

(74)

OA No. 436/2010

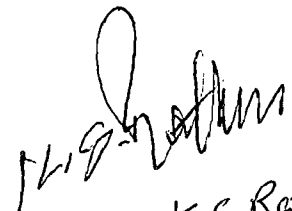
15/03/2012

Mr. S.K. Vyas along with Mr. Ashok Joshi, Counsel for applicants  
Mr. Mukesh Agarwal, Counsel for respondents.

Heard.

O.A. is disposed of by a separate  
order on the separate sheets for the  
reasons recorded therein.

Anil Kumar  
[Anil Kumar]  
Member (A)

  
[Justice K.S. Rathore]  
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 15<sup>th</sup> day of March, 2012

Original Application No.436/2010

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDICIAL)  
HON'BLE MR. ANIL KUMAR, MEMBER (ADMINISTRATIVE)

1. Assistant Audit Officers Association, Rajasthan, Jaipur through Jagdish Prasad Panchal, General Secretary O/o the Principal Accountant General (Civil Audit), Rajasthan, Jaipur
2. Jagdish Prasad Panchal s/o Girraj Prasad r/o 170/147, "RHJ" Pratap Nagar, Jaipur presently working as Asstt. Audit Officer, O/o the Principal Accountant General (Civil Audit), Rajasthan, Jaipur
3. Rajneesh Mehta s/o Moti Ram, r/o 160, Jagnnath Puri, Kalwar Road, Jhotwara, Jaipur, presently working as Asstt. Audit Officer O/o the Principal Accountant General (Civil Audit), Rajasthan, Jaipur

.. Applicants

(By Advocate: Shri S.K.Vyas along with Shri Ashok Joshi)

Versus

1. The Union of India through the Secretary, Department of Expenditure, Ministry of Finance, North Block, New Delhi.
2. The Comptroller and Auditor General of India, 9, Deendayal Upadhyaya Marg, New Delhi.
3. The Principal Accountant General (Civil Audit), Rajasthan, Jaipur

.. Respondents

(By Advocate: Shri Mukesh Agarwal)

O R D E R (ORAL)

By way of this OA, the applicants claim following reliefs:-

"It is, therefore, prayed that the Hon'ble Tribunal may kindly pleased to call for entire record of the case, examine the same and accept & allow this Original Application. The Hon'ble Tribunal further be pleased to:-

- i) issue an appropriate order or direction, whereby the impugned order dated 1.10.2008 (Annex-A/1) issued by the respondent No.2 may be quashed as the merged of posts of Section Officer & Asstt. Accounts/Audit Officers effective from 27.5.2009 (Annex-A/2) can not be given retrospective effect from 1.1.2006;
- iii) issue an appropriate order or direction, whereby the impugned order dated 27.5.2009 (Annex-A/2) may also be quashed because as per the recommendation of VI CPC, the post of Asstt. Accounts/Audit Officers was to be merged with the post of Accounts/Audit Officer;
- iii) issue an appropriate order or direction, whereby the impugned order of Principal Accountant General annulling the fixation done under FR 22 (1)(A)(i) on promotion of Section Officers to the post of Asstt. Accountants/Audit Officers during the period from 1.1.2006 to 30.9.1998 (Annex-A/5) may be quashed;
- iv) issue an appropriate order or direction, whereby the Principal Accountant General may be directed to refund the amount which was recovered from the



applicants on annulment of their fixation under FR (1)(A)(i) on their promotion to the post of A.A.O. The amount paid on the basis of order being bonafide payment can not be recovered.

- v) issue an appropriate order or direction, whereby the respondent No.1 Government of India, Department of Expenditure may be directed to consider that the Sixth Pay Commission had recommended for up gradation of the pay scale of Asstt. Accounts/Audit Officer and therefore, also recommended that of posts Asstt. Accountants/Audit Officer may be merged with post of Accounts/Audit Officer. The post of Asstt. Accounts/Audit Officer be placed in the PB-2 along with grade pay Rs. 5400/- corresponding to pre-revised pay scale of Rs. 8000-13500 and redesignation as Audit/Accounts Officer;
- vi) Issue an appropriate order or direction, whereby the respondent No.3 may be directed to refund the amount recovered on account of refixation of pay for the period from date of promotion to the date from which that fixation was annulled.
- vii) Any other appropriate order or directions which is deemed just and proper by this Hon'ble Tribunal may also be passed in favour of the applicants.
- viii) The Original Application may kindly be allowed through out with costs."

2. Brief facts of the case are that prior to implementation of Sixth Central Pay Commission (CPC) in the Indian Audit and Accounts Department, Section Officers were in the pay scale of Rs. 6500-200-10500 and the post of Section Officer was classified as



Group 'B' Non-Gazetted. The Section Officers who fulfill the minimum qualifying service of three years, were promoted to the post of Assistant Accounts/Audit Officer in the pay scale of Rs. 7450-225-11500 subject to availability of vacancies and this post was classified as Group-B Gazetted.

3. The Sixth CPC vide para 7.56.9 (Ann.A/10) recommended that merger of Fifth CPC pay scale of Rs. 5000-8000, Rs. 5500-9000 and Rs. 6500-10500 would place the posts of Senior Auditor/Accountants and Section Officer in an identical pay band and grade pay, even though the former are feeder grade for promotion to the later. The Post of Section Officer therefore, also need to be upgraded.

4. The Government of India after carefully considering the recommendation of the 6<sup>th</sup> CPC accepted the same subject to some modifications and issued resolution dated 29.8.2008 (Ann.A/11) whereby in the IA&AD and all organized accounts cadres, posts of Section Officers and Assistant Audit/Accounts Officers were merged and placed in PB-2 with the grade pay of Rs. 5400 and Senior Audit/Accounts Officers (Sr. AOs) were placed in PB-3 with the same grade pay of Rs. 5400.

5. The Controller and Auditor General of India vide letter dated 1.10.2008 clarified that as the cadre of Asstt. Audit/Accounts Officer



and Section Officer have been merged and upgraded in PB-2 (Rs. 9300-34800) with grade pay of Rs. 4800 w.e.f. 1.1.2006 and promotion from Section Officer to Assistant Audit/Accounts Officer on or after 1.1.2006 are to be treated as null and void. Accordingly, fixation made under FR 22(1)(A) (1) while promoting to the post of Assistant Audit/Accounts Officer from SO on or after 1.1.2006 was also nullified, therefore, recovery to this effect were made and it was decided to make promotions to the new cadre of Assistant Audit/Accounts Officers in terms of existing recruitment rules of Section Officer cadre till such time the new recruitment rules are framed.

6. Per contra, the respondents controverted the submissions made on behalf of the applicants and submitted that pursuant to resolution dated 29.8.2008 recommendations of the 6<sup>th</sup> CPC were accepted. The Govt. of India issued revised pay rules vide notification dated 29.8.2008 and in para 1(2) of the said Rules it is clearly mentioned that they shall be deemed to have come into force on the 1<sup>st</sup> day of January, 2006. Thus, the acceptance with regard to 6<sup>th</sup> CPC have taken effect from 1.1.2006. So far letter dated 15.7.2009 (Ann.A/4) is concerned, it was issued in reference to grant of Non-productivity Linked Bonus for the year 2007-2008. In the pre revised scale, the cadre of Section Officer was classified as Group-B Non-Gazetted and was entitled for Bonus but the Assistant



Audit/Accounts Officer cadre was classified as Group-B Gazetted and was not entitled for bonus.

7. Further, after implementation of the 6<sup>th</sup> CPC recommendation vide notification w.e.f. 1.1.2006 cadres of Section Officer and Assistant Audit/Accounts Officer were merged, therefore, merged cadre was needed to be re-designated. Consequently vide letter dated 27.5.2009 merged cadre of Section Officer and Assistant Audit/Accounts Officer was re-designated as Assistant Audit/Accounts Officer and was classified as Group-B Gazetted. In view of this letter, it was decided to give bonus to the Section Officer and equivalent having grade pay of Rs. 4800 in the year 2007-08. Thus grant of bonus is separate issue and should not be linked with the issue which has been raised by the applicants.

8. The respondents have also relied upon the judgment of the Hon'ble Supreme Court in the case of State of West Bengal Vs. Subhash Kumar Chatterjee reported in (2010) 11 SCC 694, wherein it was held that recommendation of pay commission are always subject to acceptance or rejection and the Court cannot compel the State to accept the recommendation of pay commission. The state in its wisdom and furtherance of its valid policy may or may not accept the recommendation of the pay commission.



9. It is not disputed that the recommendations of the 6<sup>th</sup> CPC were implemented w.e.f. 1.1.2006 and benefit was allowed to the staff w.e.f. 1.1.2006, therefore, merger of Section Officer and Assistant Audit/Accounts Officer has already been taken effect from 1.1.2006.

10. We have heard the rival submissions of the respective parties and carefully perused the material available on record as well as the provisions of law and relevant rules. We have also carefully perused the Resolution of Ministry of Finance, Department of Expenditure dated 29<sup>th</sup> August, 2008 (Ann.A/11) and as per sub-clause c) of this resolution, in the IA&AD and all organized accounts cadres, posts of Section Officers and Assistant Audit/Accounts Officers will be merged and placed in PB-2 with grade pay of Rs. 4800 as recommended by the Commission. In modification of Sixth CPC's recommendations, Audit/Accounts Officers (AOs) will be placed in PB-2 with grade pay of Rs. 5400 and Senior AOs will be placed in PB-3 with grade pay of Rs. 5400. Further, as per clause 2, the Commission's recommendations and Government decision thereon with regard to revised scales of pay and dearness allowance for civilian employees of the Central government and personnel of All India Services as detailed in the Part-A of the Annexure-I will be made effective from 1<sup>st</sup> day of January, 2006.

11. We have also carefully perused Ann.A/10 and, more particularly, para 7.56.9, which is reproduced as under:-





"7.56.9      Insofar as other posts are concerned, it is observed that a clear cut parity of these posts vis-à-vis those existing in the Central Secretariat Service has never been established in past and it is difficult to establish any parity even now. The proposed upgradation for the posts of SAO, AO will, therefore, have to be considered on merits. It is observed that the post of SAO constitutes a feeder cadre for induction into IA&AS. The entry grade for IA&AS is presently Rs. 8000-13500 which is identical to the scale of SAOs. Upgrading their pay scale will place them in a higher level than the entry grade of A&AS which is a promotion post. This will be anomalous. The existing pay scale of SAO will, therefore, need to be maintained. Merger of the Fifth CPC pay scale of Rs. 5000-8000, Rs. 5500-9000 and Rs. 6500-10500 will place the posts of Senior Auditor/Accountant and Section Officer in an identical pay band and grade pay even though the former are a feeder grade for promotion to the later. The post of Section Officer would, therefore, also need to be upgraded. The post will consequently be placed in the next higher grade carrying grade pay of Rs. 4800 in PB-2 of Rs. 8700-34800 that corresponds to the pre-revised pay scale of Rs. 7500-12000. This upgradation will place the posts of Section Officer and Assistant Accounts/Audit Officer in an identical pay scale, thus necessitating the upgradation of the latter category. The posts of Assistant Accounts/Audit Officer and Accounts/Audit Officer should, therefore, be merged in the pay band PB-2 of Rs. 8700-34800 along with grade pay of Rs. 4800 that corresponds to the pre-revised pay scale of Rs. 7500-12000. The post of Senior Accounts/Audit Officer shall be placed in the corresponding revised pay band PB-2 of Rs. 8700-34800 along with a grade pay of Rs. 5400. The existing parity between posts in various organized cadres shall be maintained. Accordingly, the aforesaid structure being



recommended in IA&AD will be extended in case of other organized accounts cadres like Controller General of Accounts, Controller General of Defence Accounts, Railway Accounts, Postal Accounts, Telecom Accounts."

12. The applicant Association has claimed the relief to quash and set-aside the impugned orders dated 1.10.2008 (Ann.A/1) and 27.5.2009 (Ann.A/2) and also seeks further direction to the Principal Accountant General to refund the amount which was recovered from the applicants on annulment of their fixation under FR 22(1) (A) (1) on their promotion to the post of AAO as the amount is paid on the basis of order being bonafide payment which cannot be recovered. To this effect the applicant Association has represented before Principal Accountant General (CA), Rajasthan, Jaipur vide its representation dated 12.8.2009 (Ann.A/13) and also vide Ann.A/15 dated 27.9.2009 addressed to the Comptroller and Auditor General of India, New Delhi.

13. As discussed hereinabove, we do not want to interfere with the resolution dated 29.8.2008 taken by the Ministry of Finance, Department of Expenditure to accept the 6<sup>th</sup> CPC recommendations and to decide that it shall be made effective from 1<sup>st</sup> day of January, 2006. But so far as the amount, which has already been paid on the basis of the order being bonafide and undoubtedly the same has been recovered from the members of the Association. Therefore, in our considered view, ends of justice will be met, if we direct the



respondents to consider representations dated 12.8.2009 (Ann..A/13) and 27.8.2009 (Ann.A/15) filed by the applicant Association as it is evident that the said representations have not been considered properly by the respondents.

14. Consequently, the respondents are directed to consider representations dated 12.8.2009 (Ann.A/13) and 27.8.2009 (Ann.A/15) filed by the applicant Association and shall pass fresh speaking order to resolve the controversy involved in this OA.

15. With these observations, the OA stands disposed of with no order as to costs.

*Anil Kumar*

(ANIL KUMAR)  
Admv. Member

*K.S. Rathore*

(JUSTICE K.S.RATHORE  
Judl. Member

R/