

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

**O.A. 825/2016
with
O.A No.704/2016
O.A. No.705/2016
OA No.35/2016**

**Reserved On:06.12.2017
Pronounced on:5.1.2018**

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)**

OA No.825/2016

1. Smt. Tejwinder Kaur, Aged 40 years,
W/o Shri Sukhwinder Singh,
Working as Staff Nurse, in JNV,
Khara, Kheri, Fatehabad (Har.).
2. Ms. Veena Rani, Aged 43 years,
D/o Sh. Ranjharam,
Working as Staff Nurse in
JNV Pabra, Hissar (Har.)
R/o Staff Quarters, JNV Campus,
Pabra, Hissar (Har.).
3. Ms. Nilima, Aged 40 years,
D/o Shri Rati Ram Humane,
Working as Staff Nurse in
JNV Jatbaroda, Sawaimadhopur (Raj.),
R/o Staff Quarters, JNV Campus,
Jatbaroda, Sawaimadhopur (Raj.).
4. Ms. Bhawna, Aged 42 years,
D/o Shri Arvind Singh,
Working as Staff Nurse,
R/o Staff Quarters, JNV Campus,
Kuchaman City, Distt. Nagaur (Raj.).
5. Smt. Sunita Kailoriya, Aged 37 years,
D/o Sh. Mohar Singh,
Working as Staff Nurse in
JNV Khereli, Distt. Dausa (Raj.)
R/o Plot No.259, Scheme-10A,

Alwar (Raj.).

6. Smt. Pankaj Kulshreshtaha, Aged 53 years,
D/o Sh. Jagdish Prashad,
Working as Staff Nurse,
R/o Staff Quarters, JNV Campus,
Chhonkerwara, Bharatpur (Raj.)
7. Kajal Sen Gupta, Aged 42 years,
W/o Shri Jayant Sen Gupta,
Working as Female Staff Nurse,
R/o Jawahar Navodaya Vidyalaya,
VPO Mouli Pkt.
8. Jagjit Kaur, Aged 37 years,
W/o Shri Tarjinder Singh,
Working as Female Staff Nurse,
R/o Jawahar Navodaya Vidyalaya,
VPO Kaulan, Ambala (Haryana)-134003.
9. Harjeet Kaur, Aged 38 years,
W/o Shri Pyara Lal,
Working as Staff Nurse,
R/o Jawahar Navodaya Vidyalaya,
Niwarsi, Kurukshetra (Haryana)

...Applicants

(By Advocate : Shri Yogesh Sharma)

Versus

1. Union of India through the Secretary,
Ministry of HRD, Department of Education,
Govt. of India, Shastri Bhawan, New Delhi.
2. The Secretary,
Ministry of Finance,
Department of Expenditure,
Govt. of India, New Delhi.
3. The Commissioner,
Navodaya Vidyalaya Samiti,
B-15, Institutional Area,
Sector 52, Noida (UP).

...Respondents

(By Advocate : Shri S. Rajappa)

OA No.704/2016

1. Devender Kumar, Aged 33 years,
S/o Sh. Man Singh,
Working as Physical Education Teacher (Male),
In JNV, Mohindergarh (Haryana),
R/o B-9/3, Shiv Vihar, Uttam Nagar,
New Delhi-110059.
2. Bajrang Lal Kumawat, Aged 36 years,
S/o Sh. Ram Gopal Kumawat,
Working as TGT (Hindi) in JNV,
Kajra, Distt. Jhunjhunu, (Rajasthan),
R/o At-Kerali Ki Dhani, PO Ajitgarh,
Distt. Sikar (Raj.)-332701.
3. Rajesh Meena, Age-41 years,
S/o Sh. Jai Singh Meena,
Working as TGT (Science) in JNV,
Chhan, Distt. Tonk (Raj.),
R/o Jawahar Navodaya Vidyalaya, Chhan,
Distt. Tonk (Rajasthan), (Vidyalaya Campus).
4. Manisha Banyal, Aged 41 years,
D/o Sh. Sudama Ram,
Working as Librarian in JNV,
Kaulan, Ambala City (Haryana),
R/o Jawahar Navodaya Vidyalaya,
Vill. Kaulan, Ambala City,
Haryana-134003. ... Applicants

(By Advocate: Shri Yogesh Sharma)

Versus

1. Union of India through the Secretary,
Ministry of HRD, Department of Education,
Govt. of India, Shastri Bhawan, New Delhi.
2. The Secretary,
Ministry of Finance,
Department of Expenditure,
Govt. of India, New Delhi.
3. The Commissioner,
Navodaya Vidyalaya Samiti,

B-15, Institutional Area,
Sector 52, Noida (UP).

...Respondents

(By Advocate : Shri S. Rajappa)

OA No.705/2016

1. Abhay Gare, Aged 44 years,
S/o Sh. Sharad Gare,
Working as TGT (Science) in
JNV Pabra, Hissar (Har),
R/o Staff Quarters, JNV Campus,
Pabra, Hissar (Har).
2. Pradeep Kumar, Aged 37 years,
S/o Sh. Ram Lakhan Ram,
Working as TGT (Hindi) in
JNV Pabra, Hissar (Har),
R/o Staff Quarters, JNV Campus,
Pabra, Hissar (Har).
3. Desh Raj, Aged 45 years,
S/o Lt. Sh. Sampat Ram,
Working as PGT (Maths) in
JNV Pabra, Hissar (Har),
R/o Staff Quarters, JNV Campus,
Pabra, Hissar (Har).
4. Surendra Kumar, Aged 37 years,
S/o Sh. Amar Singh,
Working as PGT (Chemistry) in
JNV Pabra, Hissar (Har),
R/o Staff Quarters, JNV Campus,
Pabra, Hissar (Har).
5. Krishna Deo Das, Aged 37 years,
S/o Sh. Dashrath Das,
Working as PGT (Biology) in
JNV Pabra, Hissar (Har),
R/o Staff Quarters, JNV Campus,
Pabra, Hissar (Har).
6. Pawan Kumar, Aged 38 years,
S/o Sh. MangeRam,
Working as PGT (Commerce) in
JNV Pabra, Hissar (Har),
R/o Staff Quarters, JNV Campus,

Pabra, Hissar (Har).

7. Ashok Kumar, Aged 39 years,
S/o Sh. Balwant Rai,
Working as PET in
JNV Pabra, Hissar (Har),
R/o Staff Quarters, JNV Campus,
Pabra, Hissar (Har).
 8. Ashok Kumar, Aged 39 years,
S/o Sh. Ramphal Yadav,
Working as TGT (S.Science) in
JNV Khara, Kheri, Fatehabad (Har),
R/o Staff Quarters, JNV Campus,
Khara, Kheri, Fatehabad (Har).
 9. Pradeep Kumar Poonia, Aged 42 years,
S/o Sh. Chandra Bhan Poonia,
Working as TGT (Science) in
JNV Khara, Kheri, Fatehabad (Har),
R/o Staff Quarters, JNV Campus,
Khara, Kheri, Fatehabad (Har).
 10. Smt. Sarita Kumari, aged 42 years,
w/o Sh. Jai Om Kumar,
Working as TGT (Science) in
JNV Rohtak (Har),
R/o 357, City Homesh, OMAXE,
Bahadurgarh (Har).
 11. Udai Singh, Aged 37 years,
s/o Sh. Banwari La,
Working as TGT (S.Science) in
JNV Bai, Mewat (Har),
R/o Staff Quarters, JNV Campus,
Bai, Mewat (Har).
- ... Applicants

(By Advocate: Shri Yogesh Sharma).

Versus

1. Union of India through the Secretary,
Ministry of HRD, Department of Education,
Govt. of India, Shastri Bhawan, New Delhi.
2. The Secretary,
Ministry of Finance,
Department of Expenditure,

Govt. of India, New Delhi.

3. The Commissioner,
Navodaya Vidyalaya Samiti,
B-15, Institutional Area,
Sector 52, Noida (UP).

...Respondents

(By Advocate : Shri S. Rajappa)

OA No.35/2016

1. Gajendra Kumar, Aged 42 years,
S/o Shri Roormal Yadav,
Working as PGT (Chemistry) in
JNV Kareera.
R/o Staff Quarters, JNV Campus,
Kareera.
2. Meena Verma, Aged 39 years,
D/o Shri Rameshwar Dayal Verma,
Working as PGT (Chemistry) in JNV Karauli,
R/o Staff Quarters, JNV Campus,
Karauli.
3. Raja Ram Meena, Aged 38 years,
S/o Shri Hari Narayan Meena,
Working as PGT (Biology) in JNV,
Hurda, Bhilwara.
R/o Staff Quarters, JNV Campus,
Hurda Bhilwara.
4. Sube Singh, Aged 40 years,
S/o Sh. Thana Ram Yadav,
Working as PGT (Hindi), in JNV Pallu,
Hanumangarh.
R/o Staff Quarters, JNV Campus,
Pallu, Hanumangarh.
5. Devender Singh Yadav, Aged 43 years,
S/o Shri Jagdish Singh,
Working as PGT (English) in JNV
Khairathal, Distt. Alwar (Rajasthan),
R/o Staff Quarters, JNV Campus,
Khairthal, Distt. Alwar (Rajasthan)
6. Sanjeev Jhajharia, Aged 44 years,
S/o Shri Birbal Singh,

- Working as PGT (Geography) in JNV
Khairthal, Distt. Alwar (Rajasthan),
R/o Staff Quarters, JNV Campus,
Khairthal, Distt. Alwar (Rajasthan).
7. Saroj Maan, Aged 43 years,
W/o Sh. Sunil Kumar Maan,
Working as PGT (Biology) in JNV,
Khairthal, Distt. Alwar (Rajasthan)
R/o Staff Quarters, JNV Campus,
Khairthal, Distt. Alwar (Rajasthan).
 8. Sanjay Kumar Kaushik, Aged 37 years,
S/o Sh. Rameshwar Dayal,
Working as PGT (History) in JNV,
Khairthal, Distt. Alwar (Rajasthan)
R/o Staff Quarters, JNV Campus,
Khairthal, Distt. Alwar (Rajasthan).
 9. Hansraj Meena, Aged 36 years,
S/o Sh. Hanuman Prasad,
Working as PGT (Bio) in
JNV Kareera,
R/o Staff Quarters, JNV Campus,
Kareera.
 10. Indramani Yadav, Aged 39 years,
S/o Shri Ram Singh Yadav,
Working as PGT (Economics) in
JNV Kareera,
R/o Staff Quarters, JNV Campus,
Kareera.
 11. Jagdish Chand, Aged 44 years,
S/o Shri Netram,
Working as PGT (Commerce), in
JNV Kareera.
R/o Staff Quarters, JNV Campus,
Kareera.
 12. T.C. Saini, Aged 38 years,
S/o Shri Chhanga Ram,
Working as PGT (Biology) in
JNV Rewari,
R/o Staff Quarters, JNV Campus,
Rewari.
 13. Amit Kumar Sharma, Aged 40 years,

S/o Shri Ram Bhool Sharma,
Working as PGT (Biology) in
JNV Paota Jaipur
R/o Staff Quarters, JNV Campus,
Paota Jaipur.

14. Rajnikant Sharma, Aged 40 years,
S/o Shri Natrapal Sharma,
Working as PGT (Physics) in
JNV Paota, Jaipur.
R/o Staff Quarters, JNV Campus,
Paota, Jaipur.
15. Shashidhar Mishra, Aged 46 years,
S/o Shri Prem Shankar Mishra,
Working as PGT (History) in
JNV Paota, Jaipur.
R/o Staff Quarters, JNV Campus,
Paota, Jaipur.
16. Harinder Singh Lamba, Aged 38 years,
S/o Shri Shyamphool,
Working as PGT (Commerce) in
JNV Niwarsi, Kurukshertra (Har.),
R/o Staff Quarters, JNV Campus,
JNV Niwarsi, Kurukshertra (Har.).
17. Roshan Lal, Aged 38 years,
S/o Shri Niroti Ram,
Working as PGT (Chemistry) in
JNV Niwarsi, Kurukshertra (Har.)
R/o Staff Quarters, JNV Campus,
JNV Niwarsi, Kurukshertra (Har.).
18. Deepak, Aged 39 years,
S/o Shri Satyapal,
Working as PGT (Commerce) in
JNV Nandla, Nasirabad, Ajmer (Raj),
R/o Staff Quarters, JNV Campus,
JNV Nandla, Nasirabad, Ajmer (Raj).
19. Ms. Poonam, Choudhary, aged 40 years,
S/o Shri Babu Ram,
Working as PGT (English) in
JNV Naichana, Rewari,
R/o Staff Quarters, JNV Campus,
JNV Naichana, Rewari (Har).

20. Mrs. Sunil, aged 51 years,
D/o Shri Gianander Singh,
Working as PGT (Hindi) in
JNV Naichana, Rewari (Har).
R/o Staff Quarters, JNV Campus,
JNV Naichana, Rewari (Har).
21. Anup Singh, Aged 36 years,
S/o Shri Kashi Ram,
Working as PGT (Biology) in
JNV Devrala Bhiwani (Har).
R/o Staff Quarters, JNV Campus,
Devrala Bhiwani (Har.)
22. Jai Prakash, Jangid, aged 40 years,
S/o Shri Om Prakash Jangid,
Working as PGT (English) in
JNV Devrala Bhiwani (Har).
R/o Staff Quarters, JNV Campus,
Devrala Bhiwani (Har).
23. Mahesh Kumar Rao, Aged 38 years,
S/o Shri Dharmpal Rao,
Working as PGT (Physics) in
JNV Devrala Bhiwani (Har).
R/o Staff Quarters, JNV Campus,
Devrala Bhiwani (Har.)
24. Mahipal Singh, Aged 36 years,
S/o Shri Harchand Singh,
Working as PGT (Physics) in
JNV Jalore,
R/o Staff Quarters, JNV Campus,
Jalore (Raj)
25. Geeta Bai, Aged 33 years,
D/o Shri Devi Sahay,
Working as T.G.T. (English) in JNV Karauli,
R/o Staff Quarters, JNV Campus,
Karauli.
26. Vinod Kumar Arya, Aged 40 years,
S/o Shri Babu Lal Arya,
Working as TGT (Maths) in JNV,
Khairthal, Distt. Alwar (Rajasthan)
R/o Staff Quarters, JNV Campus,
Khairthal, Distt. Alwar (Rajasthan)

27. Keshav Dev Meena, Aged 42 years,
S/o Shri Lahsni Ram Meena,
Working as TGT (Math) in JNV
Khairthal, Distt. Alwar (Rajasthan)
R/o Staff Quarters, JNV Campus,
Khairthal, Distt. Alwar (Rajasthan)
28. Phool Chand Kanav, Aged 38 years,
S/o Shri Banwari Lal Kanav,
Working as TGT (Hindi) in JNV
Khairthal, Distt. Alwar (Rajasthan)
R/o Staff Quarters, JNV Campus,
Khairthal, Distt. Alwar (Rajasthan)
29. Sudesh Kumari, Aged 35 years,
W/o Shri Krishan Kumar,
Working as TGT (English) in JNV,
Khairthal, Distt. Alwar (Rajasthan)
R/o Staff Quarters, JNV Campus,
Khairthal, Distt. Alwar (Rajasthan)
30. Ram Niwas, Aged 37 years,
S/o Shri Manpal,
Working as TGT (Hindi) in
JNV Kareera,
R/o Staff Quarters, JNV Campus, Kareera.
31. Reena Meena, Aged 38 years,
W/o Sh. Karni Singh,
Working as TGT (Hindi) in
JNV Rewari, R/o Staff Quarters, JNV Campus,
Rewari.
32. Savita Yadav, Aged 37 years,
D/o Sh. Subhash Chand,
Working as TGT (English) in
JNV Paota, Jaipur.
R/o Staff Quarters, JNV Campus,
Paota, Jaipur.
33. Radha Rakesh Gothwal, Aged 38 years,
S/o Shri Gokul Prasad Gothwal,
Working as TGT (S.Studies) in
JNV Devrala Bhiwani (Har).
R/o Staff Quarters, JNV Campus,
Devrala Bhiwani (Har).

...Applicants

(By Advocate: Shri Yogesh Sharma)

Versus

1. Union of India through the Secretary,
Ministry of HRD, Department of Education,
Govt. of India, Shastri Bhawan, New Delhi.
2. The Secretary,
Ministry of Finance,
Department of Expenditure,
Govt. of India, New Delhi.
3. The Commissioner,
Navodaya Vidyalaya Samiti,
B-15, Institutional Area,
Sector 52, Noida (UP).

...Respondents

(By Advocate : Shri S. Rajappa)

ORDER

By Mr. V. Ajay Kumar, Member (J)

Since the facts and law involved in all these OAs is common, they are being disposed of by way of this common order. However, the facts in OA No.825/2016 are taken into consideration.

2 The 6th Central Pay Commission recommended for up-gradation of pay scales of various posts and the same has been accepted by the Government of India and accordingly the CCS (Revised Pay) Rules, 2008 (in short, 2008 Rules) have been issued. The respondent-Navodaya Vidyalalaya Samiti (NVS) has also adopted the same with the approval of the Government of India vide Notification dated 11.11.2008.

3. The pay of the employees is to be fixed as per the 2008 Rules. Since the rules came into effect with effect from 1.1.2006 in the Government of India as well as in the respondent-NVS, on adoption, the said rules itself provides for fixation of the pay scale to the employees who were appointed and working prior to 1.1.2006 in a particular manner and to those who were appointed on or after 1.1.2006 in another manner. Rule 7 of the 2008 Rules, is applicable to the former, whereas Rule 8 is applicable to the latter. The said rules read as under:-

“7. Fixation of initial pay in the revised pay structure

(1)The initial pay of a Government servant who elects, or is deemed to have elected under sub-rule (3) of Rule 6 to be governed by the revised pay structure on and from the 1st day of January, 2006, shall unless in any case the President by special order otherwise directs, be fixed separately in respect of his substantive pay in the permanent post on which he holds a lien or would have held a lien if it had not been suspended, and in respect of his pay in the officiating post held by him, in the following manner, namely:-

(A) in the case of all employees:-

(i) the pay in the pay band/pay scale will be determined by multiplying the existing basis pay as on 1.1.2006 by a factor of 1.86 and rounding off the resultant figure to the next multiple of 10.

(ii) if the minimum of the revised pay band/pay scale is more than the amount arrived at as per (i) above, the pay shall be fixed at the minimum of the revised pay band/pay scale;

Provided further that:-

Where, in the fixation of pay, the pay of Government servants drawing pay at two or more consecutive stages in an existing scale gets bunched, that is to say, gets fixed in the revised

pay structure at the same stage in the pay band, then, for every two stages so bunched, benefit of one increment shall be given so as to avoid bunching of more than two stages in the revised running pay bands. For this purpose, the interment will be calculated on the pay in the pay band. Grade pay would not be taken into account for the purpose of granting increments to alleviate bunching.

In the case of pay scales of Higher Administrative Grade (HAG) in the pay band PB-4, benefit of increments due to bunching shall be given taking into account all the stages in different pay scales in this grade. In the case of HAG + scale, benefit of one increment for every two stages in the pre-revised scale will be granted in the revised pay scale.

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

(iii) The pay in the pay band will be determined in the above manner. In addition to the pay in the pay band, grade pay corresponding to the existing scale will be payable.

Note- Illustration 1 on the above is provided in the Explanatory Memorandum to these Rules”.

“8. Fixation of pay in the revised pay structure of employees appointed as fresh recruits on or after 1.1.2006.

Section II of Part ‘A’ of the First Schedule of these Rules indicates the entry level pay in the pay band at which the pay of direct recruits to a particular post carrying specific grade pay will be fixed on or after 01.01.2006.

This will also be applied in the case of those recruited between 1.1.2006 and the date of issue of this Notification. In such cases, where the emoluments in the pre-revised pay scale(s) [i.e., basic pay in the pre-revised pay scale(s) plus Dearness Pay plus Dearness Allowance applicable on the date of joining] exceeds the sum of the pay fixed in the revised pay structure and the applicable dearness allowance thereon, the difference shall be allowed as personal pay to be absorbed in future increments in pay”.

4. On implementation of the 6th CPC recommendations, by way of 2008 Rules, in particular Rules 7 and 8 of the same, the persons who were appointed directly in a particular post on or after 1.1.2006, are drawing more pay than the persons who were appointed up to 31.12.2005 in the same post.

5. For example, as per Section 1 of Part A of the First Schedule of the Rules, 2008, the posts placed in Grades S-9 to S-12, i.e. pay scales of Rs.5000-8000, Rs.5500-9000, Rs.6500-6900 and Rs.6500-10500 were placed in Pay Band 2 of Rs.9300-34800 plus 4200 Grade Pay. As per Section 2 of Part A of the First Schedule to the 2008 Rules, the initial pay of a fresh recruit appointed on or after 1.1.2006 and pertaining to the post against which the pay scales of Rs.9300-34800 in Pay Band 2 was prescribed in the Rules, shall be fixed at Rs.17140/-, i.e. Rs.12540 being pay in the Pay Band plus Rs.4600 being the Grade Pay. But for a person who was appointed on or before 31.12.2005, the pay was fixed lower than Rs.17140/-, as the same was required to be fixed as per Rule 7 of the 2008 Rules.

6. All the applicants in the above batch of OAs were appointed and working as on 31.12.2005 and hence in terms of the 2008 Rules, their pay was fixed less than the

pay of their counterparts in the same posts but appointed on or after 1.1.2006. Since the said anomaly was not rectified by the respondents, in spite of the representations from the employees and their associations, certain identically placed persons approached various benches of this Tribunal.

7. In **Vijay Pal Vs. Union of India OA No.1163/HR/2013** CAT, Chandigarh Bench, the applicant was directly appointed on 1.10.2004 as TGT (Social Science) in NVS School and filed the OA seeking to refix his pay in the minimum of the pay scale of the TGT as recommended by the 6th CPC as has been granted to a new entrant joined on or after 1.1.2006. The said OA was allowed on 21.10.2014 as under:-

“11. We have carefully perused the pleadings of the parties and the material on record. It is evident from the OA that the applicant is getting less pay than even the persons who have been recruited as TGTs on 1.1.2006 and thereafter, while he was appointed in 2004. The fixation of pay of a TGT in the NVS on the basis of the recommendations of the 6th Pay Commission cannot be linked with the seniority of the individual in the region in which he is working in a manner that he gets less pay than the directly recruited teachers who came into service after 1.1.2006. The judgement of the Principal Bench in *Sheeja Santosh & Ors. (supra)* although it relates to the ESIC, is very pertinent to the matter wherein it had been held as follows:-

Therefore, the applicants are entitled to get at least the minimum of Rs. 13860/- (Rs. 18460 with Grade Pay) as on 01.01.2006, as the same post when held by a direct recruit who joins on or after 1.1.2006 and one who joined as direct recruit years earlier, cannot be given different pay scales, that too prejudicial to the persons who joined much earlier as it would violate Article 39(d) of the Constitution of India which has now assumed the level of a Fundamental Right and also

Article 14 & 16 of the Constitution being irrational and arbitrary. The settled law is that no rules can be made in violation of the provisions contained in the Constitution of India.

12. In view of the above observations, this OA is allowed and the applicant is held entitled to the pay scale of Rs. 12540/- + 4600 (Grade Pay) = Rs. 17140/- as has been granted to a new entrant joining as TGT on 1.1.2006 or after that date as recommended by the 6th Pay Commission. Hence, the respondents are directed to re-fix the pay of the applicant within a period of three months of a certified copy of this order being served upon the respondents and the arrears due to him on this account, may also be released within this period. No costs”.

8. In **Anil Kumar and Others Vs. Government of NCT of Delhi** in **OA No.2835/2011 and batch**, the applicants who were working as Primary School Teachers, Trained Graduate Teachers and Post Graduate Teachers in the Directorate of Education, Government of NCT of Delhi and were appointed on or before 31.12.2005, filed the OAs seeking the identical reliefs. The said batch of OAs were disposed of by a common order dated 22.12.2014 of the CAT, Principal Bench, New Delhi as under:-

“10. We have heard the learned counsel for the applicants, Shri Padma Kumar S. and learned counsel for the respondents Ms. Ishita Barua for Shri Gaurang Kanth, in this case. The substantive question for consideration in this case is whether the direct recruits who have been appointed prior to 01.01.2006 can be placed at a lower pay scale than those direct recruits who have been appointed after 01.01.2006. The applicants were in the pre-revised scale of Rs.5000-8000/- and were drawing the basic pay between Rs.5300 to Rs.5900/- as on 31.12.2005. The fixation of pay w.e.f. 01.01.2006 after the acceptance of the 6th Pay Commission was made in terms of the Central Civil Service (Revised) Pay Rules, 2008. The said statutory rule upgraded the pay scale of Rs.5000-8000/- to Rs.7450-11500/- and then brought the

Staff Nurses to PB 2 pay scale of Rs.9300-34800 with the grade pay of Rs.4600/-. In between the scales of Rs.5000-8000/- and Rs.7450-11500, there were two more scales in the pre-revised scale, viz., Rs.5500-9000 and Rs.6500-10500/-. As both Rs.5000-8000 and Rs.7450-11500 are the 5th Central Pay Commission scales, the 6th Central Pay Commission cannot give the upgraded pay scale of Rs.7450-11500 to a date prior to 01.01.2006. The upgraded pay scale of Rs.7450-11500 was to happen as on 01.01.2006 and thereafter the conversion to the 6th CPC PB2 scale of Rs.9300-34800/- was to be made. The minimum pay in the pay band for a person even with Rs.7450/- is to get Rs.13860/- as per the said statutory rule. Therefore, there should have been some provision for fixation of pay in the revised pay scale of 6th CPC, when pre-revised pay scale has been upgraded to a level after skipping two intermediate scales, so that the employees who have been serving in the pre-revised scales for years are not falling below at least the corresponding minimum of the 6th CPC revised scales of the upgraded pay scale. However, Revised Pay Rules, 2008 did not contain any such provision for upgradation after skipping two intermediate scales. But at the same time, the said Rules stipulate that all Direct Recruits in the Grade Pay of Rs.4600/- appointed as on 01.01.2006 or after would get a minimum of pay in the pay band of Rs.12540/- (excluding Grade Pay) (which will make their basic pay including Grade Pay Rs.12540 + 4600 =Rs.17140/-). Admittedly, the applicants have had several years of service as direct recruit Staff Nurses as on 01.01.2006 were granted the pay in the pay band ranging from Rs.9860 to Rs.10980/- excluding Grade Pay as against the direct recruit with the same educational qualification and conditions of service who joins on 01.01.2006 who would get Rs.12540/- (excluding Grade Pay). Therefore, the Applicants are entitled to get at least the minimum of Rs.13860/- (Rs.18460 with Grade Pay) as on 01.01.2006 but in any eventuality not less than Rs.12540/- (Rs.17140/- with Grade Pay) as on 01.01.2006, as the same post when held by a direct recruit who joins on or after 01.01.2006 and one who joined as direct recruit years earlier, cannot be given different pay scales, that too prejudicial to the persons who joined much earlier as it would violate Article 39 (d) of the Constitution of India which has now assumed the level of a Fundamental Right and also Article 14 and 16 of the Constitution being irrational and arbitrary. The settled law is that no

rules can be made in violation of the provisions contained in the Constitution of India.

8. In the circumstances having due regard to the rules and instructions on the subject as well as to the aforementioned order of the Tribunal, we are of the view that the respondents should ensure that the pay of no incumbent of the posts of PST, TGT and PGT appointed prior to 1.1.2006 is fixed at a stage lower than the pay which could be drawn by the fresh appointee of the post as on 1.1.2006 as per Section II of Part A of the First Schedule and in the event, after re-fixation of their pay in terms of Schedule 4A (above), their pay could be less than the amount of 13500 (PST), 17,140 (TGT) and 18,150 (PGT), the same should be fixed at such stages. Further if after such fixation any of the applicant was found drawing same pay at two or more consecutive stages in an existing scale, that is to say his pay gets fixed in the revised pay structure at the same stage in the pay band, then, for every two stages so bunched, benefit of one increment should be given to him so as to avoid bunching of more than two stages in the revised running pay bands. Such exercise should be done in terms of the proviso to Rule 7 (A) (i). Ordered accordingly. No costs.

Let a copy of this order be sent to Secretary, Department of Personnel and Training, for being circulated to departments, which are indulging in incorrect fixation of pay in the upgraded pay scales at higher stages causing loss to public revenue/funds”.

9. In **Mrs. Malbika Deb Gupta VS. UOI & Others** in **OA No.98/2014 and batch** (cases pertaining to Railway employees), another Bench of the CAT, New Delhi after examining an identical issue, allowed the OAs by order dated 27.03.2015, as under:-

“10. We have heard the learned counsel for the applicants, Shri Padma Kumar S. and learned counsel for the respondents Ms. Ishita Barua for Shri Gaurang Kanth, in this case. The substantive question for consideration in this case is whether the direct recruits who have been appointed prior to 01.01.2006 can be placed at a lower pay scale

than those direct recruits who have been appointed after 01.01.2006. The applicants were in the pre-revised scale of Rs.5000-8000/- and were drawing the basic pay between Rs.5300 to Rs.5900/- as on 31.12.2005. The fixation of pay w.e.f. 01.01.2006 after the acceptance of the 6th Pay Commission was made in terms of the Central Civil Service (Revised) Pay Rules, 2008. The said statutory rule upgraded the pay scale of Rs.5000-8000/- to Rs.7450-11500/- and then brought the Staff Nurses to PB 2 pay scale of Rs.9300-34800 with the grade pay of Rs.4600/-. In between the scales of Rs.5000-8000/- and Rs.7450-11500, there were two more scales in the pre-revised scale, viz., Rs.5500-9000 and Rs.6500-10500/-. As both Rs.5000-8000 and Rs.7450-11500 are the 5th Central Pay Commission scales, the 6th Central Pay Commission cannot give the upgraded pay scale of Rs.7450-11500 to a date prior to 01.01.2006. The upgraded pay scale of Rs.7450-11500 was to happen as on 01.01.2006 and thereafter the conversion to the 6th CPC PB2 scale of Rs.9300-34800/- was to be made. The minimum pay in the pay band for a person even with Rs.7450/- is to get Rs.13860/- as per the said statutory rule. Therefore, there should have been some provision for fixation of pay in the revised pay scale of 6th CPC, when pre-revised pay scale has been upgraded to a level after skipping two intermediate scales, so that the employees who have been serving in the pre-revised scales for years are not falling below at least the corresponding minimum of the 6th CPC revised scales of the upgraded pay scale. However, Revised Pay Rules, 2008 did not contain any such provision for upgradation after skipping two intermediate scales. But at the same time, the said Rules stipulate that all Direct Recruits in the Grade Pay of Rs.4600/- appointed as on 01.01.2006 or after would get a minimum of pay in the pay band of Rs.12540/- (excluding Grade Pay) (which will make their basic pay including Grade Pay Rs.12540 + 4600 =Rs.17140/-). Admittedly, the applicants have had several years of service as direct recruit Staff Nurses as on 01.01.2006 were granted the pay in the pay band ranging from Rs.9860 to Rs.10980/- excluding Grade Pay as against the direct recruit with the same educational qualification and conditions of service who joins on 01.01.2006 who would get Rs.12540/- (excluding Grade Pay). Therefore, the Applicants are entitled to get at least the minimum of Rs.13860/- (Rs.18460 with Grade Pay) as on 01.01.2006 but in any eventuality not less than Rs.12540/- (Rs.17140/- with Grade Pay) as on 01.01.2006, as the same post when

held by a direct recruit who joins on or after 01.01.2006 and one who joined as direct recruit years earlier, cannot be given different pay scales, that too prejudicial to the persons who joined much earlier as it would violate Article 39 (d) of the Constitution of India which has now assumed the level of a Fundamental Right and also Article 14 and 16 of the Constitution being irrational and arbitrary. The settled law is that no rules can be made in violation of the provisions contained in the Constitution of India.

11. In view of the above position, we allow this OA and quash and set aside the impugned speaking order dated 27.08.2012. Further, we declare that the discrimination in granting the pay scales to the directly recruited Staff Nurses prior to 01.01.2006 and after 01.01.2006 is in violation of Articles 14, 16 and 39(d) of the Constitution of India. We, therefore, direct the Respondent No.1 to treat the Applicants at par with the Direct Recruit Staff Nurses appointed after 01.1.2006 and grant the PB 2 scale of Rs.9300-34800 with the grade of pay of Rs.4600 with effect from 01.01.2006 and fix their pay accordingly. The Applicants are also entitled for all consequential benefits including arrears of pay and allowances with up to date interest at rate applicable to GPF deposits. The aforesaid directions shall be complied with, within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.”

4. In the facts and circumstances of the case, we allow these OAs and declare that the discrimination in granting the pay scales to the directly recruited Staff Nurses prior to 01.01.2006 and after 01.01.2006 is in violation of Articles 14, 16 and 39(d) of the Constitution of India. We, therefore, direct the Respondents to treat the Applicants at par with the Direct Recruit Staff Nurses appointed after 01.1.2006 and grant the PB 2 scale of Rs.9300-34800 with the grade of pay of Rs.4600 with effect from 01.01.2006 and fix their pay accordingly. The Applicants are also entitled for all consequential benefits including arrears of pay and allowances with up to date interest at rate applicable to GPF deposits. The aforesaid directions shall be complied with, within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.

Let a copy of this Order be placed in all the three cases.”

10. In **W.P. (C) No.8058/2015** and batch filed against **Malbika Dev Gupta** (supra) and various other cases, the Hon'ble High Court of Delhi by its common order dated 04.11.2016 held as under:-

"11. One cannot accept that the same post can have two different pay scales, one for existing employees performing the same tasks and doing the same work on the ground that they were appointed or have been functioning on the said post prior to 1.1.2006, whereas a person appointed later in point of time would get the higher pay scale. Logically and as sequitor, the argument of the Union of India that where new appointments or promotions were made, the employees working on the posts would immediately get the benefit of pay under Rule 7A Clause (ii) is wrong and fallacious. The principle of upgradation of pay of the senior on the junior getting a higher pay scale is applicable in certain situations. Note 2A does not prescribe and record any such percept.

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14. Resultantly, the writ petitions are dismissed with the observation that the petitioners will pay to the respondents the minimum computation under clause (i) to clause (A) to Rule 7 and then compute the minimum pay applicable with reference to the pay band plus grade pay applicable to the revised pay scales as mentioned in Section II of Part B of the First Schedule to the 2008 Rules. If the net result figure as per clause (ii) to Rule 7A is higher, then the respondents would be entitled to benefit of sub-clause (i) to Rule 4 Clause (A) of the 2008 Rules.

15. This order will be implemented within 2 months from the date on which a copy of the order is received by the petitioners".

11. In **Somvir Rana and Others Vs. Government of NCT of Delhi and Others** in **OA No.3217/2014** dated 4.4.2016, CAT, Principal Bench considered an identical issue and held as under:-

"7. It is true that the CCS (Revised Pay) Rules, 2008, specifically Rule 8 provides for granting entry level pay

indicated in Section II of Part A of First Schedule to direct recruits to a particular post carrying a specific grade pay on or after 01.01.2006. This will not, therefore, apply to the applicants as they were in service before 01.01.2006 or were promoted on or after 01.01.2006 and Rule 7 and Rule 13 of the CCS (Revised Pay) Rules, 2008 will apply.

8. Rule 7 is basically multiplying the pre-revised basic pay with 1.86 etc. and Rule 13 provides for granting one increment equal to 3% of the sum of pay in the pay band and the existing grade pay round off to the next multiple of 10.

9. The clarification by the Department of Expenditure dated 27.02.2009 as well as order dated 13.03.2009 provide for stepping up of pay of seniors vis-a-vis directly recruited juniors who are recruited on or after 01.01.2006 but subject to certain conditions, already quoted above.

10. In O.A. No.657/2012 and 931/2012, some TGTs had raised the issue that their basic pay should be stepped up to the minimum level of new scale and then multiplied by the factor of 1.86. To this grade pay applicable in the pay band should have been added to arrive at the revised basic pay. On the other hand, the respondents contended that the basic pay in pre-revised scale is to be multiplied by the factor of 1.86 and if the figure arrived is less than minimum of the revised pay scale, then only the basic pay is to be increased to the level of minimum of the revised pay band. So the issue in this O.A. was different. In any case, the O.A. was disposed of holding that the pay of the applicant had been rightly fixed as per the formula provided in Rule 7 (1)(A)(i) and (ii). However, it further held that the cases needed to be considered under FR-27. Rule 7(1)(A)(i) and (ii) basically stipulates the 1.86 multiple formula and new basic pay not to be less than minimum of replacement scale.

11. As regards O.A. No.2835/2011 with O.A. Nos. 2842/2011 and 2843/2011 are concerned, these were filed by PSTs, TGTs and PGTs. The substantive question before the Tribunal was whether the direct recruits who have been appointed prior to 01.01.2006 can be placed at a lower pay scale than those direct recruits who were appointed after 01.01.2006. The Tribunal concluded that the respondents should ensure that the pay of no incumbent of the post of PST, TGT and PGT appointed prior to 01.01.2006 is fixed lower than the pay which could be drawn by the fresh appointee of the post as on 01.01.2006. The crucial clarification based on which the respondents have rejected the claim of the applicants seems to be the clarification dated 05.05.2010 which has simply quoted the DOPT clarification dated 27.02.2009, which is the same as the clarification issued by the MHRD dated 13.03.2009. As per this clarification, stepping up of basic pay of seniors can be claimed in case of those cadres which have an element of direct recruitment and in cases where the directly recruited juniors are drawing more basic pay than the seniors.

However, as stipulated in Part C subpara (C) of circular dated 13.03.2009, stepping up of pay shall not be applicable in cases where direct recruits have been granted advance increment. The respondents do not deny that there is an element of the direct recruitment in the Teacher cadres, i.e. PST, TGT and PGT. Therefore, this circular squarely applies which is also acknowledged by the respondents in their speaking order 2.08.2014. It is also not denied that juniors are drawing basic pay more than the seniors. Therefore, by a plain reading of these instructions, it is clear that pay of the applicants would need to be stepped up to the level drawn by the direct recruit juniors, who are appointed on or after 01.01.2006. The respondents argument, though not very clearly spelt out either in their reply or in the order dated 02.08.2014, seems to be that the direct recruits appointed on or after 01.01.2006 are granted advance increments at the time of recruitment and hence benefit of stepping up of pay is not available in such cases according to clause (c) quoted above. This leads to an absurd situation that a senior, on pay fixation under FR-22C draws lower pay than his junior. It is precisely for this reason that in O.A. Nos. 2835/2011 with O.A. Nos. 2842/2011 and 2843/2011, this Tribunal has held that pay of incumbents appointed/promoted prior to 01.01.2006 should not be lower than the pay which would be drawn by a fresh appointee on or after 01.01.2006.

12. In view of the above, the O.A. clearly succeeds and the order dated 02.08.2014 is set aside, with a direction to the respondents to refix the pay of the applicants as per 6th CPC recommendations. They should ensure that none of the applicants' pay is fixed at a stage lower than the pay which could be drawn by a direct recruit appointee on or after 01.01.2006. Time frame of two months is fixed for implementation of this order. There shall be no order to pay the interest as costs".

The decision in **Somvir Rana and Others** (supra) was upheld in **W.P. (C) 2634/2017** dated 23.3.2017 by the Hon'ble High Court of Delhi and in SLP Diary No.23663/2017 dated 1.9.2017 by the Hon'ble Supreme Court of India.

12. In the identical circumstances in respect of a Trained Graduate Teacher of the respondent NVS, the CAT

Ahmedabad Bench in **Bharat K. Rawat vs. U.O.I.** allowed the OA on 14.6.2016. CAT, Principal Bench allowed certain other OAs in similar circumstances by following the decision in **Somvir Rana and Others** (supra).

13. Heard Shri Yogesh Sharma, learned counsel for the applicants and Shri S. Rajappa, learned counsel for the respondents and perused the pleadings on record.

14. In all these batch of OAs, the applicants are employees of the NVS and working as Staff Nurses, Trained Graduate Teachers, Post Graduate Teachers, Physical Education Teachers, and all were appointed on or before 31.12.2005 and seeking the same benefit, i.e. to refix their pay on par with their counter parts who were appointed on or after 1.1.2006 in similar posts, in terms of the decisions referred above.

15. The respondents through their counters while reiterating identical submissions as were made in the aforesaid above referred cases submits that the **W.P. (C) 15961/2015** filed against the decision in **Vijay Pal's case** (supra) is pending before the Hon'ble Punjab & Haryana High Court, no relief can be granted to the applicants.

16. Firstly, it is not the case of the respondents that the Hon'ble High Court of Punjab & Haryana in **W.P. (C)**

15961/2015 has stayed or suspended the decision of this Tribunal in **Vijay Pal** (supra). Secondly, identical judgments in identical OAs of the CAT, Principal Bench, New Delhi were upheld either by the Hon'ble High Court of Delhi or up to the Hon'ble Apex Court as the case may be, and as referred above. Therefore, for parity of reasons, the applicants are also entitled for granting of identical reliefs.

17. In the circumstances and for the aforesaid reasons, the OAs are allowed and the respondents are directed to consider to refix the pay of the applicants at the minimum prescribed in the CCS (Revised Pay) Rules, 2008, for the respective posts for an entrant who joined on or after 1.1.2006, with all consequential benefits. The respondents shall complete this exercise within 3 months from the date of receipt of a copy of this order. No costs.

Let a copy of this order be placed in all the connected OAs.

(NITA CHOWDHURY)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

Rakesh