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09

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

Salik
2

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 39/2002

Applicant(s) A. Chatterjee & others

Respondent(s) Govt of Assam

Advocate for Applicant(s) Ms P. Chakrabarty
Mrs. M. Choudhury

Advocate for Respondent(s) CSC

Notes of the Registry	Date	Order of the Tribunal
This is application in form C. F. No. P. S. 50/- deposited vide P. C. No. T.G. 550691 Dated 5/2/2002	13.2.02	Heard Miss P. Chakrabarty, learned counsel for the applicant. The application is admitted. Call for the records. List on 15.3.2002 for order.
Slips given, Envelope & excess fee Rs. 5/- not deposited. Photocopies machine is out of Order. Order 11/2/2002.	15.3.02 mb	15.3.02 List on 22.4.2002 to enable the Respondents to file written statement.
Notice received and sent to SLS for issuing the certificate No. 3076 by Regd. MO. 15/2/2002 D/No. 497 W 502 Dtd 18/2/2002	22.4.2002 mb	15.3.02 List on 22.4.2002 to enable the Respondents to file written statement.
① Service report are still awaited.	bb	The respondents are filing written statement in course of the day. List the case on 26.4.2002 for further order.
		Vice-Chairman
		Vice-Chairman
		Vice-Chairman

2002
14-3-02

No written statement
has been filed.

32.
19.4.02

26.4.02 Written statement has been filed by the Respondents. The case may now be listed for hearing. The applicant may file rejoinder, if any, within seven days from today.

List on 22/5/2002 for hearing.

24. 4. 2002

W/S Submitted

by the Respondents. mb

IC Usha
Member

Vice-Chairman

13. 5. 2002

Rejoinder against
the W/S has been
submitted by the applicant.

22/5 Heard Ms. Padma Chakrabarty
Learned Counsel for the applicant
& Mr. A. Debroy, Sri C. G. V. C. Mr. Anil
De Mardent.

Hearing Concluded.

Judgment reserved.

ALD
A. K. Tare
22/5

4.6.02

th
Refer to Full Bench. Office to
act as per C.A.T. Rules and Practise.
The applicant shall and furnish paper Book
to prepare an extra copy of the
form and index as per rules in five sets
for assistance of the applicant.
The Judgment and order to be forwarded
to the other Benches of the Tribunal within
four weeks for information. A copy of the
order to be forwarded to the Registrar of
the Principal Bench for necessary order of the
Chairman for Constitution of Full Bench
and for fixing a date of hearing.

Member

Vice-Chairman

lm

3
3
O.A. 39 of 2002

Notes of the Registry } Date

4.6.02

Order of the Tribunal

Letter communicated to
the Principal Bench,
New Delhi vide letter
No. CAT/489/63/2001/Jud/
435 dated 14.6.2002

Work
14/6/02

1186

lm

K. K. Sharma
Member

Vice-Chairman

0

9.6.2008

A Full Bench has already been constituted for hearing of this case.

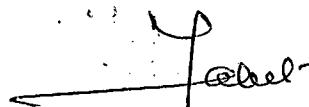
Call this matter on 14th August 2008 for hearing. If necessary, hearing may continue on 18th August 2008.

Send copies of this order to the Applicants and the Respondents in the address given in the O.A. and free copies of this order be also supplied to the Counsels appearing for both the parties.

Along with copies of this order, the copy of the Principal Bench letter dated 23.5.2008 be also sent to the parties and Advocates appearing in this case.

A copy of this order and order dated 04.06.2002 of this case be also sent to Hon'ble Shri C.R. Mohapatra, the Hon'ble Member[A] of Cuttack of this Tribunal.


[Khushiram]
Member[A]

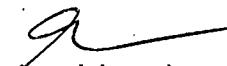

[M.R. Mohanty]
Vice-Chairman

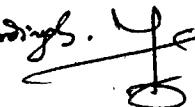
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This matter was to be listed on 14th / 18th Aug 2008.
Now there is a change in situation.
Call this matter on 29th August, 2008

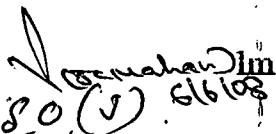
and 1st September, 2008.

Notices be issued accordingly.


(Khushiram)
Member[A]

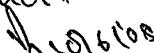

(M.R. Mohanty)
Vice-Chairman

St. 9.6.08.


M. R. Mohanty
S.O. (V) 6/6/08

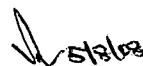
Pl. send copies of this order to the Applicants and the Respondents.
Free copies of this order be supplied to the counsels
to both the parties.
copy to the O.A. order dt. 23.5.08
be sent to the parties and
Advocates & to the copies by
this order.

A copy of this order dt. 4.6.08
to this case be sent to Hon'ble
Sh. C.R. Mohapatra, M(A) of the
CAT Cuttack Bench.


M. R. Mohanty
S.O. (V) 6/6/08

St. B/1.7.08

Pl. issue Notices


M. R. Mohanty
S.O. (V) 6/6/08

order dt 9/6/08 and the
 copy of the P.B. Letter No-
 13/1195-JA/4929 (A), Dt=
 23/5/08 also send
 to D/Section for issuing
 to applicants and respondents
 by post and Advocates
 appearing in this O.A.

A copy of this order
 and order dt. 4/6/02 sent
 to D/Section for issuing
 to the P.S, Hon'ble Shri
 C. R. Mohapatra, Member (A),
 CAT, Cuttack Bench, Rajaswa
 Bhawan, 4th Floor,
 Cuttack-753002, by
 Speed post.

D/No-2733
 (cc) 10/6/08, Dt=11/6/08 S. O. (J).

REGISTRAR

but not ~~forget~~ all
 draft letters for
 my perusal before
 issue today positively.

SO 12/6/2008

dt. 31.7.08
 Pl. issue notices accordingly.

1/50

order dt 31-7-08

Notices issued to:-

1) All Benches of CAT

2) President, Bar Association, CAT,
Guwahati Bench.

- 3) Notice Board

4) Counsels for both
the parties and
respondents.

Notice copies

Sent to D/Section for
ward transmission
to addresses.

- ~~Cess~~
7/8/08

7/8/08
S.O.(J).

D/No-3384 to 3402

- Dt: 8/8/08.

Notes of the Registry, [] Date [] Order of the Court []

25.08.2008

A rejoinder has been filed by the Applicants, after serving a copy thereof on the Respondents side.

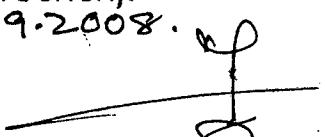
In the aforesaid premises, hearing of this case (by the Full Bench), which was fixed to 29.08.2008 and 01.09.2008, shall be taken up on 18.09.2008.

Call this matter on 18.09.2008, before the Full Bench, for hearing. In the meantime, Mr.G.Baishya, learned Sr. Standing counsel for the Union of India, should obtain instruction on the rejoinder filed by the Applicants.

Send intimation to all concerned (including the Hon'ble Member (A) of CAT, Cuttack Bench) about the date of hearing of the matter before the Full Bench.

Call on 18.09.2008.


(Khushiram)
Member (A)


(M.R. Mohanty)
Vice-Chairman

Heard learned counsel appearing for the parties.

Judgment delivered in open court. The O.A. is disposed of in terms of the order.


(C.R. Mahapatra)
Member (A)


(Khushiram)
Member (A)


(M.R. Mohanty)
Vice-Chairman

Laid before the Hon'ble Comt for further orders.

/bb/

Section other
complaint

22/8/08

REGISTERED

22/8/08

PL. send intimation to all concerned including m/s (A) of CAT Cuttack Bench about the date of hearing of the matter before the Full Bench on 18.9.2008.

18/8

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 39 of 2002

DATE OF DECISION: 18.09.2008

Sri Amitava Chatterjee & 3 others

.....Applicant/s

Ms. Papia Chakraborty

.....Advocate for the
Applicant/s,

- Versus -

Union of India & Others

.....Respondent/s

Mr. Gautam Baishya, Sr.C.G.S.C.

.....Advocate for the
Respondents

CORAM

THE HON'BLE MR. MANORANJAN MOHANTY, VICE CHAIRMAN
THE HON'BLE MR. KHUSHIRAM, ADMINISTRATIVE MEMBER
THE HON'BLE MR C.R.MAHAPATRA, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers may be allowed to see the Judgment?

✓ Yes/No

2. Whether to be referred to the Reporter or not?

✓ Yes/No

3. Whether their Lordships wish to see the fair copy of the Judgment?

✓ Yes/No


Vice-Chairman/Member(A)/Member(A)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No.39 of 2002

Date of Order: This the 18th Day of September, 2008

**HON'BLE MR.MONORANJAN MOHANTY, VICE-CHAIRMAN
THE HON'BLE MR KHUSHIRAM, ADMINISTRATIVE MEMBER
THE HON'BLE MR C.R.MOHAPATRA, ADMINISTRATIVE MEMBER**

1. Sri Amitava Chatterjee
2. Sri Kumar Paritosh Deb
3. Sri Dibakar Majumdar
4. Sri Sanjay Ranjan Dey

(All the Applicants are working as Senior Accountant in the
Office of the Accountant General (A&E), Assam, Beltola,
Guwahati-29.)

..... Applicants.

By Advocates: Ms. Papia Chakraborty & Mrs. M. Choudhury.

-Versus-

1. Union of India,
Represented by the Secretary
Department of Finance
New Delhi.
2. The Comptroller and Auditor General of India
10, Bahadur Shah Zafar Marg
New Delhi-2.
3. The Assistant Comptroller and
Auditor General (N) of India
10, Bahadur Shah Zafar Marg
New Delhi-2.

C

4. The Accountant General (A&E)
Assam, Maidamgaon, Beltola
Guwahati-781 029.
5. The Deputy Accountant General (A&E)
O/O the Accountant General (A&E)
Assam, Maidamgaon, Beltola
Guwahati-781 029.
6. The Senior Accounts Officer (Admn.)
O/O the Accountant General (A&E)
Assam, Beltola, Guwahati-29.

..... Respondents.

By Advocate: Mr. G. Baishya, Sr. C.G.S.C.

ORDER (ORAL)
18.09.2008

M.R.MOHANTY,V.C:

Facts leading to filing of the present case, as recorded in the Order dated 04.06.2002 by the Division Bench reads as under:-

2. The applicants are presently working as Senior Accountant in the office of the Accountant General (A&E) Assam, Guwahati. The applicant No.1 joined as Clerk-Cum-Typist in the office of the Accountant General, Assam on 5.2.1986. He was promoted to the post of Accountant on 30.11.1989. He was further promoted to the post of Senior Accountant on 27.1.94. The applicant No.2 was appointed as Clerk-Cum-Typist on 1.10.86 in the same office and was promoted to the post of Accountant on 11.4.90 and further promoted to the post of Senior Accountant on 31.1.94. Similarly the

applicant No.3 and 4 were promoted to the post of Senior Accountant on 25.1.94 and 31.1.94. The respondents issued circulars from time to time for conducting Incentive Examination for Senior Auditors and Senior Accountants. As per the circular the candidates securing 50% marks and above are entitled for advance increment in the scale of Senior Auditor/Senior Accountant with effect from 1st of the month in which the examination is held. All the four applicants passed the incentives examination during 1995 by securing the qualifying marks and thereby became eligible for the advance increment with effect from 1.4. 1995. The pay of the applicants as on 31.3.1995 was Rs. 1440/- and thereafter from 1.4.95 to 31.12.95 they were allowed to draw a salary of Rs. 1480/- towards incentive benefits for passing the examination. It was also stated that at the relevant time their junior colleagues who have not passed the incentive examination were drawing a salary of Rs. 1400/-, whereas the applicants were drawing Rs. 1480/- from 1.4.1995. The pay structure was revised and the Central Civil Service (Revised pay) Rules 1997 came in to force from 1.1.96. The pay of the applicants was revised at Rs.5150/-. The junior colleagues of the applicants were also allowed to draw pay at the rate of Rs.5150/-. The junior colleagues were passed the incentive examination on April 1996 and their pay with incentive benefit stood at Rs 5300/-, whereas the applicants being senior and having passed the incentive examination earlier were drawing a pay of Rs.5150/- as on 1.4.1996.

3. The applicant pleaded that the revision of pay during 1996 gave rise to the disparity between the pay structure of juniors and seniors in the same office and under the same employer performing similar function and sharing same duties and responsibilities to similarly situated sets of employees were allowed different pay scale and juniors were allowed to draw higher scale. The applicants cited instances that on April 1996 these

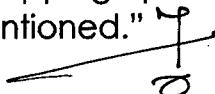
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applicants were drawing salary of Rs. 5150/- whereas the junior colleagues on the said date were allowed to draw a sum of Rs.5300/- . Thereafter on January 11st 1997 the applicants were drawing Rs.5300/-, whereas their junior colleagues were drawing Rs.5450/- . On 1.1.98 the applicants drew the pay of Rs. 5450/- while their junior counter part drew Rs. 5600/- . Again on 1.1.99 the applicants were drawing Rs. 5600/- but their juniors were drawing Rs. 6750/- . Similarly on 1.1.2000 the applicants were drawing Rs. 6750/- and their juniors were drawing Rs. 6900/- and in 1.1.2001 the applicants were drawing Rs. 6900/- and their juniors were drawing Rs. 7050/- . The name of the applicants were placed at serial Nos. 440, 462, 461 and 471 respectively in the gradation list, whereas one of their junior Sri Swapan Kumar Das was placed at serial No.536 but their junior was drawing higher pay than that of the applicants. The applicants stated that the discrimination in the pay structure on the implementation of the Central Civil Service (Revised pay) Rules 1997 on 1.1.96 between two sets of employees whose basic qualification, method, manner and grade of promotions were otherwise being same, performing similar function and identical duties under the same employer is completely irrational and against the principle of 'equal pay for equal work'. Narrating the discrimination meted out to these applicants they submitted their representations. By the impugned order No. ADMN 1/3-8/99-20009 (part II)/1078 dated 9.7.2001 the applicants were informed by the respondents about their decision rejecting their representations. The respondents by circular No.33-NGE/200 No.606/NGE/EC)/28-2000 informed the applicant that anomalies in pay which had arisen in the Senior Auditors/Senior Accountants cadre as a result of passing Incentive Examination regarding a senior before 1.1.96 and junior after 1.1.96 was not rectifiable. The relevant part of the circular is reproduced below :

✓
○

"Ministry of Finance after consultation with DOP & T have held that such type of anomalies have not arisen due to direct application of FR 22-C (Now FR-22(1) (a) (i)). In such cases anomaly has arisen due to grant of increment at a higher rate to the junior. In this connection Government have drawn attention of various orders relating to stepping up of pay, issued right from 4.2.66. para (c) of these orders provides that anomaly should be as a result of application of FR 22-C and in case where a junior is drawing higher pay than a senior by virtue of grant of advance increment no benefit of stepping up of pay will be allowed to the senior officer. In the past DOP & T have been agreeing to step up pay in such cases in relaxation of normal rules. However, after judgment of Hon'ble Supreme Court of India in the case of R. Swaminathan and others DOP & T have been taking a consistent stand not to allow benefit of stepping up of pay of senior in cases where anomaly is not due to direct application of FR 22-C (Now FR(1) (a) (i))"

In the application the applicants cited the instance of presentation of a representation sent by one Ashit Baran Chanda, Senior Accountant working in same office who also filed representation claiming parity of pay with his junior. The aforementioned representation of Sri Ashit Baran Chanda was referred to the Ministry and Sri Chanda was accordingly informed vide memo dated 23.1.2002 that the matter of stepping up his pay was referred to the Ministry of Finance. The applicant contended that the case of the applicant did not receive equal treatment like that of Ashit Baran Chanda and same was rejected by the department without awaiting for the view of the Ministry. Being aggrieved the applicants presented this application seeking for a direction for stepping up of pay of the applicants due to anomalies mentioned."



2. By filing a written statement, the Respondents contested this case. The stand of the Respondents (as recorded in the Order dated 04.06.2002 by the Division Bench) reads as under:-

“...The respondents in the written statement had specifically stated that the anomaly had arisen due to the grant of an advance increment to the junior official with effect from 1.4.96 for passing the Departmental Incentive Examination for Senior Accountants. The respondents at para 6 of the written statement admitted that the case was of an extra ordinary nature and not covered under the existing rules/order which had arisen because of the new pay structure and therefore, the authority was helpless to take any action on the matter. The respondents also stated in the written statement that the office of the Accountant General (A&E), Assam, Guwahati vide letter No. Admn. & Estt/Ghy/ROP-96/97/2339 dated 25.11.97 referred the case to the office of the Comptroller & Auditor General stating their predicament. In the said communication the Deputy Accountant General (Admn) intimated the Comptroller and Auditor General that some junior officials were getting higher pay than that of their seniors. Among others the Deputy A.G. intimated to the C.A.G. the following facts:-

“It has been observed in certain cases that by virtue of an advance increment for passing Incentive Examination for Sr. Accountants after 1.1.96 in the revised scale, some junior officials are getting higher pay than that of their seniors, who were drawing higher pay than their juniors in the pre-revised scale. The senior officials under reference also passed the same examination and got the benefit of increment in the pre-revised scale. While fixing the pay of the seniors by taking

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into account the advance increment, their pay fixed at the stage of Rs.5250/- on 1.1.96 with D.N.I. on 1.11.96, whereas their juniors, whose pay was also fixed at the stage of Rs.5150/- on 1.1.96 and got the advance increment in April /1996 apart from their normal increment on 1.1.97. Thus the juniors are getting more pay than their seniors. The senior officials now claimed equalisation of their pay with the junior w.e.f. April/96. One of the illustration at Annexure-I is given for your ready reference.

The doubts mentioned above may please be clarified."

The respondents were also informed by the office of the C.A.G. by communication dated 28.3.2002 that the matter was still under consideration with Government of India, Ministry of Finance. In the written statement the Respondents referred to the decision rendered by the Supreme Court in R.Swaminathan vs. Union of India & Ors. reported in 1997(7) SCC 690 and stated that the benefit of stepping up of pay was not admissible unless the anomaly was directly attributable to application of FR 22(1)(a)(i). Since it was not directly attributable FR 22(1)(a)(i) the respondents rejected the application. It also referred to a decision of the Cuttack Bench of the CAT rendered in O.A. 362 & 363 of 2000."

3. At the hearing of this matter before the Division Bench, learned counsel appearing for the Applicants argued at length (as recorded in the Order dated 04.06.2002 of the Division Bench) to the following effect:-

"Ms Chakrabarty, the learned counsel submitted that obviously an abnormal situation did arise wherein the

juniors were getting higher pay than that of the applicants. The learned counsel submitted that there could not be any legitimate ground in discriminating the applicants with their juniors in this regard. Ms Chakrabarty, learned counsel for the applicant pointedly referred to the recruitment rules, the qualifications vis-à-vis the duties and responsibilities discharged by the applicants and their juniors and submitted that denial of equal pay to the applicants amounted to flagrant violation of the constitutional Scheme enjoined in Article 14 and 16 of the Constitution of India read with Article 39 (d) of the Directive Principle enshrined in the said Constitution. The learned counsel further submitted that the respondents acted illegally in rejecting the claim of these applicants on the ground that the situation was beyond the purview of FR 22(1)(a)(i). Ms. Chakraborty, the learned counsel for the applicants in support of her contention referred to FR 22(1)(a)(i) as well as the Central Civil Service (Revised Pay) Rules 1997. The learned counsel submitted that both the junior and senior Government servant belonging to the same cadre and both of them were promoted in identical post. The pre revised and revised pay scale in lower and higher post in which they were entitled to draw were also identical. The anomaly is directly a result of the pay revision providing higher incentive. The juniors were not drawing any higher salary than that of the applicants in the lower post. The anomaly did arise due to grant of advance increment to the junior officers who passed the incentive examination later in point of time. The learned counsel particularly referred to the Note 9 mentioned below in Rule 7 of the CCS (RP) Rules 1997."

4. Counter argument on behalf of the Respondents before the Division Bench was (as recorded in the Order dated 04.06.2002 of the Division Bench) only to the following effect:-



"Mr.A.Deb Roy, learned Sr.C.G.S.C. opposing the application referred to FR 22(1)(a)(i) and also the decision rendered by the CAT, Cuttack Bench, Cuttack in O.A. 362 and 363 of 2000 disposed of on 6.8.2001, whereby the Cuttack Bench rejected the similar claim"

5. There were 2 cases (O.A. Nos.362 & 363 of 2000) before the Cuttack Bench of this Tribunal filed by some Senior Accountants with prayer (a) to set aside the order by which their representation (to step up their pay equal to that of their junior) was rejected by the Respondents/CAG Organisation and (b) to direct the Respondents (i) to relax FR 22(I)(a) (I) and (ii) to treat the fact of their getting less pay than their juniors as an anomaly and (c) to direct the Respondents to allow the Applicants the benefit of Rs.150/- per month and other allowances w.e.f. 01.04.1996 with arrear and consequential benefits. Those 2 cases were dismissed by the Division Bench of this Tribunal at Cuttack on 06.08.2001.

6. Facts of the cases before the Cuttack Bench of this Tribunal (as recorded in the order dated 06.08.2001 of Cuttack Bench) was as under:-

"O.A.362/00

... The case of the applicants is that they along with respondent no.5 were Senior Accountants in the pay scale of Rs.1400-

2600/- All of them took the Incentive Examination for Senior Accountant and while the applicants passed the Examination in April, 1995, respondent no.5 failed to clear the Examination. On clearing the Examination, the applicants got advance increment of Rs.40/- raising their pay from 1520/- to Rs.1560/-. With the coming into force of the Fifth Pay Commission pay scale, the pay of the applicants and respondent no.5 was fixed at Rs.5300/- in the scale of Rs.5000-8000/- from 1.1.1996. Respondent no.5, who is admittedly junior to the applicants, cleared the Incentive Examination in April 1996 and got one advance increment. In the new pay scale of Rs.5000-8000/- the increment was Rs.150/- and therefore, the pay of respondent no.5 was fixed at Rs.5450/- from 1.4.1996 on his clearing the examination whereas the applicants continued to get Rs.5300/-."

All the applicants substantively hold the post of Senior Accountant. Seven of them are working as Section Officer on ad hoc basis. The applicants took the Incentive Examination for Senior Accountant in April 1994 and came out successful in the first chance. Accordingly, in the scale of pay of Rs.1400-2600/-, which they were holding at that time as Senior Accountant, their pay was raised from Rs.1480/- to Rs.1520/- with effect from 1.4.1994. With the coming into force of the Fifth Pay Commission pay scale, the pay of the applicants and respondent no.5 was fixed at Rs.5300/- in the pay scale of Rs.5000-8000/-. Respondent no.5, who had failed to clear the Incentive Examination of

"O.A.363/00

1994 and 1995, cleared the Examination in 1996 and got the advance increment which in the new scale was Rs.150/-. Therefore, from 1.4.1996 his pay was fixed at Rs.5450/- whereas the applicants were getting Rs.5300/-."

7. The Division Bench of this Tribunal (at Cuttack Bench) considered the following reported cases of the Hon'ble Supreme Court of India:-

- (a) **Prakash Amichand Shah vs. State of Gujarat & Ors.**
(reported in AIR 1986 SC 468)
- (b) **Union of India & Another vs. R. Swaminathan**
(reported in AIR 1997 SC 3554)

8. The arguments before the Division Bench at Cuttack was as under:-

"It has been submitted by the learned counsel for the petitioners that the applicants in both these cases are admittedly senior to respondent no.5. They have admittedly cleared the Incentive Examination earlier than respondent no.5 and got an advance increment in the scale then enjoyed by them. Respondent no.5 failed to clear the examination along with the applicants and cleared the examination only 1996. By that time the Fifth Pay Commission pay scale having come into force, he was allowed one advance increment as per rules which amounted to Rs.150/-. It is stated that in the process respondent no.5 is getting more pay than the applicants



in these two cases even though he is junior and therefore, this must be treated as an anomaly. It is further stated that in the past at the time of introduction of the Third Pay Commission pay scales, similar stepping up was allowed, which is borne out by the two circulars produced by him. It is not necessary to refer to these two circulars because the departmental respondents have indicated that in the past stepping up of pay was allowed in similar circumstances. This has been mentioned in the letter dated 6.6.2000 from the office of Auditor General of India, enclosed at Annexure-R/4 by the respondents along with their counter to OA No.362/2000. In this letter it has been mentioned that after the judgment of the Hon'ble Supreme Court in R.Swaminathan's case (supra) such benefit of stepping up of pay has not been allowed. The learned counsel for the petitioners strongly urged that this point did not come up for consideration in R.Swaminathan's case (supra) and the decision in R.Swaminathan's case (supra) should not be expanded to cover a situation which was not before the Hon'ble Supreme Court in that case. In support of the above contention the learned counsel for the petitioners has relied on Prakash Amichand Shah's case (supra) in which Hon'ble Supreme Court in paragraph 26 of the judgment considered that the duty of the Court is while applying the law laid down in a precedent case. In that case the Hon'ble Supreme Court observed that a decision ordinarily is a decision on the case before the court while principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Hence while applying the decision to a later case, the Court which is dealing with it should carefully try to ascertain the true principle laid down by the previous decision. A decision often takes its colour from the questions involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. In view of the above position



of law laid down by the Hon'ble Supreme Court in Prakash Amirchand Shah's case (supra) it has been argued by the learned counsel for the petitioners that the decision of the Hon'ble Supreme Court in R.Swaminathan's case (supra) is not applicable in the two OAs before us."

9. The Division Bench at Cuttack expressed it's view of the above arguments as follows:-

"It is no doubt true that in R.Swaminathan's case (supra) the Hon'ble Supreme Court was called upon to consider the eligibility of stepping up of pay of a senior where the junior gets the higher pay due to ad hoc officiating/regular service rendered in higher post for periods earlier than the senior. In that case the question of junior getting higher pay because of passing Incentive Examination was not considered. But in R.Swaminathan's case (supra) the Hon'ble Supreme Court considered the question of stepping up of pay to remove anomaly and held that in the given instance before their Lordship no anomaly was involved and stepping up of pay was not warranted."

10. The Division Bench of this Tribunal at Cuttack, however, for the following reasons did not allow the case of the Applicants before it:-

"For stepping up of pay as a result of application of FR 22-C earlier and now FR 22(I)(a)(I), circulars have been issued from time to time. Stepping up can be done only in terms of these circulars. After introduction of the Fifth Pay Commission pay scales such stepping up is also allowed as a result of application of FR 22(I)(a)(I) in the

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revised scales under CCS(RP) Rules, 1997. The applicants and respondent no.5 in both these cases got the Fifth Pay Commission pay scale from 1.1.1996. On 1.1.1996 the pay of the applicants and respondent no.5 was fixed at Rs.5300/- . The is not a case of promotion and application of FR 22(I)(a)(I). The fact that respondent no.5 is getting more pay than the applicants from 1.4.1996 than the applicants from 1.4.1996 is not because of application of FR 22(I)(a)(I) but because he got incentive increment after clearing the Incentive Examination for Senior Accountant in April 1996. This increment happened to be Rs.150/- in the new pay scale of Rs.5000-8000/- . The applicants had cleared this examination while they were in the pre-revised pay scale of Rs.1400-2600/- and thereby got an incentive increment the quantum of which was Rs.40/- in the pre-revised pay scale. Therefore, the fact that respondent no.5, is getting more pay than the applicants as on 1.4.1996 is not because of application of FR 22(I)(a)(I) as there was no question of promotion of the applicants and respondent no.5 to any higher post. In view of the above, it is clear that the claim of the applicants in these two OAs does not come within the four corners of the circulars dealing with stepping up of pay. In R.Swaminathan's case (supra) the Hon'ble Supreme Court have held that stepping up of pay is permissible only when the anomaly is attributable to application of FR 22(I)(a)(I). Therefore, the departmental respondents are right in not treating this an anomaly due to application of FR 22(I)(a)(I). In view of this, there is no case for stepping up the pay of the applicants to the level of Rs.5450/- from 1.4.1996."

11. In order to counter the argument (based on the Order of Cuttack Bench) of the Respondents of the case before the Division Bench

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at Guwahati, the Applicants' side proceeded to argue as under, before the Division Bench:-

"Ms. Chakraborty, the learned counsel for the applicant submitted that the decision of the Cuttack Bench is to be treated as a judgment per incuriam. The learned counsel submitted that a decision is given per incuriam when the court had acted contrary to the provisions of the rules. Ms Chakraborty, learned counsel for the applicants submitted that the decision rendered by the Supreme Court in R. Swaminathan (supra) was on the facts of the case."

12. On appreciation of the arguments of the parties, the Division Bench of this Tribunal at Guwahati Bench of this Tribunal at Guwahati took a tentative view in favour of the Applicants; relevant portion of which is extracted below:-

"In the aforementioned case the junior employees was getting pay at a higher stage where he got the opportunity in ad hoc promotion while the senior did not get such opportunity. The issue involved in the aforesaid case was as to whether a senior employee who secured regular promotion on all India basis earlier than his juniors was entitled to get his pay stepped up with reference to the pay of his juniors with a higher stage because of the fact that junior was promoted by way of local and ad hoc arrangement. In view of the aforesaid promotion, the junior employee was drawing higher pay because of proviso to FR 22(l) and FR 26(a) which recognised service rendered on ad hoc promotion for pay fixation/increment on regular promotion. By virtue of ad

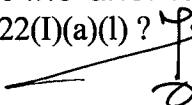
hoc promotion junior may get pay more than his senior. The decision of Swaminathan has not ruled out stepping up of pay on all situation. On the own showing of the respondents it was an extraordinary situation."

13. In the aforesaid premises, despite taking a tentative view in favour of the Applicant, the Division Bench at Guwahati proceeded to note as under and referred the matter to Full Bench:-

" A bench decision of the C.A.T. is binding on the another co-ordinate Bench on the ground of judicial comity, where a Bench does not accept as correct the decision on a question of law of another Bench, the only right and proper course to adopt is to refer to the Full Bench. For that the rule also provides. Law will be devoid of all its efficacy if it is thrown into confusion and uncertainty by conflicting decisions. Judicial decorum and legal policy also demands that difference of opinion need to be authoritatively settled by a larger Bench. In that view of the matter we decline to accept the contention of Ms Chakraborty to treat the Cuttack Bench judgment as a judgment per incuriam and instead we would prefer to refer the matter to a larger Bench. We accordingly refer this application to a Full Bench to examine the following questions:-

(a) Whether on the facts and circumstances of the case the Cuttack Bench was justified in upholding the decision of the department in refusing to stepping up of the pay of the seniors?

(b) Whether the benefit of stepping up of pay is inadmissible unless the anomaly is directly attributable to application of FR 22(I)(a)(I) ?



(C) Whether on the facts and circumstances of the case the respondents are justified in law in refusing to step up the pay of the seniors who are paid less than the juniors in view of the extra ordinary situation ?"

14. In the above premises, the matter has come before this Full Bench for consideration.

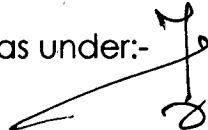
15. While referring the above matter to the Full Bench, the Division Bench of this Tribunal at Guwahati, virtually, left the matter open to the Respondents "to consider the Applicants and other persons similarly situated" to give justice to the affected parties.

16. Having heard Ms. Papia Chakraborty, learned counsel appearing for the Applicants and Mr. Gautam Baishya, learned Sr. Standing counsel appearing for the Respondents, we are convinced that the seniors have suffered the loss of pay (in comparison to their juniors) on implementation of revised pay with effect from 1996 and in absence of any statutory rules and executive instructions to address such a situation, they suffered the vice. On the face of certain Govt. instruction specifying the situation in which stepping up of pay can be granted, the Cuttack Bench had to dismiss the cases of some of the persons similarly placed as that of the present Applicants. In absence of any prohibition in any statutory or

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executive instruction to grant financial upgradation (to be at par with their juniors) the Division Bench of the Tribunal at Guwahati (in the present case) came to a tentative view in favour of the Applicant. The Division Bench of the Tribunal at Guwahati also took a view that the Apex Court, in the case of **Swaminathan** (supra) did not rule out stepping up of pay on all situations. In other words, the said Division Bench concluded that in the given circumstances, the Apex Court (in the case of **Swaminathan**) denied stepping up of pay and not denied stepping up in all circumstances. We are of the view that in order to resolve the genuine grievances of their employees (as in the present case) the Govt. ought to have come out with general instruction at the earliest; especially when it is the admitted position that the parties faced an extraordinary situation. In fact, they (Govt. of India) have done so at a very late stage; as would be seen in the following paragraph.

17. By way of filing a Rejoinder before the Full Bench, the Applicant has brought on record a Circular No.20/NGE/2002(371-NGE/(Estt.)/28-2002) dated 13.05.2002 of the CAG of India; contents of which reads as under:-

A handwritten signature consisting of a stylized 'M' shape with a horizontal line extending to the left and a small circle at the bottom right.

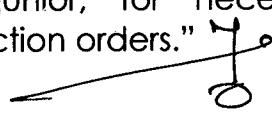
"Sub: Anomalies in pay arising in the Sr. Auditors/Sr. Accountants cadre as a result of passing Incentive Examination by a senior before 1.1.96 and junior after 1.1.96."

Sir,

For the last few years anomalies in pay were being referred to Hqrs. Office by some field offices as a result of passing Incentive Examination for Sr. Auditors/Sr. Accountants by a senior before 1.1.96 viz-a-viz his junior who passed this examination after 1.1.96 and thus become eligible for grant of advance increment in the revised scale under CCS (Revised Pay) Rules 1997.

Ministry of Finance, Government of India, to whom the matter was referred previously, did not allow such stepping up as circulated vide Headquarters office circular letter No.606/NGE(Entt)/28-2000 dated 1.8.2000. Now on reconsideration the Ministry has agreed to allow benefit of stepping up of pay, as a special case, subject to the condition that no arrears of pay and allowances shall be granted.

Individual proposals for stepping up of pay of seniors who passed incentive examination before 1.1.96 and are drawing lesser pay than their juniors who passed the said examination after 1.1.96 and became eligible for grant of advance increment in revised scales under CCS (RP) Rules 1997 may be sent to this office along with comparative statements of pay from time to time and certificate of first junior, for necessary verification and issue of sanction orders."



It has been disclosed in the above Rejoinder that stepping up of pay has already been granted to the Applicants and, as such their prayer have become infructuous.

18. In the above premises, since the Govt. of India have already granted financial benefits/stepping up of pay to the Applicants (and similarly placed others) we dispose of this case; without any direction to the Respondents.


 (C.R.M. MOHANTY)
 MEMBER (A) 18/09/08


 (KHUSHIRAM)
 MEMBER (A)


 (MANORANJAN MOHANTY)
 VICE-CHAIRMAN
 18/09/08

/bb/

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 39 of 2002.

Date of Order : This the 4th Day of June, 2002.

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

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

1. Sri Amitava Chatterjee,
2. Sri Kumar Paritosh Deb,
3. Sri Dibakar Majumdar and
4. Sri Sanjay Ranjan Dey.

. . . Applicants.

All the applicants are working as Senior Accountant in the office of the Accountant General (A&E), Assam, Beltola, Guwahati-29.

By Advocate Ms P.Chakraborty.

- Versus -

1. The Union of India, represented by the Secretary, Department of Finance, Govt. of India, Delhi.

2. The Comptroller and Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi-2.

3. The Assistant Comptroller and Auditor General (N) of India, 10, Bahadur Shah Zafar Marg, New Delhi-2.

4. The Accountant General (A&E) Assam, Maidamgaon, Beltola, Guwahati-29.

5. The Deputy Accountant General (A&E) O/O the Accountant General (A&E) Assam, Maidamgaon, Beltola, Guwahati-29.

6. The Senior Accounts Officer (Admn), O/O the Accountant General (A&E), Assam, Beltola, Guwahati-29.

. . . Respondents.

By Sri A.Deb Roy, Sr.C.G.S.C.

O R D E R

C O M M I S S I O N E R

This is an application under Section 19 of the Administrative Tribunals Act 1985 seeking for a direction for stepping up of the pay of the four applicants in the following circumstances.

2. The applicants are presently working as Senior Accountant in the office of the Accountant General (AG), Assam, Guwahati. The applicant No.1 joined as Clerk-Cum-Typist in the office of the Accountant General, Assam on 5.2.1986. He was promoted to the post of Accountant on 30.11.1989. He was further promoted to the post of Senior Accountant on 27.1.94. The applicant No.2 was appointed as Clerk-Cum-Typist on 1.10.86 in the same office and was promoted to the post of Accountant on 11.4.90 and further promoted to the post of Senior Accountant on 31.1.94. Similarly the applicant No.3 and 4 were promoted to the post of Senior Accountant on 25.1.94 and 31.1.94. The respondents issued circulars from time to time for conducting Incentive Examination for Senior Auditors and Senior Accountants. As per the circular the candidates securing 50% marks and above are entitled for advance increment in the scale of Senior Auditor/Senior Accountant with effect from 1st of the month in which the examination is held. All the four applicants passed the incentive examination during 1995 by securing the qualifying marks and thereby became eligible for the advance increment with effect from 1.4.2995. The pay of the applicants as on 31.3.1995 was Rs.1440/- and thereafter from 1.4.95 to 31.12.95 they were allowed to draw a salary of Rs.1480/- towards incentive benefits for passing the examination. It was also stated that at the relevant time their junior colleagues who have not passed the incentive examination were drawing a salary of Rs. 1400/-, whereas the applicants were drawing Rs. 1480/- from 1.4.1995. The pay structure was revised and the Central Civil Services (Revised Pay) Rules 1997 came into force from 1.1.96. The pay of the

applicants was revised at Rs. 5150/-.. The junior colleagues of the applicants were also allowed to draw pay at the rate of Rs.5150/-.. The junior colleagues were passed the incentive examination on April 1996 and their pay with incentive benefit stood at Rs. 5300/-, whereas the applicants being senior and having passed the incentive examination earlier were drawing a pay of Rs.5150/- as on 1.4.1996.

3. The applicant pleaded that the revision of pay during 1996 gave rise to the disparity between the pay structure of juniors and seniors in the same office and under the same employer performing similar function and sharing same duties and responsibilities to similarly situated sets of employees were allowed different pay scale and the juniors were allowed to draw higher scale. The applicants cited instances that on April 1996 these applicants were drawing salary of Rs.5150/- whereas the junior colleagues on the said date were allowed to draw a sum of Rs.5300/-.. Thereafter on January 1st 1997 the applicants were drawing Rs. 5300/-, whereas their junior colleagues were drawing Rs.5450/-.. On 1.1.98 the applicants drew the pay of Rs. 5450/- while their junior counter part drew Rs. 5600/-.. Again on 1.1.99 the applicants were drawing Rs. 5600/- but their juniors were drawing Rs. 6750/-.. Similarly on 1.1.2000 the applicants were drawing Rs. 6750/- and their juniors were drawing Rs. 6900/- and in 1.1.2001 the applicants were drawing Rs. 6900/- and their juniors were drawing Rs. 7050/-.. The name of the applicants were placed at serial Nos. 440, 462, 461 and 471 respectively in the gradation list, whereas one of their junior Sri Swapan Das was placed at serial No.536 but their junior was drawing higher pay than that of the

applicants. The applicants stated that the discrimination in the pay structure on the implementation of the Central Civil Service (Revised Pay) Rules 1997 on 1.1.96 between two sets of employees whose basic qualification, method, manner and grade of promotions were otherwise being same, performing similar function and identical duties under the same employer is completely irrational and against the principle of 'equal pay for equal work'. Narrating the discrimination meted out to these applicants they submitted their representations. By the impugned order No. ADMN 1/3-8/99-2000(PART II)/1078 dated 9.7.2001 the applicants were informed by the respondents about their decision rejecting their representations. The respondents by circular No.33-NGE/200 No.606/NGE/EC)/28-2000 informed the applicant that anomalies in pay which had arisen in the Senior Auditors/ Senior Accountants cadre as a result of passing Incentive Examination regarding a senior before 1.1.96 and junior after 1.1.96 was not rectifiable. The relevant part of the circular is reproduced below :

"Ministry of Finance after consultation with DOP & T have held that such type of anomalies have not arisen due to direct application of FR 22-C (Now FR-22(1)(a)(i)). In such cases anomaly has arisen due to grant of increment at a higher rate to the junior. In this connection Government have drawn attention to various orders relating to stepping up of pay, issued right from 4.2.66. Para (c) of these orders provides that anomaly should be as a result of application of FR 22-C and in case where a junior is drawing higher pay than a senior by virtue of grant of advance increment no benefit of stepping up of pay will be allowed to the senior officer. In the past DOP & T have been agreeing to step up pay in such cases in relaxation of normal rules. However, after judgment of Hon'ble Supreme Court of India in the case of R. Swaminathan and others DOP & T

have been taking a consistent stand not to allow benefit of stepping up of pay of senior in cases where anomaly is not due to direct application of FR 22-C (Now FR 22(1)(a)(i)".

In the application the applicants cited the instance of presentation of a representation sent by one Ashit Baran Chanda, Senior Accountant working in same office who also filed representation claiming parity of pay with his junior. The aforementioned representation of Sri Ashit Baran Chanda was referred to the Ministry and Sri Chanda was accordingly informed vide memo dated 23.1.2002 that the matter of stepping up of his pay was referred to the Ministry of Finance. The applicant contended that the case of the applicant did not receive equal treatment like that of Ashit Baran Chanda and same was rejected by the department without awaiting for the view of the Ministry. Being aggrieved the applicants presented this application seeking for a direction for stepping up of pay of the applicants due to anomalies mentioned.

4. The respondents contested the claim and opposed the application by filing written statement. The respondents in the written statement had specifically stated that the anomaly had arisen due to the grant of an advance increment to the junior official with effect from 1.4.96 for passing the Departmental Incentive Examination for Senior Accountants. The respondents at para 6 of the written statement admitted that the case was of an extraordinary nature and not covered under the existing rules/order which had arisen because of the new pay structure and therefore the authority was helpless to take any action on the matter. The respondents also stated in the written statement that the office of the Accountant General (A&E), Assam, Guwahati vide letter No. Admn & Estt/Ghy/ROP-96/97/2339 dated 25.11.97 referred the case to the office of the Comptroller and Auditor General stating their predicament. In the said communication

the Deputy Accountant General(Admn) intimated the Comptroller and Auditor General that some junior officials were getting higher pay than that of their seniors. Among others the Deputy A.G. intimated to the C.A.G the following facts :

"It has been observed in certain cases that by virtue of an advance increment for passing Incentive Examination for Sr.Accountants after 1.1.96 in the revised scale, some junior officials are getting higher pay than that of their seniors, who were drawing higher pay than their juniors in the pre-revised scale. The Senior officials under reference also passed the same examination and got the benefit of increment in the pre-revised scale. While fixing the pay of the seniors by taking into account the advance increment, their pay fixed at the stage of Rs.5250/- on 1.1.96 with D.N.I. on 1.11.96, whereas their juniors, whose pay was also fixed at the stage of Rs.5150/- on 1.1.96 and got the advance increment in April/96 apart from their normal increment on 1.1.97. Thus the juniors are getting more pay than their seniors. The senior officials now claimed equalisation of their pay with the junior w.e.f. April/96. One of the illustrations at Annexure-I is given for your ready reference.

The doubts mentioned above may please be clarified."

The respondents were also informed by the office of the C.A.G by communication dated 28.3.2002 that the matter is still under consideration with Government of India, Ministry of Finance. In the written statement the respondents referred to the decision rendered by the Supreme Court in R.Swamianathan vs. Union of India & Ors. reported in 1997(7) SCC 690 and stated that the benefit of stepping up of pay was not admissible unless the anomaly was directly attributable to application of FR 22(1)(a)(i). Since it was not directly attributable to FR 22(1)(a)(i) the respondents rejected the application. It also referred to a decision of the Cuttack Bench of the C.A.T rendered in O.A.362 and 363 of 2000.

5. We have heard Ms P.Chakraborty, learned counsel appearing on behalf of the applicants and also Mr A.Deb Roy, learned Sr.C.G.S.C for the respondents at length. Ms Chakraborty, the learned counsel submitted that obviously an abnormal situation did arise wherein the juniors were getting higher pay than that of the applicants. The learned counsel submitted that there could not be any legitimate ground in discriminating the applicants with their juniors in this regard. Ms Chakraborty, the learned counsel for the applicant pointedly referred to the recruitment rules, the qualifications vis-a-vis the duties and responsibilities discharged by the applicants and their juniors and submitted that denial of equal pay to the applicants amounted to flagrant violation of the Constitutional Scheme enjoined in Article 14 and 16 of the Constitution of India read with Article 39(d) of the Directive principle enshrined in the said Constitution. The learned counsel further submitted that the respondents acted illegally in rejecting the claim of these applicants on the ground that the situation was beyond the purview of FR 22(1)(a)(i). Ms Chakraborty, the learned counsel for the applicant in support of her contention referred to FR 22(1)(a)(i) as well as the Central Civil Service (Revised Pay) Rules 1997. The learned counsel submitted that both the junior and senior Government servant belonging to the same cadre and both of them were promoted in identical post. The pre revised and revised pay scale in lower and higher post in which they were entitled to draw were also identical. The anomaly is directly a result of the pay revision providing higher incentive. The juniors were not drawing any higher salary than that of the applicants in the lower post. The anomaly did arise due to grant of advance increment to the junior officers who

passed the incentive examination later in point of time. The learned counsel particularly referred to the Note 9 mentioned below in Rule 7 of the CCA (RP) Rules 1997.

6. Mr A. Deb Roy, learned Sr.C.G.S.C opposing the application referred to FR 22(1)(a)(i) and also the decision rendered by the C.A.T, Cuttack Bench, Cuttack in O.A. 362 and 363 of 2000 disposed of on 6.8.2001, whereby the Cuttack Bench rejected the similar claim. Ms Chakraborty, the learned counsel for the applicant submitted that the decision of the Cuttack Bench is to be treated as a judgment per incuriam. The learned counsel submitted that a decision is given per incuriam when the Court had acted contrary to the provisions of the rules. Ms Chakraborty, learned counsel for the applicants submitted that the decision rendered by the Supreme Court in R. Swaminathan (supra) was on the facts of the case. In the aforementioned case the junior employee was getting pay at a higher stage where he got the opportunity in ad hoc promotion while the senior did not get such opportunity. The issue involved in the aforesaid case was as to whether a senior employee who secured regular promotion on all India basis earlier than his juniors was entitled to get his pay stepped up with reference to the pay of his juniors with a higher stage because of the fact that junior was promoted by way of local and ad hoc arrangement. In view of the aforesaid promotion, the junior employee was drawing higher pay because of proviso to FR 22(I) and FR 26(a) which recognised service rendered on ad hoc promotion for pay fixation/increment on regular promotion. By virtue of ad hoc promotion junior may get pay more than his senior. The decision of Swaminathan has not ruled out stepping up of pay on all situation. On the own showing of the respondents it was an extra ordinary situation.

7. Despite our tentative conclusion we are confronted with the decision of Cuttack Bench on the same situation. The applicants in the Cuttack Bench were holding the post of Senior Accountant and claimed for stepping up their pay equal to that of their juniors and got advance increment in the new pay scale. The Tribunal however in the light of the decision of R. Swaminathan and also on interpretation of FR 22(1)(a)(i) rejected the application.

8. A Bench decision of the C.A.T is binding on the another co-ordinate Bench on the ground of judicial comity, where a Bench does not accept as correct the decision on a question of law of another Bench, the only right and proper course to adopt is to refer to the Full Bench. For that the rule also provides. Law will be devoid of all its efficacy if it is thrown into confusion and uncertainty by conflicting decisions. Judicial decorum and legal policy also demands that such difference of opinion need to be authoritatively settled by a larger Bench. In that view of the matter we decline to accept the contention of Ms Chakraborty to treat the Cuttack Bench judgment as a judgment par incuriam and instead we would prefer to refer the matter to a larger Bench. We accordingly refer this application to a Full Bench to examine the following questions :

- a) Whether on the facts and circumstances of the case the Cuttack Bench was justified in upholding the decision of the Department in refusing to stepping up of the pay of the seniors ?
- b) Whether the benefit of stepping up of pay is inadmissible unless the anomaly is directly attributable to application of FR 22 (1)(a)(i) ?
- c) Whether on the facts and circumstances of the case the respondents are justified in law in refusing to

step up the pay of the seniors who are paid less than the juniors in view of the extra ordinary situation ?

Pendency of this application shall not however preclude the respondents authority to consider the case of these applicants and other persons similarly situated as per law.

Registry to take necessary steps.

K.K.Sharma
(K.K.SHARMA)
ADMINISTRATIVE MEMBER

[Signature]
(D.N.CHOWDHURY
VICE CHAIRMAN

11
FEB 2002
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH ::
गुवाहाटी अधिकार अधिकार
Guwahati Bench
प्राप्ति कालीन AT GUWAHATI

(An Application under Section 19 of the Administrative
Tribunal Act, 1985)

ORIGINAL APPLICATION NO. 39 /2002

Sri Amitava Chatterjee & Others. ... Applicants.

- Versus -

Union of India and others. ... Respondents.

I N D E X

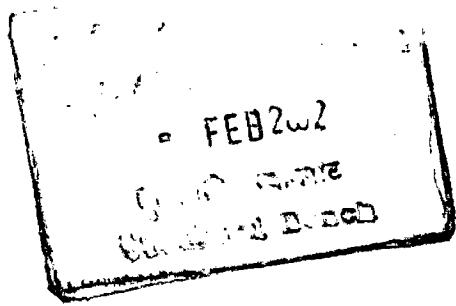
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Date of Filing :

Registration No. :

Filed by :
Papia Chakrabarty
Advocate :

Registrar



Filed by: Shri
Amitava Chatterjee
Through Ms. Bipika
Chakrabarty
Advocate

08.02.2002

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

ORIGINAL APPLICATION NO.

39 /2002

- 1) Sri Amitava Chatterjee,
Senior Accountant,
O/O the Accountant General (A&E),
Assam, Maidamgaon, Beltola,
Guwahati - 781 029.
- 2) Sri Kumar Paritosh Deb,
Senior Accountant,
O/O the Accountant General (A&E),
Assam, Maidamgaon, Beltola,
Guwahati - 781 029.
- 3) Sri Dibakar Majumdar,
Senior Accountant,
O/O the Accountant General (A&E),
Assam, Maidamgaon, Beltola,
Guwahati - 781 029.
- 4) Sri Sanjay Ranjan Dey,
Senior Accountant,
O/O the Accountant General (A&E),
Assam, Maidamgaon, Beltola,
Guwahati - 781 029.

Amitava Chatterjee

... Applicants.

- Versus -

- 1) The Union of India
Represented by the Secretary,
Department of Finance,
New Delhi .
- 2) The Comptroller and Auditor
General of India,
10, Bahadur Shah Zafar Marg,
New Delhi - 2.
- 3) The Assistant Comptroller and
Auditor General (N) of India,
10, Bahadur Shah Zafar Marg,
New Delhi - 2.
- 4) The Accountant General (A&E),
Assam, Maidangaon, Beltola,
Guwahati - 781 029.
- 5) The Deputy Accountant General (A&E),
O/O the Accountant General (A&E),
Assam, Maidangaon, Beltola,
Guwahati - 781 029.
- 6) The Senior Accounts Officer (Admn),
O/O the Accountant General (A&E),
Assam, Beltola, Guwahati - 29.

.... Respondents.

Amitava Chatterjee

3.

DETAILS OF APPLICATION :

1. PARTICULARS OF ORDERS AGAINST WHICH THE APPLICATION IS MADE :

The application is made against the order dated 9.7.2001 passed by Respondent No. 6, the Senior Accounts Officer (Administration) rejecting the representations dated 2.4.2001 for review of representations dated 17.11.1999 for equalisation ~~per~~ of pay with their juniors by referring the office circular No. 33-NGE/2000 issued by the Office of the Comptroller and Auditor General of India, the Respondent No. 2.

2. JURISDICTION OF THE TRIBUNAL :

The Applicants declare that the subject matter of the Order against which the Applicants want redressal is within the jurisdiction of the Tribunal.

3. LIMITATION :

The Applicants declare that the Application is within the limitation period prescribed in Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE :

That the applicants are citizens of India

Amritava
Chatterjee

and are permanent residents of Guwahati in Kamrup district of Assam and are entitled to all rights guaranteed under the Constitution of India. That the applicants have common interest and common question of law for糴relief in this case hence the Hon'ble Tribunal may allow the applicants to join together in exercise of power conferred under clause (a) sub Rule 5 of Rule 4 of CAT Rule.

(ii) That, the applicants are at present working

as Senior Accountant in the Office of the Accountant

General (A&E), Assam, Guwahati. The Applicant No. 1, *FR 22*

Sri Amitava Chatterjee joined as Clerk-Cum-Typist in the office of the Accountant General (A&E), Assam etc. on 5.2.1986. Thereafter he got promoted to the post of Accountant on 30.11.1989. He was further promoted to the post of Senior Accountant on 27.1.1994.

(iii) That the Applicant No. 2, Sri Kumar Paritosh Deb was appointed as Clerk-Cum-Typist on 1.10.1986 in the office of the Accountant General (A&E), Assam, Guwahati and was promoted to the post of Accountant on 11.4.1990 and got further promotion to the post of Senior Accountant on 31.1.1994.

(iv) That the Applicant No. 3 Sri Dibakar Majumdar had also joined the said office as Accountant on 19.3.1990 and he was promoted to the post of Senior Accountant on 25.1.1994.

(v) That, the Applicant No. 4 Sri Sanjay Ranjan Dey had also joined the said office as Clerk-Cum-Typist

Amitava Chatterjee

contd....

on 23.4.1986 and he was promoted to the post of Accountant on 11.4.1990 and got further promotion to the post of Senior Accountant on 31.1.1994.

(vi) That, the applicants state that the Respondent No. 2, the Comptroller and Auditor General of India from time to time issues Circulars for conducting incentive examination for Senior Auditors and Senior Accountants under which the candidates securing 50% of marks and above are granted one advance increment in the scale of Senior Auditor/Senior Accountant with effect from 1st of the month in which the examination is held. That, the applicants passed the incentive examination so conducted during 1995 and became eligible for such incentives. That all the applicants passed the incentive examination on April, 1995 and hence became entitled to an advance grant of such incentive from 01.04.1995.

(vii) That, the applicants state that thereafter the Central Civil Services (Revised Pay) Rules, 1997 came into force from 1st of January, 1996. That, the applicants state that the aforesaid Revised Pay Rules gave rise to certain disparities in the pay structure between those who passed the Incentive Examination prior to 1996 and those passed during 1996. The Applicants add that they passed the Incentive Examination in April, 1995 and their pay as on 31.3.1995 was Rs. 1,440/- and thereafter

Amitava Chatterjee

contd...

from 1.4.1995 to 31.12.1995 they have allowed to draw a salary of Rs. 1,480/- towards incentive benefits for, passing the examination. The applicants at this juncture wants to point out that at that relevant time their junior colleagues who had not passed the incentive examination were allowed to draw a salary of Rs. 1,400/-.

(viii) That, the applicants state that since the Central Civil Services (Revised Pay) Rules, 1997 came into effect on 1.1.1996 the revised pay of the applicants stood at Rs. 5,150/- vide the said revision of pay. The junior colleagues of the applicants were also allowed to draw a Pay of Rs. 5,150/-. Thereafter when the said junior colleague passed the incentive Examination on April, 1996, their pay along with the Incentive benefits stood at Rs. 5,300/-, whereas the applicants being senior and having passed the incentive examination earlier were drawing pay of Rs. 5,150/- on 1.4.1996.

(ix) That, the applicants state that due to the revision of pay during 1996, it gave birth to a disparity between the pay structure of juniors and seniors, the said revision gave a boost to the pay of the juniors to that of the seniors. Thus, in the same office under the same employer performing exactly similar function sharing same duties and responsibilities two similarly situated sets of employees were allowed different pay scale while the juniors put to higher pay scale.

Amitava Chatterjee

contd...

(x) That, the applicants herein sets in more detail the anomaly so chopped up by implementation of the recommendation of the 5th Pay Commission, 1996. That, on April, 1996 applicants were drawing ~~pay~~ of Rs. 5,150/- whereas their junior colleagues on the said day were allowed to draw ~~pay~~ of Rs. 5,300/-. Thereafter, on January 1st, 1997, the applicants were drawing ~~pay~~ of Rs. 5,300/- whereas their junior colleague were drawing pay of Rs. 5,450/-. On January 1st, 1998, the applicants drew the pay of Rs. 5,450/-, while their junior counterpart drew Rs. 5,600/-. Again, on January 1st, 1999, the applicants were drawing pay of Rs. 5,600/-, but their junior counter part drew Rs. 6,750/-. On 1st January, 2000, the applicants got the pay of Rs. 6,750/- whereas during the said period their juniors were getting Rs. 6,900/-. During January, 2001 applicants were getting pay of Rs. ~~Rs. 6,900/-~~ Rs. 6,900/- their juniors were getting Rs. 7,050/- on the said day.

(xi) That, the applicants state that the applicant No. 1 joined on 5.2.1986 as Clerk-Cum-Typist. The Applicant No. 2 joined on 1.10.1986 as Clerk-Cum-Typist. Applicant No. 3 joined on 19.3.1990 as Accountant. Applicant No. 4 joined on 23.4.1986. And they got promotion to the post of Senior Accountant on 27.01.1994, 31.1.1994, 19.3.1990 and 27.01.1994 respectively and their names in the gradation list is at Serial Nos. 440, 462, 461 and 471 respectively. Whereas, one of their junior colleagues Sri Swapan Das, whose name is at Serial No. 536 of the said gradation list

Amitava
Chatterjee

contd...

is drawing a higher pay than the applicants. For the purpose of brevity the applicants furnished a comparison of their pay with one such junior colleague to show the disparity of pay, which is annexed along with this application and marked as Annexure - 1a and 1b respectively.

(xii) That, the applicants state that this discrimination in the pay structure as aforesaid on the implementation of the Central Civil Services (Revised Pay) Rules, 1997 on 1.1.1996 between two sets of employees whose basic qualification, method, manner and grade of promotions are otherwise being same, performing similar function and identical duties and responsibilities under the same employee is completely irrational and this fixation of unequal scale is based on no classification and is a negation of principles of 'equal pay for equal work' enshrined in the Constitution of India.

(xiii) That, the applicants state that they thereafter approached respondent No. 2, the Comptroller and Auditor General of India, through the Respondent No. 4, the Accountant General (A&E), Assam, Guwahati against the aforesaid disparity of pay scale between the junior and the senior employee which cropped up due to the implementation of the pay revision during 1996 vide their representation dated 17.11.1999 as well as prayed for setting aside the anomaly so cropped up and for equalisation of their pay.

Amitava Chatterjee

contd...

The said representations dated 17.11.1997 are annexed herewith and marked as Annexures - 2(a), 2(b), 2(c) and 2(d) respectively.

(xiv) That, the applicants state that thereafter their representations for equalisation of pay was rejected by the respondent No. 6, the Senior Accounts Officer (Admn) vide Order dated 9.7.2001 referring to the Office Circular No. 33 MGE/2000 dated 7.8.2000 issued by the Respondent No. 3, the Assistant Comptroller and Auditor General (N). In the said Office Circular a reference was made to the R. Swaminathan Case reported in 1997(7) SCC 690 and in view of the said Judgement as it was held that the anomalies that have arisen in the Senior Auditor/Senior Accountant Cadre as a result of the passing incentive examination by Senior before 1.1.1996 and a junior after 1.1.1996 are not rectifiable.

The Office order dated 9.7.2001 rejecting applicants' prayer for equalisation of pay with the juniors and the Office Memo dated 7.8.2000 issued by Respondent No. 3 are annexed herewith and marked as Annexures - 3 and 4 respectively.

(xv) That the Applicants state that one Sri Ashit Baran Chanda, Senior Accountant working at the same office with the applicants also made one representation

Amitava Chatterjee

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before the Respondents claiming parity of pay with his junior. In response to the said representation, the respondents had forwarded the same to the Ministry of Finance for consideration of his prayer. That, the applicants further state that this action of the respondents is highly discriminatory, arbitrary and malafide as the similar claim by the applicants were rejected by the respondents refering to the R. Swaminathan's Case.

The said forwarding letter to the Ministry of Finance is enclosed herewith and marked as Annexure - 5.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION :

(i) For that the impugned order rejecting the prayer for equalisation of pay was passed by the respondents in a haste and mechanically without application of mind the respondents ought to have taken into consideration that the out right rejection of the applicants' prayer for equal pay with their junior would be a negation of the principles of equal pay for equal work as enshrined in Article 39(d) of the Constitution of India. Hence, the impugned order rejecting applicants' prayer for equalisation of pay is arbitrary and liable to be set aside and quashed.

(ii) For that while passing impugned order

Amitava Chatterjee

contd....

rejecting applicants' prayer for equalisation referring to the Supreme Court Judgement passed in R. Swaminathan's Case reported in 1997(7) SCC 690, the respondents failed to appreciate that the circumstances which led to the denial of stepping up of pay of the Senior in R. Swaminathan's Case by the Apex Court and the set of things as in this present case in hand are completely different and hence had wrongly applied the ratio in this present case same being perverse liable to be set aside and quashed.

(iii) For that the respondents failed to appreciate that in the aforesaid R. Swaminathan's Case, the Apex Court declined stepping up of pay of the seniors because in that case the juniors were getting higher pay than the seniors because of the ad-hoc promotions granted to them. Hence, the Apex Court held that the increased pay drawn by the juniors was due to the officiating or regular service rendered by him in the higher posts for period earlier than the seniors is not an anomaly requiring stepping up of pay. Hence, it is apparent that the set of circumstances in R. Swaminathan's Case and in the present case is dissimilar and hence rejecting applicants' prayer of equalisation of pay with that of their juniors is apparently illegal and malafide and liable to be set aside.

(iv) For that the said Central Civil Services

Amitava Chatterjee

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(Revised Pay) Rules, 1997 as came into effect from 1996 expressly provided the pay of the Government servant who in the existing scale was drawing immediately before 1-1-1996 more pay than another Government servant junior to him in the same cadre gets fixed in the revised scale at a stage lower than that of such junior, his pay shall be stepped up to same stage in revised pay scale as that of a junior. The respondents in conformity with the said provision of the aforesaid rule ought to have rectified the anomaly so arisen. Failure on their part to do so is violative of applicants' Fundamental Rights under Article 14 and 16 of the Constitution of India.

(v) The impugned order rejecting the prayer of the applicants in complete disregard of the specific provisions laid down in the Central Civil Services (Revised Pay) Rules, 1997 is not sustainable in the eye of law and ~~is~~ liable to be set aside and quashed.

(vi) For that the respondents while rejecting applicants' prayer for parity of pay with their juniors failed to consider that the anomalies in pay has arisen due to application of FR 22-C (Now FR 22(1)(a)(i)) and that in this present case the juniors were getting higher pay than senior by virtue of the revision of pay and hence would have allowed the prayer of the applicants in stepping up of pay and failure to do so has rendered it bad in law

Amritava Chatterjee

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and it the same is allowed to stand it will cause abuse of law.

6. DETAILS OF REMEDIES EXHAUSTED :

That the Applicants state that they have no other alternative and efficacious remedy than to file this application. The Applicants filed representation for redressal of their grievances by the respondents which was rejected and thereafter they had also filed an application dated 2.4.2001 for review of the earlier order rejecting their claim which also subsequently was rejected by the respondents.

7. MATTER NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT :

That the applicants declare that they had not previously filed any application, writ petition or suit regarding the matter in respect of which this application is made before any court or any other authority or any other Bench or Tribunal nor any such writ petition, application or suit pending before any of them.

8. RELIEFS SOUGHT :

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

Anitara Chatterjee

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(A) Declaration that the impugned order rejecting the prayer of the applicants with their juniors is highly illegal, irrational, unconstitutional and violative of Articles 14 and 16 of the Constitution of India and against the proclaimed principles of equal pay for equal work of our Constitution and therefore, void and inoperative in law.

(B) To set aside and quash the impugned order dated 9.7.2001 rejecting applicants' prayer for equalisation of their pay with their junior and for a declaration that placing the applicants at a lower scale of pay than their juniors is illegal and arbitrary.

(C) Declaration that the action of the respondents denying equalisation of pay to the applicants is unconstitutional and for a direction to the respondents issue appropriate orders for redressing applicants' grievances.

(D) Issue appropriate orders directing the respondents to step up the pay of the applicants in conformity with the ~~xx~~ Rules and taking into consideration their seniority so that at least they get equal pay to that of their juniors.

(E) Direction to the respondents that after stepping up the pay of the applicants pay them the balance

Amitava
Chatterjee

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arrear calculated since 1.1.1996 till date.

(F) Any other relief or reliefs to which the applicants are entitled to as the Hon'ble Tribunal may deem fit and proper.

9. INTERIM ORDER PRAYED :

Pending disposal of this application an observation be made that pendency of this application shall not be a bar for the respondents to redress the applicants' grievances and step up their pay so as to enable them to draw at least equal pay to that of their juniors. The applicants also pray that the instant application be disposed of expeditiously.

10. PARTICULARS OF I.P.O. :

(i) I.P.O. No. : 7 G 550691
(ii) DATE : 5-2-2002
(iii) Payable at : Guwaahati.

11. LIST OF ENCLOSURES :

As stated in the Index.

Amitava Chatterjee

VERIFICATION

I, Shri Amitava Chatterjee, Applicant No. 1 and authorised on behalf of the other applicants and being acquainted with the facts and circumstances of the case do hereby verify the statements made in paragraphs 1,2,3,4 (i to vi and ix, xii) are true to my knowledge and those made in paragraphs 4 (vii, viii, x, xi, xiii, xiv) are true to my information derived from records and I have not suppressed any material fact.

And I sign this Verification on this, the day of February, 2002 at Guwahati.


Amitava Chatterjee
SIGNATURE

STATEMENT OF COMPARATIVE SALARY OF ApplicantsAnnexure- 1(a).

1. Name	Amiama Chatterjee	Kumar Paritosh Deb	Sanjoy Kr. Das	Swapan Kr. Das
2. Date of joining as C/T	5.2.1986	1.10.1988	23.4.1986	22.10.1986
3. Date of promotion to Accountant.	30.11.1989	11.4.1990	11.4.1990	16.1.1992.
4. Date of promotion to Sr. Accountant.	27.1.1994	31.1.1994	27.1.1994	16.1.1995.
5. Month and year of passing incentive.	April 1995.	Apel 1995	April 1995	April 1996
6. Pay on 1.1.95	Rs.1440/-	Rs.1440/-	Rs.1440/-	Rs-1400/-
7. Pay on 1.4.95	Rs.1480/-	Rs.1480/-	Rs.1480/-	Rs.1400/-
8. Pay on 1.1.96	Rs.5150/-	Rs.5150/-	Rs.5150/-	Rs.5150/-
9. Pay on 1.4.96	Rs.5150/-	Rs.5150/-	Rs.5150/-	Rs.5300/-
10. Pay on 1.1.97	Rs.5300/-	Rs.5300/-	Rs.5300/-	Rs.5450/-
11. Pay on 1.1.98	Rs.5450/-	Rs.5450/-	Rs.5450/-	5600/-
12. Pay on 1.1.99	Rs.5600/-	Rs.5600/-	Rs.5600/-	Rs.5750/-
13. Pay on 1.1.2000	Rs.5750/-	Rs.5750/-	Rs.5750/-	Rs.5900/-
14. Pay on 1.1.2001	Rs.5900/-	Rs.5900/-	Rs.5900/-	Rs.6050/-
15. Pay on 1.1.2002	Rs.6050/-	Rs.6050/-	Rs.6050/-	6200/-
16. Their names at	440	462	461	536.
Sl.No. of gradation list.				

Attested by
Swapan Chakraborty
Advocate

SF

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Annexure- 1(b).

STATEMENT OF COMPARATIVE SALARY OF Applicants

Name	Dibakar Mazumdar	Shebendu Das
2. Date of Joining as Accountant.	19.3.1990	29.11.1990.
3. Date of promotion to the post of Sr. Account.	25.1.1994.	24.2.1994.
4. Date of passing incentive Exam.	April, 1995.	April, 1996.
5. Pay on 1.1.1995	Rs.1440/-	Rs.1440/-
6. Pay on 1.4.1995.	Rs.1480/-	Rs.1440/-
7. Pay on 1.1.1996.	Rs.5150/-	Rs.5000/-
8. Pay on 1.4.96	Rs.5150/-	Rs.5300/-
9. Sl.No.as per gradation list.	Rs.461.	504/-

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6A0

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Annexure - 2 (a)

To

The Comptroller and Auditor General of India,
10, Bahadurshah Zafar Marg,
New Delhi - 110 002.

(Through the Accountant General (A&E), Assam,
Guwahati)

Sub : Equalisation of Pay in respect of Shri Amitava
Chatterjee, Sr. Accountant.

Sir,

With due respect I have the honour to lay before you
the following few lines for your kind consideration and favou-
rable order please.

That Sir, my junior Shri Swapna Kr. Das who had started
his career as C/T in this office on 22.10.86 is getting higher
pay from April, 1996 than me. The higher rate of increment
awarded for the passing of Incentive Examination for Sr. Accoun-
tant consequent upon Revision of Pay '97 in the cadre of Sr.
Accountant appears to be root cause of anomaly with the pay of
my junior.

A synopsis of service particulars of both of us are
appended below which will throw more light on the anomalies.

Service Particulars of

A. Chatterjee, Sr. Accountant

D.O.J. : 050286 (AN)

Entry Code : C/T

Date of Promotion to the

post of Accountant : 30.11.89

Date of Promotion to the

post of Sr. Accountant : ~~25.01.94~~ 27.01.94Month & yr. of passing
Exam. for Sr. Accountant :
04/95

Service Particulars of

Sri Swapna Kr. Das, Sr. Accountant

D.O.J. : 22.10.86 (F.N.)

Entry Code : C/T

Date of Promotion to the post of

Accountant : 16.01.92

Date of promotion to the post of

Sr. Accountant : 16.01.95

Month & year of passing Incentive
Exam. for Sr. Accountant :
4/96

Attested by

Sapna Chakraborty
Advocate

contd...

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Pay as on 1.1.96	: Rs. 5150/-	Pay as on 1.1.96	: Rs. 5150/-
D.N.I. 01.11.96		D.N.I. 01.01.97	
Pay as on 1.1.96	: Rs. 5150/-	Pay as on 1.1.96	: Rs. 5300/-
Pay as on 1.11.96	: Rs. 5300/-	Pay as on 1.1.97	: Rs. 5450/-
Pay as on 1.11.97	: Rs. 5450/-	Pay as on 1.1.98	: Rs. 5600/-
Pay as on 1.11.98	: Rs. 5600/-	Pay as on 1.1.99	: Rs. 5750/-
Pay as on 1.11.99	: Rs. 5750/-		

From the above particulars it is clear that Sri Swapan Kr. Das, Sr. Accountant has been drawing higher pay than that of me w.e.f. 1.4.96.

May I therefore, request you to take necessary action for equalisation pf pay by stepping up my pay with effect from 1.4.96.

For this act of your kindness I shall ever remain grateful to you.

Yours faithfully,

Sd/- Amitava Chatterjee
Sr. Accountant,
O/O the A.G. (A&E) Assam, Guwahati.

To

The Comptroller and Auditor General of India,
10, Bahadurshah Zafar Marg,
New Delhi - 110 002.

(Through the Accountant General (A&E) Assam,
Guwahati)

Sub : Equalisation pf Pay in respect of Shri Kumar Paritosh Deb, Sr. Accountant.

Sir,

With due respect I have the honour to lay before you the following few lines for your kind consideration and favourable order please.

That Sir, my junior Shri Swapam Kr. Das who had started his career as C/T in this office on 22.10.86 is getting higher pay from April, 1996 than me. The higher rate of increment awarded for the passing of Incentive Examination for Sr. Accountant consequent upon Revision of Pay '97 in the cadre of Sr. Accountant appears to be the root cause of anomaly with the pay of my junior.

A synopsis of service particulars of both of us are appended below which will throw more light on the anomalies.

Service Particulars of
K.P. Deb, Sr. Accountant

D.O.J. : 01.10.86 (F.N.)

Entry Cadre : C/T

Date of Promotion to the post
of Accountant : 11.04.90

Date of Promotion to the post
of Sr. Accountant : 31.01.94

Month and year of passing
Incentive Exam. for Sr.
Acctt. : 04/95

Pay as on 01.01.96 : 5150/-

Service Particulars of
Sri Swapam Kr. Das, Sr. Accountant

D.O.J. : 22.10.86

Entry Cadre : C/T

Date of promotion to the post of
Accountant : 16.01.92

Date of promotion to the post of
Sr. Accountant : 16.01.95

Month and year of passing
Incentive Exam. for Sr.
Accountant : 04/96

Pay as on 01.01.96 : Rs. 5150/-

Attested by

Ms. Papia Chakraborty
Advocate

contd...

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4.

D.N.I. : 01.01.97

D.N.I. : 01.01.97

Pay as on 01.04.96 : Rs. 5150/- Pay as on 1.4.96 : 5300/-

Pay as on 01.01.97 : Rs. 5300/- Pay as on 01.01.97 : 5450/-

Pay as on 01.01.98 : Rs. 5450/- Pay as on 01.01.98 : 5600/-

Pay as on 01.01.99 : Rs. 5600/- Pay as on 01.01.99 : 5750/-

From the above particulars it is clear that Sri Swapan Kr. Das, Sr. Accountant has been drawing higher pay than that of me w.e.f. 1.4.96.

May I therefore, request you to take necessary action for equalisation of pay by stepping up my pay with effect from 1.4.96.

For this act of your kindness I shall ever ~~ever~~ remain grateful to you.

Yours faithfully

Dated Guwahati,
the 17th Nov. '99.

Sd/- Kumar Paritosh Deb
17.11.99

Sr. Accountant
O/O the A.G.(A&E) Assam, Guwahati..

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5.

Annexure - 2(c)

To

The Comptroller and Auditor General of India.
10-Bahadurshah Zafar marg.
New Delhi : 110 002.

(Through the Accountant General (A&F) Assam)

Sub: Equilisation of pay in respect of Shri Dibakar Majumdar, Sr. Accountant.

Sir,

With due respect I have the honour to lay before you the following few lines for your kind consideration and favourable order.

That Sir, according to gradation list Sri Swapan Kr. Das, Sr. Accountant is junior to me. But since 1.4.96 he has been drawing higher pay than what I have been drawing.

Under the circumstances, I would request you kindly to take necessary action for equilisation of my pay with that of Shri Swapan Kr. Das w.e.f. 1.4.96.

And for this act of your kindness, I as in duty bound shall ever pray.

Yours faithfully,

Dated, Guwahati,
The 1 th Nov' 99.

Sd/- Dibakar Majumdar,
Sr. Accountant
O/O the A.G.(A&E) Assam, Ghy.

Attested by

Ms. Sopia Chakrabarty
Advocate

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6.

Annexure - 2 (d)

To

The Comptroller and Auditor General of India,
10-Bahadurshah Zafar marg.
New Delhi : 110 002.

(Through the Accountant General (A&E) Assam)

Sub: Equilisation of pay in respect of Shri Sanjoy Ranjan
Dey, Sr. Accountant.

Sir,

With due respect I have the honour to lay before you
the following few lines for your kind consideration and
favourable order.

That Sir, according to the gradation list Sri Swapan
Kr. Das, Sr. Accountant is junior to me. But since 1.4.96 he
has been drawing higher pay than what I have been drawing.

Under the circumstances, I would request you kindly
to take necessary action for equilisation to my pay with that
of Shri Swapan Kr. Das w.e.f. 1.4.96.

And for this act of your kindness, I as in duty bound
shall ever pray.

Yours faithfully,

Dated at Guwahati
the 17th Nov' 99.

Sd/- Sanjay Ranjan Dey
Sr. Accountant.
O/O the A.G.(A&E) Assam, Ghy.

Attested by

Ms. Papi'a Chakraborty
Advocate

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7.

Annexure - 3

OFFICE OF THE ACCOUNTANT GENERAL (A&E) ASSAM
MAIDAMGAON, BELTOLA, GUWAHATI 781029

TO .ADMN 1/3-8/99-2000(PART II)/1078. Monday, July 09, 2001

~~With reference to their representation dated 2nd April 2001 for review of representation dated 17.11.1999 for equalisation of pay with their juniors, I am directed to inform you that after going through the Supreme Court Judgement and subsequent specific clarification issued by the Headquarters office in the regard, the Accountant General is of the opinion that the request made by you in the above mentioned representation cannot be acceded to.~~

This disposes your above mentioned representations.

Sd/-
Sr. Accounts Officer
(Admn)

To

- 1. Shri Amitava Chatterjee, S/A, Admn I Section
- 2. Shri Dibakar Mazumdar, S/A, PAO Section
- 3. Shri Prahab Jyoti Chakraborty, S/A, Computer Cell
- 4. Shri Kumar Paritosh Deb, S/A, GE Cell.

Attested by
Papia Chakraborty
Advocate

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29 Annexure - 4

Circular No. 33-NGE/2000
No. 606/NGE(Ec)/28 - 2000

OFFICE OF THE COMPTROLLER AND
AUDITOR GENERAL OF
INDIA.

To

All Principal Accountants General/Accountants General/
Principal Directors of Audit and Other Heads of
Department in IA & AD (As per Mihing List)
Director (P), A.C.(C). OE & Admn (local)

Sir,

A reference is invited to this office Circular No.
10 of 1988 No. 768- Exam 27-88 dated 4.8.1988 read with
circular No. 59-Exam 27-88 II dated 26.2.90 regarding Incentive
Examination for Seniors Auditors/ Senior Accountants under
which candidates securing fifty percent marks and above are
granted one advance increment in the Scale of Senior Auditor/
Senior Accountant with effect from first of the month in which
the examination is held. Consequent upon implementation of
recommendations of Fifth Central Pay Commission anomalies in
pay have arisen in some cases in the cadre of Senior Auditors/
Senior Accountants as a result of passing the Incentive Exam-
ination by a senior before 1.1.96 and a junior after 1.1.96.
The matter was referred to Government for considering rectifica-
tion of such anomalies.

[Ministry of Finance after consultation with DOP & T

contd....

Allesed by
Spira Chakrabarty
Advocate

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22-C
22(1)(a)(i)

have held that such type of anomalies have not arisen due to direct application of FR 22-C (Now FR - 22 (1)(a)(i)). In such cases anomaly has arisen due to grant of increment at a higher rate to the junior. In this connection Government have drawn attention to various orders relating to stepping up of pay, issued right from 4.2.1966. Para (c) of these orders provides that anomaly should be as a result of application of FR 22-C and in case where a junior is drawing higher pay than a senior by virtue of grant of advance increment no benefit of stepping up of pay will be allowed to the senior officer. In the past DOP & T have been agreeing to step up pay in such cases in relaxation of normal rules. However after judgement of Hon'ble Supreme Court of India in the case of R. Swaminathan and Others DOP & T have been taking a consistent stand not to allow benefit of stepping up of pay of senior in cases where anomaly is not due to direct application of Fr 22-C (Now FR22(1)(a)(i)).

In view of the position explained above it is clarified that anomalies in pay which have arisen in the Senior Auditors/Senior Accountants cadre as a result of passing Incentive Exam by a senior before 1.1.96 and junior after 1.1.96 are not rectifiable.

Hindi version will follow.

Kindly acknowledge receipt by E-mail.

Yours faithfully

Sd/- Meenakshi Gupta
Asstt. Comptroller & Auditor
General (N)

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ANNEXURE - 5

OFFICE OF THE ACCOUNTANT GENERAL (A & E) ASSAM
MAIDAMGAON : BELGOLA : GUWAHATI - 781029

NO. ADMN 1/3-8/99-2000 (PT.II)/ 3240 Wednesday, January 23,
2002.

In continuation to Admn 1/3-8/99-2000 (Part II)/
2556 dated 29.11.2001, Shri Asit Baran Chanda, Sr. Accountant
is hereby informed that as per communication received by this
office from Headquarters Office, the matter of stepping up
of his pay has been referred to Ministry of Finance.

He is further informed that final decision in the
matter will be communicated in due course.

Shri Asit Baran Chanda
Senior Accountant
CA 7 Section.

Sd/- Illegible.
23/1
Assistant Accounts Officer (Admn)

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ANNEXURE - 6.

MINISTRY OF FINANCE

(Department of Expenditure)

NOTIFICATION

New Delhi, the 30th September, 1997

G.S.D. 569(E) - In exercise of the powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution and after consultation with the Comptroller and Auditor General in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following rules, namely :-

Short Title and commencement - (1) These rules may be called the Central Civil Services (Revised Pay) Rules, 1997.

(2) They shall be deemed to have come into force on the 1st day of January, 1996.

Categories of Government Servants to whom the rules apply :- (1) Save as otherwise provided by or under these rules, these rules shall apply to persons appointed to Civil services and posts in connection with the affairs of the Union whose pay is debitible to the Civil Estimates as also to persons serving in the Indian Audit and Accounts Department.

(2) These rules shall not apply to :-

(a) persons appointed to the Central Civil Services and posts in Groups 'A', 'B', 'C' and 'D' under the Administrative control of the Administrator of the Union Territory of Chandigarh.

Attested by

Rajna Chakrabarty
Advocate

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- (b) persons locally recruited for service in Diplomatic, Consular or other Indian establishments in foreign countries ;
- (c) persons not in whole-time employment ;
- (d) persons paid out of contingencies ;
- (e) persons paid otherwise than on a monthly basis including those paid only on a piece rate basis ;
- (f) persons employed on contract except where the contract provides otherwise ;
- (g) persons re-employed in Government service after retirement ;
- (h) any other class or category of persons whom the President may, by order specifically exclude from the operation of all or any of the provisions contained in these rules.

3. Definitions - In these rules the context otherwise requires :-

- (1) 'Basic pay' means pay drawn in the prescribed scale of pay including stagnation increment(s), but does not include any other type of pay like 'special pay', 'personal pay' etc.
- (2) 'existing scale' in relation to a Government servant means the present scale applicable to the post held by the Government servant (or, as

contd....

the case may be, personal scale applicable to him)
as on the 1st day of January, 1996 whether in a
substantive or officiating capacity.

Explanation - In the case of a Government servant, who was on the 1st day of January, 1996 on deputation out of India or on leave or on foreign service, or who would have on that date officiated in one or more lower posts but for his officiating in a higher post, "existing scale" includes the scale applicable to the post which he would have held but for his being on deputation out of India or on leave or on foreign service or, as the case may be, but for his officiating in a higher post ;

(3) "Present Scale" in relation to any post/grade specified in column 2 of the first schedule means the scale of day specified against that post in column 3 thereof ;

(4) 'revised emoluments' means the basic pay of a Govt. servant in the revised scale and includes the revised scale and includes the revised non-practising allowance, if any, admissible to him, in addition to pay in the revised scale.

(5) "revised scale" in relation to any post specified in column 2 of the First Schedule means the scale of pay specified against that post in column 4

thereof unless a different revised scale is notified separately for that post ;

(d) "Schedule" means a Schedule annexed to these rules.

4. Scale of pay of posts - The scale of pay of every post/grade specified in column 2 of the First Schedule shall be as specified against it in column 4 thereof.

5. Drawal of pay in the revised scales - Save as otherwise provided in these rules, a Government servant shall draw pay in the revised scale applicable to the post to which he is appointed ;

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

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

Explanation 2. - The aforesaid option shall not be admissible to any person appointed to a post on or after the 1st day of January, 1995, whether for the first time in Government service, or by transfer or promotion from another post and he shall be allowed pay only in the revised scale.

Explanation 3. - Where a Government servant exercises the

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

6. Exercise of Option -

(1) The option under the proviso to rule 5 shall be exercised in writing in the form appended to the Second Schedule so as to reach the authority mentioned in sub rule (1) within three months of the date of publication of these rules or where an existing scale has been revised by any order made subsequent to that date, within three months of the date of such order.

Provided that -

(i) in the case of a Government servant who is, on the date of such publication or, as the case may be, date of such order, but of India on leave or deputation or foreign service or active service,

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the said option shall be exercised in writing so as to reach the said authority within three months of the date of his taking charge of his post in India ; and

(ii) where a Government servant is under suspension on the 1st day of January, 1996, the option may be exercised within three months of the date of his return to his duty if that date is later than the date prescribed in this sub-rule.

(2) The option shall be intimated by the Government servant to the head of his office.

(3) If the intimation regarding option is not received within the time mentioned in sub-rule (1), the Government servant shall be deemed to have elected to be governed by the revised scale of pay with effect on and from the 1st day of January, 1996.

(4) The option once exercised shall be final.

Note 1 : Persons whose services were terminated on or after the 1st January, 1996 and who could not exercise the option within the prescribed time limit, on account of death, discharge on the expiry of the sanctioned posts, resignation, dismissal or discharge or disciplinary grounds, are entitled to the benefits of this rule.

Note 2. : Persons who have died on or after the 1st day of January, 1996 and could not exercise the option within the prescribed time limit be deemed to have opted for the revised scales on and from the 1st day of January, 1996 or such later date as is most beneficial to their dependents, if the revised scales are more favourable and in such cases, necessary action for payment of arrears should be taken by the Head of Office.

7. Fixation of initial pay in the revised scale :-

(1) The initial pay of a Government servant who elects or is deemed to have elected under sub-rule (3) of rule 6 to be governed by the revised scale on and from the 1st day of January, 1996, shall, unless in any case the President by special order otherwise directs, is fixed separately in respect of his substantive pay in the permanent post on which he holds a lien or would have held a lien if it had not been suspended, and in respect of his pay in the officiating post held by him, in the following manner, namely :-

(A) in the case of all employees -

(1) an amount representing 40 per cent of the basic pay in the existing scales shall be added to the 'existing emoluments' of the employees ;

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(ii) after the existing emoluments have been so increased, the pay shall thereafter be fixed in the revised scale at the stage next above the amount thus computed.

Provided that -

- (a) if the minimum of the revised scale is more than the amount so arrived at, the pay shall be fixed at the minimum of the revised scale ;
- (b) if the amount so arrived at is more than the maximum of the revised scale, the pay shall be fixed at the maximum of that scale.

Provided further that -

where in the fixation of pay, the pay of Government servants drawing pay at more than four consecutive stages in an existing scale gets bunched, that is to say, gets fixed in the revised scale at the same stage, the pay in the revised scale of such of these Government servants who are drawing pay beyond the first four consecutive stages in the existing scale shall be stepped upto the stage where such bunching occurs, as under by the grant of increment(s) in the revised scale in the following manner, namely :

- (a) for Govt. servants drawing pay from the 5th upto the 8th stage in the existing scale - by one increment.

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(b) for Govt. servants drawing pay from the 9th upto the 12th stage in the existing scale, if there is bunching beyond the 8th stage - by two increments.

(c) for Govt. servants drawing pay from the 13th upto the 16th stage in the existing scale, if there is bunching beyond the 12th stage - by three increments.

If by stepping up of the pay as above, the pay of a Government servant gets fixed at a stage in the revised scale which is higher than the stage in the revised scale at which the pay of a Government servant who was drawing pay at the next higher stage or stages in the same existing scale is fixed, the pay of the latter shall also be stepped up only to the extent by which it falls short of that of the former.

Provided also that -

The fixation thus made shall ensure that every employee will get atleast one increment in the revised scale of pay for every three increments (inclusive of stagnation increments), if any) in the existing scale of pay.

Explanation - For the purpose of this clause "existing emoluments" shall include,

(a) the basic pay in the existing scale :

contd....

(b) dearness allowance appropriate to the basic pay admissible at index average 1510 (1960=100), and

(c) the amounts of first and second installment of interim relief admissible on the basic pay in the existing scale :

(B) in the case of employees who are in receipt of special pay/allowance in addition to pay in existing scale which has been recommended for replacement by a scale of pay without any special pay/allowance, pay shall be fixed in the revised scale in accordance with the provisions of clause (A) above except that in such cases "existing emoluments" shall include -

(a) the basic pay in the existing scale ;

(b) admissible dearness allowance at index average 1510 (1960=100) under the relevant orders; and

(d) the amounts of first and second instalments of interim relief admissible on the basic pay in the existing scale and special pay under the relevant orders ;

(C) in the case of employees who are in receipt of special pay ~~complement~~ with any other nomenclature in addition to pay in the existing scales, such as personal pay for promoting small family norms, special pay to Parliament

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Assistants, Central (Deputation on Tenure) Allowance. etc., and in whose case the same has been replaced in the revised scale with corresponding allowance/pay at the same rate or at a different rate, the pay in the revised scale shall be fixed in accordance with the provisions of clause (A) above. In such cases the allowance at the new rate as recommended shall be drawn in addition to pay in the revised scale of pay:

(D) in the case of medical officers who are in receipt of non-practising allowance, the pay in the revised scale shall be fixed in accordance with the provisions of clause (A) above except that in such cases the term "existing emoluments" shall not include NPA and will comprise only the following -

- (a) the basic pay in the existing scale;
- (b) dearness allowance appropriate to the basic pay and non-practising allowance admissible at index average 1510 (1960=100) under the relevant orders; and
- (c) the amounts of first and second instalments of interim relief admissible on the basic pay in the existing scale and non-practising allowance under the relevant orders.

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and in such cases, non-practising allowance at the new rates shall be drawn in addition to the pay so fixed in the revised scale.

Note 1 - The Government servants drawing pay upto the stage of Rs. 1030 in the existing scale of Rs. 775-12-871-14-955-15-1030-20-1150 shall be fixed in S-2 scale of pay and those drawing pay beyond the stage of Rs. 1030 shall be fixed in S-3 scale of pay.

Note 2 - Where the increment of a Government servant is on leave on the 1st day of January, 1996, he shall have option to draw the increment in the existing scale or the revised scale.

Note - 3 - Where a Government servant is on leave on the 1st day of January, 1996, he shall become entitled to pay in the revised scale of pay from the date he joins duty. In case of Government servant under suspension, he shall continue to draw subsistence allowance based on existing scale of pay and ~~is~~ his pay in the revised scale of pay will be subject to final order on the pending disciplinary proceedings.

Note 4 - Where a Government servant is holding a permanent post and is officiating in a higher post on a regular basis and the scales applicable to these two posts are merged into one scale, the pay shall be fixed under this sub-rule with reference to the officiating post only, and the pay so fixed shall be treated as substantive pay.

The provisions of this Note shall apply, mutatis

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mutandis, to Government servants holding in an officiating capacity posts on different existing scales which have replaced by a single revised scale.

Note 5 - Where the existing emoluments as calculated in accordance with clause (A), Clause (B), Clause (C) or Clause (D), as the case may be exceed the revised emoluments in the case of any Government servant, the difference shall be allowed as personal pay to be absorbed in future increases in pay.

Note 6 - Where in the fixation of pay under sub-rule (1), pay, of a Government servant, who, in the existing scale was drawing immediately before the 1st day of January, 1996 more pay than another Government servant junior to him in the same cadre, gets fixed in the revised scale at a stage lower than that of such junior, his pay shall be stepped upto the same stage in the revised scale as that of the junior.

Note 7 - Where a Government servant is in receipt of personal pay on the 1st day of January, 1996, which together with his existing emoluments as calculated in accordance with clause (A), Clause (B), Clause (C) or Clause (D), as the case may be, exceeds the revised emoluments, than the difference representing such excess shall be allowed to such Government servant as personal pay to be absorbed in future ~~increments~~ increases in pay.

Note 8 - In the case of employees who are in receipt of

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personal pay for passing Hindi Pragya, Hindi Typewriting, Hindi Shorthand and such other examinations under the "Hindi Teaching Scheme" or on successfully undergoing training in cash and accounts matters prior to the 1st day of January 1996. While the personal pay shall not be taken into account for purposes of fixation of initial pay in the revised scales, they would continue to draw personal pay after fixation of ~~the~~ their pay in the revised scale on and from the 1st day of January, 1995 or subsequently for the period for which they would have drawn it but for the fixation of their pay in the revised scale. The quantum of such personal pay would be paid at the appropriate rate of increment in the revised scale from the date of fixation of pay for the period for which the employee would have continued to draw it.

Examination - For the purpose of this Note, "appropriate rate of increment in the revised scale" means the amount of increment admissible at and immediately beyond the stage at which the pay of the employee is fixed in the revised scale.

Note 9 - In cases, where a Senior Government servant promoted to a higher post before the 1st day of January, 1996 draws less pay in the revised scale than his junior who is promoted to the higher post on or after the 1st day of January, 1996, the pay of the senior Government servant should be stepped up to an amount equal to the pay as fixed for his junior in the higher post. The stepping up should be done

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with effect from the date of promotion of the junior Government servant subject to the fulfilment of the following conditions, namely :-

- (a) both the junior and the senior Government servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre.
- (b) the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical.
- (c) the senior Government servants at the time of promotion have been drawing equal or more pay than the junior.
- (d) the anomaly should be directly as a result of the application of the provisions of Fundamental Rule 22 or any other rule or order regulating pay fixation on such promotion in the revised scale. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provision of this Note need not be invoked to step up the pay of the senior officer.

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The order relating to refixation of the pay of the senior officer the accordance with the above provisions should be issued under Fundamental Rule 27 and the senior officer will be entitled to the next increment on completion of his required qualifying service with effect from the date of refixation of pay.

(2) Subject to the provisions of rule 5, if the pay as fixed in the officiating post under sub-rule (1) is lower than the pay fixed in the substantive post, the former shall be fixed at the stage next above the substantive pay.

8. Date of next increment in the revised scale - The next increment of a Government servant whose pay has been fixed in the revised scale in accordance with sub-rule (1) of rule 7 shall be granted on the date he would have drawn his increment, had he continued in the existing scale :

Provided that in cases where the pay of a Government servant is stepped up in terms of Note 6 or Note 9 to sub-rule (1) and also second proviso to sub-rule (1) of rule 7, the next increment shall be granted on the completion of qualifying service of twelve months from the date of stepping up of the pay in the revised scale.

Provided further that in cases other than those covered by the preceding proviso, the next increment

of a Government servant, whose pay is fixed on the 1st day of January, 1996 at the same stage as the one fixed for another Government servant junior to him in the same cadre and drawing pay at a lower stage than his in the existing scale, shall be granted on the same date as admissible to his junior, if the date of increment of the junior happens to be earlier.

Provided also that in the case of persons who had been drawing maximum of the existing scale for more than a year as on the 1st day of January, 1996, next increment in the revised scale shall be allowed on the 1st day of January, 1996.

Note 1 - In cases where two existing scales, one being a promotional scale for the other, are merged, and the junior Government servant, now drawing his pay at equal or lower stage in the lower scale of pay, and happens to draw more pay in the revised scale than the pay of the senior Government servant in the existing higher scale, the pay of the senior Government servant in the revised scale shall be stepped up to that of his junior from the same date and he shall draw next increment after completing the qualifying period from the date of such stepping up of pay.

9. Fixation of pay in the revised scale subsequent to the 1st day of January, 1996 - Where a Government servant continues to draw his pay in the existing scale and is brought ~~is~~ over to revised scale from a date latter

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than the 1st day of January, 1996, his pay from the later date in the revised scale shall be fixed under Fundamental Rules and for this purpose his pay in the existing scale shall have the same meaning as of existing emoluments as calculated in accordance with clause (A), clause (B), clause (C) or clause (D), as the case may be of sub-rule(1) of rule 7 except that the basic pay to be taken into account for calculation of those emoluments will be the basic pay on the later date aforesaid and where the Government servant is in receipt of special pay or non-practising allowance, his pay shall be fixed after deducting from those emoluments an amount equal to the special pay or non-practising allowance, as the case may be, at the revised rates appropriate to the emoluments so calculated.

10. Fixation of pay on reappointment after the 1st day of January, 1996 to a post held prior to that date - A Government servant who had officiated in a post prior to the 1st day of January, 1996 but was not holding that post on that date and who on subsequent appointment to that post draws pay in the revised scale of pay shall be allowed the benefit of the proviso to Fundamental Rule 22, to the extent if would have been admissible had he been holding that post on the 1st day of January, 1996, and had elected the revised scale of pay on and from that date.

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11. Mode of payment of arrears of pay - The arrears would be paid in cash with the stipulation that where the amount of arrears is less than Rs. 5000, it should be paid in one instalment and where it is in excess of Rs. 5000, it should be paid in two instalments, in the first instalment payment should be restricted to Rs. 5000 plus fifty percent of the balance amount of arrears.

Explanation - For the purposes of this rule :

(a) "arrears of pay", in relation to a Government servant, means the difference between -

(i) the aggregate of the pay and allowances in which he is entitled ~~to~~ on account of the revision of his pay and allowances under these rules, for the relevant period; and

(ii) the aggregate of the pay and allowances to which he would have been entitled (whether such pay and allowances had been received or not) for that period had his pay and allowances not been so revised.

(b) "relevant period" means the period commencing on the 1st day of January, 1996 and ending with the 30th September, 1997.

12. Overriding effect of Rules - The provisions of the Fundamental rules, the Central Civil Services (Revision

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of pay) Rules, 1947, the Central Civil Services
(Revised Pay) Rules, 1960, the Central Civil Services
(Revised Pay) Rules, 1973 and the Central Civil Services
(Revised Pay) Rules, 1986, shall not save as otherwise
provided in these rules, apply to cases where pay is
regulated under these rules, to the extent they are
inconsistent with these rules.

13. Power to relax - Where the President is satisfied that the operation of all or any of the provisions of these rules causes undue hardship in any particular case, he may, by order, dispense with or relax the requirements of that rule to such extent and subject to such conditions as he may consider necessary for dealing with the case in a just and equitable manner.
14. Interpretation - If any question arises relating to the interpretation of any of the provisions of these rules, it shall be referred to the Central Government for decision.

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21/4/02

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI**

O. A. No. 39 OF 2002

Shri Amitava Chatterjee & Ors

-Vs-

Union of India & Ors

-AND-

In the matter of ::

Written Statement submitted by the
Respondents.

The Respondents beg to submit written statement
as follows :-

1. That with regard to paras – 1 to 3 of the O. A., the respondents beg to offer no comments.

2. That with regard to paras 4 (i) to (v) of O. A., the respondents beg to state that the applicant No. 4 – Shri Sanjoy Ranjan Dey was promoted to the post of Accountant and joined on 16.8.1990 and as Senior Accountant on 25.1.1994 instead of 11.8.1990 and 31.1.1994 as mentioned in Para 4 (v) as per

records of this office (Annexure 1). Except the fact the respondents beg to offer no comments.

3. That with regard to paras 4 (vi) to (x) of O. A., the respondents beg to offer no comments as these are matter of records.

4. That with regard to para 4 (xi) of O. A., the respondents beg to state that facts stated in this para are matter of records. However, the date of promotion as Senior Accountant shown against the applicant No. 3 as 19.3.1990 and applicant No. 4 as 27.01.1994 are not as per records of this office. The date of promotion of both the applicants is 25.1.1994 (Annexure 2).

5. That with regard to para 4 (xii) of O. A., the respondents beg to state that the facts stated in the para appear to be incorrect to the extent that the pay of the applicants as well as that of the junior official referred to therein were fixed at the same stage under the same scale as prescribed under CCS (ROP) Rules 1997 and as such there was no anomaly as on 1.1.1996. The anomaly had arisen due to the grant of an advance increment to the junior official w. e. f. 1.4.1996 for passing the Departmental Incentive Examination for Senior Accountants.

6. That with regard to para 4 (xiii) of O.A., the respondents beg to state that the content of the para is matter of record. However, it is worth-

mentioning here that on receipt of the representations as stated herein, this office, being a subordinate one working under the Comptroller & Auditor General of India, has referred the matter vide letter No. Admn 1/GHY/SEP//2-46A/98-99/1665 dated 7.8.1998 (Annexure 3) to the office of the Comptroller & Auditor General of India for issuance of necessary orders. It is also to be mentioned here that the case happened to be an extraordinary one and not covered under the existing rules / orders and no action could be taken without the approval of the office of the Comptroller & Auditor General of India.

7. That with regard to para 4 (xiv) of O.A., the respondents beg to state that the rejection of the representation by the Senior Accounts Officer (Admn) vide letter No. Admn1/3-8/99-2000(Part II) dated 5.7.2001 (Annexure 4) referred to in this para was nothing but an administrative action based on the instructions contained in the Circular letter issued by the office of the Comptroller & Auditor General (Annexure 5) in response to this office letter No. Admn 1/Ghy/2-46A/98-99/1665 dated 7.8.98 referred to in Para 4 (xiii) above.

8. That with regard to para 4 (xv) of O.A., the respondents beg to state that the representation of one Shri Asit Baran Chanda, (Annexure 6) a Senior Accountant of this office, has been forwarded to the office of the Comptroller & Auditor General of India for re-consideration vide this office letter No. Admn 1/3-8/99-2000/(Part II)/2302 dated 5.11.2001 (Annexure 7). However,

forwarding of the representation for stepping up of pay in respect of Shri Asit Baran Chanda should not be considered as a discriminatory action. Further, this office has no malafide intention in forwarding the representation of the above official, as any positive result would equally apply to the present applicants as well. This point can also be proved from the fact that even before the present applicants represented for stepping up of their pay, this office has, on its own, referred the case to the office of the Comptroller & Auditor General of India vide letter No. Admn & Estt/Ghy/ROP-96/97/2339 dated 25th November 1997 (Annexure 8). Now it may also be mentioned that the matter is under consultation with the Ministry of Finance (Annexure 9)

9. That with regard to paras 5 (I) to (ii) of O.A., the respondents beg to state that the rejection of the prayer of the applicants by Respondents is based on the instructions issued by the office of the Comptroller & Auditor General of India (Annexure 5). Further, in the light of Hon'ble Supreme Court order in the matter of R. Swaminathan Vs. Union of India and others, (Annexure 10) the Govt. of India has maintained not to allow the benefit of stepping up of pay unless the anomaly is directly attributable to application of FR 22 (I) (a) (I). The anomaly in the present case being not directly attributable to the application of FR 22 (I) (a) (I), the rejection of the request of the applicants is in order. In this regard, order of Hon'ble CAT, Cuttack Bench in the matter of OA No. 362 & 363 of 2000 (Annexure 11) in a similar case may be referred to.

10. That with regard to para 5 (iii) of O.A., the respondents beg to state that though the circumstances of the case of R. Swaminathan and the present applicants seems to be different, however, the basic principle governing stepping up / equalisation of pay stands. As the anomaly in the present case is not directly due to the application of FR 22 (I) (a) (I) but for the implementation of Revision of Pay, the demand of the applicants for equalisation of pay with that of the juniors cannot be acceded to in terms of the existing instructions / orders. Hence, the stand taken by the respondents are correct and just.

11. The rejection of the prayer by the respondents for equalisation of pay in respect of the applicants are based on the rules in force ie. Revision of Pay Rules 1997 and not under FR 22 (I)(a)(1) and as such, is in order.

12. That with regard to paras 5 (v) to (vi) of O. A., the respondents beg to state that as the decision has been based on rules in force, the decision of the respondents are in order. The anomaly as stated by the applicants has arisen not because of application of FR 22(1)(a)(1) but due to the application of Revision of Pay Rules 1997. Moreover, there is no provision in the Revision Of Pay Rules 1997 (Annexure - 12) to set right the anomalies of the nature arisen in the case of the applicants. Hence, the stand of the respondents is in order.

13. That with regard to paras 6 & 7 of O. A., the respondents beg to offer no comments as this is matter of records..

14. That with regard to paras 8 (A), (B) & (C) of O. A., the respondents beg to state the decision to reject the prayer of the applicants are based on the rules in force as stated in the preceding paragraphs and as such, it is in order.

15. That with regard to para 8 (D) of O. A., the respondents beg to state that the order of the Hon'ble Supreme Court of India in the case of R. Swaminathan Vs. Union of India and also that of the Hon'ble Central Administrative Tribunal, Cuttack Bench, have proved that the claim of the applicants are not in order in the light of the Rules and Orders in force. Hence, the prayer for relief sought for may be rejected.

16. That with regard to para 8 (E) of O. A., the respondents beg to state in the light of the submissions made at Para 8 (D) above, the prayer made in this para is not admissible and hence may be rejected.

17. That with regard to paras 8 (F) of O. A., the respondents beg to offer no comments.

18. That with regard to paras 9 of O. A., the respondents beg to state that in the light of the facts stated above and particularly in view of the rejection of the

claim of the same nature by the Hon'ble CAT, Cuttack Bench, Cuttack, the prayer for issuance of interim order is liable to be rejected.

V E R I F I C A T I O N

I, Shri Honeyda Abbas, presently working as Dy. Accountant General (Admn & V LC) be duly authorised and competent to sign this verification, do hereby solemnly affirm and state that the statement made in para are true to my knowledge and belief, these made in para being matters of records, are true to my information derived therefrom and rest are my humble submission before this Hon'ble Tribunal, I have not suppressed any material facts.

And I signed this verification on this day of April 2002.

Honeyda Abbas
Declarant

dy. महालेखाकार (अ०)
Dy. Accountant General (Admn.
लालेखाकार का कायोल्य (ल०.एब०.३०
D/O the Accountant General (A & S)

असम मुख्यालय
Assam, Guwahati

ANNEXURE 1

To
the Dy. Accountant General,
or at the Accountant General(A&E), Assam,
Guwahati-5.

96
S-49-56-
8

Subj. Joining report.

Sir,

With reference to the Admin.I order No.114 dt.16-8-90
I beg to report myself for duty on promotion as Accountant
on the 16th day of August, 1990(FN).

Dated: Guwahati.
The 16-8-90.

Yours faithfully,

Sanjay Rajan Dey.

ANNEXURE !

9 a/s 57

TO
THE DEPUTY ACCOUNTANT GENERAL,
GUWAHATI
(ADMN. & ESTT.)

I beg to report myself for duties this day fore-noon/
after noon on expiry of my leave/after the cancellation
of my promotion as Sr. Acctt vide Bctt Order No. 482 dt 25.1.94
of unexpired portion of my leave for

.....
As the leave was taken on medical ground a certificate
of fitness as required under Fundamental Rule 71 is furnished
herewith.

Yours faithfully,

Adm. & Estt

Full Name : DIBAKAR MAJUMDER
Signature : *Adm. & Estt*

Guwahati :

Designation : Sr. Acctt.
Section : Gc-E/XI/section

Dated the

25-1-94 (F.N.)

She/He is posted to section. The excess man of
that section should report himself to the
Admn. & Estt Branch at once.

Adm. & Estt
Dy. Accountant General, Admn. & Estt

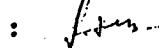
TO
THE DEPUTY ACCOUNTANT GENERAL,
GUWAHATI
(ADMN. & ESTT.)

to Sr. Acctt.

I beg to report myself for duties this day fore-noon/
after noon on expiry of my leave/after the cancellation
of my promotion as Sr. Acctt vide Estt order No. 482 dt 25.1.74.
of unexpired portion of my leave for
.....

As the leave was taken on medical ground a certificate
of fitness as required under Fundamental Rule-71 is furnished
herewith.

Yours faithfully,

Full Name : SANJAY RANJAN DE
Signature : 

Guwahati :
Dated the 25-01-94.

Designation : Sr. Accountant
Section : PF (A) - 1

She/He is posted to section. The excess man of
that section should report himself to the
Admn. & Estt Branch at once.


Dy. Accountant General Admn. & Estt

OFFICE OF THE ACCOUNTANT GENERAL (A&E) ASSAM
MAIDAMGAON, BELTOLA, GUWAHATI 781 029

ADMN 1/GHY/SEP/2-46A/98-99/1665

07-08-1998

To

The Comptroller & Auditor General of India
 10, Bahadur Shah Zafar Marg
 Indraprastha Head Post Office
 NEW DELHI 110 002

SUB: CLARIFICATION ON FIXATION OF PAY UNDER CCS(ROP) RULES, 1997

Sir,

In inviting a reference to the subject noted above, I am directed to state that due to fixation of pay under CCS(ROP) Rules, 1997, allowing advance increment to officials who have passed the Incentive Examination for Sr. Accountants after 1.1.96 in the revised scale of pay of Sr. Accountants have given rise to some anomalies where seniors who have passed the aforesaid examination prior to 1.1.96, are getting less pay than their juniors.

2. The CAG's instruction No 6 under FR 27 clearly states that "Sr. Accountants/Auditors securing 50% marks and above would be granted one Advance Increment in the scale of Senior Auditor/Accountant with effect from the first of the month in which the Examination is held". Accordingly, eligible officials are granted advance increment presuming that it should be the normal rate of increment in their existing scale.

3. The reason for anomaly is the lower rate of increment in the old scale and higher rate of increment in the revised scale granted respectively to officials on passing of their said Examination before and after 1.1.96.

4. The matter was referred to Hqrs. office for clarification vide this office letter No. Admn & Estt/Ghy/ROP-96/96-97/2339 dated 19-11-1997 and against the point raised at Sl.2, it was clarified by Hqrs. office vide letter No. 67/PCC/11/97 dated 10.2.98 as under:

"No orders for grant of incentive increment in the revised Pay Scale have been issued. The question of anomaly therefore does not arise."

5. However, it is not clear as to what should be the quantum of benefit to be granted to concerned officials in the revised scale on passing the Incentive Examination..

6. A few examples, which are illustrative and not exhaustive, are enclosed for ready reference in the Annexure with a request to provide this office with instructions to settle the issue.

Accountant General has seen.

Yours faithfully,

S. Siddhartha Singh
D.Y. ACCOUNTANT GENERAL(ADMIN)
SJS/BS

Encl: as stated above.

ANNEXURE 4

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OFFICE OF THE ACCOUNTANT GENERAL (A&E) ASSAM
MAIDAMGAON, BELTOLA, GUWAHATI 781029

NO. ADMN 1/3-8/99-2000(PART II)/

Thursday, July 05, 2001

With reference to their representation dated 2nd April 2001 for review of representation dated 17.11.1999 for equalisation of pay with their juniors, I am directed to inform you that after going through the Supreme Court Judgement and subsequent specific clarification issued by the Headquarters office in this regard, the Accountant General is of the opinion that the request made by you in the above mentioned representation cannot be acceded to.

This disposes your above mentioned representations.

V6/7
Sr. Accounts Officer (Admn)

To

Handing 9.7.01

1. Shri Amitava Chatterjee, S/A, Admin I Section
2. Shri Dibakar Mazumdar, S/A, PAO Section
3. Shri Pranab Jyoti Chakraborty, S/A, Computer Cell
4. Shri Kumar Paritosh Deb, S/A, GE Cell

1/10/2



ANNEXURES

By E - Mail

13
Circular No. 53 - NGE/2000
No. 606/NGE (E-mail)/28 - 2000

D.1/1/15/6(b)(c) DC/62

Ch 8/8/20

भारत के नियंत्रक-महालेखा दिविया द. दार्यालय
OFFICE OF THE COMPTROLLER
AND AUDITOR GENERAL OF INDIA

16/11/2000
Date

To

All Principal Accountants General/Accountants
General/Principal Directors of Audit and
Other Heads of Department in IA & AD (As per
Mailing List)
Director (P), A.C (C), OE & Admin (local).

Sir.

A reference is invited to this office Circular No. 10 of 1988 No. 768 - Exam - 88 dated 4.8.1988 read with circular No. 59 - Exam - 87-88 II dated 26.2.90 regarding Incentive Examination for Senior Auditors/Senior Accountants, under which candidates securing fifty percent marks and above are granted one advance increment in the scale of Senior Auditor/Senior Accountant with effect from first of the month in which the examination is held. Consequent upon implementation of recommendations of Fifth Central Pay Commission anomalies in pay have arisen in some cases in the cadre of Senior Auditors/Senior Accountants as a result of passing the Incentive Examination by a senior before 1.1.96 and a junior after 1.1.96. The matter was referred to Government for considering rectification of such anomalies.

Ministry of Finance after consultation with DOP & T have held that such type of anomalies have not arisen due to direct application of FR 22 - C [Now FR - 22 (1)(a)(i)]. In such cases anomaly has arisen due to grant of increment at a higher rate to the junior. In this connection, Government have drawn attention to various orders relating to stepping up of pay, issued right from 4.2.1966. Para (c) of these orders provides that anomaly should be as a result of application of FR 22-C and in case where a junior is drawing higher pay than a senior by virtue of grant of advance increment, no benefit of stepping up of pay will be allowed to the senior officer. In the past, DOP & T have been agreeing to step up pay in such cases in relaxation of normal rules. However after judgement

D.A. (A)
A.S.
J.P.
P.L. examine
S.A.C. (A)
Y.M.
7/8

D.A.O./Parma,
1/26/96

10. Bahadurshah Zafar Marg, New Delhi-110002
10. Bahadurshah Zafar Marg, New Delhi-110002

P.T.O

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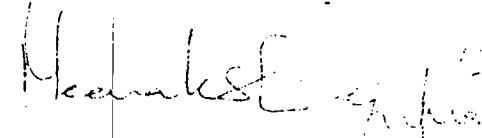
of Hon'ble Supreme Court of India in the case of R. Swaminathan and Others DOP & T have been taking a consistent stand not to allow benefit of stepping up of pay of senior in cases where anomaly is not due to direct application of FR 22 - C [Now FR 22 (1)(a)(i)].

In view of the position explained above it is clarified that anomalies in pay which have arisen in the Senior Auditors/Senior Accountants cadre as a result of passing Incentive Exam by a senior before 1.1.96 and junior after 1.1.96 are not rectifiable.

Hindi version will follow.

Kindly acknowledge receipt by E-mail.

Yours faithfully,



(MEENAKSHI GUPTA)
ASSTT.COMPTROLLER AND
AUDITOR GENERAL (N)

To

The Deputy Accountant General (Adm)

Office of the Accountant General (A&E) Assam,

Guwahati-781029.

Subject :-

The representation for stepping up and fixation of the scale of pay and salary of the incumbent considering his seniority in the cadre "Senior Accountant" on and from 1st day of April 1996.

Sir,

With due respect the undersigned incumbent namely Sri Ashit Baran Chanda most respectfully beg to state as follows :

1. That, the undersigned incumbent has joined on the 28th day of October in the year 1986 (FN) as Clerk - cum - Typist. It is stated that the incumbent was allowed to join in the scale of pay of Rs. 950 - 1500 with all other benefit permissible in the said scale of pay.

2. That the undersigned since the date of his appointment has been contently rendering his service to the department with all sincerity and to the best of his quality and also to the full satisfaction of the departmental superiors.

3. That, it was on 19th October in the year of 1990 he was promoted to the post of Accountant under Administrative jurisdiction of your honour. On promotion to the post of Accountant he was allowed to draw his salary in the scale of Rs. 1200 - 2040 plus other allowances as admissible.

4. That, it is stated on 24th February 1994 on the basis of seniority he was promoted to the next higher cadre i.e. in the post of "Senior Accountant". It is also stated that his salary was fixed in the appropriate scale of pay awarding on increment in accordance with the rules in force at the relevant time. Thereafter, the incumbent duly appeared in the "Incentive Examination" held in the month of April 1995. It is most humbly stated that the undersigned had qualified himself in the said examination. As the undersigned come out successfully in the said examination he was allowed financial benefit awarding requisite advance increment. It is further stated that the salary of the undersigned was fixed in the scale of Rs. 1280/- p.m.

5. That, it is stated that on 01.01.1996 the petitioner incumbent reached in the scale of Rs. 5150/-, thereafter on and from 01.01.1997 the ROP came into effect. Be it stated here that one Mr. Dipak Kr. Das who was appointed 22.07.1987 as Clerk / Typist got his promotion as "Accountant" on 05.06.1991, thereafter the said employee passed examination and got promotion as "Senior Accountant" on 06.06.1994. The said employee could pass "Incentive Examination" in the month of April 1996 was placed in the scale of Rs. 5,300/- on and from 1st April 1996. It may be pointed out here that this humble incumbent passed Departmental Examination more than one and half year earlier than Sri Dipak Kr. Das. For the sake of brevity a comparative statement is furnished as below :-

Service particulars of Sri A. B. Chanda	Service particulars of Sri D. K. Das
Date of joining 28-10-1986(FN) as C/T	Date of joining 22-07-1987(FN) as C/T
Promoted as Accountant on 19.10.1990	Promoted as Accountant on 05.06.1991
Promoted as Sr. Accountant on 24.2.94	Promoted as Sr. Accountant on 6.6.94
Passing of Incentive Exam on 04 / 95	Passing of Incentive Exam on 04 / 96

Pay as on 01 - 01 - 1996 Rs. 5,150/-	Pay as on 01 - 01 - 1996 Rs. 5,150/-
Pay as on 1 st April '96 Rs. 5,150/-	Pay as on 1 st April '96 Rs. 5,300/-
Pay as on 1 st January '97 Rs. 5,300/-	Pay as on 1 st January '97 Rs. 5,450/-
Pay as on 1 st January '98 Rs. 5,450/-	Pay as on 1 st January '98 Rs. 5,600/-
Pay as on 1 st January '99 Rs. 5,600/-	Pay as on 1 st January '99 Rs. 5,750/-
Pay as on 1 st January '2000 Rs. 5,750/-	Pay as on 1 st January '2000 Rs. 5,900/-
Pay as on 1 st January '2001 Rs. 5,900/-	Pay as on 1 st January '2001 Rs. 6,050/-

6. That, incumbent begs to state that on and from 1st February 1995 to 31st March 1995 he was allowed to draw salary of Rs. 1,440/- . He was given one advance increment towards incentive for passing Incentive Examination. Again on and from 1st April 1995 to 31st December 1995 he was allowed Rs. 1,480/- towards incentive benefits for passing the examination. On the other hand the above named junior colleague at the relevant time he was drawing Rs. 1,400/- and he was than yet to pass incentive examination. It is stated that upto this period, this petitioner incumbent as a senior person in the cadre was getting seniority benefits.

7. That, it was on and from 1st day of January 1996 this petitioner incumbent was allowed to draw salary in the revised pay scale of Rs. 5000 - 8000. Considering his pay previous to the ROP, he was placed in the scale awarding Rs. 5,150/- . The said ROP gave extra benefit to the junior in the cadre and on and from 1st day of January 1996 Mr. Dipak Kr. Das was allowed to draw Rs. 5,150/- revised scale of pay. The said ROP showered a boost in the pay of the junior while this incumbent being a senior in all respects, his position was relegated to the equal of his junior. The petitioner incumbent here begs to point out his position in the Gradation List of 1st March 2000 which shows his name against Serial Number 524 whereas, the position of the above named junior colleague, in the same Gradation List showed his position against Serial Number 533.

8. That, so far knowledge goes to the fact that the above named junior colleague, Mr. Das could pass his examination in the early part of the year 1996 and he was awarded increment benefit on and from 1996. He was allowed to draw Rs. 5,300/- for passing the Incentive Examination till the 31st December 1996.

9. That, the undersigned incumbent begs to state that he being a senior, he was allowed to draw Rs. 5,300/- on and from 1st January 1997, whereas the above named junior colleague was allowed to draw Rs. 5,450/- on and from the aforesaid date. It is further stated that as a result of this anomalies situation created by the ROP, this incumbent could draw his salary at Rs. 5,450/- on and from 1st day of January 1998, while the said junior was drawing Rs. 5,600/- and on and from 1st January 1999, the petitioner could draw Rs. 5,600/- while the junior colleague was drawing Rs. 5,750/-.

10. The undersigned incumbent begs to state that on the plea of last ROP recommendations is not binding on the government in the present case which has caused an injury to the service career of the undersigned government servant. It is stated that the last ROP did not create any classification between the permanent employees in the cadre, the present incumbent is serving, but in effect, of a gross mistake committed therein, a classification is made relating to the senior person in the cadre passing incentive examination earlier than the junior person in the same cadre have been denied appropriate stepping up in the scale of pay of the senior incumbent.

11. That it is very shoutly and specifically stated that the difference made between the undersigned incumbent and the above named junior employee belonging to the same cadre without any rational basis is totally illegal denial of benefits which the petitioner is entitled under the enshrined principle "equal pay for equal work" guaranteed by the Constitution of India. It is very shoutly stated that the unequal scales of pay based on no

classification or irrational classification caused by the ROP is no less than denial and deprivation of legitimate pay benefits to the undersigned employee having much more seniority than that of the above named junior. The undersigned incumbent is entitled to get not lesser than his junior. At present this petitioner is suffering without any fault on his part. It is further stated that this incumbent and the above named junior both were recruited under the A.G. Assam and till date they are discharging their duties in the same office. It is stated that the undersigned petitioner and the above named junior colleague belong to the same cadre and the post in which they have been promoted is identical and in the same cadre. The nature of the duty is also the same. The undersigned further begs to state that the scale of pay of the lower posts and in the higher posts in which they are entitled to draw pay in the identical scale, they should get equal pay in the higher posts, considering the question of seniority in the lower scale.

12. It is stated that the anomalies occurred due to ROP mentioned above should be removed taking into consideration the seniority of the undersigned. It is stated that the present petitioner is entitled to get salary more than his junior colleague named above.

13. That, the anomaly in fixing the pay scale of the undersigned in the post of Senior Accountant is his legitimate claim. The incumbent undersigned is entitled to get his pay protected in conformity with his seniority in the lower cadre as well as in the promoted cadre, if, due to ROP the applicant suffers or losses his service benefits in the promotional post than such inequality should be removed by stepping up the salary of the petitioner. It is stated that the undersigned was getting higher salary than the above named junior in the lower cadre. On promotion to the next post and as a result of ROP the petitioner's position has been illegally reduced to the lower scale of pay. This situation goes totally against the constitutional guarantee to the petitioner. The anomaly in fixing the pay of the petitioner is very clear. The anomaly should be removed by stepping up his salary. If this sort of anomaly is retained than the petitioner incumbent will loose future benefit in the event of his promotion to the next higher post.

14. That, the undersigned petitioner begs to submit that stepping up salary should be done with effect from the date of promotion of the junior employee in the present cadre.

15. That, this representation has been filed bona fide demanding immediate redressal of the grievances stated above and justice is demanded.

It is in the aforesaid facts and circumstances prayed to your honour to take into consideration the grievances of the undersigned incumbent and to step up his salary with effect from the date he is getting lesser amount than that of the junior employee named in the representation.

And for this act of kindness I shall remain always duty bound and grateful to your honour.

Dated, Guwahati the
24th of August '2001

Yours faithfully,

Ashit Baran Chanda
(ASHIT BARAN CHANDA)
Sr. Accountant
Office of the A.G. (A&E) Assam
Guwahati - 29.

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Sewai post
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06.11.2001

NO. ADMN 1/3-8/9-2000 (Pt. II)/2302

Monday, November 05, 2001

To

The Asstt. Comptroller & Auditor General of India (S)
 10, Bahadur Shah Zafar Marg
 Indraprastha Head Post Office
 NEW DELHI 110 002

Sub: Rectification of anomaly by stepping up of pay – Request for review of Headquarters decision communicated vide letter No. 606/NCE(ENTT)/28-2000 dated 1st August 2000

Madam,

Kindly refer to this office letter No. Admin 1/GHY/SEP/2-46a/98-99/1665 dated 7.8.1998 (copy enclosed) regarding stepping up of pay of some senior officials with reference to the pay of some of their juniors. Headquarters office, vide letter No. No. 606/NCE (ENTT)/28-2000 dated 1st August 2000 (copy enclosed), has not acceded to the request for stepping up of pay citing the decision of Finance Ministry and the Department of Personnel and Training.

It is seen from Headquarters office letter referred to above that the rejection of the request of the officials to step up their pay with that of their juniors was based on a verdict of Hon'ble Supreme Court in the matter of R. Swaminathan & Others Vs. Union of India. A thorough study of the above case reveals that the higher pay received by the junior was on account of him officiating earlier in the higher post as a result of a local officiating promotion; whereas in the instant case, the junior was at no stage getting higher pay and there was no officiating promotion also. Accordingly, equating both the cases may not be justified.

In this regard, it may be mentioned here that the officials who have passed the Incentive Examination for Sr. Accountants were drawing higher pay than their juniors till 1.1.1996. However, the junior officials, who have passed the above mentioned examination after 1.1.1996 are getting more pay than their seniors since 1.4.1996 for the lone reason that the advance increment drawn by the senior officials got merged while fixing their pay under ROP'96. As explained in this office letter under reference, the request of the officials seems to be justified and reasonable.

- 67 -

ANNEXURE 8

No. Admn & Estt/Ghy/ROP-96/97/

Dated.

To,
The Comptroller and Auditor General of India,
Post Bag No.7
Indraprastha Head Post Office
New Delhi-11 0002

Subject:-Fixation of Pay under R.C.C.S(ROP)Rules,1996-
Clarification regarding-

Sir,

I am to invite a reference Head Quarters Office
letter No.424-Audit(Rules)/45-97/IV-97/48 dt.7-10-97 on
the subject cited above and to state that the following
points of doubt have arisen during the course of fixation
of pay under C.C.S.(RoP)Rules,1996:-

1) 1 increment for every 3 increments

Whether 1:3 benefit as envisaged under proviso to
Rule 7(f)(A) of C.C.S.(ROP)Rules,1996 is admissible
with reference to increment actually drawn or on the
incremental stage basis.

2) DIFFERENCE OF PAY DUE TO ADVANCE INCREMENT

It has been observed in certain cases that by virtue
of an advance increment for passing Incentive Examination
for Sr, Accountants after 1-1-96 in the revised scale, some
junior officials are getting higher pay than that of their
seniors, who were drawing higher pay than their
juniors in the pre-revised scale. The Senior officials
under reference also passed the same examination and got
the benefit of increment in the pre-revised scale. While
fixing the pay of the seniors, by taking into account the
advance increment, the pay fixed at the stage of Rs.5150/- on 1-1-96
with D.N.I. on 1-11-96. But their juniors, whose pay was
also fixed at the stage of Rs.5150/- on 1-1-96 and got the
advance increment in April/96 apart from their normal

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increment on 1-1-97. Thus the juniors getting more ^{BYL} than their seniors. The Seniors officials now claimed equalisation of their pay with the junior w.e.f. April/96. One of the illustrations at ANNEXURE-I is given for your ready reference.

The doubts mentioned above may please be clarified.

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DEPUTY ACCOUNTANT GENERAL (ADMN)

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SPEED-POST

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ANNEXURE 9 69 D.O.NO. 251/LC/38-2002

RR

भारत के नियंत्रक-महालेखा परीक्षक का कार्यालय
OFFICE OF THE COMPTROLLER
AND AUDITOR GENERAL OF INDIA

दिनांक
Date

109
28.03.2002

R.SRINIVASAN
DIRECTOR (LEGAL)

Dear Shri *Abbas*

Please refer to your office letter No. Admn-I/OA No. 39-2002/2001-02/3671 dated 05.03.2002 regarding OA No. 39/2002 filed by Shri Amitava Chatterjee, Sr. Acctt.

The matter is still under consideration with Govt. of India, Ministry of Finance.

Best wishes

Yours sincerely

Srinivasan

Shri H.Abbas,
Deputy Accountant General (Admn)
O/o the Accountant General (A&E)
Maidamgaon, Beltola,
GUWAHATI-781029

M/14
DPA (A) 1/4/02 SKAAA
1/4/02 Admin
p. attach a copy as annexure to an affidavit

10, बहादुरशाह जफर मार्ग, नई दिल्ली-110002
10, Bahadurshah Zafar Marg, New Delhi-110002

(1997)7 SUPREME COURT CASES 690
(Before J.S Verma, C.J and Sujata V.Manohar and B.N.Kirpal,JJ)

UNION OF INDIA AND ANOTHER

.....Appellants

Versus

R. Swaminathan and others

..... Respondents

Civil Appeals No.8658 of 1996 with Nos.8810, 8690-94, 8731-8777, 8876, 8813, 8680-82, 8684-86, 8873, 8874, 8778-8800, 8814-8818, 8875, 10978 of 1996, 8811-8812, 8687, 8730, 8689, 8872 of 1996, 689 and 690 of 1997, 6267-6287 of 1997, decided on September 12, 1997.

[Ed. In the judgement there is a repeated reference to "Proviso to FR22". This is a mis-quotation. The proviso in fact is connected with FR22(I) and not FR22. In the head-note reference has therefore been made to FR22(I) and not to FR 22]

A. Service Law-Pay-Fixation of pay-Anomaly-Deptts. of P&T and Telecommunications-Juniors officiating in promotional posts on account of their local ad hoc promotion while seniors not so officiating before their regular promotion -held, by operation of proviso to FR22, Juniors were rightly given higher pay than their seniors- held, was not an anomaly recognised by the Govt. of India orders - Higher pay drawn by the junior was also not "directly as a result of application of FR 22 C now FR 22 (I) (a) (1)" - seniors therefore not entitled to stepping up of their pay with reference to their juniors' pay- Fundamental Rule, FR 22 (I) proviso and 26 (a)

The issue involved in this case was whether a senior employee who gets regular promotion on all India basis earlier than his junior is entitled to get his pay stepped with reference to pay of his junior whose pay on regular promotion was fixed at a higher stage because the junior got opportunity of Local ad hoc promotion while the senior did not get such opportunity.

The junior under the above mentioned circumstances gets higher pay because of proviso to FR 22 (I) and FR 26(a) which recognise service rendered on ad hoc promotion for pay fixation /increment on regular promotion (Though such period may not count for seniority on promotion post). The junior by virtue of ad hoc promotion may get pay more than his senior in the All India seniority list .This happened in the present case also because the Deptt of Telecommunication is divided into number of circles within the country. The regular promotions from the junior post in question to the higher post were

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made on the basis of All India seniority. The heads of circle have, however been delegated powers for making local officiating arrangements based on circle seniority to the higher posts in question against short time vacancies up to 180 days in the event of regular empanelled officers not being available in that circle. Under this provision for local officiation, the senior most official in the circle is allowed to hold charge of the higher posts for a limited duration. This is purely out of administrative consideration and is resorted to tide over the exigencies of work. This practice has been followed in all circles in the Deptt of Telecommunication since 1970. This is because at time it is not possible to fill up all the vacancies in a particular circle for various reasons such as non joining by a particulars persons, chain promotions or short term vacancies arising on account of leave etc. It is also not always possible to convene the DPC meeting for filling up all the posts which are available for short periods on an All India Basis because of administrative problems. To fill up this gap Govt. issued instruction from time to time to allow local officiating arrangement in the interest of work. By virtue of proviso to FR 22 (I), the juniors in each of these cases received higher pay on their regular promotion than the seniors.

Govt. of India order No. F.2(78)-E-III (A)/66 dt.4.2.66 provides for removal of anomaly if the following three condition are satisfied:

- (a) Both the Junior and seniors officers should belong to the same cadre and the post in which they have been promoted or appointed should be identical and in the same cadre
- (b) The scale of pay of the lower and the higher post in which they are entitled to draw pay should be identical
- (c) The anomaly should be directly as a result of application of FR 22C now FR 22(I)
 - (a) (1).There is another Govt. of India O.M. dt. 4.11.93 in which provides that "the increased pay drawn by the junior either due to ad hoc officiating/regular service rendered in the higher posts for periods earlier than the senior ,cannot , be an anomaly in strict sense of the term.

Held:

The difference in pay of the junior and the senior in the present case is not a result of application of FR 22(I) (a) (1). The higher pay received by the junior is on account of his earlier officiation in the higher post because of a local officiating promotion. He may, because of the proviso to FR 22 (I), have earned increments in the higher pay scale of the posts to which he is promoted on account of his past service and also his previous pay in

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the promotional posts has been taken into account in fixing his pay on promotion. It is these two factors which have increased pay of the juniors. This cannot be considered as anomaly requiring the stepping up of the pay of the seniors.

Govt. of India O.M. dt 4.11.93 also negatives the respondents claim. The increased pay drawn by the junior because of the ad hoc officiating or regular service rendered by him in the higher posts for period earlier than the senior is not an anomaly because pay does not depend on seniority alone nor a seniority alone a criterion for stepping up of pay. The employees who have not officiated in the higher post earlier, however, will not get the benefit of proviso to FR 22(I). The employees in question are therefore not entitled to have their pay stepped up under the said govt. order because the difference in the pay drawn by them and the higher pay drawn by their juniors is not as a result of any anomaly; nor is it a result of the application of FR 22 (I) (a) (1) .

B. Service law- promotion- ad hoc local promotion against short term vacancies in Dept. of Telecommunication which is divided in several circles within the country – All India seniority, whether to be followed – plea not accepted observing that making short term local promotion is primarily a matter of administrative exigencies because there are difficulties in following All India seniority in such situation- However, need for laying down norms for making short term promotion emphasised- Further held, local officiating arrangement does not adversely affect seniority or regular promotion of a senior employee on the basis of All India seniority list.

Held:

The aggrieved employees contended with some justification that the local officiating promotion within a circle have resulted in their being deprived of a chance to officiate in a higher posts, if such a chance of officiation arises in a different circle. They have submitted that since there is an All India seniority lists for regular promotions , this All India seniority lists must prevail even while making local officiating appointments within any circle. The question is basically of administrative exigencies and the difficulty that the administration may face if even short term vacancies have to be filled up on the basis of All India seniority by calling a person who may be stationed in a different circle in a region remote from the region where the vacancy arises, and that too for a short duration. If such vacancy is of a long duration there is no administrative reason for not following the All India seniority. Most of the grievances of the employees will be met if proper norms

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are laid down for making local officiating promotions. Neither the seniority nor the regular promotion of these employees is affected by such officiating local arrangements.

Appeals allowed

The judgement of the court was delivered by Sujata V. Manohar J- delay condoned.

2. leave granted in the special leave petition.
3. These appeals have been filed from the judgements of various benches of CAT. The employees who are before us to the department of Posts and Telegraphs and Telecommunication they can be broadly classified in to two categories:

Those who belong to the Accounts stream and those who belong to the engineering stream.

In the accounts stream we are concerned with the two posts , the post of AAO and the next promotional post of Accounts Officer in the engineering stream there are employees belonging to telegraph traffic service and employees belonging to Post and telegraph electrical wing services. In the Telegraph traffic services , we are concerned with the post of junior engineers and the promotional post of Asstt. Engineer. In the stream of telegraph traffic service we are concerned with the post of Asstt. Superintendent, telegraph traffic services subsequently re-designated as Jr. Telecommunication officer and the next promotion post of Superintendent. Telegraph traffic now designated as Sub divisional Engineer. In the Post and Telegraph electric wing we are concerned with the post of Jr. Engineer and the next promotional post of Asstt. Engineer. In C.A. No.8730 of 1996 the respondent was a junior stenographer in the National Aero Space Laboratories, Council of Scientific and Industrial Research. The question raised is the same- of pay fixation on promotion.

4. All these appeals and special leave petitions raised a common question relating to interpretation of certain fundamental rules which govern the services of all these employees, and certain govt. orders issued in these behalf. The promotees who respondents in these appeals claimed that they are getting in the promotional post

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less pay than their juniors who have been subsequently promoted to the same post. This is an anomaly which should be removed by stepping up their pay to the same level as their juniors from the date he was promoted.

5. For the sake of convenience, we are referring to the facts in Civil Appeal No. 8658 of 96. The respondents, R.Swaminathan, at the material time, was an Accounts Officer with the Madras Telephones. Prior to his promotion as Accounts Officer, he held the post of AAO. On his promotion to the post of AO on 18.2.1988 his pay was fixed at Rs. 2675/- . One J.N. Misra, who was junior to the respondent was also subsequently promoted to the post of AO. His pay, was , however, fixed at Rs. 3125/- . The respondent, thereupon, filed OA No. 1324 of 93 before the CAT Madras Bench claiming that his pay should be stepped up to equal that of his junior Shri J.N. Misra from the date on which the anomaly arose and that he should be paid all arrears arising on accounts of such re-fixation. The Tribunal vide its judgement dated 9.2.94 allowed the respondent's application on the basis of its earlier decision which is also the subject matter of appeal before us.
6. Fixation of pay on promotion to a higher post is governed by FR 22 (I)(a)(I) which was formerly FR 22 C which is as follows:

“ FR 22(I) the initial pay of govt. servant who is appointed to a post on time scale of pay is regulated as follows”

(a)(I) where a govt. servant holding a post other than a tenure post in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity as the case may be, subject to the fulfillment of the eligibility conditions as prescribed in the relevant recruitment rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or Rs. 25/- only, whichever is more”.

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The proviso to FR 22 is as follows

Provided that, both in cases covered by clause (b) if he –

- (I) has previously held substantively or officiated in
 - (i) in the same post;
 - (ii)

then the initial pay shall not, except in cases of reversion to parent cadre governed by proviso I)(iii), be less than the pay, other than special pay, personal pay or any other emoluments which may be classified as pay be the President under Rule 9(25)(a)(iii) which he drew on the last occasion, and he shall count the period during which he draw that pay on a regular basis on such last and any previous occasions for increment in the stage of the time scale equivalent to that pay".

7. For the fixation of pay on promotion, therefore, one has to first look at the pay being drawn by the promotee in the lower post. This pay in the lower post must be increased by one increment in that pay scale. His initial pay in the time scale of the higher post is fixed at the stage next above this notional pay arrived at in the lower post.
8. The fixation of the pay in the higher post is, however, subject to the proviso. If the person so promoted has earlier officiated in the higher post or substantively held that higher post for short or long term duration, then (I) his last pay which is fixed under FR 22 (I)(a)(I) should not be less than the last pay which he drew when he last held the higher post (ii) the period during which he drew that pay on such last and any previous occasion shall count for increments in the time scale of pay for the higher post. For example, if the promotee had previously on various occasions, officiated in that higher post for different periods, and if the sum total of periods for which he so officiated is more than 12 months, he would be entitled to an increment in that higher pay scale. His initial pay, therefore, on his regular promotion, will be fixed taking into account, not merely his entitlement on the basis of his notional pay in the pay scale of the lower post, but also taking into account the last pay drawn by him while he was officiating in the higher post and also counting the previous periods during which he so officiated for his increment in the higher pay scale. The deptt. Has also, in this connection, drawn our attention to FR 26 which, inter-alia provides as follows :

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"FR 26(a) All duty in a post on a time scale counts for increments in that time scale"

Provided that for the purpose of arriving at the date of next increment in that time scale, the total of all such periods as do not count for increment in that time scale, shall be added to the normal date of increment"

9. We are, however, in the present case, concerned basically with FR 22 (I)(a)(I) and the proviso to FR 22 because in all these appeals, the junior employees who have got higher pay on promotion than their seniors, had officiated in the promotional post for different periods on account of local ad hoc promotions granted to them. This is because the Dep'tt. Of Telecom. Is divided into a number of circles within the country. The regular promotions from the junior posts in question to the higher posts are on the basis of all India seniority. The Heads of circles have, however, been delegated powers for making local officiating arrangements based on Circle seniority to the higher posts in question against short term vacancies up to 120 days in the event of the regular panelled officers not being available in that circle. This period of 120 days subsequently revised to 180 days. Under the provision for local officiation, the senior most official in the circle is allowed to hold the charge of the higher post for a limited duration. This is purely out of administrative considerations and is resorted to in order to tide over the exigencies of work. This practice, we are informed, has been followed in all the circles in the DOT since 1970. This is because, at times, it is not possible to fill up all vacancies in a particular circle for various reasons such as non-joining by a particular person, chain promotions or short-term vacancies arising on account of leave etc. It is submitted before us by the deptt. That it is not always possible to convene meetings of DPC for filling up all the posts which are only available for short periods on all India basis of administrative problems. To fill up this gap, the govt. has issued instructions from time to time to allow local officiating arrangement in the interest of work. The deptt. Has also pointed out that all the aggrieved employees in these appeals have availed of such officiating promotions as and when such occasions arose in their circle and they were eligible. The juniors, therefore, in each of these cases, who have received this, higher pay on account of the application of the proviso to FR 22.

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10. According to the aggrieved employees, this has resulted in an anomaly. Govt. Order bearing No. F 2 (75) 66 dated 4.2.66 has been issued for removal of anomaly by stepping up of pay of a senior on promotion drawing less pay than his juniors. It provides as follows :

“ 10 Removal of anomaly by stepping up of pay of seniors on promotion drawing less pay than his juniors – (a) As a result of application of FR 22 C -. In order to remove the anomaly of a govt. servant promoted or appointed to a higher post on or after 1.4.61 drawing a lower rate of pay in that post than another govt. servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases, the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The Stepping up should be done w.e.f. the date of promotion or appointment of the junior officer and will be subject to the following conditions; namely:

- (a) both the junior and the senior should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;
- (b) the scale of pay of the lower and the higher posts in which they are entitled to draw pay should be identical;
- (c) the anomaly should be directly as a result of the application of FR 22C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

The orders re-fixing the pay of the senior officers in accordance with the above provision shall be issued under FR 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of re-fixation of the pay.

As the order itself states, the stepping up is subject to the three conditions; viz. (I) Both junior and senior officers should belong to the same cadre and the

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posts in which they have been promoted should be identical and in the same cadre (ii) the scale of pay of the lower and the higher posts should be identical (iii) anomaly should be directly as a result of the application of FR 22I)(a)(I). We are concerned with the last condition. The difference in the pay of a junior and a senior in the case before us is not as a result of the application of the FR 22(I)(a)(I). The higher pay received by the junior is on account of his earlier officiating in the higher post because of local officiating promotions which he got in the past. Because of the proviso to Rule 22 he may have earned increments in the higher pay scale of the post to which he is promoted on account of his past service and also his previous pay in the promotional post has been taken into account in fixing his pay on promotion. It is these two facts which have increased the pay of the juniors. It is these two factors which have increased the pay of the junior. This cannot be considered as an anomaly requiring the stepping up of the pay of the senior.

11. The OM dated 16.11.93, GOI, DOPT has cited various instances when stepping up of pay cannot be done. It gives, inter-alia, the following instances which have come to the notice of the Department with a request for stepping up of pay. These are:

- (a) "when a senior proceeds on EOL which results in postponement of the Date of Next Increment in the lower post, consequently he stands drawing less pay than his junior in the lower grade itself. He, therefore, can't claim pay parity on promotion even though he may be promoted earlier to the higher grade;
- (b) If a senior foregoes / refuses promotion leading to his junior being promoted / appointed to the higher post earlier, the junior draws higher pay than the senior. The senior may be on deputation which the junior avails and ad hoc promotion in the cadre. The increased pay drawn by a junior either due to ad hoc officiating / regular service rendered in the higher posts for periods earlier than the senior, can't, therefore, be an anomaly in strict sense of the term.
- (c) If a senior joins the higher post later than the junior for what-so-ever reasons, whereby he draws less pay than the junior, in such cases the senior cannot claim stepping up of pay at par with the junior.

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There are also other instances cited in the Memorandum. The Memo. Makes it clear that in such instances a junior drawing more than his senior will not constitute an anomaly and, therefore, stepping up of pay will not be admissible. The increased pay drawn by a junior because of ad hoc officiating or regular service rendered by him in the higher post for periods earlier than the senior is not an anomaly because pay does not depend on seniority alone nor is seniority alone a criterion for stepping up of pay.

12. The aggrieved employees have contended with some justification that local officiating promotions within a circle have resulted in their being deprived of a chance to officiate in the higher post, if such chance of officiation arise in a different circle. They have submitted that since there is all India seniority of regular promotion, this all India seniority of regular promotion, this all India seniority prevail even while making local officiating appointments within any circle. The question is basically of administrative exigency and the difficulty that the administration may face if even short term vacancy have to be filled on the basis of all India seniority by calling a person who may be stationed in a different circle in a region remote from the region where the vacancy arises and that too for a short duration. If such a vacancy is of a long duration, there is no administrative reason for not following the all India seniority . Most of the grievance of the employees will be met if proper norms are laid down for making local officiating promotion. One thing, however, is clear. Neither the seniority nor the regular promotion of these employees is affected by such officiating local arrangements. The employees who have not officiated in the higher post earlier, however, will not get the benefit of the proviso to FR 22.
13. The employees in question, therefore, not entitled to have the pay stepped up under the said Govt. Order because the difference in the pay drawn by them and the higher pay drawn by their juniors is not as a result of the application of FR 22(I)a(I).
14. The appeals are, therefore, allowed and the impugned orders of difference Benches of the Central Administrative Tribunals which have held to the contrary are set aside. There will, however, be no order as to costs.

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.O.A. NOS. 362 & 363 OF 2000
Cuttack, this the 6th day of August, 2001

CORAM:

HON'BLE SHRI SONNATH SORI, VICE-CHAIRMAN
AND
HON'BLE SHRI G. NARASTHAMI, MEMBER (JUDICIAL)

In OA 362/2000

1. Sri Debi Prasad Mohapatra, aged about 38 years, son of Sri Bansidhara Mohapatra, resident of village Apilo, Post Jhadeswapur, District-Cuttack and at present working as Senior Accountant.
2. Sri A. Jankiram, aged about 43 years, son of Sri A. Narasimha Rao, resident of village/post Golapalli Street, Berhampur, District-Ganjam, and at present working as Senior Accountant.
3. Sri Pramod Kumar Samal, aged about 41 years, son of Sri Ragunath Samal, resident of village/Post-Jarka, District-Jajpur and at present working as Senior Accountant.
4. Sri Pramod Kumar Rout, aged about 42 years, son of Sri Rajkishore Rout, resident of village/post Singapur, Nalakani, District-Jagatsinghpur, and at present working as Section Officer on ad hoc basis.
5. Sri Trilochan Biswal, aged about 43 years, son of Sri Krushna Chandra Biswal, village/post-Adhupur, District-Bhadrak and at present working as Section Officer on ad hoc basis.
6. Sri Uttam Charan Sahu, aged about 38 years, son of Sri Babaji Sahu, Village/Post Adheikul, District-Jagatsinghpur and at present working as Senior Accountant.
7. Sri Radheshyam Behera, aged about 40 years, son of late Baghirathi Behera, Village/Post New Police Lane, Shantinagar, Chhatrapur, District-Ganjam and at present working as Senior Accountant.
8. Sri Jayabandhu Behera, aged about 42 years, son of Sri Narahari Behera, village Talakarua, Post-Haripur, District-Balasore and at present working as Senior Accountant.
9. Sri Brundaban Behera, aged about 37 years, son of late Sanatan Behera, Village Srikrishnapur, Post/Via-avana, District-Basasore, and at present working as Senior Accountant.
10. Sri Ratnakar Behera, aged about 38 years, son of Sri Banchhanidhi Behera of village/post-Kaduria, Via-Mahimayadi, District-Dhenkanal and at present working as Senior Accountant.

11. Sri Prafulla Chandra Swain, aged about 43 years, son of late Ramachandra Swain, village/post Balanga, District-Puri and at present working as Senior Accountant.

(All above are the employees holding the posts as indicated above in the office of the Principal Accountant General (A&E), Orissa, Bhubaneswar, District-Khurda)

.....Applicants

In O.A.No.363 of 2000

1. Sri Pravat Chandra Pani, aged about 42 years, son of Sri Sridhar Pani, resident of village Ostara, Post-Jadupur, District-Kendrapara and at present working as Senior Accountant.
2. Sri Tikeswar Lakra, aged about 40 years, son of late Bailas Lakra resident of village Pahartoli, Post Lanjiherna, District-Sundargarh and at present working as Senior Accountant.
3. Sri Prasanna Kumar Samantray, aged about 42 years, son of late Raghunath Samantray, resident of village Jariput, Post Gudum District-Khurda, and at present working as Senior Accountant.
4. Sri Khageswar Das, aged about 43 years, son of Sri Brahmallad Das, resident of village Naraharipur, Post Aripada, Dist.Kendrapara and at present working as Senior Accountant.
5. Sri Sankar Sahoo, aged about 41 years, son of Sri Sadhu Charan Sahoo, resident of village/post Nahantara, District-Puri and at present working as Senior Accountant.
6. Sri Sarat Chandra Kundu, aged about 41 years, son of Sri Muralidhara Kundu, resident of village Vidyadharpur, Post Nuapara District-Jagatsinghpur and at present working as Senior Accountant.
7. Sri Prafulla Chandra Biswal, aged about 43 years, son of Sri Parikhita Biswal, resident of village Kantitara, Post Sanakuanla, Dist.Jajpur and at present working as Senior Accountant.
8. Sri Rabindra Nath Rout, aged about 41 years, son of Sri Basudev Rout, resident of village/Post-Singhapur, District-Jajpur and at present working as Senior Accountant.
9. Sri Nitya Ranjan Sahu, aged about 40 years, son of Sri Radhamohan Sahu, resident of Plot No.341/57, Barhari, Unit-20, Jayamara, Bhubaneswar and at present working as Senior Accountant.
10. Sri Natabara Panda, aged about 41 years, son of late Dhruba Charan Panda, resident of village/post Pahanga, P.S-Niali, District-Cuttack, and at present working as Section Officer on ad hoc basis.

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11. Sri Kirtan Dash, aged about 40 years, son of late Satyabadi dash, resident of village Sudasailo, Post-Sailobarabil, District-Cuttack and at present working as Section officer on ad hoc basis.
12. Sri Prasanta Kumar Rout, aged about 30 years, son of Sri Uttam Charan Rout, resident of village/post Kantara District-Jagatsinghpur, and at present working as Senior Accountant.
13. Sri Santosh Kumar Mallick, aged about 38 years, son of late Sadhucharan Mallick, resident of village/Post Kaptipada, District-Jayurhhanj and at present working as Senior Accountant.
14. Sri Paramananda Samal, aged about 41 years, son of late Sriram Samal, resident of Oukhanda, Post Kurjanga, District-Kendrapara, and at present working as Section Officer on ad hoc basis.
15. Sri Harihar Chand, aged about 38 years, son of Sri Madan Mohan Chand, resident of village/Post Badahala, District-Keonjhar and at present working as Senior Accountant.
16. Sri Prabir Kumar Samal, aged about 30 years, son of Sri Khageswar Samal, village Kharimunda, Post-Bimahakalapara, District-Jajpur and at present working as Section Officer on ad hoc basis.
17. Sri Basanta Kumar Patida, aged about 30 years, son of Sri Bidyadhar Patida, resident of village Patanpur, Post Kotana District-Kendrapara and at present working as Section Officer on ad hoc basis.
18. Sri Manoranjan Panigrahi, aged about 36 years, son of Sri Sanatan Panigrahi, resident of village Golapalli Street, Berhampur-1 and at present working as Section Officer on ad hoc basis.
19. Sri H.K.Burma, aged about 30 years, son of Sri Batakrushna Samal, resident of village/post "auda, District-Cuttack and at present working as Section Officer on ad hoc basis

(All above are the employees holding the posts as indicated above in the office of the Principal Accountant General (A&E), Orissa, Bhubaneswar, District-Khurda)

..... Respondents

Advocates for applicants - "s/ K.C.Kanungo
S.Bhera
R.N.Singh

Vrs.

1. Comptroller & Auditor General of India, 10 Bahadur Shah Zafar Marg, New Delhi-110 002.
2. Secretary to Government of India, Ministry of Finance, New Delhi-110 001.
3. Secretary to Government of India, Ministry of Personnel Public Grievances and Pensions, Department of Personnel & Training, New Delhi-110 001.
4. Principal Accountant General (A&E), Orissa, Bhubaneswar, District-Khurda.

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5. Bidyadhar Mallick, Senior Accountant, Office of Principal Accountant General (A&E), Orissa Bhubaneswar, District-Khurda

..... Respondents

Advocate for respondents - Mr.B.Dash
ACGSC

O R D E R
SOMNATH SORI, VICE-CHAIRMAN

These two applications have been heard separately. But as the facts are identical and the point for determination is the same and the pleadings of the parties have been more or less on similar lines, one order will cover both these cases. The facts of the two O.A.s. are however set out separately.

2. The eleven applicants in OA No. 362 of 2000, substantively hold the post of Senior Accountant under the departmental respondents. Two of them are working as Section Officer on ad hoc basis. Their prayer in the OA is to quash the order dated 16.6.2000 (Annexure-2) rejecting their representation to step up their pay equal to that of Bidyadhar Mallick, Senior Accountant (respondent no.5). They have further prayed for a direction to the respondents to relax FR 22(T)(a)(1) and to treat the fact of their getting less pay than respondent as an anomaly. They have also prayed for a direction to the departmental respondents to allow the applicants the benefit of Rs.150/- per month and other allowances with effect from 1.4.1996 with arrear and consequential benefits. The case of the applicants is

that they along with respondent no.5 were Senior Accountants in the pay scale of Rs.1400-2600/- All of them took the Incentive Examination for Senior Accountant and while the applicants passed the Examination in April 1995, respondent no.5 failed to clear the Examination. On

clearing the Examination, the applicants got advance increment of Rs.40/- raising their pay from Rs.1520/- to Rs.1560/-. With the coming into force of the Fifth Pay Commission pay scale, the pay of the applicants and respondent no.5 was fixed at Rs.5300/- in the scale of Rs.5000-8000/- from 1.1.1996. Respondent no.5, who is admittedly junior to the applicants, cleared the Incentive Examination in April 1996 and got one advance increment. In the new pay scale of Rs.5000-8000/- the increment was Rs.150/- and therefore, the pay of respondent no.5 was fixed at Rs.5450/- from 1.4.1996 on his clearing the examination whereas the applicants continued to get Rs.5300/-. In the context of the above, they have come up with the prayers referred to earlier.

3. In OA No.363 of 2000 the 1^o applicants have made similar prayers. All the applicants substantively hold the post of Senior Accountant. Seven of them are working as Section Officer on ad hoc basis. The applicants took the Incentive Examination for Senior Accountant in April 1994 and came out successful in the first chance. Accordingly, in the scale of pay of Rs.1400-2600/-, which they were holding at that time as Senior Accountant, their pay was raised from Rs.1480/- to Rs.1520/- with effect from 1.4.1994. With the coming into force of the Fifth Pay Commission pay scale, the pay of the applicants and respondent no. 5 was fixed at Rs. 5300/- in the pay scale of Rs.5000-8000/-. Respondent no.5, who had failed to clear the Incentive Examinations of 1994 and 1995, cleared the Examination in 1996 and got the advance increment which in the new scale was Rs.150/-. Therefore, from 1.4.1996 his pay was fixed at Rs.5450/- whereas, the applicants were getting Rs.5300/-. In the context of the

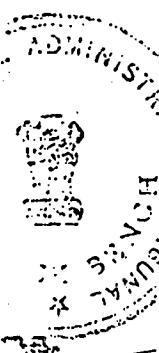
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above ~~the~~ these applicants have made prayer similar to the ~~applicants~~ in OA No. 362 of 2000.

4. Departmental respondents have filed identical counters in both the cases. It is not necessary to refer ~~the~~ the averments made in the counters as these will be referred to while considering the submissions made by the learned counsel of both sides. Private respondent no.5 was issued with notice but he did not appear or file any counter.

5. We have heard Shri K.C.Kanungo, the learned counsel for the petitioners and Shri B.Dash, the learned Additional Standing Counsel for the respondents and have perused the records. The learned counsel for the petitioners has filed circulars dated 14.3.1981 and 28.2.1984 which have been taken note of along with the written note of argument submitted by him. The learned counsel for the petitioners has relied on the decision of the Hon'ble Supreme Court in the case of Prakash Amichand Shah v. State of Gujarat and others, ATR 1986 SC 468, and the case of Union of India and another v. R.Swaminathan, AIR 1997 SC 3554. We have gone through these decisions.

6. It has been submitted by the learned counsel for the petitioners that the applicants in both these cases are admittedly senior to respondent no.5. They have admittedly cleared the Incentive Examination earlier than respondent no.5 and got an advance increment in the scale then enjoyed by them. Respondent no.5 failed to clear the examination along with the applicants and cleared the examination only in 1995. By that time the Fifth Pay Commission pay scale having come into force, he was allowed one advance increment as per rules which amounted to

Rs.150/- It is stated that in the process respondent no.5 is getting more pay than the applicants in these two cases even though he is junior and therefore, this must be treated as an anomaly. It is further stated that in the past at the time of introduction of the Third Pay Commission pay scales, similar stepping up was allowed, which is borne out by the two circulars produced by him. It is not necessary to refer to these two circulars because the departmental respondents have indicated that in the past stepping up of pay was allowed in similar circumstances. This has been mentioned in the letter dated 6.6.2000 from the office of Auditor General of India, enclosed at Annexure-R/4 by the respondents along with their counter to OA No.362/2000. In this letter it has been mentioned that after the judgment of the Hon'ble Supreme Court in R.Swaminathan's case(supra) such benefit of stepping up of pay has not been allowed. The learned counsel for the petitioners strongly urged that this point did not come up for consideration in R.Swaminathan's case (supra) and the decision in R.Swaminathan's case(supra) should not be expanded to cover a situation which was not before the Hon'ble Supreme Court in that case. In support of the above contention the learned counsel for the petitioners has relied on Prakash Amichand Shah's case(supra) in which Hon'ble Supreme Court in paragraph 26 of the judgment considered that the duty of the Court is while applying the law laid down in a precedent case. In that case the Hon'ble Supreme Court observed that a decision ordinarily is a decision on the case before the Court while the principle underlying the decision would be binding as a precedent in a case which comes up for



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decision subsequently. Hence while applying the decision to a later case, the Court which is dealing with it should carefully try to ascertain the true principle laid down by the previous decision. A decision often takes its colour from the questions involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. In view of the above position of law laid down by the Hon'ble Supreme Court in Prakash Amirchand Shah's case (supra) it has been argued by the learned counsel for the petitioners that the decision of the Hon'ble Supreme Court in R.Swaminathan's case (supra) is not applicable in the two OAs before us. It is no doubt true that in R.Swaminathan's case (supra) the Hon'ble Supreme Court was called upon to consider the eligibility of stepping up of pay of a senior where the junior gets the higher pay due to ad hoc officiating/regular service rendered in higher post for periods earlier than the senior. In that case the question of junior getting higher pay because of passing Incentive Examination was not considered. But in R.Swaminathan's case (supra) the Hon'ble Supreme Court considered the question of stepping up of pay to remove anomaly and held that in the given instance before their Lordship no anomaly was involved and stepping up of pay was not warranted. The departmental respondents have referred to decisions of Ernakulam Bench and Mumbai Bench dealing with the question of stepping up of pay. It is not necessary to refer to those decisions. For stepping up of pay as a result of application of FR 22-C earlier and now FR 22(I)(a)(1), circulars have been issued from time to time. Stepping up can be done only in terms of these circulars. After introduction of the Fifth Pay Commission

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Pay scales such stepping up is also allowed as a result of application of FR 22(T)(a)(l) in the revised scales under CCS(RP)Rules,1997. The applicants and respondent no.5 in both these cases got the Fifth Pay Commission pay scale from 1.1.1996. On 1.1.1996 the pay of the applicants and respondent no.5 was fixed at Rs.5300/- This is not a case of promotion and application of FR 22(T)(a)(i). The fact that respondent no.5 is getting more pay than the applicants from 1.4.1996 is not because of application of FR 22(T)(a)(l) but because he got incentive increment after clearing the Incentive Examination for Senior Accountant in April 1996. This increment happened to be Rs.150/- in the new pay scale of Rs.5000-8000/- The applicants had cleared this examination while they were in the pre-revised pay scale of Rs.1400-2600/- and thereby got an incentive increment the quantum of which was Rs.40/- in the pre-revised pay scale. Therefore, the fact that respondent no.5 is getting more pay than the applicants as on 1.4.1996 is not because of application of FR 22(T)(a)(l) as there was no question of promotion of the applicants and respondent no.5 to any higher post. In view of the above, it is clear that the claim of the applicants in these two OAs does not come within the four corners of the circulars dealing with stepping up of pay. In R.Swaminathan's case (supra) the Hon'ble Supreme Court have held that stepping up of pay is permissible only when the anomaly is attributable to application of FR 22(T)(a)(l). Therefore, the departmental respondents are right in not treating this as an anomaly due to application of FR 22(T)(a)(l). In view of this, there is no case for stepping up the pay of the applicants to the level of Rs.5450/- from 1.4.1996. The other prayer being consequential in nature also fails.

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7. In the result, therefore, the Original Applications are held to be without any merit and the same are rejected. No costs.

Sd/- G. Narasimham
Member (J).

Sd/- Somnath Som /
Vice-Chairman

CAT/CB/ 644 August, 2001/AN/PS

TRUE COPY

~~Examiner~~
Examining Officer,
Central Administrative Tribunal,
Chancery Bench, Cuttack.

NOTIFICATION

New Delhi, the 30th September, 1997

G.S.R. 569 (E).— In exercise of the powers conferred by the proviso to article 309, and clause (5) of article 148 of the Constitution and after consultation with the Comptroller and Auditor General, in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following rules, namely :—

1. *Short title and commencement* :— (1) These rules may be called the Central Civil Services (Revised Pay) Rules, 1997.

(2) They shall be deemed to have come into force on the 1st day of January, 1996.

2. *Categories of Government servants to whom the rules apply* :— (1) Save as otherwise provided by or under these rules, these rules shall apply to persons appointed to civil services and posts in connection with the affairs of the Union whose pay is debitible to the Civil Estimates as also to persons serving in the Indian Audit and Accounts Department.

(2) These rules shall not apply to :—

- (a) persons appointed to the Central Civil Services and posts in Groups 'A', 'B', 'C' and 'D' under the administrative control of the Administrator of the Union territory of Chandigarh;
- (b) persons locally recruited for service in Diplomatic, Consular or other Indian establishments in foreign countries;
- (c) persons not in whole-time employment;
- (d) persons paid out of contingencies;
- (e) persons paid otherwise than on a monthly basis including those paid only on a piece-rate basis;
- (f) persons employed on contract except where the contract provides otherwise;
- (g) persons re-employed in Government service after retirement;
- (h) any other class or category of persons whom the President may, by order, specifically exclude from the operation of all or any of the provisions contained in these rules.

3. *Definitions* :— In these rules, unless the context otherwise requires :—

- (1) "basic pay" means pay drawn in the prescribed scale of pay,

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 (2) including Stagnation increment(s), but does not include any type of pay like 'special pay', 'personal pay', etc.

(2) "existing scale" in relation to a Government servant means the present scale applicable to the post held by the Government servant (or, as the case may be, personal scale applicable to him) as on the 1st day of January, 1996 whether in a substantive or officiating capacity.

Explanation

(2) In the case of a Government servant, who was on the 1st day of January, 1996 on deputation out of India or on leave or on foreign service, or who would have on that date officiated in one or more lower posts but for his officiating in a higher post, "existing scale" includes the scale applicable to the post which he would have held but for his being on deputation out of India or on leave or on foreign service or, as the case may be, but for his officiating in a higher post;

(3) "Present Scale" in relation to any post/grade specified in column 2 of the first schedule means the scale of pay specified against that post in column 3 thereof;

(4) "revised emoluments" means the basic pay of a Government servant in the revised scale and includes the revised non-practising allowance, if any, admissible to him, in addition to pay in the revised scale.

(5) "revised scale" in relation to any post specified in column 2 of the First Schedule means the scale of pay specified against that post in column 4 thereof unless a different revised scale is notified separately for that post;

(6) "Schedule" means a schedule annexed to these rules.

4. *Scale of pay of posts* - The scale of pay of every post/grade specified in column 2 of the First Schedule shall be as specified against it in column 4 thereof.

5. *Drawal of pay in the revised scales* - Save as otherwise provided in these rules, a Government servant shall draw pay in the revised scale applicable to the post to which he is appointed:

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

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

Explanation 2. - The aforesaid option shall not be admissible to any person appointed to a post on or after the 1st day of January, 1995, whether for the first time in Government service, or by transfer or promotion from another post and he shall be allowed pay only in the revised scale.

Explanation 3. - Where a Government servant exercises the option under the proviso to this rule to retain the existing scale in respect of a post held by him in an officiating capacity on a regular basis for the purpose of regulation of pay in that scale under Fundamental Rule 22, or any other rule

for order applicable to that post, his substantive pay shall be the substantive pay which he would have drawn had he retained the existing scale in respect of the permanent post on which he holds a lien or would have held a lien had his lien not been suspended or the pay of the officiating post which has acquired the character of substantive pay in accordance with any order for the time being in force, whichever is higher.

6. *Exercise of Option* -

(1) The option under the proviso to rule 5 shall be exercised in writing in the form appended to the Second Schedule so as to reach the authority mentioned in sub rule (2) within three months of the date of publication of these rules or where an existing scale has been revised by any order made subsequent to that date, within three months of the date of such order.

Provided that -

(1) in the case of a Government servant who is, on the date of such publication or, as the case may be, date of such order, out of India on leave or deputation or foreign service or active service, the said option shall be exercised in writing so as to reach the said authority within three months of the date of his taking charge of his post in India; and

(2) where a Government servant is under suspension on the 1st day of January, 1996, the option may be exercised within three months of the date of his return to his duty if that date is later than the date prescribed in this sub-rule.

(2) The option shall be intimated by the Government servant to the Head of his Office.

(3) If the intimation regarding option is not received within the time mentioned in sub-rule (1), the Government servant shall be deemed to have elected to be governed by the revised scale of pay with effect on and from the 1st day of January, 1996.

(4) The option once exercised shall be final.

Note 1. Persons whose services were terminated on or after the 1st January, 1996 and who could not exercise the option within the prescribed time limit, on account of death, discharge on the expiry of the sanctioned posts, resignation, dismissal or discharge or disciplinary grounds, are entitled to the benefits of this rule.

Note 2. Persons who have died on or after the 1st day of January, 1996 and could not exercise the option within the prescribed time limit be deemed to have opted for the revised scales on and from the 1st day of January, 1996 or such later date as is most beneficial to their dependents, if the revised scales are more favourable and in such cases, necessary action for payment of arrears should be taken by the Head of Office.

7. *Fixation of initial pay in the revised scale* :-

(1) The initial pay of a Government servant who elects, or is deemed to have elected under sub-rule (3) of rule 6 to be governed by the revised scale on and from the 1st day of January, 1996, shall,

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unless in any case the President by special order otherwise directs, be fixed separately in respect of his substantive post in the permanent post on which he holds a lien or would have held a lien if it had not been suspended, and in respect of his pay in the officiating post held by him, in the following manner, namely :-

(A) In the case of all employees, —

- (i) an amount representing 40 per cent of the basic pay in the existing scale shall be added to the 'existing emoluments' of the employee;
- (ii) after the existing emoluments have been so increased, the pay shall thereafter be fixed in the revised scale at the stage next above the amount thus computed.

Provided that —

- (a) if the minimum of the revised scale is more than the amount so arrived at, the pay shall be fixed at the minimum of the revised scale;
- (b) if the amount so arrived at is more than the maximum of the revised scale, the pay shall be fixed at the maximum of that scale.

Provided further that —

Where in the fixation of pay, the pay of Government servants drawing pay in more than four consecutive stages in an existing scale gets bunched, that is to say, gets fixed in the revised scale at the same stage, the pay in the revised scale of such of these Government servants who are drawing pay beyond the first four consecutive stages in the existing scale shall be stepped up to the stage where such bunching occurs, as under, by the grant of increment(s) in the revised scale, in the following manner, namely:

- (a) for Govt. servants drawing pay from the 5th upto the 8th stage in the existing scale - by one increment
- (b) for Govt. servants drawing pay from the 9th upto the 12th stage in the existing scale, if there is bunching beyond the 8th stage - by two increments
- (c) for Govt. servants drawing pay from the 13th upto the 16th stage in the existing scale, if there is bunching beyond the 12th stage - by three increments

If by stepping up of the pay as above, the pay of a Government servant gets fixed at a stage in the revised scale which is higher than the stage in the revised scale at which the pay of a Government servant who was drawing pay at the next higher stage or stages in the same existing scale is fixed, the pay of the latter shall also be stepped up only to the extent by which it falls short of that of the former.

Provided also that —

The fixation thus made shall ensure that every employee will get atleast one increment in the revised scale of pay for every three

increments [inclusive of stagnation increment(s), if any] in the existing scale of pay.

Explanation—For the purpose of this clause "existing emoluments" shall include,

- (a) the basic pay in the existing scale;
- (b) dearness allowance appropriate to the basic pay admissible at index average 1510 (1960=100), and
- (c) the amounts of first and second instalment of interim relief admissible on the basic pay in the existing scale;

(B) in the case of employees who are in receipt of special pay/allowance in addition to pay in the existing scale which has been recommended for replacement by a scale of pay without any special pay/allowance, pay shall be fixed in the revised scale in accordance with the provisions of clause (A) above except that in such cases "existing emoluments" shall include—

- (a) the basic pay in the existing scale;
- (b) existing amount of special pay/allowance;
- (c) admissible dearness allowance at index average 1510 (1960=100) under the relevant orders; and
- (d) the amounts of first and second instalments of interim relief admissible on the basic pay in the existing scale and special pay under the relevant orders;

(C) in the case of employees who are in receipt of special pay component with any other nomenclature in addition to pay in the existing scales, such as personal pay for promoting small family norms, special pay to Parliament Assistants, Central (Deputation on Tenure) Allowance, etc., and in whose case the same has been replaced in the revised scale with corresponding allowance/pay at the same rate or at a different rate, the pay in the revised scale shall be fixed in accordance with the provisions of clause (A) above. In such cases the allowance at the new rate as recommended shall be drawn in addition to pay in the revised scale of pay;

(D) in the case of medical officers who are in receipt of non-practising allowance, the pay in the revised scale shall be fixed in accordance with the provisions of clause (A) above except that in such cases the term "existing emoluments" shall not include NPA and will comprise only the following—

- (a) the basic pay in the existing scale;
- (b) dearness allowance appropriate to the basic pay and non-practising allowance admissible at index average 1510 (1960=100) under the relevant orders; and
- (c) the amounts of first and second instalments of interim relief admissible on the basic pay in the existing scale and non-practising allowance under the relevant orders.

and in such cases, non-practising allowance at the new rates shall be drawn in addition to the pay so fixed in the revised scale.

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Note 1 - The Government servants drawing pay upto the stage of Rs. 1032 in the existing scale of Rs. 775-12-871-14-955-15-1029-20-1150 shall be fixed in S-2 scale of pay and those drawing pay beyond the stage of Rs. 1032 shall be fixed in S-3 scale of pay.

Note 2 - Where the increment of a Government servant falls on 1st day of January, 1996, he shall have option to draw the increment in the existing scale or the revised scale.

Note 3 - Where a Government servant is on leave on the 1st day of January, 1996, he shall become entitled to pay in the revised scale of pay from the date he joins duty. In case of Government servant under suspension, he shall continue to draw subsistence allowance based on existing scale of pay and his pay in the revised scale of pay will be subject to final order on the pending disciplinary proceedings.

Note 4 - Where a Government servant is holding a permanent post and is officiating in a higher post on a regular basis and the scales applicable to these two posts are merged into one scale, the pay shall be fixed under this sub-rule with reference to the officiating post only, and the pay so fixed shall be treated as substantive pay.

The provisions of this Note shall apply, mutatis mutandis, to Government servants holding in an officiating capacity posts on different existing scales which have been replaced by a single revised scale.

Note 5 - Where the existing emoluments as calculated in accordance with clause (A), clause (B), clause (C) or clause (D), as the case may be, exceed the revised emoluments in the case of any Government servant, the difference shall be allowed as personal pay to be absorbed in future increases in pay.

Note 6 - Where in the fixation of pay under sub-rule (1), pay, of a Government servant, who, in the existing scale was drawing immediately before the 1st day of January, 1996 more pay than another Government servant junior to him in the same cadre, gets fixed in the revised scale at a stage lower than that of such junior, his pay shall be stepped upto the same stage in the revised scale as that of the junior.

Note 7 - Where a Government servant is in receipt of personal pay on the 1st day of January, 1996, which together with his existing emoluments as calculated in accordance with clause (A), clause (B), clause (C) or clause (D), as the case may be, exceeds the revised emoluments, then, the difference representing such excess shall be allowed to such Government servant as personal pay to be absorbed in future increases in pay.

Note 8 - In the case of employees who are in receipt of personal pay for passing Hindi Pragya, Hindi Typewriting, Hindi Shorthand and such other examinations under the "Hindi Teaching Scheme", or on successfully undergoing training in cash and accounts matters prior to the 1st day of January, 1996, while the personal pay shall not be taken into account for purposes of fixation of initial pay in the revised scales, they would continue to draw personal pay after fixation of their pay in the revised scale on and from the 1st day of January, 1996 or subsequently for the period for which they would have drawn it but for the fixation of their pay in the revised scale. The quantum of such personal pay would be paid at the appropriate rate of increment in the revised scale from the date of fixation of pay for the period for which the employee would have continued to draw it.

~~Explanation -~~ For the purpose of this Note, "appropriate rate of increment in the revised scale" means the amount of increment admissible at and

immediately beyond the stage at which the pay of the employee is fixed in the revised scale.

~~Note 9 - In cases, where a senior Government servant promoted to a higher post before the 1st day of January, 1996 draws less pay in the revised scale than his junior who is promoted to the higher post on or after the 1st day of January, 1996, the pay of the senior Government servant should be stepped up to an amount equal to the pay as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior Government servant subject to the fulfilment of the following conditions, namely:-~~

- (a) both the junior and the senior Government servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre.
- (b) the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical.
- (c) the senior Government servants at the time of promotion have been drawing equal or more pay than the junior.
- (d) the anomaly should be directly as a result of the application of the provisions of Fundamental Rule 22 or any other rule or order regulating pay fixation on such promotion in the revised scale, if even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provision of this Note need not be invoked to step up the pay of the senior officer.

The order relating to refixation of the pay of the senior officer in accordance with the above provisions should be issued under Fundamental Rule 27 and the senior officer will be entitled to the next increment on completion of his required qualifying service with effect from the date of refixation of pay.

(2) Subject to the provisions of rule 5, if the pay as fixed in the officiating post under sub-rule (1) is lower than the pay fixed in the substantive post, the former shall be fixed at the stage next above the substantive pay.

8. *Date of next increment in the revised scale* - The next increment of a Government servant whose pay has been fixed in the revised scale in accordance with sub-rule (1) of rule 7 shall be granted on the date he would have drawn his increment, had he continued in the existing scale:

Provided that in cases where the pay of a Government servant is stepped up in terms of Note 6 or Note 9 to sub-rule (1) and also second proviso to sub-rule (1) of rule 7, the next increment shall be granted on the

completion of qualifying service of twelve months from the date of stepping up of the pay in the revised scale.

Provided further that in cases other than those covered by the preceding proviso, the next increment of a Government servant, whose pay is fixed on the 1st day of January, 1996 at the same stage as the one fixed for another Government servant junior to him in the same cadre and drawing pay at a lower stage than his in the existing scale, shall be granted on the same date as admissible to his junior, if the date of increment of the junior happens to be earlier.

Provided also that in the case of persons who had been drawing maximum of the existing scale for more than a year as on the 1st day of January, 1996, next increment in the revised scale shall be allowed on the 1st day of January, 1996.

Note 1 - In cases where two existing scales, one being a promotional scale for the other, are merged, and the junior Government servant, now drawing his pay at equal or lower stage in the lower scale of pay, and happens to draw more pay in the revised scale than the pay of the senior Government servant in the existing higher scale, the pay of the senior government servant in the revised scale shall be stepped up to that of his junior from the same date and he shall draw next increment after completing the qualifying period from the date of such stepping up of pay.

9. *Fixation of pay in the revised scale subsequent to the 1st day of January, 1996* - Where a Government servant continues to draw his pay in the existing scale and is brought over to revised scale from a date later than the 1st day of January 1996, his pay from the later date in the revised scale shall be fixed under Fundamental Rules and for this purpose his pay in the existing scale shall have the same meaning as of existing emoluments as calculated in accordance with clause(A), clause(B), clause(C) or clause(D), as the case may be, of sub-rule(1) of rule 7, except that the basic pay to be taken into account for calculation of those emoluments will be the basic pay on the later date aforesaid and where the Government servant is in receipt of special pay or non-practising allowance, his pay shall be fixed after deducting from those emoluments an amount equal to the special pay or non-practising allowance, as the case may be, at the revised rates appropriate to the emoluments so calculated.

10. *Fixation of pay on reappointment after the 1st day of January, 1996 to a post held prior to that date* - A Government servant who had officiated in a post prior to the 1st day of January, 1996 but was not holding that post on that date and who on subsequent appointment to that post draws pay in the revised scale of pay shall be allowed the benefit of the proviso to Fundamental Rule 22, to the extent it would have been admissible had he been holding that post on the 1st day of January, 1996, and had elected the revised scale of pay on and from that date.

11. *Mode of payment of arrears of pay* - The arrears would be paid in cash with the stipulation that where the amount of arrears is less than

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Rs.5000, it should be paid in one instalment and where it is in excess of Rs.5000, it should be paid in two instalments; in the first instalment payment should be restricted to Rs.5000 plus fifty percent of the balance amount of arrears.

Explanation - For the purposes of this rule:

(a) "arrears of pay", in relation to a Government servant, means the difference between:-

- (i) the aggregate of the pay and allowances to which he is entitled on account of the revision of his pay and allowances under these rules, for the relevant period; and
- (ii) the aggregate of the pay and allowances to which he would have been entitled (whether such pay and allowances had been received or not) for that period had his pay and allowances not been so revised.

(b) "relevant period" means the period commencing on the 1st day of January, 1996 and ending with the 30th September, 1997.

12. *Overriding effect of Rules* - The provisions of the Fundamental rules, the Central Civil Services (Revision of Pay) Rules, 1947, the Central Civil Services (Revised Pay) Rules, 1960, the Central Civil Services (Revised Pay) Rules, 1973 and the Central Civil Services (Revised Pay) Rules, 1986, shall not, save as otherwise provided in these rules, apply to cases where pay is regulated under these rules, to the extent they are inconsistent with these rules.

13. *Power to relax* - Where the President is satisfied that the operation of all or any of the provisions of these rules causes undue hardship in any particular case, he may, by order, dispense with or relax the requirements of that rule to such extent and subject to such conditions as he may consider necessary for dealing with the case in a just and equitable manner.

14. *Interpretation* - If any question arises relating to the interpretation of any of the provisions of these rules, it shall be referred to the Central Government for decision.

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Filed by -
Sri Sanjay Ranjan Dey
through Mrs. Monorita
Chowdhury, Advocate.

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

ORIGINAL APPLICATION NO. 39/2002.

Sri Amitava Chatterjee and Others.

- Versus -

Union of India and Others.

IN THE MATTER OF :

Reply to the Written Statement
submitted by the Respondents.

The Applicants beg to submit the reply to the
Written Statement as follows :-

- 1) In reply to paragraph No. 2 of the Written Statement the Applicants beg to state that due to inadvertant omission the date of joining as Accountant ~~and~~ Applicant No. 4 Sri Sanjay Ranjan Dey was wrongly typed as 11.4.1990 and 27.1.1994. The date so furnished in the application by the applicants were not deliberate and was caused due to oversight.

That the applicants state that the correct dates of joining as Accountant and Senior Accountant will

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be 16.4.1990 and 25.1.1994 respectively.

2) That, the applicants state that in paragraph 4(xi) of the Original Application date of promotion to the post of Senior Accountant to the Applicant No. 3 is wrongly typed as 19.3.1990 instead of 25.1.1994. It is apparent on the comparative statement (Annexure - 4(D)) of the Original Application wherein the correct date of promotion to the post of Senior Accountant is given as 25.1.1994. Therefore, the discrepancy of the date of promotion to the post of Senior Accountant as appeared in paragraph 4(xi) is unintentional and typing error. Regarding the discrepancy of respondents regarding the date of promotion to the post of Senior Accountant of Applicant No. 4 Sri Sanjay Ranjan Dey has already been stated in the preceding paragraph.

3) That, in reply to the paragraph No. 5 of the Written Statement of the respondents the applicants beg to state that the statements made therein are not correct under the circumstances of the case. It will be evident from the comparative salary statement of the Applicants (Annexure - 1(a) and 1(b) respectively). That even prior to implementation of Revised Pay Rules, 1997, pay of the Junior colleagues of the Applicants was fixed at a lower scale. The anomaly that arose

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between the structure of pay of the employees as alleged in the Original Application is directly attributable to the Revision of Pay Rules, 1997.

4) That with respect of paragraph 6 of the written statement filed by the respondents the applicants beg to state that the statement made therein are not totally correct. The respondents could have settled the anomaly so crapped up due to the implementation of the Revised Pay Rules, 1997 under the provision of the Rule itself. The Rule in contemplation of crapping up of such anomalies by its application provided provisions for setting aside such anomaly by stepping up of salary under the Rules.

5) That, with regard to the paragraph (vii) of the written statement by the respondent, the representation of the applicants dated 5.7.2001 on the strength of Circular dated 7.8.1998 was wrong as the instant case has no resemblance with that of R. Swaminathan's Case as referred to in the said circular.

6) That, with respect to paragraph No. 8 of the written statement filed by the respondents, the Applicants state that admittedly there is some anomaly and fixing the pay of applicants who passed incentive examination

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before 1996. Hence, the representation of Sri Ashit Baran Chanda is referred to the Comptroller and Auditor General of India and the matter as stated in the aforesaid paragraph is under consultation with the Ministry of Finance. Therefore, the applicants state that their representation ought not to have been rejected by the respondent in as much as representation of similarly situated employee of the same office on the same issue was not rejected. Hence, the action is discriminatory.

7) That, with regard to paragraph 9, the applicants reiterate that the Hon'ble Supreme Court directed stepping up of pay unless it is directly attributable in FR 22(1)(a)(i) under different circumstances which is not applicable in the instant case. As regards the order of the Hon'ble Cuttack Bench in the matter of Original Application No. 362/2000 and Original Application No. 363/2000 as referred in this paragraph also does not resemble to the instant case in hand. In the applications before the Cuttak Bench, the applicants were working as Section Officer on Adhoc basis and they prayed for direction to quash the order of the official respondents rejecting their applications to step up their pay equal to the Senior Accountant (Private Respondent) as well as for a direction to release FR 22(1)(a)(i) and to treat the fact of their getting less pay than respondent (Private Respondent) as an anomaly. Therefore, the facts and circumstances and prayer in the

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aforesaid two applications and as in this instant application are not similar. Therefore, the ratio of the above mentioned application before the Cuttak Bench will not be applicable in this instant application.

8. That, with regard to paragraphs 10, 11 and 12 of the written statement, the applicants state that in the preceding paragraph the applicants have already stated the correct position and any addition to that would be only a re-iteration.

9) That, with regard to paragraphs 13, 14 and 15 of the written statement the applicants state that no rule of this land allows such discrimination as alleged in this application, so as to allow the junior to draw more salary than senior performing similar duty similar functions under the same employer. The applicants reaffirm that the Constitution of India has provided specific Protection against such discrimination.

10) That, the applicants states that in view of the statements made above, the respondents stand in the case as stated in the written statement is nsustainable and untenable in the eye of law and if it is allowed to stand, it will substantial injustice to the applicants and the same may be rejected as unacceptable.

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VERIFICATION

I, Sri Sanjay Ranjan Dey, Applicant No. 4
and authorised on behalf of the other applicants and
being acquainted with the facts and circumstances of
the case do hereby verify the statements made in
paragraphs 6, 8, 9 are true to my knowledge
and those made in paragraphs 1 to 4, 5, 7 are true
to my information derived from records and I have not
suppressed any material fact.

And I signed this verification on this,
the 10th day of May, 2002 at Guwahati.

Sanjay Ranjan Dey.

SIGNATURE



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Filed by the Applicant
through Ms. Purna Chakraborty
Advocate

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

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

21 AUG 2008

गुवाहाटी न्यायपीठ
Guwahati Bench

A REJOINDER IN ORIGINAL
APPLICATION NO. 39 / 2002

Sri Amitava Chatterjee & Ors
- Vs -
The Union of India and Ors.

IN THE MATTER OF :

A rejoinder on behalf of the applicants
bringing to the notice of this Hon'ble
Tribunal the Office Memo No. 12371-
MGE(EMTD)/28-2002 dated 13-5-2002
setting right the anomaly in fixation of
pay by stepping up pay of the applicants
rendering the Original Application
infructuous.

*Rejoined
Guwahati
21.08.08*

I, Sri Amitava Chatterjee, applicant No.1 in this instant Original Application, being conversant with the facts and circumstances of the case and being duly authorised by the other applicants is competent to swear this affidavit and do hereby solemnly affirm and declare as follows:-

1. That the Original Application No. 39 / 2002 was filed by the applicants seeking a direction to the respondents for stepping up pay of the applicants working as Senior Accountant and having passed the Incentive Examination and being entitled to one advance increment as per the rules and guidelines in force.

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2. That the Central Civil Services (Revised Pay) Rule, 1997 which came into force on 1-1-96 gave rise to certain anomalies in fixation of pay of the applicants, resulting in high pay scale to those who were junior to the applicants.

3. That the sole contention of the applicants in the Original Application was that the pay fixation after implementation of the Central Civil Services (Revised Pay) Rules, 1997 brought certain discrimination among the two sets of employees whose basic qualification, method, manner and grade of promotions were otherwise being same, performing similar functions and identical duties under the same employer is completely irrational and against the principles of equal pay for equal work.

4. That the representations filed by the applicants was also rejected by the respondents. Hence the Original Application. The contention of the respondents on the other hand had raised objection that FR-22(1)(a)(i) had no application in the instant case. The respondents although had acknowledged that an abnormal situation has arisen but the same was not rectifiable. Besides referring to a decision rendered by Cuttack Bench in O.A. 363 of 2001 as disposed on 6-8-2001 where a similar claim was rejected by the Bench.

5. The judgment and order as passed by the Cuttack Bench is binding on the Guwahati Bench of this Tribunal. But on the other hand the judgment seems to be a per incuriam judgment in as much as the ratio of the judgment passed by the Cuttack Bench is not approved by the Apex Court on the same fact. To avoid such confusion and conflict of judicial pronouncement the matter was referred to a Larger Bench, to decide the following :-

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Guwahati Bench

(a) Whether on the facts and circumstances of the case the Cuttack Bench was justified in upholding the decision of the department in refusing to stepping up of the pay of the seniors?

(b) Whether the benefit of stepping up of pay is inadmissible unless the anomaly is directly attributable to the application of FR-22(1)(a)(i) ?

(c) Whether on the facts and circumstances of the case the respondents are justified in law in refusing the step up pay of the seniors who are paid less than the juniors in view of the extra-ordinary situation ?

(6) That the order dated 11-6-2002 as passed by this Hon'ble Tribunal however specified that the respondents in the meantime may settle the mater as per law.

A copy of the judgment dated 11-6-2002 as passed by this Hon'ble Tribunal is enclosed herewith and marked as Annexure-1.

(7) That in the meantime vide office memo No. AOMN 1/3-8/99-2000(Part-II) 1677 dated 5-6-2002 the respondents had set right the anomalies by stepping up the pay of the applicants, thus mitigating the grievances of the applicants.

A copy of the office memo dated 5-6-2002 is enclosed herewith and marked as Annexure-2.

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(8) That in view of the subsequent development in this regard as referred to herein above the reference of the matter to the Larger Bench has become infructuous and the matter may thus be disposed accordingly.

(9) That the statements made hereinabove in paragraphs...2,4,8..... are true to my knowledge and those made in paragraphs...1,2,3,5,6 and 7...are being matters of record are true to my information derived therefrom and I sign this affidavit on this 20th day of August at Guwahati.

Identified by me :

Sopika Chakrabarty

Amritava Chatterjee

D E P O N E N T

Solemnly affirmed and declared before me by the deponent who is identified by *Sopika Chakrabarty* Advocate, on this the 20th day of August, 2008 at Guwahati.

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 39 of 2002.

Date of Order : This the 4th Day of June, 2002.

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

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

केन्द्रीय प्रशासनिक अधिकार परा
Central Administrative Tribunal

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1. Sri Amitava Chatterjee,
2. Sri Kumar Paritosh Dab,
3. Sri Dibekar Majumdar, and
4. Sri Sanjay Ranjan Dey.

वाराणसी न्यायालय
Guwahati Bench

..... Applicants.

All the applicants are working as Senior Accountant in the office of the Accountant General (A&E), Assam, Beltola, Guwahati-29.

By Advocate Ms P.Chakraborty.

versus

1. The Union of India, represented by the Secretary, Department of Finance, Government of India, Govt. of India, Delhi.
2. The Comptroller and Auditor General of India, whose office has address 10, Bahadur Shah Zafar Marg, New Delhi-2.
3. The Assistant Comptroller and Auditor General (N) of India, 10, Bahadur Shah Zafar Marg, New Delhi-2.
4. The Accountant General (A&E) of Assam, Maidamgaon, Beltola, Guwahati-29.
5. The Deputy Accountant General (A&E) O/O the Accountant General (A&E), Assam, Maidamgaon, Beltola, Guwahati-29.
6. The Senior Accounts Officer (Admin), O/O the Accountant General (A&E), Assam, Beltola, Guwahati-29. Respondents.

By Sri A.Dab Roy, Sr.C.G.S.C.

O R D E R

Case No. 39/2002

This is an application under Section 19 of the Administrative Tribunals Act 1985 seeking for a direction for stepping up of the pay of the four applicants in the following circumstances.

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Guwahati Bench

2. The applicants are presently working as Senior Accountant in the office of the Accountant General (AS&E) Assam, Guwahati. The applicant No.1 joined as Clerk-Cum-Typist in the office of the Accountant General, Assam on 5.2.1986. He was promoted to the post of Accountant on 30.11.1989. He was further promoted to the post of Senior Accountant on 27.1.94. The applicant No.2 was appointed as Clerk-Cum-Typist on 1.10.86 in the same office and was promoted to the post of Accountant on 11.4.90 and further promoted to the post of Senior Accountant on 31.1.94. Similarly the applicant No.3 and 4 were promoted to the post of Senior Accountant on 25.1.94 and 31.1.94. The respondents issued circulars from time to time for conducting Incentive Examination for Senior Auditors and Senior Accountants. As per the circular the candidates securing 50% marks and above are entitled for advance increment in the scale of Senior Auditor/Senior Accountant with effect from 1st of the month in which the examination is held. All the four applicants passed the incentive examination during 1995 by securing the qualifying marks and thereby became eligible for the advance increment with effect from 1.4.2995. The pay of the applicants as on 31.3.1995 was Rs.1440/- and thereafter from 1.4.95 to 31.12.95 they were allowed to draw a salary of Rs.1480/- towards incentive benefits for passing the examination. It was also stated that at the relevant time their junior colleagues who have not passed the incentive examination were drawing a salary of Rs. 1400/-, whereas the applicants were drawing Rs. 1480/- from 1.4.1995. The pay structure was revised and the Central Civil Services (Revised Pay) Rules 1997 came into force from 1.1.96. The pay of the

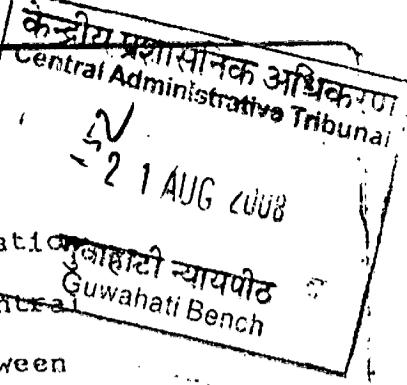
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applicants was revised at Rs. 5150/- . The junior colleagues of the applicants were also allowed to draw pay at the rate of Rs.5150/- . The junior colleagues were passed the incentive examination on April 1996 and their pay with incentive benefit stood at Rs. 5300/-, whereas the applicants being senior and having passed the incentive examination earlier were drawing a pay of Rs.5150/- as on 1.4.1996.

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Central Administrative Tribunal

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3. The applicant pleaded that the revision of pay during 1996 gave rise to the disparity between the pay structure of juniors and seniors in the same office and under the same employer performing similar function and sharing same duties and responsibilities to similarly situated sets of employees were allowed different pay scale and the juniors were allowed to draw higher scale. The applicants cited instances that on April 1996 these applicants were drawing salary of Rs.5150/- whereas the junior colleagues on the said date were allowed to draw a sum of Rs.5300/- . Thereafter on January 1st 1997 the applicants were drawing Rs. 5300/-, whereas their junior colleagues were drawing Rs.5450/- . On 1.1.98 the applicants drew the pay of Rs. 5450/- while their junior counter part drew Rs. 5600/- . Again on 1.1.99 the applicants were drawing Rs. 5600/- but their juniors were drawing Rs. 6750/- . Similarly on 1.1.2000 the applicants were drawing Rs. 6750/- and their juniors were drawing Rs. 6900/- and in 1.1.2001 the applicants were drawing Rs. 6900/- and their juniors were drawing Rs. 7050/- . The name of the applicants were placed at serial Nos. 440, 462, 461 and 471 respectively in the gradation list, whereas one of their junior Sri Swapan Das was placed at serial No.536 but their junior was drawing higher pay than that of the



applicants. The applicants stated that the discrimination in the pay structure on the implementation of the Central Civil Service (Revised Pay) Rules 1997 on 1.1.96 between two sets of employees whose basic qualification, method, manner and grade of promotions were otherwise being same, performing similar function and identical duties under the same employer is completely irrational and against the principle of 'equal pay for equal work'. Narrating the discrimination meted out to these applicants, they submitted their representations. By the impugned order No. ADMN 1/3-8/99-2000(PART II)/1078 dated 9.7.2001 the applicants were informed by the respondents about their decision rejecting their representations. The respondents by circular No.33-NGE/200 No.606/NGE/EC)/28-2000 informed the applicant that anomalies in pay which had arisen in the Senior Auditors/ Senior Accountants cadre as a result of passing Incentive Examination regarding a senior before 1.1.96 and junior after 1.1.96 was not rectifiable. The relevant part of the circular is reproduced below :



"Ministry of Finance after consultation with DOP & T have held that such type of anomalies have not arisen due to direct application of FR 22-C (Now FR-22(1)(a)(i)). In such cases anomaly has arisen due to grant of increment at a higher rate to the junior. In this connection Government have drawn attention to various orders relating to stepping up of pay, issued right from 4.2.66. Para (c) of these orders provides that anomaly should be as a result of application of FR 22-C and in case where a junior is drawing higher pay than a senior by virtue of grant of advance increment no benefit of stepping up of pay will be allowed to the senior officer. In the past DOP & T have been agreeing to step up pay in such cases in relaxation of normal rules. However, after judgment of Hon'ble Supreme Court of India in the case of R. Swaminathan and others DOP & T

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have been taking a consistent stand not to allow benefit of stepping up of pay of senior in cases where anomaly is not due to direct application of FR 22-C (Now FR 22(1)(a)(i)).

In the application the applicants cited the instance of presentation of a representation sent by one Ashit Baran Chanda, Senior Accountant working in same office who also filed representation claiming parity of pay with his junior. The aforementioned representation of Sri Ashit Baran Chanda was referred to the Ministry and Sri Chanda was accordingly informed vide memo dated 23.1.2002 that the matter of stepping up of his pay was referred to the Ministry of Finance. The applicant contended that the case of the applicant did not receive equal treatment like that of Ashit Baran Chanda and same was rejected by the department without awaiting for the view of the Ministry. Being aggrieved the applicants presented this application seeking for a direction for stepping up of pay of the applicants due to anomalies mentioned.

The respondents contested the claim and opposed the application by filing written statement. The respondents in the written statement had specifically stated that the anomaly had arisen due to the grant of an advance increment to the junior official with effect from 1.4.96 for passing the Departmental Incentive Examination for Senior Accountants. The respondents at para 6 of the written statement admitted that the case was of an extraordinary nature and not covered under the existing rules/order which had arisen because of the new pay structure and therefore the authority was helpless to take any action on the matter. The respondents also stated in the written statement that the office of the Accountant General (A&E), Assam, Guwahati vide letter No. Admin & Estt/Ghy/ROP-96/97/2339 dated 25.11.97 referred the case to the office of the Comptroller and Auditor General stating their predicament. In the said communication

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the Deputy Accountant General (Admn) intimated the Comptroller and Auditor General that some junior officials were getting higher pay than that of their seniors. Among others the Deputy A.G. intimated to the C.A.G the following facts :

"It has been observed in certain cases that by virtue of an advance increment for passing Incentive Examination for Sr. Accountants after 1.1.96 in the revised scale, some junior officials are getting higher pay than that of their seniors, who were drawing higher pay than their juniors in the pre-revised scale. The Senior officials under reference also passed the same examination and got the benefit of increment in the pre-revised scale. While fixing the pay of the seniors by taking into account the advance increment, their pay fixed at the stage of Rs.5250/- on 1.1.96 with D.N.I. on 1.11.96, whereas their juniors, whose pay was also fixed at the stage of Rs.5150/- on 1.1.96 and got the advance increment in April/96 apart from their normal increment on 1.1.97. Thus the juniors are getting more pay than their seniors. The senior officials now claimed equalisation of their pay with the junior w.e.f. April/96. One of the illustrations at Annexure-I is given for your ready reference.

The doubts mentioned above may please be clarified."

The respondents were also informed by the office of the C.A.G by communication dated 28.3.2002 that the matter is still under consideration with Government of India, Ministry of Finance. In the written statement the respondents referred to the decision rendered by the Supreme Court in R. Swami-nathan vs. Union of India & Ors. reported in 1997(7) SCC 690 and stated that the benefit of stepping up of pay was not admissible unless the anomaly was directly attributable to application of FR 22(1)(a)(i). Since it was not directly attributable to FR 22(1)(a)(i) the respondents rejected the application. It also referred to a decision of the Cuttack Bench of the C.A.T rendered in O.A.362 and 363 of 2000.

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Guwahati Bench

5. We have heard Ms P.Chakraborty, learned counsel appearing on behalf of the applicants and also Mr A.Dutta, learned Sr.C.G.S.C for the respondents at length. Ms Chakraborty, the learned counsel submitted that obviously an abnormal situation did arise wherein the juniors were getting higher pay than that of the applicants. The learned counsel submitted that there could not be any legitimate ground in discriminating the applicants with their juniors in this regard. Ms Chakraborty, the learned counsel for the applicant pointedly referred to the recruitment rules, the qualifications vis-a-vis the duties and responsibilities discharged by the applicants and their juniors and submitted that denial of equal pay to the applicants amounted to flagrant violation of the Constitutional Scheme enjoined in Article 14 and 16 of the Constitution of India read with Article 39(d) of the Directive principle ^{नियम विधि} enshrined in the said Constitution. The learned counsel further submitted that the respondents acted illegally in rejecting the claim of these applicants on the ground that the situation was beyond the purview of FR 22(1)(a)(i). Ms Chakraborty, the learned counsel for the applicant in support of her contention referred to FR 22(1)(a)(i) as well as the Central Civil Service (Revised Pay) Rules 1997. The learned counsel submitted that both the junior and senior Government servant belonging to the same cadre and both of them were promoted in identical post. The pre revised and revised pay scale in lower and higher post in which they were entitled to draw were also identical. The anomaly is directly a result of the pay revision providing higher incentive. The juniors were not drawing any higher salary than that of the applicants in the lower post. The anomaly did arise due to grant of advance increment to the junior officers who

passed the incentive examination later in point of time? 1 AUG 2008
The learned counsel particularly referred to the Note ग्रन्टी न्यायपोठ
mentioned below in Rule 7 of the CCA (RP) Rules 1997. Guwahati Bench

6. Mr A. Deb Roy, learned Sr.C.G.S.C opposing the application referred to FR 22(1)(a)(i) and also the decision rendered by the C.A.T, Cuttack Bench, Cuttack in O.A. 362 and 363 of 2000 disposed of on 6.8.2001, whereby the Cuttack Bench rejected the similar claim. Ms Chakraborty, the learned counsel for the applicant submitted that the decision of the Cuttack Bench is to be treated as a judgment per incuriam. The learned counsel submitted that a decision is given per incuriam when the Court had acted contrary to the provisions of the rules. Ms Chakraborty, learned counsel for the applicants submitted that the decision rendered by the Supreme Court in R. Swaminathan (supra) was on the facts of the case.

In the aforementioned case the junior employee was getting pay at a higher stage where he got the opportunity in ad hoc promotion while the senior did not get such opportunity. The issue involved in the aforesaid case was as to whether a senior employee who secured regular promotion on all India basis earlier than his juniors was entitled to get his pay stepped up with reference to the pay of his juniors with a higher stage because of the fact that junior was promoted by way of local and ad hoc arrangement. In view of the aforesaid promotion, the junior employee was drawing higher pay because of proviso to FR 22(I) and FR 26(a) which recognised service rendered on ad hoc promotion for pay fixation/increment on regular promotion. By virtue of ad hoc promotion junior may get pay more than his senior.

The decision of Swaminathan has not ruled out stepping up of pay on all situation. On the own showing of the respondents it was an extra ordinary situation.

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Guwahati Bench

7. Despite our tentative conclusion we are confronted with the decision of Cuttack Bench on the same situation. The applicants in the Cuttack Bench were holding the post of Senior Accountant and claimed for stepping up their pay equal to that of their juniors and got advance increment in the new pay scale. The Tribunal however in the light of the decision of R. Swaminathan and also on interpretation of FR 22(1)(a)(i) rejected the application.

8. A Bench decision of the C.A.T is binding on the another co-ordinate Bench on the ground of judicial comity, where a Bench does not accept as correct the decision on a question of law of another Bench, the only right and proper course to adopt is to refer to the Full Bench. For that the rule also provides. Law will be devoid of all its efficacy if it is thrown into confusion and uncertainty by conflicting decisions. Judicial decorum and legal policy also demands that such difference of opinion need to be authoritatively settled by a larger Bench. In that view of the matter we decline to accept the contention of Ms Chakraborty to treat the Cuttack Bench judgment as a judgment par incuriam and instead we would prefer to refer the matter to a larger Bench. We accordingly refer this application to a Full Bench to examine the following questions :

a) Whether on the facts and circumstances of the case the Cuttack Bench was justified in upholding the decision of the Department in refusing to stepping up of the pay of the seniors ?

b) Whether the benefit of stepping up of pay is inadmissible unless the anomaly is directly attributable to application of FR 22 (1)(a)(i) ?

c) Whether on the facts and circumstances of the case the respondents are justified in law in refusing to

step up the pay of the seniors who are paid less than the juniors in view of the extra ordinary situation ?

Pendency of this application shall not however preclude the respondents authority to consider the case of these applicants and other persons similarly situated as per law.

Registry to take necessary steps.

SD/ VICE CHAIRMAN

SD/ MEMBER (A)

TRUE COPY

কেন্দ্ৰীয় প্ৰশাসনিক অধিকৰণ

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কেন্দ্ৰীয় প্ৰশাসনিক অধিকৰণ
গুৱাহাটী ন্যায়পীঠ
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গুৱাহাটী ন্যায়পীঠ, গুৱাহাটী

কেন্দ্ৰীয় প্ৰশাসনিক অধিকৰণ
Central Administrative Tribunal

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গুৱাহাটী ন্যায়পীঠ
Guwahati Bench

Referred on - 14-6-2002
Reply Com - 16-7-2002

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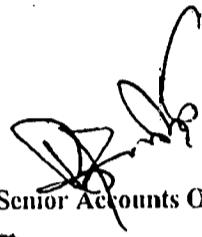
OFFICE OF THE ACCOUNTANT GENERAL (R&E) ASSAM
MARDAMGRON, BELTOLA, GUWAHATI 781 029

NO. ADMN 1/3-8/99-2000(Part II)/677

Wednesday, June 05, 2002

The officials named below, who are also applicants in OA No. 39/2002 filed in the Gauhati Bench of the Central Administrative Tribunal, Guwahati are hereby informed that Headquarters office has, vide Circular letter No. 20/NGE/2002 issued under No. 12371-NGE (ENTT)/28-2002 dated 13.5.2002 (copy enclosed), agreed to set right the anomaly in the fixation of pay by allowing stepping up of their pay.

This is for information and necessary action.


Senior Accounts Officer (A)

Encl: as above

Shri Amitava Chatterjee, SA
Shri Kumar Paritosh Deb, SA
Shri Dibakar Majumdar, SA
Shri Sanjay Ranjan Dey, SA /Deposit

