certain services mentioned therein'. We have dealt with this aspect and have not accepted this basis to be warranted. They have relied upon certain decisions as already mentioned.

17. The submissions urged by Mr. B K Sharma, the learned Counsel for the applicants and Mr. A K Choudhury, the learned Addl. C.G.S.C. for the respondents have been duly considered by us and the above discussion has been made in the light of their respective submissions. Hence we do not mention them separately. We may add that we found considerable substance in the submissions urged by Mr. Sharma on behalf of the applicants. We may further add that since the question involved had to be decided mainly on the legal aspects some amount of repetition has inevitably entered in the above discussion.



18. We would accordingly answer Point Nos. 1, 2, and 3 (See para above) in the affirmative and turn to Point No. 4 as to Relief.

19. Relief

That brings us to the question of relief. Although consistently with our conclusions we would be justified in making a positive order in terms of the relief prayed by the applicants we find it difficult to do so for the following reasons.

In State of Uttar Pradesh and Others Vs. J.P. Chaurasia (AIR 1989 SC 19) the Supreme Court observed :

① " the equation of posts or equation of pay must be left to the executive Government. It must be determined by expert bodies like the Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts ... Court should not try to tinker with such equivalence unless it is shown that it was made with extraneous considerations".

Similar view is taken in Federation of All India Customs and Central Excise Stenographers Vs. Union of India AIR 1988 SC 1291 and in Union of India Vs. Secretary Madras Civil Audit and Accounts Association (1992 SCLJ 530). A note of caution has also been struck by the Supreme Court. It is said that it is a policy matter involving financial burden. No court or Tribunal should compel the Govt. to change its policy, involving expenditure. It has also been ruled by the Supreme Court that :

② "The problem about equal pay cannot always be translated into a mathematical formula. If it has a rational nexus with the object to be sought for, as reiterated before, a certain amount of value judgement of the administrative authorities who are charged with fixing the pay scale has to be left with them and it cannot be interfered with by the Court unless it is demonstrated that either it is irrational or based on no basis or arrived mala fide, either in law or in fact" (AIR 1988 SC P 1291) = (JT 1988(2) SC 519).



It is true that the respondents have made a value judgement which was within their exclusive province negating the claim of Senior Auditors of IA & AD for higher scale. It is also true that the Fifth Central Pay Commission is expected to deal with the problem comprehensively. Yet we feel that injustice has been caused to the applicants. Our endeavour so far has been to point out that element of irrationality in the decision of respondents does not stand ruled out and that needs reconsideration of the matter. In this connection the learned counsel for the applicant refers to the latest decision of the Supreme Court in 1994 SCC(L & S) P 869 and submits that as the action of the respondents is found violative of Article 14 of the Constitution the pay scales fixed by them can be judicially interfered with as the principle of equal pay for equal work is breached as recommendation of the expert body i.e. Pay Commission has not been followed and therefore we should grant the relief.

In spite of the agreement by applicants, the CAT decided in its wisdom not to give further orders.

We however feel that we will be better advised to leave the matter for fresh and proper decision by the respondents. The respondents can always review their own decision when necessary. We would therefore recommend to the respondents in the interest of justice to re-examine the question and take a suitable decision afresh without postponing the issue to the report of the Fifth Central Pay Commission. We do not make such a direction or stipulate a time limit as we have no doubt that the reasons that have persuaded us to make the recommendation as reflected in the foregoing discussion will receive due and expeditious attention from the respondents. The fresh decision whichever way it may be taken however shall be communicated to the applicants.

i.e., the CAT very much anticipated the possibility that the decision of the Govt might be not to accede to the demand of the applicant.*

In the result, subject to the recommendation made above to the respondents the application is disposed of. It is made clear



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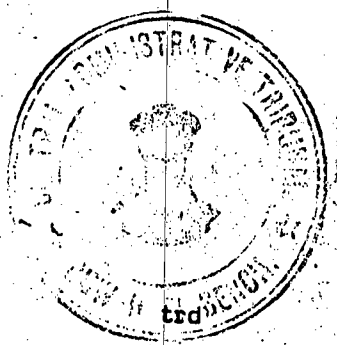
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that this order will not preclude the applicants in any manner to represent their case before the 5th Central Pay Commission whether a fresh decision is taken or not by the respondents as recommended by us.

In the circumstances of the case there will be no order as to costs.

Sd/- M.G.CHAUDHARI
VICE CHAIRMAN
Sd/- G.L.SANGLYINE
MEMBER (ADMN)



Certified to be true Copy
प्रमाणित प्रतिलिपि

[Signature]
16/11/94

Section Officer (J)
आनुमान अधिकारी (न्यायिक शाखा)
Central Administrative Tribunal
देशीय प्रशासनिक अदालत
Guwahati Bench, Guwahati-6
गुवाहाटी बेंच, गुवाहाटी-6

[Signature]
16/11/94

16/11/94

46 Annexure - R-II
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
Misc. Petition No. 121/96 (O.A. 45/92)

(134)

Union of India & Ors.

Versus

Applicants.

R. Chaudhury & Ors.

Respondents.

PRESENT -

THE HON'BLE JUSTICE SHRI D.N. BARIK, VICE-CHAIRMAN
THE HON'BLE SHRI G.L. SANGLYING, MEMBER (A)

For the Applicants: Mr. S. Ali, Sr. C.G.S.C.

For the Respondents: Mr. G.P. Bhowmik, Advocate.

11.2.97

Mr. S. Ali, Sr. C.G.S.C. has filed this M.P. communicating that the decision had been taken by the respondents. Mr. A.K. Phukan, learned counsel appearing for the applicant, opposite parties on the other hand submits that the decision was contrary to the directions given by the Tribunal, besides they have also violated the directions given by the Tribunal. If the applicants are aggrieved by the decision they may file an appropriate application for their redressal.

M.P. disposed of.

Sd/- VICE-CHAIRMAN
Sd/- MEMBER (A)

Ref. No. 6/4

Dated 14.2.97

Copy for information and necessary action to:
1. Smt. A.L. Gogpathi, Principal Accountant General (Audit),
Assam, Meghalaya etc. Shillong-793001.

2. Shri Ranjit Choudhury, Sr. Auditor, O/o the Accountant
General (Audit), Assam, Meghalaya etc. Shillong-793001.

3. Mr. S. Ali, Sr. C.G.S.C., CAT, Guwahati Bench.

4. Mr. A.K. Phukan, Advocate, Gauhati High Court.

SECTION OFFICER (J).

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