

0/100
7
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 17/1/2003
R.A/C.P No.....
E.P/M.A No.....

1. Orders Sheet..... O.A. Pg.....1.....to.....2.....
2. Judgment/Order dtd 28/09/2003 Pg.....1.....to.....15..... Altered
3. Judgment & Order dtd..... Received from H.C/Supreme Court
4. O.A..... 17/1/2003 Pg.....1.....to.....72.....
5. E.P/M.P..... Pg.....to.....
6. R.A/C.P..... Pg.....to.....
7. W.S..... Pg.....to.....
8. Rejoinder..... Pg.....to.....
9. Reply..... Pg.....to.....
10. Any other Papers..... Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

Kahya
17/11/17

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No: 171/2003 /

Misc Petition No: X /

Contempt Petition No: X /

Review Application No: X /

Applicants: - Sri M.K. Kar & Ors.

Respondents: - Union of India & Ors.

Advocate for the Applicants: - Subhasis Talapatra, Adv.

Advocate for the Respondents: - C.G.S.C.

Notes of the Registry	Date	File	Order of the Tribunal
Application is in but not in time Admonition action is not filed C.R.	1.8.2003		Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice Chairman. The Hon'ble Mr. N.D. Dayal, Member (A).
Rs. 50/- deposited O.A. No 338/14 Dated 30/7/03.			Heard Mr. S. Talapatra, learned counsel for the applicant. The application is admitted. Call for the records.
<i>Done By Registrar</i>			It is has been stated by Mr. S. Talapatra, learned counsel for the applicant and Mr. A.K. Choudhury, learned Addl. C.G.S.C. for the respondents that this matter is analogous with O.A. No. 112/2003 which is posted for hearing on 28.8.2003. This case may also be listed alongwith the said O.A. for disposal. The respondents, if they desire may submit written statement in meantime.
Notice prepared & sent to DLS for arrg. the respondent No 1104 by Regd. A.D. D.No 1656 dt 16/5/03			Put up the matter on 28.8.2003 alongwith O.A. 112/2003 for hearing.
<i>Done 4/8/03.</i>			
No written statement has been filed.			<i>Member</i>
			<i>Vice-Chairman</i>

28.8.2003 Present: The Hon'ble Mr. Justice D.N.

Chowdhury, Vice-Chairman

The Hon'ble K.V.Prahala

Administrative Member.

Heard counsel for the parties. Judgment delivered in open Court, kept in separate sheets.

The application is allowed in terms of the order. No costs.

Member

Vice-Chairman

bb

9.9.2003

Copy of the Judgment
has been sent to the
Spee. for ~~Engineering~~
The same do the apply
as usual as to the
add. C.G.C. for the
replies

HS

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application Nos. 112 & 171 of 2003.

Date of Order : This the 28th Day of August, 2003.

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

THE HON'BLE MR. K.V.PRAHALADAN, ADMINISTRATIVE MEMBER.

O.A.112 of 2003:

1. Sri Nirmay Sindhu Deb
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Jamini Kanta Deb,
Kunjaban Road, Agartala
2. Sri Chunilal Debnath
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Manik Chand Debnath
Dhaleswar, Agartala
3. Sri Srikanta Bhattacharjee
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Bhabataran Bhattacharjee
Rabindra Palli
79 Tilla, Agartala
4. Sri Mukundalal Choudhury
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Mohendra Mohan Choudhury
AG's Qrs. Complex
79 Tilla, Agartala
5. Sri Dinesh Ch. Das
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Banamali Das
Indranagar, Agartala
6. Sri Kajal Ch. Deb
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. P. C. Deb
Banamalipur, Agartala
7. Sri Amal Kr. Bhattacharjee
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
Lt. Debendranath Bhattacharjee
AG's Qrs. Complex

79 Tilla, Agartala

8. Sri Ramani Ch. Deb
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Rohini Kr. Deb.
Jagaharimurah, Agartala
9. Sri Panna Lal Chakraborty
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. R K Chakraborty
Supari bagan, Krishnanagar
Agartala
10. Sri Pradip Kr. Chakraborty
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Prabir Kr. Chakraborty
Ker Chowmuhan
Krishnanagar, Agartala
11. Sri Tarun Kanti Das
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Kshetra Mohan Das
AG Colony
Kabar Khala, Agartala
12. Sri Basudev Kangsa Banik
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Satya Narayan K. Banik
Kabar Khala, Indranagar, Agartala
13. Sri Indu Bhusan Mitra
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Haribal Mitra
Ramnagar Road No. 5
Agartala
14. Sri Kalipada Deb
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Prafulla Kr. Deb
AG Colony, Kabar Khala
Indranagar, Agartala
15. Sri Dipak Sengupta

Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Himangshu Sengupta
AG's Qrs. Complex, 79 Tilla
Agartala

16. Sri Ramaprasad Bhattacharjee
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Rakesh Ch. Bhattacharjee
Jagatpur Road, Indranagar
Agartala

17. Sri Dipak Rn. Ghosh
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Gopesh Rn. Ghosh
Kalibari Road, Jagatpur Road
799005

18. Sri Kalyan Kr. Das.(II)
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Bhagyeshwar Das
Chandrapur, Agartala

19. Sri Pradip Kr. Chanda
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Prafulla Kr. Chanda
AG Colony, Kabar Khala
Indranagar, Agartala

20. Sri Anup Bhattacharjee
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Rabindranath Bhattacharjee
Kalibari Road, Jagatpur
Abhoynagar, Pin-799005

21. Sri Arabinda Choudhury
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Hrishikesh Choudhury
Banamalipur, Agartala
Pin-799001

22. Sri Kiriti Roy Choudhury
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura

S/o. Lt. Karunamoy Roy Choudhury
AG's Qrs. Complex
79 Tilla, Agartala

23. Sri Sandip Choudhury
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Shri J. M. Choudhury
Arundhatinagar, Agartala
24. Smt. Kaberi Choudhury
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
W/o. B N Choudhury
Banamalipur, Agartala
25. Smti. Chandana Roy
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
W/o. A B Roy
AG's Qrs. Complex
79 Tilla, Agartala
26. Sri Tushar Kanti Ghosh
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Matilal Ghosh
Nandan Nagar, Agartala
27. Smti Maju Bhattacharjee
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
W/o. R P Bhattacharjee
Jagatpur Road, Indranagar
Agartala-799006
28. Sri Sankar Ch. Deb
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Subodh Ch. Deb
Bardawali, Agartala
29. Sri Braja Sadhan Jamatia
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Raj Sadhan Jamatia
Vill. Jamaria, Maharani
Udaipur
30. Smti Kanan Rani Biswas

Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
W/o. Lt. S. K. Biswas
Bhattacharjee, Arundhatinagar
Agartala

31. Sri Sadhan Ch. Sarkar
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Mani Ram Sarkar
AG's Qrs Complex
79 Tilla, Agartala
32. Sri Monaj Sil
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o Lt. Lalit Mohan Sil
Vill. Kashipur, Reshambagan
Agartala
33. Sri Sibudas Saha
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Gopimohan Saha
Kunjaban Colony
Abhoynagar, Agartala
34. Smti. Mina De
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
W/o. Sukumar Deb
Arundhatinagar, Agartala
35. Sri Partha Pratim Majumder
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. A. K. Majumder
Ramnagar Road No. 5
Agartala
36. Sri Swapan Roy
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. N. Roy
Pandavpur, Sekharkut
Amtali
37. Sri Sanjoy Sengupta
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura

S/o. Shri Bijoy Sengupta
Ramnagar Road No. 6
Agartala

38. Sri Arabinda Saha
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. R. M. Saha
Hatipara
Shalbagan, Agartala

39. Sri Subhash Ch. Das
Asstt. Audit Officer, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Upendra Ch. Das
79 Tilla, AG's Qrs Complex
Agartala

40. Sri G. R. Paul
Asstt. Audit Officer, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Gopesh Ch. Paul
AG's Qrs. Complex
79 Tilla, Agartala

41. Sri Nirode Chakraborty
Asstt. Audit Officer, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. N. K. Chakraborty
AG's Qrs. Complex
79 Tilla, Agartala-799006

42. Sri Kalyan Kr. Das
Asstt. Audit Officer, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. K. K. Das
Kunjaban, Agartala-799005

43. Sri Kirti Kr. Datta
Asstt. Audit Officer, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. B. Datta
Ramnagar Road 3
Agartala-799002

44. Sri Anil Baran Datta
Asstt. Audit Officer, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. N. K. Datta
Krishnanagar, Agartala

45. Sri Parimal Datta Choudhury
Asstt. Audit Officer, posted at the office of
the Accountant General (Audit), Tripura
S/o. Shri B. Datta Choudhury
AG's Qrs. Complex
79 Tilla, Agartala

46. Sri Arunendhu Bikash Roy
Asstt. Audit Officer, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. A. B. Roy
AG's Qrs. Complex
79 Tilla, Agartala-799006

47. Sri Phani Bn. Mitra
Asstt. Audit Officer, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. M. C. Mitra
Ramnagar Road No. 2
Agartala

48. Sri Sunil Nath Choudhury
Asstt. Audit Officer, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. R Nath Choudhury
Banamalipur, Pin-799001

49. Sri Jaydip Ghosh
Asstt. Audit Officer, posted at the office of
the Accountant General (Audit), Tripura
S/o. Shri M. Ghosh
Ramnagar Road 11, Agartala

50. Sri Tapash Ch. Majumder
Asstt. Audit Officer, posted at the office of
the Accountant General (Audit), Tripura
Lt. A. C. Majumder
Indranagar, Agartala

51. Smti Gouri Roy Choudhury
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
W/o. J. P. Roy Choudhury
Kunjaban, Agartala-799006

52. Sri Sudhangshu Rn. Dey
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. B. B. Dey

A. R Road, Bhati Abhoynagar
Agartala

53. Smti Indrani Saha
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
W/o. Asish Roy
Melarmath, Gangail Road, Agartala
54. Sri Jyotirmoy Das
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. S C Das
AG's Qrs. Complex
79 Tilla, Agartala
55. Sri Niva Chakraborty
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
W/o. R L Chakraborty
Rammagar Road 3/4, Last crossing
Agartala
56. Sri Subhash Ch. Bose
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. S. K. Bose
AG's Qrs. Complex
79 Tilla, Agartala
57. Sri Jadav Ch. Das
Asstt. Audit Officer, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. J. C. Das
Kabar Khala
Indranagar, Agartala
58. Sri Pares Ch. Das
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. N. Das
Kunjaban Colony
Abhoynagar, Agartala
59. Sri Arun Ch. Nath
Asstt. Audit Officer, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. R M Nath
Kabar Khala, Indranagar
Agartala

60. Sri Subhash Ch. Paul
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Girish Ch. Paul
Santipara, Agartala

61. Sri Dhirendra Bhattacharjee
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. S. Bhattacharjee
AG's Qrs. Complex
79 Tilla, Agartala

62. Smti Meena Das
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
W/o. Kalyan Kr. Das
Kunjaban Colony
Abhoynagar, Agartala 799005

63. Sri Subhas Kar
Audit Officer, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. S K. Kar
Ramnagar Road 2
Agartala 799002

64. Sri Subinoy Paul
Audit Officer, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. S. C. Paul
Krishnanagar, Kalibari Road
Agartala

65. Smti Kanan Bala Bhattacharjee
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
W/o. N. Bhattacharjee
Malanchaniwas, Qrs. Complex
Agartala 799005

66. Sri Animesh Majumder
Asst. Audit Officer, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. N Majumder
Dhaleswar Road No. 8/9
Agartala 799007

67. Sri Ajoyendu Deb
Asst. Audit Officer, posted at the office of
the Accountant General (Audit), Tripura

63
Lt. N. M. Deb
Srinagar Lane 3
Arundhatinagar, Agartala

68. Sri Santosh Kr. Deb
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Shri Sanath Kr. Deb
AG's Qrs. Complex
79 Tilla, Agartala
69. Sri Bishnupada Banik
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Surendra Nath Banik
Housing Board Complex
79 Tilla, Agartala 799006
70. Smti. Sanchali Roy
Asst. Audit Officer, posted at the office of
the Accountant General (Audit), Tripura
W/o. Shri S. R. Roy
Joynagar Lane 1, Agartala
71. Sri Nipendra Ch. Biswas
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Shri P. C. Biswas
Ushabazar, Airport, Agartala
72. Sri Sankar Sevak Das
Asst. Audit Officer, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. S. C. Das, AG's Qrs. Complex
79 Tilla, Agartala
73. Sri Sushil Das
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. M. C. Das
Dhaleswar, Agartala
74. Sri Dipankar De
Senior Auditor, now posted at the office of
the Accountant General (Audit), Manipur
S/o. Lt. Nalini Rn. De
79 Tilla, Kunjaban, Agartala
75. Shri Bibhuti Bhushan Shome
Retd. Senior Auditor, posted at the office of

the Accountant General (Audit), Tripura
Jagatpur, Agartala

76. Shri Dipak Ch. Sarkar
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
Jirania, Agartala
77. Sri Kumud Behari Das
Retd. Senior Auditor
S/o. Lt. P. C Das
Vill. Subhasnagar
P. O. Birendranagar
West Tripura
78. Sri Asit Dey
Asst. Audit Officer, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Chandramani Das
AG's Quarters' Complex
79 Tilla, Agartala
79. Sri Nalini Kanta Das
Audit Officer, now posted at the office of
the Accountant General (Audit), Manipur
S/o. Lt. Laxmikanta Das
Town Indranagar, Dhaleswar
Agartala
80. Sri Fani Bhusan Dey
Retd. Sr. Auditor
S/o. Lt. Gouranga Das
Indranagar (South)
Agartala
81. Sri Prabodh Chandra Bhattacharjee
Retd. Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. Lt. Promode Ch. Bhattacharjee
North Banamalipur
Agartala
82. Sri Sushil Chandra Paul
Retd. Senior Auditor
S/o. Lt. Balaram Paul
Near Kathaltali
Bhati Abhoynagar
Agartala
83. Sri Amar Krishna Dutta

Asstt. Audit Officer, posted at the office of
the Accountant General (Audit), Tripura
S/o. Late A. K. Dutta
Office of the Accountant General (Audit), Agartala

84. Sri Karunamoy Nath
Asstt. Audit Officer, posted at the office of
the Accountant General (Audit), Tripura
S/o. Late D. C. Nath
AG Colony, Indranagar
Agartala

85. Sri Ramendu Roy Choudhury
Senior Auditor, posted at the office of
the Accountant General (Audit), Tripura
S/o. R. Roy Choudhury
Indranagar, Agartala

APPLICANTS

By Advocate Mr. S. Talapatra.

VERSUS

1. The Union of India
represented by the Comptroller
& Auditor General of India
New Delhi
2. Comptroller & Auditor General of India
New Delhi
3. The Secretary to the Govt. of India
Ministry of Finance
Department of Expenditure
New Delhi
4. The Accountant General (Audit) Tripura
Agartala

RESPONDENTS

By Mr. A. K. Chaudhuri, Addl. C. G. S. C.

16
O.A.171/2003:

1. Shri Mrinal Kanti Kar
Audit Officer, Posted
at the Office of the
Accountant General (Audit), Tripura
S/o Late Manmath Kr.Kar
AG's Quarter Complex, 79 Tilla
Agartala.
2. Shri Manash Bhattacharjee
Audit Officer, posted at the
Office of the Accountant General(Audit)
Tripura, S/o Late M.M.Bhattacharjee
AG's Quarter Complex, 79 Tilla
Agartala.
3. Shri Santosh Debnath
Asstt. Audit Officer, posted at the
Office of the Accountant General(Audit)
Tripura, S/o Late P.M.Debnath
Jagatpur, Kalibari Road, Abhoynagar
Agartala.
3. Smti.Khela Roy Chowdhury
Senior Auditor, Posted at Office of the
Accountant General(Audit), Tripura
W/o R.Roy Chowdhury, Jagatpur Road
Indranager, Agartala.
5. Shri Rabindra Ch. Datta, Retired Sr.Auditor
S/o Late Suresh Ch.Datta
Kumari Tilla
Agartala.
6. Shri Shyamal Kanti Roy
Retired Sr.Auditor
S/o Late Nagendra Nath Roy
Indranagar, Near I.T.I., Agartala. APPLICANTS.

By Advocate Mr.S.Talapatra.

VERSUS

1. The Union of India
Represented by the Comptroller and
Auditor General of India
New Delhi.
2. The Comptroller and Auditor
General of India
New Delhi.
3. The Secretary to the Govt. of India
Ministry of Finance
Department of Expenditure
New Delhi.
4. The Accountant General (Audit)
Tripura, Agartala. RESPONDENTS.

By Mr.A.K.Chaudhuri, Addl.C.G.S.C.

O R D E R

CHOWDHURY J.(V.C.):

The O.A. Nos.112 & 171 of 2003 involve commonality of facts as well as law. Therefore, both the cases are taken up for hearing together.

1. All the applicants are or were working as Sr. Auditor under the Accountant General (Audit), Tripura and sought for direction from the Tribunal for parity of pay scale with the Assistant working in the Central Secretariat and for implementation of the pay scale of Rs.1640-2900 w.e.f. 1.1.1996.

2. Admittedly, the issues raised in these two O.A.s are squarely covered by the decisions rendered by the Tribunal in O.A.45/1992 disposed on 2.11.1994 and O.A.63/1997 disposed on 14.9.1999. Similar issues were also raised before the Chandigarh Bench of this Tribunal which ultimately went up to the High Court of Himachal Pradesh, which by judgment and order dated 10.4.2003 in C.W.P.No.22/1998 directed the respondents to pay the Sr.Auditors the pay scale of Rs.1640-2900 for pre-revised scale of Rs.425-800 from the date it was granted to the Assistants in the Central Civil Secretariat. The aforementioned decisions categorically and unambiguously in ^{held} clear terms found that the Sr.Auditors working in the Office of the Accountant General (Audit) are also entitled to get the pay parity in their revised pay scale to the staff of Central Secretariat, Govt.of ^{India} ~~Assam~~. The applicants are similarly situated with those the applicants in O.A.45/1992 disposed on 2.11.1994, O.A.63/1997 disposed on 14.9.1999 as well as the O.A.85/2000 disposed on 19.1.2001 which is upheld by the Gauhati High Court in W.P.(C) No.7598 of 2001 disposed on 16.9.2002 as well as the

decision rendered by the High Court of Himachal Pradesh in C.W.P.No.22 of 1998 disposed on 10.4.2003. The respondents also did not dispute the similarities of these cases to the aforementioned cases.

3. We have heard Mr.S.Talapatra, learned counsel appearing on behalf of the applicants as well as Mr.A.K.Chaudhuri, learned Addl.C.G.S.C. for the respondents at length.

4. On overall consideration of the matter, we are of the opinion that the case of the applicants is squarely covered by the aforementioned decisions and therefore, the present applicants are also entitled to the similar benefits granted by the aforementioned judgments. In the set of circumstances the impugned order in both the cases passed by the Ministry of Finance & Company Affairs, Department of Expenditure bearing F.No.6/82/E.10/(B)/91 dated 28.2.2003 are liable to be set aside and accordingly, the same are set aside and the respondents are directed to re-fix the pay of the Sr.Auditors in the pay scale of Rs1640-2900/- for pre-revised scale of Rs.425-800 from the date it was granted to the Assistants in the Central Civil Secretariat with all consequential benefits.

The two applications are accordingly allowed to the extent indicated above.

There shall, however, be no order as to costs.

Sd/ VICE CHAIRMAN
Sd/ MEMBER (A)

1st April 2003

Guwahati Bench

19

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GAUHATI BENCH : GUWAHATI

O A No.

171

of 2003

Sri M.K. Kar and others ... Applicant.

Versus

U. O. I. and others.

List of Dates and Synopsis of the Application.

02.06.1984

Auditors cadre was constituted and the post redesignated as the Sr. Auditor in the scale of the Assistant in the Central Civil Secretariat.

01.01.1986

The Assistants were provided the scale of Rs.1640 - 2900 but the Sr. Auditor were denied despite recommendation and acceptance of the equal pay scale.

02.11.1992.

The Ld. CAT, Guwahati Bench held that recommendation of the expert body is breached in O.A. 45/92.

14.09.97

The CAT Guwahati Bench further directs to pass order regarding parity pay in O.A. 63 / 97.

04.02.2000

Order passed denying the parity.

contd..p/2

short

-: 2 :-

19.01.2001	The U.Q.A.T., Guwahati Bench quashed the order dt. 04.02.2000 and directs to pay the scale of pay of Rs.1640 - 2900 with all consequential benefits w.e.f. 01.01.86 to the Sr. Auditors.
16.09.2002	The Hon'ble Gauhati High Court affirms the order dt. 19.01.2001 in W.P. (C) 7598/2001.
10.04.2003	Similar order directing to provide the Scale of pay of Rs.1640 - 2900 to the Sr. Auditors by the High Court of Himachal Pradesh in C.W.P. 22 / 98.
19.10.2001	Interim order of the Gauhati High Court regarding implementation of the scale of pay Rs.1640 - 2900.
12.04.02	Office order in regard to compliance of the order of the Hon'ble High court dt.19.10.2001.
28.02.2003	Office Memorandum is issued stripping the said benefit from 01.01.1986. It seeks to give effect from 01.01.96.

✓ *sp. athen*

FORM - 1
(See Rule 4)

21
Filed Through
SRI DILIP
(GRIEVANCE
TRAILER)
30/07/2003

Application Under Section 19 of the Administrative Tribunal Act, 1985.

In the Central Administrative Tribunal
Guwahati Bench at Guwahati

O.A. No. of 2003.

Sri Mrinal Kanti Kar & others.

- Applicant

VS

The Union of India & others.

- Respondents.

I N D E X

<u>Sl.No.</u>	<u>Description of documents relied upon</u>	<u>Page No.</u>
01.	Application.	1-18
02.	ANNEXURE-1 : Letter of authorisation.	19
03.	ANNEXURE-2 : Copy of the order dated 02.11.1994.	20-34
04.	ANNEXURE-3 : Copy of the order, dated 14.09.1999.	35-40
05.	ANNEXURE-4 : Copy of the order dated 19.10.2001.	41 42 -47
06.	ANNEXURE-5 : Copy of the judgement dated 16.09.2002.	48-58
07.	ANNEXURE-6 : Copy of the judgement dated 07.01.2003.	57-68
08.	ANNEXURE-7 : Copy of the order dated 19.10.2001.	69
09.	ANNEXURE-8 : Copy of the order dated 12.04.2002.	70
10.	ANNEXURE-9 : Copy of the Office Memorandum dated 22.08.2003.	71-72

2

- 2 -

<u>Sl.No.</u>	<u>Description of documents relied upon</u>	<u>Page No.</u>
11.	VOKALATNAMA	73
12.	Letter to the Central Govt. Standing Counsel.	74

Total :-

74 (seventy four) pages

For use in Tribunal's
Office.

Mrinal Kanti Kar
Signature of the Applicant

Date of filing or
date of receipt by
post Registration No.

Signature of the Registrar

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH AT GUWAHATI

O.A. No. of 2003.

1. Shri Mrinal Kanti Kar, Audit Officer, Posted at the Office of the Accountant General(Audit), Tripura, Son of Late Manmath Kr.Kar, AG's Quarter Complex, 79 Tilla Agartala.
2. Shri Manash Bhattacharjee, Audit Officer, Posted at the Office of the Accountant General(Audit) Tripura, Son of late M.M.Bhattacharjee, AG's Quarter Complex, 79 Tilla, Agartala.
3. Shri Santosh Debnath, Asstt. Audit Officer, posted at the Office of the Accountant General(Audit) Tripura, son of late P.M.Debnath, Jagatpur, Kalibari Road, Abhoynagar, Agartala.
4. Smti.Khela Roy Chowdhury, Senior Auditor, Posted at office of the Accountant General(Audit),Tripura, wife of R.Roy Chowdhury, Jagatpur Road, Indranagar, Agartala.
5. Shri Rabindra Ch. Datta, retired Sr.Auditor, Son of late Suresh Ch.Datta, Kumari Tilla, Agartala.
6. Shri Shyamal Kanti Roy, Retired Sr.Auditor, son of late Nagendra Nath Roy, Indranagar, Near I.T.I., Agartala.

- APPLICANTS,

contd...p/2

Mrinal Kanti Kar
Santosh Debnath
Khela Roy Chowdhury
Shyamal Kanti Roy
Rabindra Ch. Datta

Minakshi Kantikar
Manas Chakraborty
Santosh Deb Nath
Kulab Roychowdhury
Sugandh Kant Roy
Rajendra Ch. Datta

- 2 -

VS

1. The Union of India,
Represented by the Comptroller and
Auditor General of India,
New Delhi.
2. The Comptroller and Auditor General of
India,
New Delhi.
3. The Secretary to the Govt. of India,
Ministry of Finance,
Department of Expenditure,
New Delhi.
4. The Accountant General (Audit)
Tripura, Agartala.

- RESPONDENTS.

DETAILS OF APPLICATION

01. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE.

The Application is made against the Office Memorandum bearing No.F.6/82/E-10(B)/91 dated 28.02.2003 and against the non implementation of the judgement and order dated 16.09.2002 passed in W.P.(C) No.7598 of 2001 confirming the Judgement and in O.A. 85/000, O.A.45/9 and O.A.63/97 of the Central Administrative Tribunal, Guwahati Bench, and also the Judgement and Order dated 10.04.2003 passed in W.P.(C) No.22 of 1998 and also against

Minakshi Kantikar
Maan Chakraborty
Santosh DabNath
Khele Roychondroy
Sugandh Kant Ray
Rakeshwar Ch. Datta

- 3 -

the Order bearing No. LL/86-2000/Vol-II dated 12.04.02.

02. JURISDICTION OF THE TRIBUNAL

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

03. LIMITATION

The Applicants further declare that the Application is within the Limitation period prescribed in Section 21 of the Administrative Tribunal Act, 1985.

04. FACT OF THE CASE

4.1) That, all the Applicants are or were holding the post of the Senior Auditor under the Accountant General(Audit) Tripura and they have been demanding Scale of Pay at par with Assistants working in the Central Secretariat and for purpose of implementation of the pay scale of Rs.1640-2900 w.e.f. 01.01.1986. Representations were made to the appropriate authority through the Union of the Applicants but no result has yielded. The Applicants have a common interest in the matter and the cause of action is identical and as such they are filing this petition together subject to leave of this Ld.Tribunal. For the purpose of representing the Applicants except the applicant No.1, the other Applicants have authorised the Applicant No.1 as their

Minakshi Kan
M. Kan
Santosh Deb Nal
Kulab Roy Choudhury
Suganand Nath Ray
Ranabirachandran
Ranabirachandran

- 4 -

agent to represent their case by a letter of authorisation.

A copy of the letter of authorisation is
annexed hereto and marked as ANNEXURE-1.

4.2) That, w.e.f. 01.03.1984 the Applicants were transferred to a separate cadre service created in the Indian Audit and Accounts Department and the posts were subsequently redesignated as Senior Auditors by a circular dated 02.06.1984 issued by the Comptroller and Auditor General of India. The Senior Auditors were placed at parity in their pay scale with Assistants in the Central Secretariat. The Assistants in the Central Secretariat were enjoying a pre-revised pay scale of Rs.425-800 and therefore the Senior Auditors of I.A. & A.D. are also entitled to the said pay scale allowed to the Assistant in the Central Secretariat from the date when the post of Senior Auditors were created i.e. from 01.03.1984. The 4th Central Pay Commission had recommended the same pay scale for both Assistants of Central Secretariat and Senior Auditors of I.A. & A.D. and the recommendation of the Pay Commission was accepted by the Govt. of India. Subsequently the Assistants in the Central Civil Secretariat were allowed the pay scale of Rs.1640-2900. But, the Senior Auditors of Indian Audit & Accounts Department were not given that benefit.

contd...p.5

Minal Kantkar
Manas Bhowmik
Santosh DebNata
Kiran RoyChowdhury
Suganya Kanti Ray
Rakshanda Ch. Datta

- 5 -

They were arbitrarily allowed a lower scale of pay of Rs.1400-2600. Despite representations by the representative Union, no positive outcome was there. A section of Senior Auditors filed an application under Section 19 of the Administrative Tribunal Act, 1985 being original application No.45/92 and the said application was disposed of by the Order dated 02.11.1994 with following observation and direction inter alia :

" It is true that the respondents have made value judgement which was within their exclusive province negativing the claims of Senior Auditors of IA & AD for higher scale. It is also true that the Fifth Central Pay Commission is expected to deal with the problem comprehensively. Yet we feel that injustice has been caused to the applicants. Our endeavour so far has been to point out that element of irrationality in the decision of respondents does not stand ruled out and that needs reconsideration of the matter. In this connection, the learned Counsel for the applicant refers to the latest decision of the Supreme Court in 1994 SCC(L&S)P.869 and submit that as the action of the respondents is found violative of Article 14 of the Constitution the

Contd.....P/6.

Minal Kant Kar
Prasanna Dabholkar
Santosh Debnath
Khela Roychowdhury
Suganesh Kant Roy
Rajendra Ch. Datta

- 6 -

pay scales fixed by them can be judicially interfered with as the principle of equal pay for equal work is breached as recommendation of the expert body i.e. Pay Commission has not been followed and therefore we should grant the relief. We however feel that we will be better advised to leave the matter for fresh and proper decision by the respondents. The respondents can always review their own decision when necessary. We would therefore recommend to the respondents in the interest of justice to re-examine the question and take a suitable decision afresh without postponing the issue to the report of the Firth Central Pay Commission. We do not make such a direction or stipulate a time limit as we have no doubt that the reasons that have persuaded us to make the recommendation as reflected in the foregoing discussion will receive due and expeditious attention from the respondents. The fresh decision whichever way it may be taken however shall be communicated to the applicants".

A copy of the said Order dated 02.11.1994 passed in O.A. No. 45/1992 is annexed hereto and marked as ANNEXURE.2.

4.3) That, there was no appeal against the said Judgement

Contd.....P/7.

Minjal Venkateswar
G. S.
Mass 13/6/92
Santosh Deb Nath
Khula Roy Choudhury
Suganesh Nambi Ram
Rakshidhara Datta

- 7 -

and thus it has attained its finality. Even then, the Respondents did not extend the benefits as per Memorandum dated 30.07.1990. Consequently Applicant of the said O.A. No.45/92 approached this Tribunal again by Original Application No.O.A. 63/97. By the Order dated 14.09.1999 the said O.A. was disposed of by the Tribunal with the following Order :

"We therefore have no hesitation of coming to the conclusion that the respondents did not properly scrutinise the findings of this Tribunal given in O.A. 45/92 dated 02.11.1994 and also the spirit of the judicial pronouncements. Mr. Deb Roy while supporting the action of the respondents has cited some decisions of the Supreme Court that the Tribunal/Court should not play a role of an employer by interfering with the pay scale. This is in our opinion, is well settled principle. But we feel that that order passed by this Tribunal which reached its finality, has not been fully complied with. The Tribunal having come to the conclusion that the nature of job, qualification, responsibility of the Senior Auditors are same or similar with that of the Assistants historically, they had been given the same scale of pay, Even the expert body like Fourth Central Pay Commission also gave similar scale. Government had already taken

Pravin Kant Var
Mars 13/8/2000
Santosh Debnath
Kulab Roychoudhury
Suklal Kant Ray
Ranindra Ch. Datta

- 8 -

a decision. We find no justifiable ground to make a departure from that decision of the Government earlier taken. Accordingly we direct the respondents to consider the true spirit and direction given in Judgement dated 02.11.1994 passed in O.A. 45/92 and to pass necessary and appropriate order regarding the parity of pay. This must be done as early as possible, at any rate, within a period of 4 months from the date of receipt of this Order".

A Copy of the said Order dated 14.09.99 is annexed hereto and marked as ANNEXURE- 3.

4.4) That, after the above Order has been passed by this Tribunal, the Deputy Director (Legal), Office of the Comptroller and Auditor General of India issued a D.O. Letter No. PCC/FT/ 97 dated 04.02.2000 intimating refusal of the said scale of pay, though the Accountant General (Audit) was previously communicated that Government has agreed in principle to accept the proposal of the Comptroller & Auditor General of India to grant a pay scale of Rs. 1640-2900 (Pre-revised) to the Senior Auditors in the I.A. & A.D. It is pertinent to point out that even after that policy decision for change in Government, the matter was later on remitted to the 5th Central Pay Commission and the said Pay Commission did not recommend parity in the pay scale of Senior Auditors

Contd.....P/9.

Prinpal Kanti Kar
Manas Bhattacharya
Santosh Debbarma
Kulab Roychowdhury
Suganesh Karthik Ray
Rakindra Ch. Datta

- 9 -

and Assistants in the Central Secretariat. The Commission recommended that the matter be examined by the anomalies committee which also did not recommend parity as aforesaid. Being aggrieved by the decision communicated by the letter dated 04.02.2000 the Applicants of the said Original Application approach again the Central Administrative Tribunal, Guwahati Bench by filing O.A. No.85/2000 which was disposed of on 19.01.2001 with the following Order :

" We have given our anxious consideration on the issue and in our considered opinion the reasons cited in the impugned order dated 04.02.2000 only reflect the extraneous considerations, overlooking the relevant considerations. The reasons cited in clause 9 on the purported ground of alleged disagreement in the JCM can not be upheld on the basis of the earlier finding on the issued by the Tribunal in O.A. No.45 of 1992. the impugned order dated 04.02.2000 is accordingly set aside and the respondents are directed to implement the order of the Tribunal dated 02.11.1994 in O.A. No.25/92 as well as the dated dated 14.09.1999 in O.A. No.63/1997 forwith and to give all consequential benefit to the applicants forwith".

Contd.....P/10.

Minal Konika
Manesha Debnath
Santosh Debnath
Khela Roychowdhury
Sugandh Kant Roy
Rakhi Ch. Datta

- 10 -

A Copy of the said Order dated 19.01.2001 is annexed hereto and marked as ANNEXURE-4.

4.5) That, the Respondents herein filed an application seeking Judicial Review of the said Order dated 19.01.2001 by filing a Writ Petition before a Division Bench of the Hon'ble Gauhati High Court being W.P.(C)No.7598 of 2001 which was disposed of by the Hon'ble Gauhati High Court by the Judgement and Order dated 16.09.2002 which upholds finding and Order of the Central Administrative Tribunal stating that there is no infirmity in the impugned Judgement passed by the Central Administrative Tribunal, Guwahati Bench in O.A. No.85/2000.

A copy of the said Judgement dated 16.09.2002 is annexed hereto and marked as ANNEXURE-5.

4.6) That, a similar Judgement has also been passed by the High Court of Himachal Pradesh at Simla on 07.01.2003 in C.W.(P) No.22 of 1998 directing that :

a) fix the pay of the Senior Auditors in the pay scale of 1640-2900 for pre-revised scale of 425-800 from the date it was granted to the Assistants in the Central Civil Secretariat.

Contd.....B/11.

Minal Kanti Kar
Manes ~~Shivnagar~~
Santosh Debbarma
Kulab Roychowdhury
Surjana Kanti Ray
Rakbindra Ch. Datta

- 11 -

b) release all consequential benefits, including arrears of pay and refixation of their pay in the revised pay scale in accordance with the recommendation of the 5th Pay Commission.

c) pay cost of Rs.5,000.00 to the Petitioner".

A copy of the said Judgement dated 07.01.2003 is annexed hereto and marked as ANNEXURE-6.

4.7) That during pendency of the Writ Petition the Hon'ble Gauhati High Court directed by the Order dated 19.10.2001 to fix the pay from the month of November, 2001 onwards as per the Judgement of the learned Tribunal which will be further subject to the final Order that may be passed in the Writ Petition.

A copy of the said Order dated 19.10.2001 passed in W.P.(C)7598 of 2001 is annexed hereto and marked as ANNEXURE-7.

4.8) That, in accordance with the said Order dated 19.10.2001 the Order was passed only in respect of Applicants in O.A. 85/92 and O.A. 63/97 for giving the higher pay scale

Contd.....P/12.

Meenal Kantkar
Planner Batches
Santosh Debkumar
Khele Raychandpur
Sugandha Kant Ray
Rajkiran Ray
Rajkiran Ray

- 12 -

as per the Order of the learned Tribunal subject to the final order in W.P.(C)7598 of 2001 under Reference No.LL/86/2000/Vol-II dated 12.04.2002.

A copy of the said Order dated 12.04.2002 is annexed hereto and marked as ANNEXURE-8.

4.9) That, thereafter, the Writ Petition filed by the Respondents herein, was dismissed, but the Respondents did not give effect of the said Judgement and Order in rem to the present Applicants despite their demands.

4.10) That, in the mean time the Respondents have issued one Office Memorandum No.F.6/82/E.10(B)/91 dated 28.02.2003 whereby date of effect on notional basis of the demand of pay scale was given from 01.01.1996 and actual payment will be made prospectively.

A copy of the said Office Memorandum dated 28.02.2003 is annexed hereto and marked as Annexure-9.

4.11) That, this is a clear deprivation of the Applicants herein and it is also a deliberate act to frustrate the judicial pronouncement in favour of the Senior Auditors working in Indian Audit & Accounts Department.

Minal Kanti Kar.
Manohar P. Chakraborty
Santosh Seth Nath
Khele Bhattacharya
Suganand Kanti Ray
Rakshika Ch. Datta

- 13 -

4.12) That, in a similar circumstances this Learned Tribunal held that :

" In view of clear pronouncement made by the Tribunal in its Judgement there was/is any room for getting away and to take a decision contrary to the Judgement rendered by the Tribunal. This application also involves as to whether the Tribunal in its Judgements left any elbow room to make any manoeuvre by the Respondents ".

The said finding is available in the Judgement and Order dated 19.01.2001 passed in O.A. 85/2000. As such the Office Memorandum dated 28.02.2003 is void ab initio contrary to the law, fraud on power and is bound to be set aside and/or quashed.

05. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1) For that, the Applicants are similarly situated like the Applicants of O.A. No.45/92 O.A. No.63/97 and O.A. No.85/2000 and as such they are also entitled to get the pay scale at par with the Assistants of the Central Civil Secretariat i.e. the scale of pay of Rs.1640-2900 for pre-revised scale of Rs.425-800 from the date it was granted to the Assistants in the Central Civil Secretariat.

Minakshi Kant Varan
Prasenjeet Bhattacharya
Santosh Devaraj
Kerala Poyachandur
S. S. Bhattacharya
Shri Anand Kant Ray
Rajendra Ch. Dalle

- 14 -

- 5.2) For that, all the referred Judgements and Orders are in rem as such the Respondents can not make any discrimination in implementation of those Judgements and Orders.
- 5.3) For that, the action of the Respondents is tainted by arbitrariness in state action which offends the provisions of Article 14 and 16 of the Constitution of India.
- 5.4) For that, it is the settled position of law that an act of arbitrariness is violative of Article 14 and if it effects any matter relating to public employment is violative of Article 16 and Article 14 of the Constitution of India. It is well settled that the state action must be on valid relevant principles applicable alike to all similarly situated persons and it must not be guided by any extraneous or irrelevant considerations because that would be denial of the quality.
- 5.5) For that, the rule of law mandates that discretion vested with the Government must be confined within clearly defined limits.
- 5.6) For that, the issue of parity has been well settled by the judicial pronouncement and by efflux of time those pronouncements have attained finality so far as the parity between the posts of the Senior Auditors

X Maina Kantikar
3, Plaza 13 Kachurie
Santosh Debnath
Khela Roychowdhury
Sugan Kant Roy
Rakshna Ch. Datta

in the I.A. & A.D. and the Assistants in the Central Civil Secretariat is concerned.

- 5.7) For that, the Office Memorandum dated 28.02.2003 is an affront to the judicial pronouncement and it must go.
- 5.8) For that, the Applicants are entitled to get the pre-revised scale of pay of Rs.1640-2900 from the date it was granted to the Assistants in the Central Civil Secretariat i.e. w.e.f. 01.01.1986 with all actual financial benefits.
- 5.9) For that, there are other grounds to grant the relief to the Applicants.

06. DETAILS OF THE REMEDIES EXHAUST :

The Applicants declare that they have availed of all the remedies available to them through their Association and those attempts have been reflected in the Judgement and Order of this Learned Tribunal. Copies of those Judgements and Order have already been annexed to this application.

07. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER GROUND :

The Applicants further declare that they have not previously filed any application/Writ Petition or suit

Shri
Primal Kant Kumar
Mines & Steel
Santosh Debnath
Khela Roy Choudhury
Shivam Kant Roy
Riddhima Ch. Datta

- 16 -

regarding the matter in respect of which this application has been made, before any Court or any other authority or any other bench of the Tribunal nor any such application/Writ Petition or suit is pending before any of them.

08. RELIEFS SOUGHT

In view of the facts mentioned in Para 6 the Applicants pray for the following reliefs :

This learned Tribunal would graciously be pleased to grant the following reliefs :

- 1) direction on the Respondents to fix the pay of the Senior Auditors in the pre-revised scale of pay of Rs.1640-2900 (corresponding pre-revised scale of Rs.425-800) from the date it was granted to the Assistants in the Central Civil Secretariat with all actual financial benefits.
- ii) direction on the Respondents to released all consequential benefits including arrears of pay refixation of their pay in accordance with the recommendation of the Pay Commission in respect of the Assistants in the Civil Secretariat.

6/Manjal Kanti
Mam Bhattacharya
Santo Sh. Debnath
Khela Roychowdhury
Suganu Monk Roy
Ranindra Ch. Datta

iii) quash the Office Memorandum No.F.6/82/E.10(B)/91
dated 28.02.2003 forthwith and in no time.

iv) pay cost of this application of the Applicants.

v) pass such further order or ordefs as seem fit and proper having regard to the circumstances of the case.

09. INTERIM ORDER, IF ANY PRAYED FOR :

Not at this state.

10. IN THE EVENT OF APPLICATION BEING SENT BY THE REGISTERED POST ETC.

The application is being presented in the Guwahati Bench of the Tribunal through the appointed Counsel.

11. PARTICULARS OF BANK DRAFT

UCOBANK DD No. 338114 dt. 30.07.2003

12. LIST OF ENCLOSURES :

a) 6(Six) Copies of Application.

b) 4(four) file size envelops.

e) Bank Draft for Rs.50/-

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

I, Shri Mrinal Kanti Kar, Son of Late Manmath Kumar Kar, aged about 55 years working as the Audit Officer in the Office of the Accountant General (Audit), Tripura, Agartala, resident of AG's Quarter Complex, 79. Tilla, Agartala do hereby solemnly verify for myself and on behalf of the Other Applicants being duly authorized that the contents of Para-1 to 4, 6^{and} 7 are true to my knowledge and Paras 5 believe to be true on legal advice and that I have not suppressed any material facts.

Date : 20.07.2003 Mrinal Kanti Kar
Place : Agartala. Signature of the Applicant

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

AUTHORISATION

For filing original Application and other petitions/applications in respect of the revised pay scale of Senior Auditors and its date of effect i.e 01.01.1986 before the Central Administrative Tribunal at Guwahati Bench at Guwahati.

We, the following incumbents working in the office of the Accountant General (Audit), Tripura, Agartala do hereby authorise Shri Mrinal Kanti Kar, Audit Officer, son of Late Manmath Kar, Office of the Accountant General (Audit), Tripura, Agartala for representing us in the original the Application/other petitions in respect of the revised pay scale against the post of the Senior Auditors and for its actual financial effect from 01.01.1986 in the Central Administrative Tribunal, Guwahati Bench at Guwahati, as the fact or the relief is identical and common.

Dated:

The ...²⁰⁰³ July 2003

- 1) Pranav Datta Ray
- 2) Santosh Ray
3. Khela Roychowdhury
4. Suganand Kanti Ray
5. Ranendra Ch. Datta

**This is to certify that
this copy is the exact
copy of the original /
certified copy.**

Subhasis Talapatra
(Subhasis Talapatra)
Advocate.

20
ANNEXURE ✓ ✓

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

(Shillong Circuit)

Original Application No. 45 of 1992

Date of decision : 2 Nov. 1994

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

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

Shri Ranjit Choudhury & Others

Senior Auditors

Office of the Accountant General (Audit)

Assam-Meghalaya etc. at Shillong and Guwahati

..... Applicants

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

versus

1. Union of India

represented by the Comptroller &

Auditor General of India, New Delhi

2. Comptroller & Auditor General of India

New Delhi-110002

3. The Accountant General (Audit)

Assam, Meghalaya, Arunachal Pradesh

and Mizoram and Shillong.

..... Respondents

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

ORDER

CHAUDHARI J. V.C.

The applicants are Senior Auditors working in the office of the Accountant General (Audit), Assam- Meghalaya etc. at Guwahati and Shillong. Their claim for upward revision of their pay scale to Rs. 1640-2900 with retrospective effect in parity with the staff of Central Secretariat, Government of India has been denied by the respondents. Hence they have approached the Tribunal seeking that relief. The application was filed on 28.2.1992. It was heard by us during our sitting at Shillong.

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

This is to certify that this copy is the exact copy of the original / certified copy.

Subhasis Talapatra
(Subhasis Talapatra)
Advocate.

21

425-700. They were transferred after separation of the cadres to the posts of auditors carrying scale of Rs.

425-800. The applicants described these posts as higher functional grade posts.

4. The case of the applicants in short is that the erstwhile pay scale of the Assistants of the Central Secretariat was also the same namely, Rs. 425-800 and therefore the Senior Auditors or IA & AD enjoyed parity in their pay scales with Assistants of Central Secretariat from the date of creation of their posts on 1.3.1984. The Fourth Central Pay Commission in its report prescribed the same revised pay scale for pre existing scale of Rs. 425-800 for both, Assistants of Central Secretariat and Senior Auditors of IA & Ad. The recommendation was accepted by the Government of India. However, they have issued orders on 31.7.1990 only in respect of Assistants of Central Secretariat with effect from 1.1.1986 thereby revising their pay scale to Rs. 1640-2900. The applicants Senior Auditors of IA & AD are however not given that benefit. They have therefore to continue in the lower pay scale of Rs. 1400-2600. They filed representations claiming the extension of the benefit of revised pay scale of Rs. 1640-2900, to the Government of India through the Accountant General (Audit). However they did not receive any reply nor their demand was acceded to although benefit to revision was extended to the employees of some other departments under the administrative control of different Ministries of the Government of India. In the premises the applicants allege that the refusal of the Government of India to give them the benefit of revised pay scale on parity with the staff of the Central Secretariat Service is discriminatory, capricious and in violation of the constitutional provisions. They complain that thereby they are given a differential treatment and by introducing in parity and internal relativity in the pay scales has occurred. They contend that they stand on par with the staff of Central Secretariat Service which has been given the benefit of revised pay scale for the following reasons :

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

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

- 5. Initially the respondents filed a short reply and raised preliminary objection to the maintainability of the application contending that the subject matter of the application is under consideration in the National Coun-

cit (JCM) and therefore it cannot be decided by the Government unilaterally and since under the JCM scheme pay and allowance is an item for which compulsory arbitration is provided the application was premature and deserved to be dismissed. That was controverted by the applications by filling a rejoinder contending therein that time the JCM is not departmental remedy and it cannot override the jurisdiction of the Tribunal. At one stage the Tribunal was informed that the respondents were contemplating to apply to the Chairman of the Central Administrative Tribunal for transferring all the cases pending before different benches involving the same issue to one bench. In view of the above, we called for clarification vide dated 21.9.1994 as to whether any decision has been taken by the JCM which will govern all the Senior Auditors of the Audit Branch generally, whether the JCM will be in a position to consider the case of the applicants if this Tribunal is inclined to direct it to do so and whether the respondents have decided or not to approach the Principal Bench or transfer of all similar cases before one bench. We were informed by the learned counsel for the respondents in writing that there was no proposal to approach Principal Bench for transfer of the cases, that the case of Senior Auditors of IA & AD was delinked from the general issue in the National Council as the committee of National Council (JCM) which was constituted have decided in its meeting to recommended to the National Council (JCM) that a disagreement may be recorded and that after delinking of the case, the Govt. of India considered the demand of the Senior Auditors and it has been rejected by the Government. The communication from the office of the Comptroller and Auditor General of India dated 5.10.1992 containing the above information has been placed on record. In view of the same the counsel for both sides have been heard at length.

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

The Tribunal has no jurisdiction to determine the pay scale to which the applicants are entitled as that is the executive function of the administration and courts ought not normally to interfere in such matters. The revised pay scale was prescribed under the Government of India, Ministry of personal Grievances and Pension O.M. No. 2/90-CS-IV dated 31.7.1990 for the duty posts included in the Assistant Grade of Central Secretariat Service, Grade 'C' stenographers of Central Secretariat Service and for Assistants and Stenographers in other organisations where the posts are in comparable graces with same classification and pay scales and the method of recruitment through open competitive examination is also the same. That was done in compliance with order of the Central Administrative Tribunal, Principal Bench. The post of Senior Auditor is filled by promotion from the cadre of Auditor having three years of Tribunal service in the cadre and not by recruitment through open competitive examination and as a such the condition regarding method of recruitment as envisaged by G.I.O. M. dated 31.7.1990 (Supra) is not fulfilled in the case of the applicants. The Government of India have also clarified that the above stated order dated 31.7.1990 is not applicable to other bodies in the pre-revised scale of Rs. 425-800 in other Government department etc. Where the method of recruitment is not through open competitive examination as in the case of Assistants (Stenographers of the Central Secretariat Service conducted by the UPSC). Thus according to the respondents the applicants do not fulfil the requirements of the O.M. regarding the same classification and method of recruitment. They reiterate that the method of recruitment to the post is not through the same open competitive examination conducted by the Staff Selection Commission for Assistants of the Central Secre-

45

23

23

tariat Service etc. and since the recruitment to the post of Senior Auditor is not made through the same examination the demand for extension of the benefit of the O.M. 31.7.1990 made by the applicants is not tenable. The respondents further state that the recommendation of the Fourth Central Pay Commission was considered by the Government. They seek to point out that Assistants who are members of Central Secretariat assist the Ministries in formulation and implementation of policies of the Central Government so also the stenographers Grade 'C' of Central Secretariat Service and Assistants of Central Secretariat Service are historically being treated on par in terms of pay scale. This parity was maintained by the Fourth Pay Commission also. Consequent to the revision of this pay scales of Assistants, in order to set right the anomaly pointed out by the Principle Bench of the Central Administrative Tribunal, as a logical corollary, the scale of pay of Grade 'C' Stenographers was also revised to Rs. 1640-2900. Thus according to the respondents the order (i.e. dated 31.7.1990) is neither discriminatory nor violative of the principle of 'Equal pay for Equal Work'. The respondents point out that with a view to develop an organisational pattern suited to the altered needs of audit and to improve the maintenance of the accounts of the State Govt. transactions the IA & AD was bifurcated with effect from 1.3.1984 into two separate streams under Accountants General with cadres of their own with higher pay scale to audit side against the common category pay scale for Account side and higher pay was granted to the senior auditors with effect from 1.3.1984 by the Govt. of India in comparison with their cannot parts in Accounts office in view of their arduous natures of job and responsibilities. It is contended that the nature of job and conditions of service of Assistants in the Central Secretariat and Senior Auditor in the IA & AD are different in the matter of recruitment, promotion, duties and responsibilities and they are not comparable and that more pay parity in the pre-revised scale of Assistant and senior Auditor is not the only criteria for treating the two posts as same so far as service condition is concerned. The respondents also contend that as Senior Auditors is a feeder cadre for the grade of Section Office of the IA & AD the applicants cannot claim the pay scale of Rs. 1640-2900 granted to the Section Officers. The respondents contend that the Senior Auditor in IA & AD and the Assistants of the Central Secretariat Service constitute two distinct classes as the nature of duties and responsibilities of the two categories is not identical, the method of their recruitment and future promotional prospect of the two categories is also different and as the Assistants of Central Secretariat are important functionaries in the Secretariat. It is stated that the note they record in the files is an important aid to taking policy decision. On the other hand the Senior Auditors perform functions, which cannot be termed as on aid in formulation of policy decisions. The respondents further state that since the applicants and the Assistants and Stenographers of Central Secretariat constitute two different and distinct classes, the Govt. can prescribe different pay scales and there is no violation of any Constitutional Provision in doing so. Thus the respondents submit that the applicants are not entitled to any relief and the application is liable to be dismissed. It is not necessary to set out the rejoinder of the applicants.

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

i. In the case of Central Secretariat Direct Recruit Assistants Association vs. Union of India and Others.

O.A. No. 1538/87 wherein the pay scale of Rs. 1400-2600 for the post of Assistant in the Central Secretariat Service notified by the Govt. on the basis of the recommendations of the Fourth Central Pay Commission was challenged, it was held by the Principal Bench of Central Administrative Tribunal by order dated 23.5.1989 that as the respondents have only accepted the recommendations of the Pay Commission the action of the respondents cannot be assailed as being arbitrary or violative of Articles 14, 16 and 39 (d) of the Constitution, nor any discrimination has been made by the Commission when it enhances the pay scales of certain officials nor discrimination can be attributed to the respondents when they accepted and implemented the recommendations of the Commission and though the pay scales are not determined by the classification in CCA Rules but vice versa, nevertheless the disturbance of the internal relativities was a legitimate grievance of the applicants (in that case) which had to be considered. The learned Members of the Bench came to the conclusion prime facio that there was an anomaly which could be properly considered by the respondents as it required detailed consideration. The anomaly was directed to be referred to the "Anomaly Committee" for disposal in The disturbance of internal relativities was held to occur for three reasons: Firstly, the Direct Recruit Assistants were in the highest pre-revised pay scale of Rs. 425-800. Secondly, they were the first rung of important functionaries in the Central Secretariat and thirdly, they stood out separately as a group among the officials covered by the (Central Fourth Pay) Commission's recommendations paras 8.41 to 8.44 of its report.

The applicants seek to derive advantage from this decision.

It is their case that their position is similar in as much as they were in the pre-revised pay scale of Rs. 525-800. Their duties as Senior Auditors involve special nature of work, skills and aptitude for effective audit functioning and that the Commission has also placed them on par with other categories carrying the pay scale of Rs. 425-800 and therefore they are similarly situated as the Direct Recruit Assistants and that in their case also anomaly arises and since the respondents have removed anomaly in the case of the Central Secretariat Assistants following this decision, they should be directed to remove the same in respect of the present applicants also. The respondents also reply on this decision in support of their contentions to a large extent.

- ii. In the case of B. Bhaskar and others Vs Union of India and other in D.A. No.427/HP/91 decided on 8.10.91 the Chandigarh Bench of the Tribunal was dealing with the application filed by Himachal Pradesh Civil Audit and Accounts Association and others praying for parity of pay with the Assistants of the Central Secretariat in the scale of Rs. 10452000. It appears that as at that stage the respondents had not taken any final decision no order was passed on the application while directing the respondents to take a final decision.
- iii. In the case of T. R. Vijoy Kumaran and other vs. Union of India and others in C.A. No.634/92 similar question fell for consideration before the Ernakulam Bench of the Tribunal. Similar Grounds as are raised by the present applicants were urged by the Senior Accountants working in the Accountant General's Office at Trivandrum. They claim parity of pay scale with the Assistants of the Central Secretariat Service. It appears that the representation of the applicants in the case was pending with the respondents. The Tribunal vide decision dated 28.4.1993 directed the respondents to consider the representation and take a decision in accordance with the law in the light of the Report of Fourth Pay Commission and bearing in mind the

29

25

principles laid down by the Supreme Court on the question of Equal pay for Equal work.

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

The respondents reply on these decisions:-

v. In the case of S.R.Dheer and Others vs. Union of India and another (ATR 1993 (1) CAT 480) the question related to the claim of Assistants and stenographers Grade 'C' working in the Central Administrative Tribunal for parity of pay scale with their counter parts in the Central Secretariat Service and Central Secretariat Stenographers Service namely scale of Rs. 1640-2900. The principal Bench in its decision dated 3.2.1993 observed that the law is well settled on the point that Equal pay cannot be denied on the ground that mode of recruitment was different. The argument of the respondents that there was rational basis for discrimination in the pay scales because the Assistants/Stenographers Grade 'C' stand as a class apart because of element of direct recruitment through Staff Selection Commission was rejected. It was found in that connection that the differentiation in the scale was not made on the basis of value judgement by those who were charged with administration in fixing the scales of pay and other conditions of service. It was held that the order dated 312.7.1990 enables the extension of the revised pay scale to other organisations where the posts were in comparable grades with same classification and pay scales. Whether the recruitment was made in one way or the other would hardly be relevant from the point of view of Equal Pay for Equal work. It was also held that the foundation for establishing the parity would lie in the nature and functions and the work of the two groups of persons, one in the Secretariat and the other in the Tribunal and that there was no disparity in pay scales in the said group prior to Fourth Pay Commission, which recommended the same scale for the said groups in recognition of similarity in nature of functions. It was noted that no additional duties and responsibilities were found to be entrusted to the Assistants/Stenographers Grade 'C' thereafter in the Secretariat so as to make a distinction.

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

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

vi. In the case of George Thomas and Others vs. Union of India and Others. D.A. No. 157/91 decided on 8.6.1994. The Ernakulam Bench of the Central Administrative Tribunal however negatived the claim of Senior Accountants in the Accountant General's office for parity in the scale of pay with the pay scale of Central Secretariat Assistants etc. After referring to the decisions of the Supreme Court in State of Uttar Pradesh and others vs. J.P.Chaurasia (AIR 1989 SC page 19), the observations of the Supreme Court in

the decision in Union of India and others vs. Shir Tapan Patashramji and Others C.A.233/91, the decision in Federation of All India Customs and Central Excise Stenographers and Others vs. Union of India and Other AIR 1988 SC page 1291 and in Union of India vs. Secretariat, Civil Audit and Accounts Association (1982 SCL page 530), it was held that having regard to the note of caution struck by the Supreme Court and having regard to the state of law, it was not within the province of the Tribunal to prescribe the scale of pay as prayed for. It was observed that it is not the function of the court to pronounce on such matters namely whether work is equal and whether the employees in question are similar and those are the matter for administrative Government and policy makers to decide. It was however left open to the applicants to raise their grievances before the Fifth the pay Commission. Eventually the application was dismissed.

The respondents repay on this decision.

vii. The applicants further rely open the observation of the emakulam Bench in the case of T.R. Vijaykimaran and other vs. Union of India, D.A. No. 634/92 decided on 28.4.1993, wherein the Senior Accountants in the A.G.'s office, Trivandrum were aggrieved by the denial of parity of pay and grant of higher scale which scale which has been given to Assistants of Central Secretariat and other Ministers. It appears that the representation of the applicants was still pending with the A.G. Hence respondents were directed to consider the matter in the light of the Report of IV Pay Commission amongst other grounds.

8. A survey of the aforesaid decisions other that in name of the cases except in the case of the Assistants and Stenographers Grade 'C' working in the Central Administrative Tribunal that relief as prayed was fully granted on the basis of similar Contentions as are raised by the applicants. As far as the decision of the Principal Bench in the case of Central Secretariat Direct Recruit Assistants Association is concerned only a limited direction was given to the respondents to remove the anomaly as regards disturbance of internal relativity. The respondents respected the judgement and delinked the case of the Central Secretariat Direct Recruit Assistants but have declined to grant similar relief to the applicants. However, merely from that circumstance it would not automatically follow that a case of discrimination stands established. It is however clear that the respondents have not considered the anomaly in the case of the applicants and have rejected their claim.

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

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

We now proceed to examine these points.

10. We are somewhat surprised at the stand of the respondents. On the one had they have raised the preliminary objection to the maintainability of the application on the ground that under KCM Scheme 'Pay

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

5th Pay Commission constituted by the Govt. of India is examining the entire gamut of pay structure of the Govt. Servants. Further, on the directions of the Central Administrative Tribunal, Chandigarh Bench in D.A. 457/91(427/917) the question whether the representation of the applicants for parity in pay scales could be considered separately was examined in consultation with the Department of Legal Affairs, Govt. of India. On obtaining the advice of the Department of Legal Affairs, the issue was delinked and considered by the Government. But the demand was rejected”.

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

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

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

These aspects may now be examined in detail.

12. Historical parity

i. It is averred that the erstwhile pay scale of the Assistants of the Central Secretariat was the same namely Rs. 325-800 and therefore the Senior Auditors of IA & AD enjoyed parity in their pay scale with Assistants of Central Secretariats from the date of creation of their posts on 1.3.1984. It is further averred by the applicants that the Fourth Central pay Commission had recommended the revised pay scale of Rs. 1400-2600 for the existing pre-revised scale of Rs. 425-800 and suggested. The same pay scale for both Assistants of Central Secretariats and Senior Auditors of IA & AD. It is pointed out that the said recommendation was accepted by the Govt. of India and has been given effect to from 1.1.1986 vide Govt. of India, Ministry of Finance, Department of Expenditure Resolution No. 14(1)/IC/86 dated 13.9.1986 and Notification No. F 15(1)/IC/86 dated 13.9.1986. These averments have not been controverted by the respondents vide para 5 of the written statement.

ii. The respondents however have glossed over this position in para 8 of the written statement by replying upon only that part of the report of 4th pay commission (in para 9.17) which noted that the

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

iii. In the written argument submitted on behalf of the respondents it is stated that the parity between the Senior Auditors of IA & AD and Assistants in CSS has existed only between 1.3.1984 and 31.12.1985 and there was nothing historical about it as was the case with Grade 'C' Stenographers of CSSS. The submission also appears to be half hearted because by establishment order No. 18 issued on 1.3.1984 the Auditors were redesignated and placed in the scale of pay of Rs. 425-800 as Senior Auditors. The pay scale of the Assistants of the Central Secretariat was also the same i.e. Rs. 425-800. The Fourth Pay Commission recommended revised pay scale of Rs. 1400-2600 for the existing pre-revised scale of Rs. 425-800 for both. How then can it be logical to say that historically there was no parity? Historically would mean in the context of the pre-revised scale which was the spring board for revision and the grouping was found to be equal the Fourth Pay Commission. We are therefore inclined to hold that historically there was parity in the pay scale of applicants and Assistants in Central Secretariat. That however cannot be the sole criterion to determine whether applicants are entitled to be given parity in the revised scale. That would depend on other factors which may now be considered.

13. Qualification

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

ii. These averments contained in para 4(m) of the application have not been controverted by the respondents. They have however contended that the conditions of recruitment are different in the two cadres. They point out that there is no Direct Recruitment to the cadre of Senior Auditors. All the posts are filled in by promotion from the cadre of Auditors having 3 years continuous service in the grade. That however does not appear to be wholly correct as the applicants have stated that for such promotion qualifying at a departmental examination with limited number of chances is essential for the promotion. They have also stated that failure to pass in the departmental examination would result in either reversion to the lower post of Clerk or cessation of appointment. These statements have not been denied by the respondents. That shows that mere length of service of 3 years is not alone sufficient for promotion. The respondents have indeed referred to the requirement of qualifying at departmental examination for further promotions from Senior Auditors post. It therefore follows that in so far as qualification for recruitment is concerned both the

cadres are similarly placed. It is not shown that the Secretarial cadre of Assistants has to undergo more arduous test than the applicants. The applicants thus cannot be considered ineligible to be given the same pay scale. Moreover this contention did not find favour with the principal Bench in S. Dheer's case (Supra).

14. The nature of duties and differentiation in scales.

i. The applicants aver that the objective in creating a separate cadre for audit was to develop expertise and efficiency required for auditorial functioning. They rely on the various provisions contained in Accountant General's Manual of Instructions for recruiting of cadres and contend that these indicate that higher pay scale sanctioned by the Government of India was in view of special nature of work, skills and aptitude required for audit functioning. They point out that the Govt. recognised that the two different streams of posts namely Senior Auditors of IA & AD and Assistants of Central Secretariat have to perform equal/identical work when equal pay scale was sanctioned with effect from 1.3.1984 both. The applicants further rely on the circumstance that the Fourth Pay Commission has maintained the parity and that the Govt. of India had equated the two sets of posts in consideration of the expertise and efficiency required for auditorial function. They contend that the nature of duties and functions as well as measure of responsibilities is similar. Again referring to the report of the Fourth Pay Commission, they point out that the Commission has adopted (in para 8.41 of its report) the principle of fair comparison and internal relativity in case of Inspectors of Central Excise and same would be the position of Senior Auditors.

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

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

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

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

Their grievance is that there was no justification for choosing the Assistants in Central Secretariat to be given benefit of higher scale of Rs. 1640-2900 by D.M. dated 31.7.1990 denying the same benefit to them since all along they were placed in the same scale and which fact according to them would suggest that nature of their duties is same and they are similarly situated. The applicants therefore attribute discrimination to the respondents. They contend that by reason of giving differential treatment to them by introducing two types of revision in the same pre-revised scale causing disturbance in parity and internal relativity in the pay scales in discrimination is apparent. They contend that the differentia so introduced as regards pay scale is irrational and unreasonable.

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

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

vii. The respondents however state in para 9 of the written statement that the Govt. of India granted higher pay to Senior Auditors with effect from 1.3.1984 in comparison with their counterparts in Accounts Offices in view of their arduous nature of job and responsibilities. The respondents admit that as per Manual of Instruction for restructuring of cadres in IA & AD issued by the Comptroller and Auditor General the primary purpose of restructuring of the offices was to develop an organised pattern suited to attend needs of audit and to improve the maintenance of the accounts of the State Govt. transactions and the senior Auditors were sanctioned higher scale i.e. Rs. 425-800 in audit in comparison with the counterparts in the Accounts side in recognition of the special nature of work, skills, and aptitude required for audit function. Yet their grievance is that the Fourth Pay Commission in its report clubbed the Assistants of CSS and the Senior Auditors of IA & AD together. Hence the Govt. of India has to re-determine the revised

scale of Assistants taking into consideration the higher duties and responsibilities assigned to the cadre of Assistants. We find this explanation to be one sided because it simply justifies why the benefit of higher scale was extended to the Assistants but does not explain as to why same consideration could not apply to the applicants. It is not stated that the duties and responsibilities of the Senior Auditors are not 'higher' duties' or that the responsibilities assigned to them are higher.

viii. The respondents contend that the benefit given by ICAR or University Grants Commission cannot be taken into account as it is contrary to the instructions issued in the D.M. dated 31.7.1990 and infact steps are directed to be taken to withdrew these benefits.

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

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

1. Historically there was parity in scales.
2. The Fourth Pay Commission recommended uniform scales. There is no convincing reason shown to depart therefore.
3. The contention of the respondents that the senior Auditors do not come through open competitive examination in our view is not germane to decide the similarity in the nature of the two posts having regard to the common educational qualification prescribed at entry level and the essentiality of the departmental examination to be passed and requisite length of service prescribed for promotion to the post of Senior Auditors. This contention also did not find favour with the Principal Bench in the case of S. Dheer & Others (Supra) as stated earlier also.
4. The Accountant Generals' office was bifurcated admittedly to provide better and efficient audit service suited to the altered needs of audit and improve the maintenance of the accounts of the State Govt. transactions. The nature of work of the Senior Auditor therefore cannot be regarded in comparison to bit of lesser importance than that of the Assistants in Central Secretariat or of Stenographers Grade 'C' in CSSS.
5. The circumstance that the Secretariat staff aids the Ministries in formulation of policies as they put up notes on concerned topics is part of their job. It is not demonstrated by the respondents that involves any special knowledge or specialised training. As compared to it the Senior Auditors have to qualify at a departmental examination after gaining experience and knowledge at least for 3 years to achieve professional expertise for audit functioning which is not disputed. It cannot therefore be conceived that the nature of work of Senior Auditors is of lesser significance in running the State craft in comparison with Secretariat staff.

Even according to the respondents the job of the applicants is of arduous nature and responsibilities.

6. The other organisation namely ICAR, University Grants Commission as well as ICAR found comparability of Assistants working under them and Secretariat staff reasonable. Although that may not be binding upon the respondents it can surely be looked upon to understand that the work of Senior Auditors in Audit Department is of no less importance than of the Assistants in the Secretariat.

The decision of the Principal Bench of Central Administrative Tribunal in the case of S Dheer & Other (Supra) is also illustrative on the point.

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

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

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

With respect, we think that similar is the situation in the instant case. It is material to note in that connection that in the written statement the respondents have stated that in para 8.41 of its report the Fourth Pay Commission has clubbed Assistants of Central Secretariat and Senior Auditors of IA & AD together in the pre-revised scale of rs. 425-800. The respondents acted on the basis of the above judgement so far as Secretarial staff is concerned. We are not satisfied that any special reason has been shown to differentiate the Senior Auditors.

xi. In view of the above circumstances we are inclined to reject the contention of the respondents that the Assistants of the Central Secretariat and the Senior Auditors in the IA & AD constitute two distinct classes. We are inclined to hold that they are required to be treated as of the same class as found by the Fourth Pay Commission. We are not satisfied that any rational or reasonable criteria is shown to exist to differentiate the two sets of posts. Consequently we are inclined to hold that there arises disturbance of

33

internal relativity in the pay scales leading to an anomaly which is required to be removed by the respondents. As a consequence we are also inclined to hold that as the applicants are unequally treated their grievance of discrimination is fully justified. We are inclined to hold that the nature of work in the two sets of posts attracts the principle of Equal Pay for Equal Work and it stands violated. We are also inclined to hold that the recommendation of 4th pay commission has not been followed and in doing so respondents have acted arbitrarily and illegally.

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

At annexure I to the application is establishment order date 1.3.1984 issued upon bifurcation of the office of the Accountant General transferring personnel as Auditors to Audit Wing. At Annexure-II is the order dated 2.6.1984 redesignating auditors as Senior Auditors in the scale of Rs. 425-800. At annexure III is the D.M. issued by the Ministry of Personnel, Public Grievances, and Pensions, Department of Personnel and Training dated 31.7.1990. At annexure IV & V are copies of representation filed by same of the applicants to the Comptroller and Auditor General of India seeking the extension of benefit of revised scale of Rs. 1640-2900 with effect from 1.1.1986. At annexure VII is the copy of order dated 6.5.1991 of the North Eastern Hill University revising the pay scale of Assistants to Rs. 1640-2900. An extract of order of ICAR dated 18.4.1994 published in Swamys' News is also produced where-ever scale of Rs. 1640-2900 has been given to Assistants and Gr. 'C' Stenographers of ICAR. The applicants have relied upon the decision already mentioned.

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

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

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

19. Relief.

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

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

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

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

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

It is true that the respondents have make a value judgement which was within their exclusive province negativing the claim of Senior Auditors of IA & AD for higher scale. It is also true that the Fifth Central pay Commission is expected to deal with the problem comprehensively. Yet we feel that injustice has been caused to the applicants. Our endeavour so far has been to point out that 'element of irrationality in the decision of respondents does not stand ruled out and that needs reconsideration of the matter. In this connection the learned counsel for the applicant refers to the latest decision of the Supreme Court in 1994 SCC (L&S) P 869 and submits that as the action of the respondents is found violative of Article 14 of the Constitution the pay scales fixed by them can be judicially interfered with as the principle of equal pay for equal work is breached as recommendation of the expert body. i.e. Pay Commission has not been followed and therefore we should grant the relief. We however feel that we will be better advised to leave the matter for fresh and proper decision by the respondents. The respondents can always review their own decision when necessary. We would therefore recommend to the respondents in the interest of justice to re-examine the question and take a suitable decision afresh without postponing the issue to the report of the Fifth Central Pay Commission. We do not take such a direction or stipulate a time limit as we have no doubt that the reasons that have persuaded us to make the recommendation as reflected in the foregoing discussion will receive due and expeditious attention from the respondents. The fresh decision whichever way it may be taken however shall be communicated to the applicants.

In the result, subject to the recommendation made above to the respondents the application is disposed of. It is made clear that this order will not preclude the applicants in any manner to represent their case before the 5th Central Pay Commission whether a fresh decision is taken or not by the respondents as recommended by us.

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

Sd/- M. G. CHAUDHARI

Vice Chairman

Sd/- G. L. SANGLYINE

Member (Admn.)

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 63 of 1997

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

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

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

Shri Hironmoy Sen and 267 others

All the applicants are Senior Auditors

in the office of Pr. Accountant General

(Audit), Assam, Meghalaya etc. at

Shillong and Guwahati.

Applicants.

By Advocate S/Shri A.K. Phukan and

M. Munir.

Versus

1. Union of India

represented by the Comptroller

and Auditor General of India.

New Delhi.

2. The Comptroller and Auditor General

of India, New Delhi -110002.

3. Secretary to the Government of India.

Ministry of Finance,

Department of Expenditure,

New Delhi.

4. The Principal Accountant General (Audit)

Assam, Meghalaya, Arunachal Pradesh

and Mizoram, Shillong.

Respondents.

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

ORDER

BARUAH J. (V.C)

268 applicants have approached this Tribunal by filing this present application. Permission under the provision of Rule 4 (5) (a) of the Central Administrative Tribunal (Procedure) Rule 1987 has been granted to the applicants to proceed in this single application. The applicants in this O.A. have prayed for a declaration that the applicants are entitled to the scale of pay of Rs. 1640-2900/ (pre-revised) i.e. before 5th Pay Commission and have further prayed for a direction to the respondents to extend the benefit of the said scale with retrospective effect equal to the Assistant of the Central Secretariat. For the purpose of disposal of this present application short facts may be narrated as follows:

The applicants are at present working as Senior Auditors in the office of the Principal Accountant General

This is to certify that
this copy is the exact
copy of the original /
certified copy.

Subhasis Talapatra
(Subhasis Talapatra)
Advocate.

421
35

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

“..... The President is now pleased to prescribe the revised scale of Rs. 1640-60-2600-EB-75-500 EB-15-560-20-700-EB-25-800/- for duty posts included in the Assistant Grade of Central Secretariat Service and Grade ‘C’ Stenographer of Central Secretariat Stenographers Service with effect from 1.11.1986. The same revised pay scale will also be applicable to Assistants and Stenographers in other Organisations like Ministry of External Affairs which are not participating in the Central Secretariat Service and Central Secretariat Stenographers Service but where the posts are in comparable grades with same classification and pay scales and the method of recruitment through open competitive Examination is also the same.”

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

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

- “i. Historically the posts of the applicants and the Assistants of the Central Secretariat Service were on par.
- ii. The minimum educational qualification in the entry level for the direct recruit Assistants of Central Secretariat Service and the Auditors of IA & AD is the same namely graduation.
- iii. The Senior Auditors are drawn from the posts of Auditors after qualifying at the departmental examina-

44

tion with limited number of chances and after acquiring functional knowledge for at least three years as
Auditors."

37

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

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

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

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

Thereafter on the first ground this Tribunal held hereunder :

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

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

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

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

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

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

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

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

".... However, the Government clarified that the decision to revise the scale of Senior Auditor did not imply that the Government had conceded parity with the Assistant in the Central Secretariat Service and that all such matters were to be left for consideration of Fifth pay commission. For this purpose a Cabinet Note was prepared by the Respondent No. 2 which was also approved by the then Finance Minister and Minister of State (personnel and pensions). But due to the announcement of general election, the then Finance Minister

and desired that in view of model code of conduct of the elections, the proposal would have to be deferred till the new Government took over."

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

"The proposal was examined no merits on the directions of the CAT and the then FM had agreed to the proposal to revise the pay scale subject to the approval of the Cabinet. The Cabinet Note prepared by the C & AG was also approved by then FM and MOS (PP). However due to announcement of the general elections then FM had desired that in view of Model code of Conduct of elections, the proposal will have to be deferred till the new Government takes over."

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

"... it has been agreed, in principle, to upgrade the scale of pay for the post of Senior Auditors in IARAD From Rs. 1400-2600/- No. Rs. 1640-2900/- from the date of order of the Tribunal, Guwahati Bench viz. 2.11.94..."

These two letters have not been disputed by Mr Deb Roy. From all those it appears that the Government had taken a decision in principle to give the benefit of higher pay scale appear with that of Assistant of the Central Secretariat. But the decision could not be implemented in view of the announcement of the general election. In this regard we find that the written submission given by the learned Sr. C.G.S.C is similar to that of those letters even though in written statement we find some difference. Taking all together we can safely come to the conclusion that the Government had taken a decision to give parity of scale with that of the Assistant of the General Secretariat. Unfortunately this was reversed when the new Government came to power. It is a well settled principle that a decision can be revised by the Government, but there must be some plausible or reasonable ground for doing so. In the written statement it is spelt out that if the applicants are given the benefit of the Annexure-IV office Memorandum, the Government will have to pay to the others also. Law is well settled in this regard also. If the qualification, nature of duties and responsibilities are similar, the similar benefit must be given. Merely because some more employees will come and claim the similar benefit, in our opinion cannot be a ground for denying the right. If that is so the Government ought to have come forward at that time itself when the Assistant pay was raised by the order of the principle Bench of the Tribunal. They were satisfied with the judgments and therefore did not prefer any appeal before the Supreme Court. Therefore it is not reasonable to say that similar employees will come and claim the same benefit. We therefore have no hesitation of coming to the conclusion that the respondents did not properly scrutinise the findings of this Tribunal given in O.A.45/92 dated 2.11.1994 and also the spirit of the judicial pronouncement. Mr. Deb Roy while supporting the action of the respondents has cited some decisions of the Supreme Court that the Tribunal/ Court should not play a role of an employer by interfering with the pay scale. This is, in our opinion, i.e. well settled principle. But we feel that the order passed by this Tribunal

which reached its finality, has not been fully complied with. The Tribunal having come to the conclusion that the nature of job, qualification, responsibility of the Senior Auditors are same or similar with that of the Assistants historically, they had been given the same scale or pay. Even the expert body like Fourth Central Pay Commission also gave similar scale. Government had already taken a decision. We find no justifiable ground to make a departure from that decision of the Government earlier taken. Accordingly we direct the respondents to consider the true spirit and direction given in the judgment dated 2.11.1994 passed in O.A.45/92 and to pass necessary and appropriate orders regarding the parity of pay. This must be done as early as possible, at any rate, within a period of 4 months from the date of receipt of this order.

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

Sd/- Vice Chairman

Sd/- Member (A)

ance and the same was forwarded to the Comptroller and Auditor General of India, respondent No. 2. The proposal envisaged a higher level of specialization and functionalisation in the cadre for audit and better pay scales for those cadres. The Government assented to the said proposal. in March 1984, the composite offices of the States Accountant General were bifurcated into two separate offices with two distinct and separate cadres, one for the Audit functions. Under the scheme, 80% of the Auditors in the separated Audit office who were entrusted with the actual audit Assistants Grade of Central Secretariat Service. Consequently, the applicants were appointed on permanent transfer to the higher functional grade post of Auditor in the pay scale of Rs. 425-800 in the separated office of the Accountant General (Audit), Assam, Meghalaya etc., Shillong and Guwahati with effect from 1.3.1984.

The applicants state and contended that their duties and responsibilities were no less onerous than the Assistant in the Central Secretariat Service. On the other hand, their duties and functions and the measures of responsibilities undertaken by them were qualitatively higher than those of the said Assistant and therefore, applicants an were granted the higher pay scale of Rs. 425-800. The erstwhile pay scales of the Assistants of Central Secretariat Service was also the same, i.e. Rs. 425-800 (pre-revised) and therefore, the Senior Auditors of IA and AD enjoyed partly of the pay scales with the Assistant in the Central Secretariat from the date of creation of their cadres, i.e. 1.3.1984.

3. The Fourth Central Pay Commission placed the senior Auditors of IA and AD in the same group us the Assistant and Stenographer of Central Secretariat Carrying the pay scale of Rs. 425-800 and recommended the revised scale of Rs. 1400-2600 for both Assistants and Stenographers of Central Secretariat and the senior Auditors of IA and AD, which was initially accepted and given effect by the Government with effect from 1.1.1986. The Assistant of the Central Secretariat moved the Central Administrative Tribunal, Principal Bench, by filling O.A. No. 1538/ 1987 claiming higher pay scale and the Principal Bench by its Judgment and Order dated 23.5.1989 allowed the application and pursuant thereto, the Government of India by O.M. dated 30.7.1990 issued orders for revision of the scale of pay for the Assistants and Stenographers in the Central Secretariat and accordingly prescribed the revised scale of pay of Rs. 1640-60-2600-ED-75-2900 for the pre-revised scale of pay of Rs. 425-15-500-EB-560-20-700-EB-25-800 with retrospective effect, i.e. with order from 1.1.1986. Since the aforesaid order introduced a partial revision in the same pre-revised scale of pay disturbing the existing parity and internal relatively in the pay scale of senior Auditors of IA and AD with the Assistants of Central Secretariat, these applicants submitted their representation claiming higher revised scale of pay in terms of the O.M. No. 2/1/90-C.L. IV dated 30.7.1990. Falling to get appropriate response from the respondents a large section of the present applicants moved this Tribunal praying for pay parity and for extending the higher revised pay scale of Rs. 1640-2900 with retrospective effect from 1.1.1986. The aforesaid O.A. was registered and numbered as O.A. No. 45 of 1992. The respondents submitted their written statement opposing the claim of the applicants, wherein the respondents also took the stand that the subject matter of the O.A. was under consideration of the National Council (Joint Consultative Machinery) and therefore, the Government could not unilaterally decide the matter and therefore, the application was premature. The respondents also contended that the benefit of the higher pay scale that was granted by the order dated 30.7.1990 was not extendable to other bodies in the

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

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

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

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

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

5. The aforesaid decision of the Tribunal was not assailed at any stage, on the other hand, the respondents submitted various petitions before the Tribunal by way of Misc. Petitions, namely M.P. Nos. 68/95, 105/95, 26/96, 68/96, 69/96, 100/96 and 121/96, wherein the respondents prayed for extension of time for compli-

ance with the decision of the Tribunal. The Tribunal by its order dated 4.7.1996 in M.P. No. 100/96 finally closed the petition with the hope that the respondents would sincerely abide by their own promise to take final decision within 31.3.1996 and implement the directions contained in the order dated 2.11.1994 in O.A. No. 45/1992. After a long lapse, a Misc. Petition was presented in the aforesaid O.A. which was registered and numbered as M.P. No. 121/1996, by the Principle Accountant General (Audit), Assam, Meghalaya etc. Shillong, inter alia mentioning that its had been decided by the Government from Rs. 1400-2600 to Rs. 1640-2900 on the following considerations :

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

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

6. The applicants submitted written objection to the Misc. Petition and referred to the stand taken by the respondents in the various M.P.s consequent to the judgment of the Tribunal and the order passed by the Tribunal on those M.P.s Its was also inter alia pleaded that the grounds for refusal mentioned in this application were already considered by the Tribunal which were rejected by the order of the Tribunal dated 2.11.1994. In course of the aforesaid proceeding, the Tribunal by its order dated 24.9.1996 directed the respondents to submit the copy of the order/ decision mentioned in the M.P. refusing to grant pay parity with that of the Assistant in the Central Secretariat to the applicants and in present thereto a copy of the Government decision dated 2.7.1996 was produced, wherein it was stated that in view of the Tribunal order the previous government had approved the higher revised pay scale of Rs. 1640-2900 for the senior Auditors of IA and AD, but subsequently the above decision was reversed by the new Government who, in consultation with the JCM and taken a view that any decision to refix the pay scale of senior Auditors would have implications in the pay pattern of senior Accountants in the organised Accounts Department and also would have chain reaction and accordingly the name was rejected. The Tribunal disposed of the M.P. No. 121/96 on 11.2.1997

observing, inter alia, that if the applicants were aggrieved by the Government decision they shall approach the Tribunal for redressal.

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

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

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

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

11. The key question in this proceeding is the admissibility for pay parity of the applicants with the Assistants in the Central Secretariat Service. The question is no longer *Res Integra* in view of the decision rendered by the Tribunal in O.A. No. 45/92 dated 2.11.1994 as well as judgment and order dated 14.9.1999 passed in O.A. No. 63/97. The Bench in clear terms in O.A. No. 45/92 come to a positive conclusion that the applicants were entitled to get parity in The revised scale of pay with the Assistants and Stenographers in the Central Secretariat Service and that refusal of the respondents to grant the parity in pay scale to the applicants was in violation of Articles 14, 16 and 39 (d) of the Constitution of India. The Tribunal also held that by refusing the parity in pay scale the respondents had acted arbitrarily and illegally.

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

13. In O.A. No. 45/92 the Tribunal finally adjudicated the issues raised directly and substantially between the same parties. The issues involved in the aforementioned O.A. were the issues in which the Tribunal has had the exclusive jurisdiction. The decision rendered by the Tribunal has attained its finality and binding on the Tribunal has decision rendered by it shall operate as Res judicata against subsequent disputes within the same parties before the Court or Tribunal. A decision on merit rendered between the parties cannot be permitted to be reopened on any ground whatsoever. Neither law nor logic, nay any administrative exigency or political compulsion should withstand the implementation of the lawful decision of the competent authority that has attained finality. The Tribunal conclusively decided that the applicants were entitled to get parity in the pay scale with the Assistants and Stenographers of the Central Secretariat on the principle of 'equal pay for equal work'. It was also held that the denial of the same by the respondents amounted to violation of Articles 14, 16 and 39 (d) of the Constitution, and therefore the respondents acted arbitrarily and illegally. The Tribunal found that there was no justifiable, effective and convincing reason to deny the into the matter and take an appropriate decision, necessary--- to remove the infirmities and to remove the illegality. The two decisions mentioned above, did not leave any ambiguity and the respondents were left with no choice, but to implement the order. As mentioned earlier, the Tribunal in no uncertain terms held that the applicants were entitled to get parity in their revised pay scale on the principle of 'equal pay for equal work'. The 'equal pay for equal work' for both men and women is a Constitutional objective set out with the Directive Principles of State Policy. The Constitution aims at the fusion of fundamental rights and the directive principles of the State Policy. Together they create the conscience of the Constitution. Article 39 though included in the chapter of Directive Principles of the State Policy, it is fundamental in nature. The principle of 'equal pay for equal work' is not an abstract doctrine. It is indeed open to the State to prescribe different scales of pay for different classes/cadres having regard to the duties and responsibilities. Where two classes of employees perform identical or similar duties and carry out similar functions with some measure of responsibility having same qualification, it would be entitled to equal pay. Where the State denies them the equality of pay its actions could be violative of Articles 14 and 16 an the Court would strike down those as discriminatory. In the instant case, the Tribunal analysed the rational behind the State action i) prescribing two scales of pay and found invidiuour discrimination was practised without there being any rational classification. The Tribunal gave a decisive and clear-cut finding on the issues and held as such. The respondent authority as eluded earlier had no choice, but to give effect to.

14. Rule of law is the basic feature of the Indian polity. It embraces some internal quality of public law. Rule of law enjoins that there should be certainty and there should be some predictablity. Official action is to congruent with the legislative purpose. in applying the ground of legality Courts and Tribunals are effectively acting as the interpreter of the Parliament's will. Parliamentary sovereignty, executive necessity and rule of law are not anachronistic. The Parliament enacted the Administrative Tribunals Act to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union, etc. The judgment rendered by the Tribunal is final and binding. The judgment in question was not assailed in any higher forum. The respondent authority after the decision rendered, since not assailed in any

Legal institution, owed the duty to implement the order. The responsibility to maintain law lies on all individuals and institutions. The responsibility is same on the three organs of the State. The Constitution has separated and defined the functions of the respective fields. It has to perform the functions entrusted to it and respect the functions of others. None is free from errors and so also the Tribunal cannot claim infallibility. It is said that a Judge who has not committed a mistake is yet to be born. Indian jurisprudence, in fact, acknowledge the fallibility of the Courts and Tribunals and provides for both internal and external checks to rectify the errors. The Constitution & well as the Act entrusted the Tribunal of interpreting and administering the law whose view is final and binding of all till it is corrected, modified by a higher forum or be permissible legislative measure. Any attempt designed to question the legality is likely to subvert the law and only invite anarchy. Law is not autonomous, but rests on the support of those it governs. The law is the servant of the sense of rightness in the community.

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

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

Sd/ VICE CHAIRMAN

Sd/ MEMBER (Adm).

5/48
ANNEXURE

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM : NAGALAND : MAGHALAYA : MANIPUR : TRIPURA :
MIZORAM AND ARUNACHAL PRADESH)

W.P. (C) NO. 7598 OF 2001

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

This is to certify that
this copy is the exact
copy of the original /
certified copy.

Subhasis Talapatra
(Subhasis Talapatra)
Advocate.

PETITIONERS

VERSUS

1. Shri Hiranmoy Sen and 148 others
S/Shri
1. Sisir Ranjan Choudhury
2. Pijush Kanti Dhar
3. Mangobinda Chaudhury
4. Bhuben Chandra Bania
5. Margret Lyngdoh
6. Helen Diengdoh
7. Q. Birdge Star Maingiang
8. Sandip Kumar Das
9. Gopika Rangan Goswami
10. Ranbir Chakravorty
11. Kamakhya Kumar Ganguly
12. Anil Chandra Das
13. Redskilton Nongkynrih
14. F. Garnet Lyngdoh
15. Kalyan Kumar Chakraborty
16. Debora Sohelia
17. John Wallang
18. Alfred Royce Bang
19. Venetia Dolly Mawrie
20. Pranesh Ranjan Deb
21. Shangain Donbor Bubroy
22. Nirmledu Bhattacharjee
23. Anupam Biswas
24. Glorinda Jyrwa
25. Augustine Royce Bang
26. Phersto Niangtd.
27. Kroshek D. Khhiewtam
28. Anup Kumar Gupta Choudhury
29. Debasish Banerjee
30. Nitya Gopal Karmakar
31. Persara Mary Nongbri

32. Sunirmal Purkayastha
33. Jyoti Rajkhowa
34. Sanjit Purkayastha
35. Nirmal Kumar Das
36. Piston Sing Ryngah
38. Namar Bahun Syiem
39. Ratish Ranjan Dhar
40. Ranendra Das
41. S. Shhallyney D. Syiem
42. Sitendu Bhattacharjee
43. Slad Sing Nongkhlaw
44. L. Lyngkholi
45. C.S. Roy Riengsete
46. Trocline Lyngdeh
47. H. Sawian
48. Madhusree Dutta
49. Kynreit Jyrwe
50. Nirendra Narayan Chaudhury
51. Bijon Kanti Roy
52. Raru Roy
53. Yurlbell Roy
54. Alexender Shabong
55. Saradendu Bhattacharjee
56. Ricky Martin
57. Phailin Thangkhiew
58. Hillol Shekhar Gupta
59. Madallin Sohtun
60. Alban Roy Lingwah
61. Eldrick Stone Shullai
62. Dälade Hynjah
63. Barun Dey
64. Rijush Chandra Shome
65. Nihar Kanti Bhattacharjee
66. M. Bhattacharjee
67. Subrata Sen
68. Nilkanta Shannyashi
69. Liladhar Gautam
70. Ardhendu Shekhar Bhattacharjee
71. Dilip Kumar Sarma
72. Prabir Chakravorty
73. Khanindra Chandra Das
74. Dhirendra Chandra Hazarika
75. Dhirendra Kumar Mazumdar
76. Harendra Prasad Kataki
77. Haridev Pathak
78. Haladhar Das
79. Suresh Kumar Das
80. Suresh Kumar Das
81. Sarbananda Dakua
82. Sarat Chandra Chaudhury
83. Dadhi Ram Das
84. Rabindra Nath Daimari
85. Mugilal Dawo
86. Jogendra Nath Patowary
87. Prafulla Chandra Pathak
88. Balendra Basumatary
89. Dhirendra Nath Das
90. Golakeswar Das
91. Dharmeswar Das
92. Bidyut Kumati Paul
93. Samarendra Kumar Paul

94. Ram Krishna Das
 95. Bhogeswar Panging
 96. Binoy Kumar Das
 97. Karuna Kanta Lahkar
 98. Bipul Lahkar
 99. Madhab Chandra Kakati
 100. Prabhas Chandra Nath
 101. Nagendra Chandra Nath
 102. Srikanta Kafita
 103. Jagadish Chandra Talukdar
 104. Dhirendra Nath Rabha
 105. Nepal Chandra Sarker
 106. Sarat Chandra Das
 107. Basab Cnandra Das
 108. Phanindra Cnandra Goswami
 109. Partha Sarthi Gupta
 110. Mitul Chakravorty
 111. Nanigopal Paul
 112. Dilip Kumar Dhar
 113. Binode Chandra Sinha
 114. Subal Kumar Paul
 115. Soumitra Das
 116. Kumar S. Purkayastha
 117. Salam Kumar Singh
 118. Swapan Kumar Bose
 119. Pradip Kumar Dutta
 120. Nirmal Kumar Malakar
 121. Nandita Kar
 122. Anupama Chakravorty
 123. Raj Kumar Teye
 124. Kamal Cnandra Dutta
 125. Pratul Baruah
 126. Chitta Ranjan Dey
 127. Bidhu Bhusan Das
 128. Balai Kumar Chanda
 129. Nihar Kanti Das
 130. Suchitra Ghosh
 131. Sudipta Dasgupta
 132. Jatindra Mohan Roy
 133. Biprajit Chaudhury
 134. Suranjan Chaudhury
 135. Subhash Chandra Sarkar
 136. Parimal Chakravorty
 137. Ajit Das
 138. Ratindra Chakravorty
 139. Pratiba Rani Das
 140. Debabrata Saha
 141. Anukul Cnandra Dhar
 142. Paran Chandra Sarkar
 143. Pradip Dasgupta
 144. Sekhar Das
 145. Ajiy Bahuguna
 146. Suchitra Mukherjee
 147. Pratul Khakhli
 148. Raj Narayan Adhayapak.

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

RESPONDENTS

50
51

PRESENT

THE HON'BLE MR. JUSTICE J. N. SARMA

THE HON'BLE MR. JUSTICE B. LAMARE

For the Petitioner : Mr. D. Barua

Central Govt. Standing Counsel

For the Respondents : Mr. K. Momin,
Mr. S. Sarma
Advocates.

Date of Hearing : 12-09-2002.

Date of Judgment : 16.9.2002.

JUDGMENTLamare J.

1. Heard Mr. D. Barua, learned Central Govt. Standing Counsel for the Petitioners and Mr. K. Momin, learned counsel for the respondents.
2. In this writ petition the order dated 19-01-2001 passed by the Central Administrative Tribunal, Guwahati Bench in Original Application No. 85/ 2000 is assailed.
3. The respondents were appointed in the erstwhile office of the Accountant General, Assam and Meghalaya etc. at Shillong as Auditors in the scale of pay of Rs. 425- Rs. 700/- P. M. A separate cadre was created in the Indian Audit and Accounts Department (IA & AD), as a result of which the present respondents were permanently transferred to the posts of Auditors in the separated Audit Office of the Assam-Meghalaya etc. at Guwahati and Shillong. Subsequently the posts were redesignated as Senior Auditors vide circular dated 2.6.1984 issued by the Comptroller and Auditor General of India and the Senior Auditors enjoyed parity in their pay scale with Assistants in the Central Secretariat.
4. The main contention of the respondents before the Central Administrative Tribunal is that, Assistants in the Central Secretariat were enjoying a pre-revised pay scale of Rs. 425- Rs. 800/- and, therefore, the Senior Auditors of IA & AD are also entitled to the Central Secretariat from the date when the post of Senior Auditors were created i.e. from 1.3. 1984. The Fourth Central pay commission has revised the pay scale for both, Assistants of Central Secretariat and Senior Auditors of IA & AD and the recommendation of the pay Commission was accepted by the Govt. of India. According to this revised pay scale their pay scale is 1640-2900. However, the respondents who are senior Auditors of IA & AD were not given this benefit. They were allowed at the lower pay scale of 1400-2600. Representations were made to the concerned authority, but no reply was given.
5. The respondents therefore, approached the Central Administrative Tribunal, Guwahati Bench in Original Application No. 45 of 1992 and the same was disposed of by order dated 2.11.1994 with the following order :-

“It is true that the respondents have made value judgement which was within their exclusive province negating the claims of Senior Auditors of IA & AD for higher scale. It is also true that the Fifty Central pay

Commission is expected to deal with the problem comprehensively. Yet we feel that injustice has been caused to the applicants. Our endeavour so far has been to point out that element of irrationality in the decision of respondents does not stand ruled out and that needs reconsideration of the matter. In this connection the learned counsel for the applicant refers to the latest decision of the Supreme Court in 1994 SCC (L&S) P. 869 and submits that as the action of the respondents is found violative of Article 14 of the constitution the pay scales fixed by them can be judicially interfered with as the principle of equal pay for equal work is breached as recommendation of the expert body i.e. Pay Commission has not been followed and therefore we should grant the relief.

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

6. There was no appeal against the above judgment of Central Administrative Tribunal and the said judgment has attained its finality. Even then the petitioners did not extend the benefit to the respondents as per Memorandum dated 30-7-1990. The respondents, therefore, were compelled to approach the Tribunal again in original Application No. 63/97. By order dated 14th September, 1999 the said O.A. was disposed of by the Tribunal with the following order :-

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

7. After the above order has been passed by the Tribunal, the Deputy Director (legal), office of the Comptroller & Auditor General of India issued a D.O. letter No. PCC/FT/97 dated 4.2.2000 intimating the Accountant General (Audit), Meghalaya etc. Shillong that after considering the judgment rendered by the CAT on 14.9.1999 in O.A. No. 63/97 and also the judgment dated 2.11.1994 in O.A. No. 45/92, the

Government has agreed in principle to accept the proposal of the Comptroller & Auditor General of India to grant a pay scale of Rs. 1640-Rs. 2900 (Pre-revised) to the Senior Auditors in the IA&AD. However, when a new Government assumes office, it was decided to remit this issue to the Fifth Central Pay Commission which was constituted. However, the Fifth Pay Commission did not recommend parity in the pay scale of the Senior Auditors and Assistants in the Central Secretariat. The commission has recommended that the matter be examined by the Anomalies committee. Accordingly the matter was examined by the committee of Secretaries (Fast Track committee) which found it is not possible to accept the demand for parity with the Assistants in Central Secretariat and the senior Auditors in the IA & AD.

8. Being aggrieved by this letter dated 4.2.2000, the respondents again approached the Central Administrative Tribunal, Guwahati Bench in O.A. NO. 85/2000 which was disposed of on 19-10-2001 with the following order :

“We have given our anxious consideration on the issue and in our considered opinion the reasons cited in the impugned order dated 4.2.2000 only reflect the extraneous considerations, overlooking the relevant considerations. The reasons cited in clause 9 on the purported ground of alleged disagreement in the JCM cannot be upheld on the basis of the earlier finding on the issue by the Tribunal in O.A. No. 45 of 1992. The impugned order dated 4.2.2000 is accordingly set aside and the respondents are directed to implement the order of the Tribunal dated 2.11.1994 in O.A. No. 25/92 as well as the order dated 14.9.1999 in O.A. No. 63/1997 forthwith and to give all consequential benefits to the applicants forthwith.”

9. A similar/situation had arisen in respect of the post of stenographer Grade-II in the office of Dy. Director General, Geological Survey of India, W.E. Region, Shillong which came up before the Division Bench of this court in W.P. (C) No. 4526 of 2000. in the said writ petition, this court has taken note of the orders passed by the Central Administrative Tribunal as well as the pay scale granted in other Departments which are as follows :-

“1. Stenographers Gr. II in the office of the Central Bureau of Investigation, New Delhi, under Ministry of Home Affairs.	Pursuant to the judgment and order in O.A. 144A/1993 dated 19.1.1996 of Central Administrative Tribunal, (Principal Bench), New Delhi.
2. Stenographers Gr. II in the offices of the Director General of Income Tax (Investigation), New Delhi under Ministry of Finance.	Pursuant to the judgment and order in O.A. No. 985/94 dated 19.1.1996 by the Principal Bench, C.A.T.

3. Stenographers Gr. II in the office of the Directorate of Field Publicity under Ministry of Information and Broadcasting.

Pursuant to the judgment and order in O.A. No. 548/94 dated 19.1.1996 by the Principal Bench of C.A.T.

4. Stenographers Gr. II in the National Book Trust of India, New Delhi under Ministry of Education.

Pursuant to the judgment and order in O.A. No. 4842/96 decided on 28.7.97.

5. Stenographers Gr. II in the office of the Director General of Inspection, Customs and Central Excise under Ministry of Revenue.

Pursuant to the judgment and order in O.A. No. 527/97 dated 28.9.1997 by the Principal Bench of C.A.T.

6. Stenographers Gr. II in the offices of the National Archives of India, New Delhi under Ministry of Human Resource Development Dept. of Culture.

Pursuant to the judgment and order in O.A. No. 407/97 decided on 9.1.1.1998 by the Principal Bench of C.A.T.

7. Stenographers Gr. II working in the C.A.T. New Delhi, Ministry of Law and Justice.

Pursuant to the judgment and order in O.A. 2865/91 and O.A. No. 529/92 decided on 4.2.1993 by the Principal Bench of C.A.T.

8. Stenographers Gr. II working in the Kendriya Vidyalaya Sangathan New Delhi under, Ministry of Human Resource and Development

Pursuant to the judgment and order in CWP No. 4414/94 and O.A. No. 3181/96

Dept. of Education.

decided by the
Delhi High Court on
16.7.97.

15
55

9. Stenographers Gr. II working in
the office of the Salt
Commissioner, Jaipur, Ministry
of Industry.

Pursuant to the
judgment and order
in OA No. 152\91
dated 9th August,
1994 of the C.A.T.

Jaipur.

10. Stenographers working in the
office of the Director General
of Ordnance Factory, Calcutta.

Pursuant to the
judgment and order
in O.A. No. 1130\91
decided on 19.5.1995

by the C.A.T.
Bench at Calcutta.

10. Stenographers working in
official Language Wing under
Ministry of Law & Justice.

Pursuant to the
judgment and order
in civil appeals
No. 8348-50 of 1995
decided on 9.10.96
1998 (L&S) 253

In the following department, the Department itself had ordered the grant of pay scale of Rs. 1640-2900/- to
the Stenographers Grade-II with effect from 1.1.1986.

1. Department of Space/ISRO Centres Units, Bangalore.
2. Department of Atomic Energy, Atomic Energy Commission, Hyderabad.
3. CSIR, Department of Science and Technology.
4. Indian Council of Medical Research, Ministry of Health and Family Welfare.
5. Central Glass & Ceramic Research Institute, Calcutta, Department of science and Technology.
6. Border Security Force, INDO Tibotan Border Police, Central Industrial Force, Bureau of Police, Re-
search & Development."

10. In the instant case the Tribunal has found that the functions and duties of respondents are qualitatively higher than those of the Assistants in the Central Secretariat and the respondents were given higher scale of pay of Rs. 425-800/- which was at par with the assistants of the Central secretariat. The Fourth Central Pay Commission also placed the senior Auditor of IA & AD in the same group as Assistants and stenographers of the central secretariat and recommended a revised scale of pay of Rs. 1400- Rs. 2600/. The Tribunal has also found that the issue of office Memorandum dated 30.7. 1990 revising the pay scale of the Assistants and stenographers in the Central secretariat by granting them scale of pay of Rs. 1640- Rs. 2900 was arbitrary, inasmuch as the pre-revised scale of pay of both the Assistants and stenographers in the Central

62
56

secretariat as well as the senior Auditors was Rs. 425- Rs. 800/- Needless to say that there was no appeal against the order dated 2.11.94 of the C.A.T. Gauhati Bench passed in O.A. No. 45/92 and the order has attained finality.

11. We, therefore, find that there is no infirmity in the impugned judgment passed by the Central Administrative Tribunal, Guwahati Bench in O.A. No. 85/2000.

For the aforesaid reasons we find on merit in this writ petition and it is accordingly dismissed.

Sd/- J. N. Sarma, Judge

Sd/- B. Lamare, Judge

This is to certify that
this copy is the exact
copy of the original /
certified copy.


(Subhasis Talapatra)
Advocate.

IN THE HIGH COURT OF HIMACHAL PRADESH
at SHIMLA

C. W. P. No. 22 of 1998
Reserved on 7.1.2003
Date of Decision : April 10, 2003

V. Bhaskar and others

Petitioners

Versus

Union of India and others

Respondents

Coram :

Hon'ble Mr. Justice Arun Kumar Goel, J.
Hon'ble Mr. Justice Kuldip Chand Sood, J.

Whether Approved for Reporting ?

For the Petitioners : Mr. Shrawan Dogra, Advocate

For the Respondents : Mr. Baldev Singh, Addl. Central Government Standing Counsel.

PER KULDIP CHAND SOOD, J.

This writ petition is laid, in a representative capacity by the H. P. Civil Audit Association, Petitioner No. 3 through its office bearers.

The petitioner No. 1 a Senior Auditor in the Office of the Accountant General (Audit), is the Vice President of H. P. Civil Audit Association, Petitioner No. 3, whereas, Petitioner No. 2 Shri B. B. Sharma also a Senior Auditor in the same office is Secretary of this Association. The members of the Association are Senior Auditors working in the office of the Accountant General (Audit) at Shimla.

Whether the reporters of local newspapers may be allowed to see the judgement?
Yes.

In the year 1984, the Audit and Accounts Departments of the Accountant General (s) throughout India were separated and restructured as two offices, namely, Accountant General (Audit) and Accountant General (A&E). These two offices came into being with effect from March 1, 1984. The Accountant general (A&E) was entrusted with the responsibilities of accounts and entitlements. The Accountant general (Audit) was made responsible for audit. The members of the Association were permanently transferred to the Accountant General (Audit) as Senior Auditors in the pay scale of 425-800, which then was equivalent to the scale of Assistants in the Central Civil Secretariat. This scale after separation of the audit wing of the Accountant General (s), was given in recognition of the special nature of work, skill and aptitude for the audit function. It was stipulated that actual audit would be conducted by the Senior Auditor(s) whereas, auditors would be entrusted with training and routine duties (Annexure P5). It may be noticed that the members of the Petitioners' Association from the inception of their cadre were placed in the pay scale of 425-800 even in the composite office of the Accountant General at par with the pay scale of Assistants in the Central Secretariat, in pursuance of the conscious decision of the Government of India in 1983 (Annexure P-4), and not in the pay scale of 425-700 which was then available.

The case of the petitioners is that the Senior Auditors were given parity in the pay scale with the Assistants of the Central Secretariat from the very day of inception of their cadre on March 1, 1984.

The Fourth Pay Commission in its report prescribed revised pay scale for preexisting scale (425-800) to 1400-2600 for both Assistants of the Central Secretariat and Senior Auditors. This recommendation was accepted by the Government of India. However, in the year 1987, direct recruit Assistants of the Central Secretariat filed an application before the Principal Bench of the Central Administrative Tribunal at Delhi seeking revision of pre-revised pay scale of 425-800 to 1640-2900 instead of 1400-2600 as recommended by the fourth Pay Commission. This application was allowed. The Government granted pay scale of 1640-200 to the Assistants in the Central Secretariat. The Senior Auditors, who were treated at in the matter of pay scales with the Assistants of the Central Secretariat, even by the Fourth Pay Commission, were not extended this benefit. They continued to be in the lower pay scale of 1400-2600. The Association of the Senior Auditors and individuals filed various representations to the Government of India through the Accountant General (Audit) but without any result.

This action, maintain the petitioners, was discriminatory and against the principle of equal pay for equal work. This disturbed internal relativity and altered inter-se parity / grouping in the matter of pay scale to the post forming part of the same group. The representations of the Senior Auditors to the Government for revision of their pay scale to rupees 1640-2900 instead of 1400-2600 as was done in the case of Assistants and Stenographers in the Central Secretariat did not evoke favourable response.

In April 1991, an Original Application 427 of 1991 (Annexure P11) was filed before the Central Administrative Tribunal at Chandigarh Bench in which petitioners No. 1 and 3 were also applicants. The Bench of the Tribunal directed the Union Government to treat the Original Application filed by the petitioners as representation. Liberty was reserved to file fresh application in case the petitioners were not satisfied. On July 13, 1992 it was conveyed to the petitioners that the Government has rejected the claim of the Senior Auditors for the grant of pay scale at par with the Assistants in the Central Secretariat. In September 1992, another application (No. 1164-HP/92) was filed by the petitioners before the Bench of Central Administrative Tribunal at Chandigarh. Similar petitions were filed by the Senior Auditors working in the office of the Accountant General Assam and Meghalaya before the Guwahati Bench of the Central Administrative Tribunal. The said petition was decided by the Guwahati Bench on November 2, 1994. In an elaborate judgment, the Bench found historical parity in the pay scales of Assistants of the Central Secretariat and the Senior Auditors. The Bench concluded that there was no rationale to differentiate between the two sets of posts and held that the action of

Respondent No. 1 has created disturbance in the internal relativity in the pay scales leading to anomaly which must be removed by the respondents. The Bench also held that nature of work in the two set of posts, i.e. Assistants in the Central Secretariat and the Senior Auditors attracts the principle of equal pay for equal work.

The Bench, however, did not grant positive relief. The reason was the observations of the Hon'ble Apex Court that the equation of pay must be left to the Executive Government and must be determined by the Expert Bodies like pay commission etc. The Bench nevertheless directed the respondents to decide the matter afresh in the light of the observations of the Bench of the Tribunal without waiting for the report of the Fifth Pay Commission.

The Chandigarh Bench of the Central Administrative Tribunal decided the Original Application of the petitioners with similar directions (Annexure P15). The Bench, following the judgment of the Guwahati Bench, partly allowed the Original Application of the petitioners and directed the respondents to dispose of the matter in the light of the observations made by the Bench without waiting for the report of the Fifth Pay Commission.

The matter was considered by the Government of India, in the Ministry of Finance, Department of Expenditure. It was conveyed to the office of the Comptroller and Auditor General that in principle it has been decided to upgrade the scale of pay for the post of Senior Auditors in IA & AD from Rs. 1400-2600 to Rs. 1600-2900 from the date of order of the Tribunal, Guwahati Bench viz. 2.11.94 (Annexure P 16). It was clarified that as the direction of the Central Administrative Tribunal were in respect of Senior Auditors alone, therefore, revised pay scale will be applicable to the Senior Auditors and not to the Senior Accountants. It was also clarified that the decision to revise the pay scale of Senior Auditors to Rs. 1640-2900 would not imply that the Government has conceded parity of Senior Auditors with the Assistants in the Central Civil Secretariat.

This decision to grant pay scale of 1640-2900 is Senior Auditors was not implemented. On reconsideration, it was felt that re-fixation of the pay scale of Senior Auditors will have implications which will trigger chain reaction. This decision was conveyed to the office of the Comptroller and Auditors General by a letter dated July 2, 1999. The Government decided to refer the entire question of higher pay scale to Senior Auditors/Senior Accountants and their demand of parity with the Assistants of Central Civil Secretariat to the 5th Pay Commission for the reason when the CAT gave the orders in November/December 94, the Report of the 5th Pay Commission was not in sight and now expected to be available in the next few months.

The 5th Pay Commission refused to go into the matter. The Member Secretary of the Commission on January 17, 1996 informed the Comptroller and Auditor General :

The Pay Commission has no intention of reporting (sic) past case or in making any recommendation with respect to the rectification of anomalies with retrospective effect. All our recommendations with regard to the grant of pay scales, allowances etc. will have prospective effect from our recommended date only.

(Emphasis given)

It was advised by the Pay Commission that the concerned Administrative Ministries at their level might settle past cases.

On July 4, 1996, the Comptroller and Auditors General wrote to the Union Finance Minister to consider the case of the Senior Auditors for the grant of pay scale in parity with the Assistants in the Central Civil Secretariat. The Comptroller and Auditor General impressed upon the Finance Minister that the decision of the Government to refer the matter to the 5th Pay Commission was not proper for the reason that hearings before the Pay Commission were over and there was no further occasion for the Commission to take up this matter and secondly,

this decision would be at variance with the directions of the Tribunal and, therefore legally incorrect. The Comptroller and Auditor General wrote :

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

The Comptroller and Auditor General ended his letter requesting the Finance Minister to give Senior Auditors the same scale as Assistants in the Central Civil Secretariat in accordance with the judgment of the Central Administrative Tribunal.

We may notice at this stage that the 5th Pay Commission on January 17, 1995, as observed earlier, had conveyed that it will not go into the past anomalies and the matter should be settled by the concerned Administrative Ministries at their level (Annexure P 17).

On July 22, 1996, the petitioners filed Contempt Pétition before the Chandigarh Bench of the Central Administrative Tribunal. The contempt petition was dismissed with the observation that if the petitioners were still aggrieved, they were free to have judicial recourse. However, the respondents were directed to pay to the petitioners' cost of rupees 1000/- as there was apparent delay on the part of the respondents to take the decision.

It is in this background the present petitioners filed Original Application No. 1238-HP/96 before the Chandigarh Bench of the Central Administrative Tribunal claiming higher revised pay scale of rupees 1640-2900 and the arrears with effect from January 1, 1985. The petitioners pleaded that even after the receipt of the report of the 5th Pay Commission, higher revised pay scale of rupees 1640-2900 was granted in favour of Assistants / Stenographers of ICAR who also had pre-revised scale of rupees 425-800 and was so noticed by the 4th Pay Commission in its report in paragraph 8.41. This application of the petitioners was decided by the Central Administrative Tribunal on June 30, 1997 (Annexure P 25) once again without granting positive relief to the petitioners. The Bench of the Central Administrative Tribunal relying upon various judgments of the Apex Court held that the question of relativity of pay scales and question of pay parity between the various groups of Central employees etc., are questions which should be best considered by an expert body like, the Central Pay Commission. The Bench held that it was for the Government to take a decision in respect of grant of pay scale to the Senior Auditors.

Feeling aggrieved, the petitioners are in this petition against the impugned decision of the Chandigarh Bench of the Central Administrative Tribunal dated June 30, 1997.

The case of the petitioners is :

- a) the respondents are unnecessarily clubbing the claim of the Senior Auditors with the similar demand of the Accountants which was not in issue in any of the legal proceedings.
- b) the denial of pay scale to the Senior Auditors on parity with the Assistants of the Central Secretariat was discriminatory and without any rationale.

c) the 4th Pay Commission had recommended same revised pay scale to three categories clubbed in paragraph 8.41, which included the Assistants in the Central Civil Secretariat and the Senior Auditors of the Accountant General(s) Audit and therefore, the observations of the Apex Court that grant of revision of pay scale should be best left to the expert like Pay Commission, stands satisfied.

The petitioners pray for the following relief:

- (i) The impugned judgment dated 30.06.1997 (Annexure P 25) passed by learned Central Administrative Tribunal Chandigarh Bench, may be quashed and set aside to the extent that it does not give positive relief to the petitioners.
- (ii) The petitioners may be held entitled to revised pay scale of Rs. 1640-2900/- w.e.f. 1.1.1986 for pre-revised scale of Rs. 425-800 and they may be held entitled to all consequential benefits like arrears of pay and further re-fixation in the revised pay scale as per recommendations of Fifth Pay Commission.
- (iii) After the grant of pay scale of Rs. 1640-2900/- to the petitioners w.e.f. 1.1.1986 the respondents may be directed to grant revised corresponding Assistant Grade Scale to the petitioners as recommended by the Fifth Pay Commission.
- (iv) The respondents may be directed to grant arrears to the petitioners along with interest @18% per annum on the arrears become payable on account of above revision from the date the same became payable and till the date these are actually paid.
- (v) The respondents may be burdened with the cost of this writ petition.
- (vi) Any other order in the circumstances of the case as deemed fit may be passed in favour of the petitioners.

We heard Mr. Shrawan Dogra, learned counsel for the petitioners and Mr. Baldev Singh, learned Additional Central Government standing Counsel for the respondents. The parties are not in dispute so far the facts of the case, noticed above, are concerned.

We find that the Government of India conceded parity of Senior Auditors, in pay scale, when the proposal of the Comptroller and Auditor General of India restructuring the Indian Audit and Accounts Department was accepted in the year 1983. The Government of India in the Ministry of Finance communicated to the office of the Comptroller and Auditor General of India on September 21, 1983 (Annexure P 3) conveying the approval of the Government for restructuring the Audit and Accounts Departments with the relevant pay scale for each cadre. The Auditors were given pay scale of rupees 425-800 after three years of apprenticeship which scale was at par with the Assistants in the Central Civil Secretariat and was higher than the scale, i.e. 425-700, which was then available. This was done in recognition of the higher duties and responsibilities of Senior Auditors which were considered not less onerous and important compares to the Assistants in the Central Civil Secretariat as pointed out by the Principal Director (Staff) Office of the Comptroller and Auditor general of India in his letter dated August 24, 1995 (Annexure P 4) addressed to Joint Secretary (Personnel) in the Ministry of Finance.

The Fourth Central Pay Commission recognized the duties and responsibilities of Auditors under the Comptroller and Auditor General at par with Assistants and Steographers in the Ministries of the Government of India and recommended that all these categories may be given the scale of rupees 1400-2600. Recognizing the nature and duties of the auditors, the Fourth Pay Commission in para 10.518 of its Report (Annexure P 7) observed :

----- This was done because the duties and responsibilities of the staff engaged on statutory (sic) were considered more important. While the staff in the audit wing has been given higher pay scales, the remaining staff of the accounts side continue to be on the same pay scales as were applicable prior to separation of cadres.

This observation of the Fourth Central Pay Commission also indicates the onerous nature of duties and responsibilities of the Auditors. On the recommendations of the Fourth Central Pay Commission, the Assistants in the Central Civil Secretariat, the Auditors and other similarly situated categories were grouped together and granted pay scale of 1400-2600 by the Government of India. Thus grouping and parity of pay scales of Senior Auditors with the Assistants in the Central Civil Secretariat and similarly situate groups was conceded by the respondent No. 1, the Union Government.

The Principal Bench of the Central Administrative Tribunal, in Central Secretariat Direct Recruit Assistants Association - v - Union of India (O. A. No. 1538 of 1987) by an order dated May 03, 1989 directed that there was a anomaly in the grant of pay scales on the basis of the recommendations of the Fourth Central Pay Commission and anomaly was directed to be referred to the Anomaly Committee. The Central Government thereafter granted pay scale of rupees 140-2900 to the Assistants of the Central Secretariat without granting similar pay scale to Senior Auditors. This benefit, in our view, was arbitrary and unjustly denied to the Senior Auditors who were placed in the same group as Assistants by the Fourth Pay Commission.

As noticed earlier, the petitioners V. Bhaskar and others approached the Chandigarh Bench of the Central Administrative Tribunal by Original Application No. 427/HP of 1991, which was decided on October, 8, 1991. The Chandigarh Bench dealing with the question of parity of pay of the Auditors of the Petitioners' Association with the Assistants of the Central Civil Secretariat in the pay scale of 1640-2900, took a view that as respondents by that time had not taken final decision on the demand of the Auditors, therefore, no order was required to be passed on the application of the Petitioners' Association. The Bench, however, directed the respondents to take a final decision in accordance with the orders made in Original Application P. John and others - v - Union of India. Ernakulam Bench of the Tribunal and ensure that question regarding grant of pay scale of rupees 1640-2900 to the Senior Auditors of the Indian Audit and Accounts Department is taken up for consideration and the finalization by the JCM. Application in P. John was filed by the Senior Auditors in the office of the Accountant General Kerala for parity in pay scales with the Assistants of the Central Civil Secretariat Service.

the Guwahati Bench of the Central Administrative Tribunal (Shillong circuit) in Original Application No. 45 of 1992 filed by Senior Auditors, office of the Accountant General (Audit) Assam-Meghalaya etc., at Shillong and Guwahati by its judgment dated November 02, 1994 held that the Senior Auditors of the Indian Audit and Accounts Department are similarly placed as the Assistants of the Central Civil Secretariat on the grounds :

- a) Historically, there was a parity in pay scales of both the services.
- b) Fourth Pay Commission recommended uniform scales and there was no convincing reason to depart there from ;
- c) the nature of work of Senior Auditors can not be said to be less

65

important than the Assistants in the Central Secretariat Services.

Repelling the argument raised by the respondents that Assistants in the Ministries discharge onerous and higher responsibilities compared to Senior Auditors, the Bench held :

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

(emphasis supplied)

This order of the Central Administrative Tribunal attained finality as no petition was filed by the respondents against this order.

The Bench after holding that the decision of the respondents not to grant pay scale to the Senior Auditors in parity with the pay scale of Assistants in the Central Secretariat as recommended by the Fourth Pay Commission, stayed its hands off in granting positive relief to the auditors on the grounds that respondents can review their own decision. The Bench recommended to the respondents to re-examine the question and take a suitable decision without postponing the issue to the report of the Fifth Pay Commission.

Similarly, the Chandigarh Bench of the Tribunal in Original Application No. 1164-HP/2994, filed by the Petitioners herein, by its order dated December 18, 1994 held that the matter of the petitioner was fully covered by the judgment of the Guwahati Bench of the Tribunal in Original Application No. 45 of 1992 decided on November 2, 1994 and passed similar directions. The Bench directed the respondents to re-examine the question regarding the grant of pay scale to the Auditors in parity with the Assistants in the Central Civil Secretariat without postponing the issue to the report of the Fifth Central Pay Commission. This order too was not challenged by the respondents.

As noticed earlier, the matter was re-examined by the Government in the light of the observations and directions of the Guwahati and Chandigarh Bench of the Central Administrative Tribunal and Government agreed in principle to upgrade the scale of pay for the post of Senior Auditors in the Indian Audit and Accounts Department from rupees 1400-2600 to rupees 1640-2900 as communicated to the Deputy Comptroller and Auditor General of India by Joint Secretary in the Ministry of Finance, Department of Expenditure in its letter dated January 15, 1996 (Annexure P 16). This decision however was recalled as noticed in preceding paras.

In spite of the orders made by two Benches of the Central Administrative Tribunal, the pay scale of 1640-2900 was not granted to the Senior Auditors. The Anomaly Committee found that it was not possible to accept the demand of the Senior Auditors for parity with the Assistants in the Central Civil Secretariat.

Aggrieved, Senior Auditors once again approached the Guwahati Bench of the Central Administrative Tribunal by O. A. No. 85 of 2000, which was disposed of on January 19, 2001. The Bench observed that the reasons given by the respondents could not be upheld in view of the earlier findings on the issue by the Tribunal in O. A. 45 of 1992. Therefore, the impugned order of February 4, 2000 was set-aside and the respondents were directed to implement the order of the Tribunal dated November 2, 1999 in O. A. No. 45 of 1992 as well as the order dated September 14, 1999 in O. A. No. 63 of 1997 and to give consequential benefits to the Senior Auditors. Dissatisfied, Union of India approached the High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh in Writ Petition (C) No. 7598 of 2001 challenging the orders of the Guwahati Bench of the Central Administrative Tribunal. The challenge to the order of the Tribunal was dismissed by the High Court on September 16, 2002. A Division bench of the High Court held that the order dated November 2, 1994 of the Guwahati Bench of the Central Administrative Tribunal in O. A. No. 45 of 1992 had attained finality as this order was not challenged. In this order, the Bench of the Tribunal found that decision of the respondents not to grant pay scale of 1640-2900 to the Senior Auditors in parity with the Assistants in the Central Civil Secretariat was arbitrary and irrational. Thus the positive relief granted to the Senior Auditors in O. A. No. 85 of 2000 became final. For this reason alone, the members of the Petitioners' Association who are Senior Auditors in the Indian Audit and Accounts Department are entitled to the similar relief.

Mr. Baldev Singh, learned Central Government Standing Counsel relying upon Union of India and another v. P. V. Hariharan and another (1997) 3 Supreme Court Cases 568 urged with vehemence that it is not given to the Courts to interfere with the pay scales which function is best left with the government which clearly acts to the recommendations of the Pay Commission. Any change in the pay scales of a particular category has a cascading effect.

In Hariharan, true it is, the learned Judges noticed that the Administrative Tribunals were interfering with pay scales without proper reasons and without being conscious of the fact that the fixation of pay is not their function. A note of caution was therefore sounded by the learned Judges observing.

... "Unless a clear case of hostile discrimination is made out there would be no justification for interfering with the fixation of pay scales. We have come across orders passed by Single Members and that too quite often Administrative Members, allowing such claims. These orders have a serious impact on the public exchequer too. It would be in the fitness of things if all matters relating to pay scales, i.e. matters asking for a higher pay scales or an enhanced pay scale, as the case may be, on one or the other ground, are heard by a Bench comprising at least one Judicial Member."

(Emphasis supplied)

In Secretary, Finance Department and others v. West Bengal Registration Service Association and others, 1993 (1), Supreme Court Cases 153. Their Lordships observed that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary and, therefore, ordinarily courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commissions, etc. But that is not to say, that the Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary action or inaction of the State.

There is no scope of dispute so far the principle of law is concerned but the Court will not hesitate to interfere if a clear case of hostile discrimination is made out. Article 14, it is well settled, provides guarantee for equality before law to all persons and protection is all against discrimination by law. The Constitution Bench of the Apex Court in Union of India and others v.

Tulsi Ram Patel and others (1985). 3 SCC 398 pointed out that law for the purposes of Article 14 includes order by law, rule, regulation, notification, custom or usage having in the territory of India, the force of law. The Constitution Bench interpreting Article 14 of the Constitution held that Article 14 prohibits hostile classification by law, that is, treating persons similarly situate differently or treating equals as unequal and as unequal as equals. Article 14 does not countenance hostile classification by law. In Tulsi Ram Patel, Their Lordships observed :

... "In early days, this Court was concerned with discrimination and hostile class legislation and it was to this aspect of Article 14 that its attention was directed. As fresh thinking began to take place on the scope and ambit of Article 14, new dimensions to this guarantee of equality before the law and of the equal protection of the laws emerged and were recognized by this Court. It was realized that to treat one person differently from another when there was no rational basis for doing so would be arbitrary and thus discriminatory. Arbitrariness can take many forms and shapes but whatever form or shape it takes it is nonetheless discrimination. It also became apparent that to treat a person or a class of persons unfairly would be an arbitrary act amounting to discrimination forbidden by Article 14. Similarly, this Court recognized that to treat a person in violation of the principles of natural justice would amount to arbitrary and discriminatory treatment and would violate the guarantee given by Article 14".

(Emphasis given)

It may be seen that irrational discrimination in the grant of pay scales would offend Article 14 of the Constitution. We do not see in the facts and circumstances of this case, any intelligible differentia which distinguishes the Assistants in the Central Civil Secretariat and the Senior Auditors in the grant of pay scale, more so, when at the time of restructuring of the Indian Audit and Accounts Department, it was conceded by the Government that duties and responsibilities of the Senior Auditors were in parity with the duties and responsibilities of the Assistants in the Secretariat. This position was subsequently affirmed by the Fourth Pay Commission, which recommended parity in the grant of pay scales to the two categories. The Government accepted the recommendation of the Fourth Central Pay Commission and granted pay scale of 1400-2600 to both the categories. However, in view of the decision of the Principal bench of the Central Administrative Tribunal the Assistants in the Central Secretariat were granted higher pay scale of 1640-2900. The Government rejected the claim of the Senior Auditors who were similarly situate according to the recommendations of the Fourth Pay Commission without any reasonable or rational basis. Merely because the Anomaly Committee rejected the claim of the Auditors, after the decision of the Guwahati and Chandigarh Benches of the Central Administrative Tribunal upholding the parity of Senior Auditors with the Assistants in the Central Civil Secretariat, which had become final, would not make rejection of the claim of the Auditors by Anomaly Committee rational or reasonable.

Assuming the Government has discretion in the matter of revision of pay scales, then such discretion as pointed out by the Supreme Court in *Messers Pannalal Binjraj and others v. Union of India and others A.I.R 1967 S. C. 397* has to be tested on two grounds.

- a) Does it admit of the possibility of any real and substantial discrimination and
- b) Does it impinge on the fundamental right granted by the Constitution?

We are of the view that the discretion made by the Government in the present case

~~does~~ not admit of any real discrimination and if offences the right granted by Article 14 of the Constitution.

The rule of law mandates that discretion vested with the Government must be confined within clearly defined limits. A decision taken without any principle or rule, as observed by the Apex Court on Jaisinghani S. B. v. Union of India, AIR 1967 is antithesis of a decision taken in accordance with the law of the land.

The discretion has to be exercised rationally. It must not be arbitrary, vague or fanciful or capricious. If the decision is shown to be unreasonable or used for oblique or unworthy purpose or with an evil eye and unequal hard, the Court will not hesitate to interfere in its jurisdiction under Article 26 of the Constitution.

The impugned action of the respondents, in the present case, in not viewing the case of the petitioners in the light of the observations made in various orders of different Benches of Central Administrative Tribunal, as noticed above, is arbitrary and irrational more so when the Guwahati High Court in Writ Petition (C) No. 7598 of 001 decided on September 16, 2002 categorically held that the Fourth Central Pay Commission has placed the Senior Auditors IA & AD in the same group as Assistants and Stenographers of the Central Civil Secretariat as held by the Guwahati and Chandigarh Bench of the Central Administrative Tribunal which had attained finality. The Government in the circumstances, was bound to implement the judgment of the Guwahati Bench of the Central Administrative Tribunal in Original Application No. 85 of 2000 which specifically directed the respondents to implement the order of the Tribunal dated November 2, 1999 in O. A. No. 45 of 1992 as well as order dated September 14, 1999 in O. A. No. 63 of 1997 forthwith and to give consequential benefits to the applicants.

We are of the considered view that the action of the respondents in not granting pay scale of 1640-2900 to the Members of the Association of the petitioners, i.e. Senior Auditors in parity with the pay scale of the Assistants in the Central Civil Secretariat (pre-revised) is arbitrary, unreasonable and without any rational basis and therefore violative of Article 14 of the Constitution. The Apex Court in E. P. Royappa v. State of Tamilnadu and another, (1974) Supreme Court Cases 3, giving new dimension content and meaning to Article 14 observed :

...." Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Article 16, Articles 14 and 15 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that state action must be on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality".

Again a Seven Judges Bench of the Supreme Court in Special Courts Bill, 1978 (Special Reference No. 1 of 1978) A.I.R. 1979 Supreme Court 478 laid down that Article 14 provides that all persons similarly circumstances shall be treated alike both in privilege conferred and liabilities imposed.

(Emphasis given)

In Dwarkadas Marfetia and Sons v. Board of Trustees of the Port of Bombay, AIR 1989 Supreme Court 1642 it was observed :

"Where there is arbitrariness in State action, Art. 14 springs in and

judicial review strikes such an action down. Every action of the executive authority must be subject to rule of law and must be informed by reasons".

In our view, it was neither rational nor fair on the part of the respondents to deny the benefits of pay scale of 1640-2900 to the Senior Auditors at par with the Assistants in the Central Civil Secretariat who were similarly situate. We draw support, for the view we have taken, from Purshotam Lal and others v Union of India and another, AIR 1973 Supreme Court 1088. In Purshotam Lal, the petitioners were employed with the Forest Research Institute and Colleges, Dehradun. The Institute was Department of the Government of India in the Ministry of Food and Agriculture. The petitioners were Research Assistants and fell within Class III of the Non-Gazetted Technical Posts. Second Pay Commission propose new pay scales in place of the existing scales. The case of the petitioners was that their case was covered by the recommendations of the Commission. The Government in August 1960 issued a notification giving effect to the recommendations of the Pay Commission. On June 21, 1962, the Government of India revised the pay scales of the petitioners in the Forest Research Institute and Colleges Dehradun giving them revised pay scales. However, it was directed that the revision of the pay scales would take effect from the date of issue of those orders, i.e. June 21, 1962. The staff protested and made a representation to the Government saying that the revised pay scales of similar posts in other similarly sister institutions, except petitioners, under that very Ministry as well as other Ministries were implemented from July 1, 1959 according to the recommendations of the Pay Commission and, therefore, they were also entitled to the benefit of the revision of pay scales with retrospective effect, i.e. July 1, 1959. A contention on behalf of the Government was raised before the Constitution Bench that it was for the Government to accept the recommendations of the Pay Commission and while doing so to determine as to which category of the employees should be taken to have been included in terms of reference. The contention was rejected. Their Lordships observed :

....."Either the Government has made reference in respect of all Government employees or it has not. But if it has made a reference in respect of all Government employees and it accepts the recommendations it is bound to implement the recommendations in respect of all Government employees. If it does not implement the report regarding some employees only it commits a breach of Arts. 14 and 16 of the Constitution.. This is what the Government has done as far as these petitioners are concerned."

In our view, once the Government decided, on the recommendation of the Principal Bench of the Central Administrative Tribunal to grant pay scale of 1640-2900 to the Assistants in the Central Civil Secretariat then there was no rational to deny such benefit to the similarly placed Senior Auditors as both the categories formed one group.

No other point was urged before us.

In the facts and circumstances of this case, we have no hesitation to hold that the petitioners have been unjustly and arbitrarily treated in the grant of pay scales as recommended by the Fourth Pay Commission and this Court is duty bound to interfere to undo the wrong meted out to the Senior Auditors.

In result, we allow this petition in the following terms :

Respondents shall :

- a) Fix the pay of the Senior Auditors in the pay scale of 1640-2900 for pre-revised scale of 425-800 from the date it was granted to the Assistants in the Central Civil Secretariat.

b) Release all consequential benefits, including arrears of pay and re-fixation of their pay in the revised pay scale in accordance with the recommendation of the Fifth Pay Commission,

c) Pay cost of rupees 5000/- to the petitioners.

CMP No. 1325 of 200

No order in view of the disposal of the main petition.

Sd/- A. K. Goel, Judge

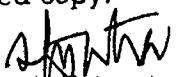
Sd/- Kuldip Chand Sud, Judge

ANNEXURE 7

a/ 69

19.10.2001

This is to certify that
this copy is the exact
copy of the original /
certified copy.


(Subhasis Talapatra)
Advocate.

PRESENT
THE HON'BLE THE CHIEF JUSTICE
THE HON'BLE MR. JUSTICE AH SAIKIA

Heard Mr. Dilip Barua, Learned Counsel for the petitioners.
issue notice calling upon the respondents to show cause as to why the writ petition should not be admitted to hearing.

Mr. A.K. Phukan, learned counsel accepts notice on behalf of the respondents.

The judgment and order of the Central Administrative Tribunal Guwahati Bench dated 19. 1. 2001, in OA No. 85 of 2000, shall remain stayed to the extent that the petitioners would not be liable to pay any arrears to the respondents. However, the pay for the month of November, 2001 onwards would be as per the judgment of the learned Tribunal, which will be subject to the final order that may be passed in this writ petition.

Sd/- R. S. Mongia, Chief Justice

Sd/- A. H. Saikia, Judge

ANNEXURE 8

70

86-2000 Vol II

Dated 12/4/02

FL Srinivasan

Director, Legal

THIS IS TO CERTIFY THAT
THIS COPY IS A TRUE COPY
OF THE ORIGINAL DOCUMENT
AS IT EXISTED ON 12/4/02
S.S.

Abhasis Talapatra
(Abhasis Talapatra)
Advocate.

Dear, Sir

Please refer to your D.O. Letter No. DAG (A) Con 7598 of 2001/ 1197 dated 3.03.2002 regarding Pay parity case or Sr. Auditors.

The Honourable High Court Interim Order dated 19.10.2001 passed in WP/ (C) 7598/ 2001 directing higher pay from the month of November 2001 onwards, subject to the final order that may be passed in the writ petition may be implemented. In respect of applicants in OA 85/2000, OA 45/92 and OA 63/1997 before CAT Guwahati Bench. The higher pay would, however, be subject to the final order in WP (C) 759/ 2001.

With best wishes,

A.I. Sharma

OAG/ADM

OA the Pr. A.G. (nu) Meghalaya etc.

Shillong.

F. No. 6/82/E. 10 (B) / 91
 Ministry of Finance & Company Affairs
 Department of Expenditure
 (E. III-B Branch)

New Delhi, the 28th February, 2003

OFFICE MEMORANDUM

Subject : Pay scales for the staff belonging the Organised
 Accounts Departments.

**This is to certify that
 this copy is the exact
 copy of the original /
 certified copy.**

Subhasis Talapatra
 (Subhasis Talapatra)
 Advocate.

1. The undersigned is directed to say that the Government had approved grant of higher scales for the Accounts staff of Railways on notional basis w.e.f. 1.1.1996 with actual payments being made prospectively. Keeping in view the fact that pay scales of corresponding categories in various organized Accounts cadres have traditionally been on par, it has been decided that the dispensation approved in case of the Accounts staff of Railways may be extended to the corresponding categories in all the organized Accounts cadres.
2. Pay scales of the following posts and their equivalent posts in the organized Accounts cadres existing in various ministries/ departments of the Government of India being made from 19.2.2003- the date on which this decision was approved by the Government as under :

Designation	Pay scale prior to 1.1.1996 Rs.	Existing pay scale Rs.	Pay scale to be extended notionally w.e.f. 1.1.1996 with actual payments being made prospectively. Rs.
Auditor/ Accountant.	1200-30- 1560-40- 2040	4000-100- 6000	4500-125-7000
Sr. Auditor/ Sr. Accountant.	1400-40- 1600-50- 2300-60- 2600	5000-150- 8000	5500-175-9000
Section Officer	1640-60- 2600-75- 2900	5500-175- 9000	6500-200-10500
Asstt. Audit Officer/ Asstt. Accounts Officer.	2000-60- 2300-75- 3200	6500-200 10500	7450-225-11500

3. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these order issue after consultation with the C & AG of India.

(USHA MAITRA)
Joint Secretary to the Government of India.

1. Secretary, Department of Posts.
2. Member (Finance), Telecom Commission, Ministry of Communications
3. Finance Commissioner, Ministry of Railways.
4. Deputy Comptroller & Auditor General of India.
5. Controller General of Defence Accounts.
6. Controller General of Accounts.