

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.632/2010

Order Reserved on: 10.03.2016
Order pronounced on 06.05.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri P. K. Basu, Member (A)

1. Shri Rohtas Sharma,
S/o Late Shri Ram Chandar Sharma,
B-19, Nanak Pura,
New Delhi.
2. Shri P.K. Kaimal,
S/o Late C.K.K. Menon,
46/2D, Sector-II, Gole Market,
New Delhi.
3. Smt. Booma Sekaran,
W/o Shri K.S. Kekaran,
M-327, Sarojini Nagar,
New Delhi.
4. Smt. Sunita Arora,
W/o Shri Brij Mohan Arora,
2/22 Tilak Nagar,
New Delhi.
5. Smt. Shakuntala Chopra,
W/o Late Shri Kamal Kumar,
C-4F-249, First Floor,
Janakpuri,
New Delhi.
6. Ms. Praveen Kalia,
D/o Late Shri S.L. Kalia,
E-153, Nanak Pura,
South Moti Bagh,
New Delhi.

7. Smt. Rama Dewan,
W/o Shri Yashpal Dewan,
F-24/139, Sector-III,
Rohini.
8. Smt. Rajani C. Nair,
W/o Shri C.G.R. Nair,
254, Pocket B,
Suvidha Apartment,
Phase IV, Ashok Vihar,
Delhi.
9. Smt. Krishna,
S/o Shri Ved S. Sharma,
47/2A Sector-II, Gole Market,
New Delhi.
10. Smt. Sushma Rani,
W/o Shri govind Lal,
2-E, MSD Flats,
Minto Road,
New Delhi.
11. Smt. Usha Peswani,
W/o Shri Jawahar Peswani,
A-146, First Floor,
Dayanand Colony,
Lajpat Nagar,
New Delhi.
12. Shri Ravinder Kumar Bhatia,
S/o ate Shri S.C.Bhatia,
C-4B-77, Pocket-B,
Janakpuri,
New Delhi.
13. Smt. Mangla Verma,
W/o Shri V.K. Verma,
B-173, Nankpura,
South Moti Bagh-II,
New Delhi.

14. Shri Sanjay Kumar,
S/o Late Shri Satish Chandra,
S-203, Shakarpur,
Delhi.

15. Smt. Sadhana Kumar,
W/o Shri Ashok Kumar,
I-918, Sarojini Nagar,
New Delhi.

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Applicants

(By Advocate : Ms. Jyoti Singh, Sr. Counsel with Shri Padma Kumar S.)

Versus

1. Union of India, through
Secretary,
Department of Expenditure,
Ministry of Finance,
North Block,
New Delhi-110 001.

2. Controller General of Accounts,
Department of Expenditure,
Ministry of Finance,
North Block,
New Delhi-110 001.

. Respondents

(By Advocate : Shri Rajinder Nischal)

O R D E R

By V. Ajay Kumar, Member (J):

The applicants, who are Private Secretaries in Controller General of Accounts, have challenged the order dated 18.12.2009 (Annexure A1) of the respondents in rejecting their claim for granting Pay Band-2 with Grade Pay of Rs.4800/- and on completion of 4 years service, Pay Band-3 with Grade Pay of Rs.5400/- at par with the Private Secretaries

of Central Secretariat Stenographers Service (CSSS) and prayed for the following reliefs:

(i) Declare the provision of CCS Revised Pay Rules 2008 to the extent the Applicants have been granted Grade Pay of s.4200 under 3.1.14 instead of 3.1.9 as illegal. Also quash and set aside Order dated 18.12.2009 rejecting the claim of the Applicants for grant of Grade Pay of Rs.4800 (Rs.5400 after 4 years) and also the Order dated 23.11.2009 modifying the original Grade Pay of Rs.4200 to Rs.4600.

(ii) Direction to the Respondents to grant the Applicants PB-2 with GP Rs.4800 and PB-3 with GP. Rs.5400 (on completion of 4 years) with all consequential benefits with effect from 1.1.1996.

(iii) Direction to the Respondents to grant the Applicants interest on the arrears as per Govt. rates.

(iv) Any other direction which this Hon'ble Tribunal may be pleased to pass under the facts and circumstances of the case including direction granting cost of litigation to the Applicants."

2. The facts as narrated by the applicants in the OA are that they are Private Secretaries working in the Organization of Controller General of Accounts (CGA, in short), and are functionally working at the Headquarters of various Ministries/ Departments/Accounting Organizations. Ministry of Finance itself had clearly stated in its letter dated 21.01.1977 (Annexure A-4) that "Accounting formulations would not be treated as Subordinate Offices of the Ministries/Departments". It is submitted that the Organization of CGA was an integral part of the mother organization of Comptroller and Auditor General of India till 1976. In exercise of the powers conferred by the 1st proviso to sub-section (1) of Section 10 of C&AG's (Duties, Powers and Conditions of Service) Act, 1971, the President, after consultation with C&AG has relieved the latter from the responsibility of compiling the Accounts of the Union Govt. (Civil) in a phased manner from 1.4.1976 to 1.4.1977. The said Organization has been created in the Department of Expenditure of the Ministry of Finance. The CGA will have

responsibility for establishing and maintaining a technically sound accounting system in the Departmentalized Accounts System. As the object of bifurcation of the undivided C&AG was to relieve the C&AG of the Central Government's Accounting and maintaining of accounts, while the accounting cadres can generally be without any differentiation, the Private Secretaries can no way be different from each other as the duties and responsibilities of the Private Secretaries cannot undergo any change nor are there any change in the command and control hierarchies.

3. It is submitted that the disparities in the pay scales of both the cadres have been set right in the wake of 5th Central Pay Commission when all the cadres viz the PSs in C&AG, CGA and CSSS have been granted the same pay scales of Rs.6500-10500/- on the basis of the recommendations of the 5th CPC. This has continued from 01.01.1996 till October, 2003. In October, 2003, the pay scale of PSs of Central Secretariat Stenographers Service has been revised notionally from 1.1.1996 and actually from 2003 to Rs.8000-13500/- to PSs on completion of 4 years. This has been adopted in the C&AG as well. The applicants' case has not been considered due to constitution of 6th CPC. The 5th CPC recommendations and its acceptance was in keeping with the existing anomalies of treating the similarly situated employees differently thus infringing the fundamental rights guaranteed in the Constitution of India. It is beyond dispute that CGA and C&AG formed a homogeneous unit prior to 1976. Now for creating

and furthering the anomaly, the respondents have totally disregarded this fact while passing the impugned order.

4. It is further submitted that on 29.08.2008, Ministry of Finance, Department of Expenditure has notified the revised Pay structure, based on the recommendations of 6th CPC as per Annexure A5. According to the said notification, the revision of the pay scale of Private Secretaries working in CSSS has been revised from Rs.6500-10500 to Rs.7500-12000 and given the revised scale of Pay Band 2 with Grade Pay of Rs.4800 and on completion of 4 years service their pay will further be revised to Rs.8000-13500 giving the scale in PB 3 with Grade Pay of Rs.5400/-. In the said Notification, it was clearly stated that the above scale shall be available in such of those organizations/services which have had a historical parity with CSSS. Obviously, C&AG which is the genus for the species CGA, had the historical parity with CSSS and, therefore, the C&AG has also got revised pay scale of Private Secretaries working in the Headquarter Office at par with CSSS. The Revised Pay Rules under Part B, Sec II has remarked that the revised scale of Rs.7500-12000 (PB-2 with GP Rs.4800) for Rs.6500-10500 and further revision to Rs.8000-13500/- after 4 years (PB-3 with GP Rs.5400) will be available which have had a historical parity with CSSS, as per Annexure A5. In the case of the applicants who are in CGA after bifurcation from C&AG, the revision has not been done as in the case of Private Secretaries of C&AG. The applicants' representations vide letter dated 24.09.2008 etc along with reminders [Annexure A-6 (colly.)] went in vain.

5. It is submitted that the nature of duties and responsibilities, mode of promotion of PS of CSSS, C&AG and CGA are the same. Further, it is stated that, the PS in CGA is on a better pedestal to be treated at par with CSSS as the PS in CGA is working in the Ministries/Departments side by side. Pr. CCA, CCA and CA are being treated at par with Addl. Secretary, Joint Secretary and Director for the purposes of pay and allowances, perks and other facilities and there is no separate hierarchy of pay scales for senior officers of accounting organization. When the Joint Secretary and Chief Controller of Accounts of the Ministry have the same pay and allowances and status, the PS of the Chief Controller of Accounts cannot be treated differently from the PS of Joint Secretary of the same Ministry. Stenographic level to be attached to an Officer is determined by the pay scale of the Senior Officer to whom the Stenographer is attached. In the case of Sr. PS, the grade pay has been allowed in the CGA as Rs.4800/- (PB 2) initially and Rs.5400/- after 4 years, which is actually what is the Grade Pay in PS of C&AG and CSSS. This is notwithstanding the fact that one of the Sr. PS in CGA is attached to the CGA himself who is a Secretary level officer.

6. It is submitted that earlier, the applicants filed OA No.81/2009 before this Tribunal for the same reliefs but the said OA was disposed of by this Tribunal vide its Order dated 25.09.2009 with an observation that the applicants had been in historical parity with CSSS upto 1.1.1996 in the pay scale of Rs.6500-10500 and the pay scale of PSs of C&AG with 4 years of service has been revised to Rs.8000-13500

notionally from 1.1.1996 and actually from 2003 vide OM dated 10.7.2007, but the same was not considered in case of applicants due to constitution of 6th Central Pay Commission. However, being similarly circumstanced and having historical parity with CSSS they are on all fours covered by the decision of this Tribunal in S.R.Dheer (supra), which stood implemented. The respondents have earlier issued OM dated 23.11.2009 replacing the Grade Pay of Rs.4200/- with Rs.4600. This however, does not mitigate the grievance of the applicants as the grant of Rs.4600 does not remove the discriminatory action and secondly, it was done due to the functional difficulties due to the merging of the scales of Rs.5000-8000/-, Rs.5500-9000/- and Rs.6500-10500.

7. It is submitted that the step motherly treatment is given only to the Stenographers side. Ever since the CGA has been carved out from C&AG for the functional effectiveness the Accounting Cadre has been kept always at par with the Auditing Cadre in the C&AG. Wherever there is a revision in Auditing Cadre in C&AG, the same has been granted to Accounting Cadres in CGA. Assistants/Audit Accounts Officers, Accounts/Audit Officers, Senior Accounts/Audit Officers of CGA and C&AG are having the same scales and whenever any change in the pay scale is effected in C&AG, the same change is adopted in the CGA also for these cadres. In support of the averments, the applicants enclosed OM dated 4.03.2003 (Annexure A8).

8. The learned counsel for the respondents Ms. Jyoti Singh also drew our attention to the provisions of the Departmentalization of Union Accounts (Transfer of Personnel) Act, 1976 [(Annexure A3 dated 08.04.1976] which came into force on 01.03.1976. This Act was promulgated for the purpose of bifurcation of the Audit and Accounts functions of the C&AG by which the Civil Accounts Service was created. She specifically referred to Sub-Section (4) of Section 2 of the said Act, which provides as follows:

"(4) Every officer or employee transferred under sub-section (1) shall be entitled to be appointed to a post carrying a scale of pay not less favourable than that of the post which he held immediately before the date of such transfer and in the same capacity (whether substantive or officiating) in which he held the post last mentioned:

Provided that if immediately before the date of such transfer any such officer or employee is officiating in a higher post in the Indian Audit and Accounts Department either in a leave vacancy or in any other vacancy of a specified duration, his pay, on transfer, shall be protected for the unexpired period of such vacancy."

It is argued that as per this Section, it was made clear that any employee, who shifts, is transferred to the Accounts Cadre, will not carry the scale of pay less favourable than that of the post which he holds immediately before the date of such transfer. The learned counsel, therefore, argued that when the Cadre was bifurcated, it was the express understanding that those who get transferred to the Civil Accounts Cadre, will not be prejudiced in any manner vis-a-vis those who remained with the Audit Cadre of C&AG, specifically with respect to the scale of pay. It is her contention that in view of this, there cannot be any disparity between the pay scale of Private Secretaries in C&AG and the Civil Accounts Department (CGA), and, therefore, the

same Pay Band and Grade Pay should be granted to the Private Secretaries in both the cadres.

9. It is submitted that the reasons given by the respondents to reject the claim of the applicants are irrelevant to the case. Hence, the OA.

10. Per contra, the respondents, while denying the contentions of the applicants, have submitted in their counter that the applicants are working as Private Secretaries in the offices of the Chief Controller of Accounts, and they do not belong to CSSS Cadre but belong to Departmentalized Accounts Cadre and were drawing pay in the scale of Rs.6500-10500 w.e.f. 01.01.1996 on the basis of the implementation of 5th Central Pay Commission's recommendations. The 6th Central Pay Commission recommended higher pay scale for the Private Secretaries of Central Secretariat Stenographers Service (CSSS, in short) in chapter 3.1.9 of their report. The Government of India vide its Notification dated 29.08.2008 implemented the said recommendations. As per Part-B Section II of the said Notification dated 29.08.2008, the pay scale of Private Secretaries of the office staff in Secretariat was upgraded from Rs.6500-10500 to Rs.7500-12000 w.e.f 01.01.2006 and were placed in Pay Band 2, i.e., Rs.9300-34800 with grade pay of Rs.4800/- and on completion of 4 years service, the Grade Pay of Rs.5400 would be given. It is clearly mentioned therein that "*this scale shall be available only in such of those organizations/services which have had a historical parity with CSS/CSSS Services like*

AFHQSS/ AFHQSS/ RBSS and Ministerial/ Secretarial posts in Ministries/ Departments organizations like MEA, Ministry of Parliamentary Affairs, CVC, UPSC etc. would therefore be covered".

Further, as per Part-B Section-II (II) of the Notification dated 29.08.2008 the Stenographer Gr.II/ equivalent of the Office Staff working in organizations outside the Secretariat will be fixed in Pay Band-2 i.e. Rs.9300-34800 with Grade Pay of Rs.4200/- (in accordance with the recommendations of 6th Pay Commission report at para 3.1.14). The Sr. Private Secretary has been placed in Pay Band-2 with Grade Pay of Rs.4800/- and on completion of four years they will remain in Pay Band-2 i.e., Rs.9300-34800 but their Grade Pay will be enhanced to Rs.5400/-. Accordingly, the pay of the applicants were fixed in the corresponding pay scale and Grade Pay as provided in Part A, Section-1 of the CCS (Revised Pay) Rules, 2008 vide O.M. dated 23.09.2008. The applicants cannot claim parity with the Central Secretariat Stenographers Service as they are in different cadre. The applicants never had historical parity with CSSS Cadre as is evident from Annexure A1 of the application. The Private Secretaries of the C&AG were drawing higher pay scale prior to the implementation of the recommendations of the 6th Pay Commission whereas the said scale was not granted to the applicants.

11. It is submitted that C&AG is an independent body and the applicants cannot claim parity with CSS/CSSS Services like AFHQSS/ AFHQSS/RBSS and Ministerial/Secretarial posts in Ministries/Departments organizations like MEA, Ministry of

Parliamentary Affairs, CVC, UPSC, etc. The respondents categorically stated that all the applicants continue to belong to Central Civil Accounts Service and their service conditions and duties and responsibilities are different from those of PSs in CSSS and in C&AG's organization. The service conditions of the PSs of accounting organization are regulated in accordance with the Recruitment Rules of CCAS Cadre. All the applicants have been granted the scale as recommended/accepted by the 6th Central Pay Commission. Further, it is categorically stated that the applicants cannot claim parity with the Private Secretaries of C&AG, who were getting higher pay than the applicants prior to implementation of 6th CPC recommendations, as they are not the part of the CSSS Cadre or the Secretariat Staff. The 6th CPC has made two different sets of pay scales in the case of Ministerial staff working in the offices outside the Secretariat and those belonging to CSS/CSSS and other Headquarters Services like RBSS, IFS(B), AFHQs etc on functional considerations and relativities across the board. Finally, it is submitted that the principle of equal pay for equal work does not apply in the present case because there is no complete and wholesale identity between the applicants and the employees of Office of C&AG as they are having separate set of Recruitment Rules. In view of the aforesaid reasons, they pray that the OA is liable to be dismissed.

12. Heard Ms. Jyoti Singh, the learned senior counsel for Shri Padma Kumar S., the learned counsel for the applicants and Shri Rajinder

Nischal, the learned counsel for the respondents and perused the pleadings on record.

13. The learned counsel for the applicants relied on the following decisions in support of the applicants claim:

1. **Union of India v. Dineshan K.K.**, (2008) 1 SCC (L&S) 248.
2. **State of Kerala v. B. Renjith Kumar & Ors.**, (2008) 12 SCC 219.
3. **Randhir Singh v. Union of India & Ors.**, (1982) 1 SCC 618.
4. **Sh. Kaushik Paik and Ors. v. Union of India & Ors.**, WP(C) No.116/2013 dated 06.09.2013 of the Delhi High Court.
5. **Union of India & Ors. v. Debasish Kar and Ors.**, (1995) SCC (L&S) 1303.
6. **Manoj Kumar & Ors. v. High Court of Delhi**, W.P.(C) 6522/2012, decided on 02.05.2013 of the Delhi High Court.
7. **Sh. R. Natarajan & Ors. v. Union of India & Ors.**, O.A.No.2002/2010, decided on 11.11.2011 of CAT, PB.
8. **D.G.O.F. Employees Association & Anr. v. Union of India & Ors.**, W.P.(C) 4606/2013, decided on 14.10.2014 of Delhi High Court.

14. The learned counsel for the respondents relied on the following decisions in support of his contentions:

- a) **All India Radio and Doordarshan & Anr. v. Union of India & Ors.**, WP(C) 2029/2001, decided on 02.01.2013 of the High Court of Delhi. [Paras 6 to 9].
- b) **Steel Authority of India Ltc. And Ors. v. Dibyendu Bhattacharya**, (2011) 11 SCC 122. [Paras 12 to 17, 22 and 26].

15. Earlier, this OA, after hearing both sides, was dismissed on 28.03.2011. However, in WP(C) No.9045/2011, the Hon'ble High Court of Delhi, by its order dated 08.10.2013, set aside the said Judgement of this Tribunal and remitted the OA back to decide the issue of granting of non-functional upgraded scale of Rs.8000-13500, first, and if they are so entitled to, then the consequence of grant of appropriate scale under 6th CPC would flow automatically. For easy reference, the

relevant paragraphs of the order of the Hon'ble High Court are reproduced hereunder:

"9. We note that the only ground on which the respondents sought to deny the claim of the petitioners is that the petitioners were not granted the non-functional upgradation to the revised pay scale of `8000-13500 on completion of four years service in the lower grade.

10. It appears that the grade pay of `4800 in PB-2 with effect from January 01, 2006 and `5400 in PB-3, on completion of four years service, have been granted to those Private Secretaries who have been given the non-functional upgradation to the pre-revised pay scale of `8000-13500 in terms of Ministry of Finance OM dated November 11, 2008.

11. Ms.Jyoti Singh, learned senior counsel on this would submit that the denial of this non-functional upgradation is also bad and in fact one of the petitioner had represented to the Cadre Controlling Authority i.e. Controller General of Accounts on July 14, 2006, immediately when the non-functional upgraded scale of `8000-13500 was given to the Private Secretaries working in the Comptroller and Auditor General. She would further submit that there was no delay on the part of the petitioners to lay a claim on the non-functional upgradation of `8000-13500. She would also submit that as late as July 09, 2009 the office of the Cabinet Secretariat has granted the non-functional upgradation of `8000-13500 to its employees. According to her, the non-functional upgradation scale cannot be denied to the petitioners. According to her, there has been no proper application of mind on the part of the respondents on this aspect which also resulted in the denial of the grade pay of `4800 in PB-2 and `5400 in PB-3 to the petitioners with effect from January 01, 2006.

12. We note that the Tribunal in the impugned order does not deal with the issue of grant of non-functional upgraded scale of `8000-13500 at all. The Tribunal should have decided this issue at the threshold because the claim of the petitioners for grant of grade pay of `4800 in PB-2 and `5400 in PB-3 is consequential to the grant of `8000-13500.

13. In the absence of any adjudication on that particular issue the appropriate course should be that the matter be remanded back to the Tribunal calling upon it to decide the issue of grant of non-functional upgraded scale of `8000-13500 to the petitioners. If they are so entitled to, then the consequence of grant of appropriate scale to the petitioners under the 6th Pay Commission would flow automatically."

16. The Ministry of Finance (Department Expenditure), issued Notification dated 29.08.2008 (Annexure A5), in exercise of the powers conferred by the proviso to Article 309, and Clause (5) of Article 148 of the Constitution and after consultation with the Comptroller and Auditor General in relation to persons serving in the Indian Audit and Accounts Department. The relevant CCS (Revised Pay) Rules, 2008 are extracted as under:

"MINISTRY OF FINANCE
(DEPARTMENT OF EXPENDITURE)
NOTIFICATION
New Delhi, the 29th August, 2008

GSR 622 (E) In exercise of the powers conferred by the proviso to article 309, and clause (5) of article 148 of the Constitution and after consultation with the Comptroller and Auditor General in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following rules, namely : -

1. Short title and commencement -

(1) These rules may be called the Central Civil Services (Revised Pay) Rules, 2008.

(2) They shall be deemed to have come into force on the 1st day of January, 2006.

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THE FIRST SCHEDULE
(SEE RULES 3 & 4)

PART - A

Section I

Revised Pay Bands and Grade Pays for posts carrying present scales in Group 'A', 'B', 'C' &

'D' except posts for which different revised scales are notified separately.

(In Rs.)

Present Scale			Revised Pay Structure		
Sl. No.	Post/ Grade	Present Scale	Name of Pay Band/ Scale	Corresponding Pay Bands/ Scales	Corresponding Grade Pay
(1)	(2)	(3)	(4)	(5)	(6)
1	S-1	2550-55-2660-60-3200	-1S	4440-7440	1300
2	S-2	2610-60-3150-65-3540	-1S	4440-7440	1400
3	S-2A	2610-60-2910-65-3300-70-4000	-1S	4440-7440	1600
4	S-3	2650-65-3300-70-4000	-1S	4440-7440	1650
5	S-4	2750-70-3800-75-4400	PB-1	5200-20200	1800
6	S-5	3050-75-3950-80-4590	PB-1	5200-20200	1900
7	S-6	3200-85-4900	PB-1	5200-20200	2000
8	S-7	4000-100-6000	PB-1	5200-20200	2400
9	S-8	4500-125-7000	PB-1	5200-20200	2800
10	S-9	5000-150-8000	PB-2	9300-34800	4200
11	S-10	5500-175-9000	PB-2	9300-34800	4200
12	S-11	6500-200-6900	PB-2	9300-34800	4200
13	S-12	6500-200-10500	PB-2	9300-34800	4200
14	S-13	7450-225-11500	PB-2	9300-34800	4600
15	S-14	7500-250-12000	PB-2	9300-34800	4800
16	S-15	8000-275-13500	PB-2	9300-34800	5400
17	New Scale	8000-275-13500	PB-3	15600-39100	5400

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PART - B

REVISED PAY SCALES FOR CERTAIN COMMON CATEGORIES OF STAFF

Section I

(i) The revised pay structure mentioned in Column (5) and (6) of this part of the Notification for the posts mentioned in Column (2) have been approved by the Government. The initial fixation as on 1.1.2006 will be done in accordance with Note 2 below Rule 7 of this Notification.

(ii) On account of merger of pre-revised pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500, some posts which presently constitute feeder and promotion grades will come to lie in an identical grade. The specific recommendations about some categories of these posts made by the Pay Commission are included Section II of Part B. As regards other posts, the posts in these three scales should be merged. In case it is not feasible to merge the posts in these pay scales on functional considerations, the posts in the scale of Rs.5000-8000 and Rs.5500-9000 should be merged, with the post in the scale of Rs.6500-10500 being upgraded to the next higher grade in pay band PB-2 i.e. to the grade pay of Rs.4600 corresponding to the pre-revised pay scale of Rs.7450-11500. In case a post already exists in the scale of Rs.7450-11500, the post being upgraded from the scale of Rs.6500-10500 should be merged with the post in the scale of Rs.7450-11500.

(iii) Posts in the scale of Rs.6500-10500 carrying minimum qualification of either Degree in Engineering or a Degree in Law should also be upgraded and placed in the scale of Rs.7450-11500 corresponding to the revised pay band PB-2 of Rs.9300-34800 along with grade pay of Rs.4600.

(iv) Posts of scientific staff in the scale of Rs.6500-10500 carrying minimum qualification of engineering degree or a post-graduate degree should also be upgraded and placed in the scale of Rs.7450-11500 corresponding to the revised pay band PB-2 of Rs.9300-34800 along with grade pay of Rs.4600

(v) Upgradation as in (ii) above may be done in consultation with Department of Expenditure, Ministry of Finance. Regarding (iii) and (iv) above, upgradation may be done by the Ministries concerned in consultation with their Integrated Finance.

Section II

(In Rupees)

Sl. No.	Post	Present scale	Revised Pay Scale	Corresponding Pay Band & Grade Pay		Para No. of the Report
(1)	(2)	(3)	(4)	(5)	(6)	(7)
OFFICE STAFF IN THE SECRETARIAT*						
1	Section Officer/PS/ equivalent	6500-10500	7500-12000 8000-13500 (on completion of four years)	PB-2 PB-3	4800 5400 (on completion of 4 years)	3.1.9 (Modified by Govt.)
<p>* This scale shall be available only in such of those organizations/services which have had a historical parity with CSS/CSSS. Services like AFHQSS/AFHQSSS/RBSS and Ministerial/Secretarial posts in Ministries/Departments organisations like MEA, Ministry of Parliamentary Affairs, CVC, UPSC, etc. would therefore be covered.</p>						
OFFICE STAFF WORKING IN ORGANISATIONS OUTSIDE THE SECRETARIAT						
1	Head Clerk/ Assistants/ Steno Gr.II/ equivalent	4500-7000 5000-8000	6500-10500	PB-2	4200	3.1.14
2	Administrative Officer Grade II/ Sr. Private Secretary/ equivalent	7500- 12000	7500-12000 (entry grade for fresh recruits) 8000-13500 (on completion of four years)	PB-2	4800 5400 (on completion of 4 years)	3.1.14
III	ACCOUNTS STAFF BELONGING TO UN-ORGANIZED ACCOUNTS CADRES					3.8.5
	<p>The existing relativity between the accounts related posts outside organized accounts cadres and ministerial posts will be maintained and the accounts staff belonging to unorganized Accounts cadres shall be extended the corresponding replacement Pay Band and grade pay.</p>					

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XX	ORGANISED ACCOUNTS CADRES*					
1	Section Officer	6500-10500	7500-12000	PB-2	4800	7.56.9
2	Assistant Accounts/ Audit Officer	7450-11500	7500-12000	PB-2	4800	7.56.9
3	Audit/ Accounts Officer	7500-12000	8000-13500	PB-2	5400	7.56.9
4	Senior Audit/ Accounts Officer	8000-13500	8000-13500	PB-3	5400	7.56.9
• Also applicable to employees of Indian Audit & Accounts Department						

17. Further, the Government of India Ministry of Finance, Department of Expenditure (Implementation Cell) issued a clarification dated 11.11.2008, which reads as under:

"Government of India
Ministry of Finance
Department of Expenditure
Implementation Cell

Cabinet Secretariat may please refer to their File No.1/98/2008-EA-I seeking clarifications regarding the pay scales applicable to certain cadres/posts in the Secret Departments working under the umbrella of Cabinet Secretariat as per the recommendations of the Supplementary Report of the Sixth Central Pay Commission.

2. The clarifications on the issues raised are given as under:-

Sl. No.	Issues	Clarification
1.	Whether Section Officers/Private Secretaries of Cabinet Secretariat can be extended the grade pay of Rs.5400 in PB-3 on completion of 4 years of regular service on the CSS/CSSS analogy?	Yes.
2.	Pay scales of Accounts Officers of organizations under Cabinet Secretariat.	Accounts Officers of organizations under Cabinet Secretariat will be granted the grade pay of Rs.5400 in PB-2 at par with Accounts Officers belonging to Organized Accounts Cadres.

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This issues with the approval of the Secretary (Expenditure).

Sd/
(Alok Saxena)
Director (IC)
11.11.2008

Director Finance (Ms. Alka Sharma), Cabinet Secretariat, New Delhi.
MoF, D/o Expenditure, IC U.O.No.10/1/2008-IC dated 11.11.2008"

18. Primarily the learned counsel for the applicant, Ms. Jyoti Singh has staked the claim of the applicants on the following two grounds:

- i) That there was an historical parity between the Private Secretaries in Civil Accounts Service and Private Secretaries in C&AG and CSSS. This was disturbed in the year 2003, and despite representations made by the applicants, this was not rectified. So, the first ground is parity of pay scales.
- ii) Since the genus of both the Accounts and Audit cadre is the same, the two species, namely, the Audit Cadre remaining with the Comptroller & Auditor General Office (i.e., C&AG Office) and the Accounts Cadre, bifurcated and transferred to a Cadre of Civil Accounts, the Pay Scale and Grade Pay of Private Secretaries of both the species cadre cannot defer, as this amounts to an unjust discrimination and also violation of the spirit in which the bifurcation has been done, which has already referred to, hereinbefore, in this order.

19. It is argued that in case the bifurcation had not taken place in 1976, the Private Secretaries, both in CGA and C&AG, would have been in the same pay scale. It is just fortuitous, that some Private Secretaries who came over to CAS thinking that their pay scales and service conditions would not turn adverse vis-a-vis the PSs in C&AG.

20. Regarding the first ground, we are of the opinion that the law has been well settled by the Hon'ble Apex Court in this regard, through catena of judgements. The settled law, now, is that Tribunals and

Courts should not normally get into the business of deciding the pay scales and it is best left to the executive to be decided on the basis of the advice of an Expert Body such as a Pay Commission, unless there is *prima-facie* evidence of arbitrariness, *mala fide* or non-application of mind. From the facts of the case, it is apparent that there has been no arbitrariness, *mala fide* or non-application of mind on the part of the respondents. A well considered decision was taken in the year 1976 to bifurcate the Cadre. Once the Cadre was bifurcated, there came into existence in two entities, namely, Audit Cadre and the Accounts Cadre. It is quite plain that the functions of these two cadres are not at all related and, hence, they are not comparable. In addition, when the respondents have demonstrated that there was never any parity from the 3rd Pay Commission onwards between the Private Secretaries in the Civil Accounts Cadre and the CSSS, so parity claim with CSSS in any way is not established. Thus, even on merits, it is obvious that pay scale of individual posts in different hierarchy cannot be decided just on the basis of the parity as any alteration in the pay scale of one post invariably has effect on the pay scales in the whole organization. It disturbs the existing parity in that organization. Therefore, the Supreme Court has held that the Tribunal should not get into the business of fixing the pay scales.

21. Regarding the second line of argument, the fact is that after 1976, these two organizations grew along their own independent paths. After 27 years of this bifurcation, in the year 2003, the Government took a decision regarding the CSSS cadre to grant the

Grade Pay of Rs.4800/- and Rs.5400/- after completion of four years service. Since the Private Secretaries working in the C&AG was considered as part of the Secretariat, the same was made applicable to them. It was not made applicable to the Private Secretaries of the Civil Accounts Service/CGA because they were considered as Non-Secretariat cadre and accordingly, Grade Pay was fixed as Rs.4600 in Pay Band-2. 27 years is a long time and in these 27 years, the two organizations have been growing along their different paths and engaged in absolutely different qualities. Therefore, to compare them now is quite impossible. In fact, if we examine such bifurcations in other situations, we find the same developments. For example, when the States of Bihar, Madhya Pradesh and Uttar Pradesh were bifurcated and the new States of Jharkhand, Chattisgarh and Uttarakhand respectively, came into existence, similar transfer of staff took place, and over time, different Governments took different decisions regarding pay scales and service matters of its employees.

22. In 2016, after 13 years of such bifurcation, if employees of these new States come up with claims based on parity that existed when the two States had together, it cannot be an acceptable proposition. After the new States came into being, the service conditions have been changed, promotional avenues changed (in fact, in the case of some States the promotional avenues of the new States dramatically improved because of the smaller cadre). Therefore, going back in time in such matters does not sound plausible.

23. We take another example. When NABARD was spun out of the Reserve Bank of India, after its creation, there was no link between the RBI and NABARD. NABARD grew into a strong organization on its own. Obviously, comparing the service conditions, pay scales and other service related matters of its employees after years of such bifurcation on the sole ground that once upon a time there was a pay parity is not a very convincing argument.

24. The Hon'ble High Court of Delhi in its Order dated 08.10.2013, passed in WP(C) No.9045/2011, had set aside the Judgement of this Tribunal and revived the Original Application No.632/2012 with a direction to this Tribunal to decide the issue afresh by considering the case of the Petitioners of Rs.8000-13500 in terms of the Ministry of Finance, OM dated 11.11.2008.

25. We have perused the OM dated 11.11.2008. This was a clarification issued by the Ministry of Finance regarding certain cadres of posts in the secret Departments working under the umbrella of Cabinet Secretariat. As per the recommendations of the supplementary report of the 6th CPC, the 1st and 2nd issues and its clarification thereon are as under:

Sl. No.	Issues	Clarification
1.	Whether Section Officers/Private Secretaries of Cabinet Secretariat can be extended the grade pay of Rs.5400 in PB-3 on completion of 4 years of regular service on the CSS/CSSS analogy?	Yes
2.	Pay scales of Accounts Officers of organizations under Cabinet Secretariat.	Accounts Officers of organizations under Cabinet Secretariat will be granted the grade pay of Rs.5400 in PB-2 at par with Accounts Officers belonging to Organized Accounts Cadres.

26. Regarding the 'Organized' Accounts Cadres, the scale had been notified vide Department of Expenditure OM dated 20.02.2003. Two things are clear: (i) 2003 OM was for an Organized Accounts Cadres and (ii) The clarification of 11.11.2008 was for 'Secret' Departments under the umbrella of Cabinet Secretariat. Therefore, these are different cadres and for Secretariat services and not for '*non-secretariat services*'. Even while making this claim, the basic argument raised by the learned counsel for the applicants remains the same as we have just discussed above and, for the same reason, we are of the opinion that the applicants have no claim to grant the pay scale of Rs.8000-13500.

27. We, therefore, are of the opinion that neither of the grounds raised by the learned counsel for the applicants sustain, and the OA does not succeed. It is dismissed accordingly. No costs.

(P. K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

/nsnrvak/