

**Central Administrative Tribunal
Principal Bench: New Delhi**

OA No.1095/2014

Reserved on: 26.04.2016

Pronounced on: 01.06.2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Shri Sudhir Kumar, Member (A)**

1. Shri K.P. Rajagopal,
Secretary General of Income Tax Employees' Federation
S/o Late Shri C. Achutha Menon, aged 58 years
Residing at 2/95, Rajouri Garden, New Delhi.
2. Smt. Kusum Lata Panwar
W/o Shri R.S. Panwar,
Aged 55 years
Residing at 89, New Model Apartment,
Sector 13, Rohini, New Delhi.
Presently working as Inspector of Income Tax,
In the office of the Commissioner of Income Tax-VI,
New Delhi.

-Applicants

(By Advocate: Shri B.K. Berera)

Versus

Union of India represented by

1. Secretary, Department of Expenditure,
North Block, New Delhi-110001.
2. Secretary, Department of Revenue,
Ministry of Finance,
North Block, New Delhi-110001.
3. Chairman,
Revenue Board,
North Block, New Delhi.

-Respondents

(By Advocate: Shri R.N. Singh)

ORDER

Per Sudhir Kumar, Member (A):

Applicants of this case are before this Tribunal seeking extension of provisions of the Department of Expenditure U.O. No. 10/1/2009-IC

dated 14.12.2009 to those persons among them and similarly situated persons who are Members of the Income-tax Employees' Federation, whom the applicant No.1 represents, and who had been promoted to the posts of Inspectors/Private Secretaries /Administrative Officer in Income-tax Department between the dates of 01.01.2006 to 31.08.2008, as has been allegedly allowed to those promoted during the same period among the Assistants of the Central Secretariat Service (CSS, in short)/Personal Assistants (PAs, in short) of Central Secretariat Stenographers' Service (CSSS, in short).

2. Applicant No.1 is the Secretary General of Income Tax Employees' Federation, and Applicant No.2 is one of the Members of the Federation who has joined together in filing this OA as per the provision of Rule 4(5) (a) & (b) of the CAT (Procedure) Rules, 1987. They have pointed out that consequent upon acceptance of the recommendations of the VI Central Pay Commission (VI CPC, in short) by the Govt. of India and implementation of the Central Civil Services (Revised Pay) (CCSRP, in short) Rules, 2008, the Inspectors/Private Secretaries/Administrative Officers in Income Tax Department, who had earlier been in the pay scale of Rs.6500-10500, were initially placed in the running Pay Band PB-2 of Rs. 9300-34800 with Grade Pay of Rs.4200. Thereafter, through Annexure A-2 OM dated 13.11.2009, it was decided by the Government that the posts which were in the pre-revised pay scale of Rs. 6500-10500

as on 01.01.2006, and which were granted the normal replacement Pay Structure of Grade Pay of Rs.4200 in the Pay Band PB-2, would instead be granted Grade Pay of Rs.4600 in Pay Band PB-2 corresponding to the pre-revised pay scale of Rs.7450-11500 w.e.f. 01.01.2006.

3. The applicants' case is that in the case of Government servants, who were promoted as Assistants/PAs/AO in the period between 1.1.2006 and 31.08.2008, the date of the CCSRP Rules, 2008 having been notified, their pay will have to be fixed as per the option exercised by them, and even as per the terms of the CCSRP Rules, 2008, they would all have the option to (i) either have their pay re-fixed as on 01.01.2006, or (ii) from the date of their promotion, which took place after 01.01.2006, and in such latter category cases, their pay will have to be fixed with reference to the fitment table of the higher pay scale on the date of their promotion, even though, in such cases, the persons concerned would not be entitled to any arrears of pay from 01.01.2006, till the date of their exercise of option after such promotion.

4. The applicants have stated that even the pay of the Inspectors/Private Secretaries/Administrative Officers in Income Tax Department, who had been promoted between 01.01.2006 and 31.08.2008, had been fixed in the same manner as prescribed as cited above in the OM dated 14.12.2009 (Annexure A-3), as they were already held to be in the pre-revised pay scale of Rs.7450-11500 prior to 01.01.2006, while the Assistants of CSS and CSSS were actually in the lower pre-revised pay scale of Rs.5500-9000 as on 01.01.2006, and had

been assigned the pre-revised pay scale of Rs.6500-10500 only w.e.f. 15.09.2006.

5. The applicants have also relied upon the clarification letter dated 13.06.2011, produced by them, through which even the Comptroller & Auditor General (C&AG, in short) had also prescribed the same mode of fixation of pay of those promoted to the posts of S.Os and AAOs during the period from 01.01.2006 to 29.08.2008, and who had then opted for fixation of their pay from the date of their promotion, as has been prescribed by the Department of Expenditure through their OM dated 14.12.2009.

6. When pay fixation in respect of personnel of Income Tax Department, who had been promoted between 01.01.2006 and 31.08.2008, was made in accordance with the above stipulation, the Zonal Accounts Officer objected to such fixation, on the ground that the Clarification dated 14.12.2009 (supra) had been issued to be made applicable only in the case of Assistants of CSS and PAs of CSSS, and could not have been applied to the Income-Tax Department personnel.

7. The Applicant No.1 representing the Federation in this regard on 04.03.2013 through Annexure A-5 to the Director General of Income Tax (Human Resource Development), New Delhi and requested that the fixation of pay of the persons promoted between 01.01.2006 and 31.08.2008 to the post of Inspectors/PSs/AOs should continue to be as per the provisions of Department of Expenditure U.O. dated 14.12.2009 (supra), as they are similarly placed with Assistants of CSS and PAs of

CSSS. Their Administrative department in the Government, the Department of Revenue had also sent a proposal seeking extension of the provision of Department of Expenditure U.O. dated 14.12.2009 (supra) to the Income-Tax Department employees, as is evident from the file Notings produced at Annexure A-6.

8. However, the Department of Expenditure has since rejected that proposal by issuing impugned Annexure A-1 dated 29.05.2013, which is an extract of the concerned Ministry's file Noting, stating as follows:-

“The proposal of D/o Revenue seeking extension of the provision of DoE's UO No.10/1/2009-IC dated 14.12.2009 to the Inspectors (ITIs)/PSs/AOs of the Income Tax Department, who were promoted between 1.1.2006 and 31.08.2008, as allowed to Assistants/PAs of CSS/CSSS, has been re-examined in this Department. It is regretted that it has not been found possible to agree to the proposal”.

9. Citing the particular case of Applicant No.2, she had produced her pay fixation granted through Annexure A-7 earlier, in which she had been granted the benefit of Grade Pay of Rs.4600, but later, through orders dated 11.11.2013 (Annexure A-8), her pay itself was ordered to be reduced, and fixed at Rs.6200 as on 01.01.2006.

10. The applicants have taken the ground that the respondents had through the OM dated 13.11.2009 (Annexure A-2) (supra) granted Grade Pay of Rs.4600 in the Pay Band PB-2 w.e.f. 01.01.2006 only in respect of those posts which were already in the pre-revised pay scale of Rs.6500-10500 as on 01.01.2006, and which had been sought to be equated by the VI CPC with the pre-revised pay scale of Rs.7450-11500. It was submitted that it is wrong to state that this OM was meant only for

Assistants of CSS and PAs of CSSS, who were actually only in the pre-revised pay scale of Rs.5500-9000 as on 01.01.2006, and had been brought into the pre-revised pay scale of Rs.7450-11500 only w.e.f. 15.09.2006, by which process they could overtake the applicants, jumping the intermediate pay scale of Rs. 6500-10500.

11. The applicants have further taken the ground that since the Inspectors/PAs/AOs in Income Tax were already placed in the pre-revised pay scale of Rs.6500-10500 as on 01.01.2006 (fixed since 01.01.1996), they had been rightly placed in the upgraded Grade Pay of Rs.4600 in PB-2, through the explanations offered in regard to such pay fixation through Annexure A-3 dated 14.12.2009, which clarifications only go to show that the claim of the Inspectors/PSs/AOs in Income Tax Department, on the basis of equal application of Rules/Orders/Laws to similarly placed persons, is more than justified, when such Rules have already been made applicable to Assistants of CSS and PAs of CSSS.

12. They had further taken the ground that when the initial fixation of pay as per the provisions of OM dated 13.11.2009 (Annexure A-2) as clarified by the U.O. dated 14.12.2009 (Annexure A-3) had already been granted by the competent authorities, without any of the Inspectors/PSs/AOs of Income Tax Department having misrepresented their case, and the alleged wrong fixation of their pay was due to the misunderstanding of authorities, if any, no action to recover any excess payments arising due to such allegedly incorrect re-fixation of pay is not warranted in terms of the law as laid down by the Hon'ble Apex Court in

Sahib Ram vs. State of Haryana (1995 (5) SLR 753), and that the recovery of such alleged over-payment was incorrect, as no misrepresentation had been made by the applicants, as held by the Hon'ble Apex Court in **All India Postal Employees Union & Others vs. Union of India & Others (2005 (2) ATJ 193)**.

13. In the result, the applicants had sought for the following reliefs:-

- “i) That the Department of Expenditure U.O. No. 123008/E-III (A)/2013 dated 16.07.2013 (Annexure A-1) may kindly be set aside.
- ii) That the clarification at (C) in Department of Expenditure-IC, U.O. No. 10/1/2009-IC dated 14.12.2009 (Annexure A-3) may kindly be made applicable to Inspectors/PSs/AO in Income Tax who had been promoted between 1.1.2006 and 31.8.2008.
- iii) That since the Grade Pay of Rs.4600 in PB-2 corresponding to pre-revised pay scale of Rs.7450-11500 has been granted with effect from 1.1.2006, the pay of Inspectors/PSs/AO in Income Tax may be fixed in terms of provisions of Rule 7 of CCS (Revised Pay) Rules, 2008 taking the minimum pay on pay band as Rs.13860 (with reference to Rs.7450) and not Rs.12090 (with reference to 6500).
- iv) That these remedies are made available to all other cadres of employees in all Departments whose grade pay was upgraded to grade pay of Rs.4600 in PB-2 in terms of Department of Expenditure OM No. 1/1/1980-IC dated 13.11.89.
- v) Any other relief which the Tribunal considers appropriate in the circumstances of the case”.

14. The applicants had also sought interim relief that pending final decision, the respondents ought not to make any recovery of overpayments, if any, which Interim Relief had been granted by a Coordinate Bench on the date of admission of the case on 31.03.2014 itself.

15. Respondents filed their counter reply on 01.05.2015, only through an affidavit filed by the Dy. Commissioner of Income Tax (Hq.) (Litigation) in the Office of Principal Chief Commissioner of Income-Tax, Central Revenue Building, New Delhi, and not from the Central Board of Direct Taxes (CBDT, in short), or from the Department of Revenue, Ministry of Finance, Govt. of India. It was stated in Para-1 of the reply that the officer concerned had the authority and competence to submit and verify that reply affidavit on behalf of the answering respondents. To our mind, he could have only sworn to that reply affidavit on behalf of Respondent No.3, under whose direct control he was working, and, that he could not have been competent to file a counter reply on behalf of either CBDT, or the Department of Revenue, Ministry of Finance, Govt. of India. Therefore, we have to take it that Respondents No. 1 & 2 chose not to file any counter reply.

16. On behalf of respondents, it was stated that no violation of any Rule, Constitutional provision, or statutory instructions had taken place, and no cause of action had accrued in favour of the applicants to file the present OA, which was, therefore, liable to be dismissed with costs.

17. It was further submitted that the applicants do have any enforceable right for demanding a particular pay scale, and that creation/abolition of post(s), assigning pay scales and framing/amendment of Recruitment Rules, falls under the exclusive domain of the respondents, as has been held by the Hon'ble Supreme Court in **Malikarjuna Rao vs. State of A.P. (1990) 2 SCC 707**, wherein

it was held that “it is neither legal nor proper for the High Courts or this Tribunal to issue directions or advisory sermons to executive in respect of sphere which is exclusively within the domain of the execution under the Constitution, and that the Constitution does not permit the Court to direct or advise the executive in the matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive”.

18. It was pointed out that this law has been further reiterated by the Hon’ble Apex Court in **P.U. Joshi & Ors. vs. The Accountant General, Ahmedabad & Ors., 2003 (2) SCC 632**. On the point of equation of posts, it was submitted that the Hon’ble Apex Court has in a catena of cases, including in the case of **Secretary Finance Department and Ors., vs. The West Bengal Registration Service Association & Ors. 1992(2) SC 82**, held that “equation of posts and determination of pay scales is primary function of the executive and not the judiciary and, therefore, the Courts would not ordinarily enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commissions etc”. Reliance was also placed on the Hon’ble Apex Court judgments in the cases of (i) **S.C. Chandra and Ors. vs. State of Jharkhand & Ors., 2007 (8) SCC 279**; (ii) **Union of India vs. Hiranmay Singh 2008 (1) SCC 630**.

19. It was submitted that the posts of Inspectors/PSs/AOs in Income Tax Department are not similar/identical to the posts of Assistants/PAs in CSS/CSSS, and, therefore, no analogy can be drawn between these posts. It was further submitted that through the impugned OM,

Department of Expenditure has only clarified that its Clarification dated 14.12.2009 (Annexure A-3) is not applicable to the officials in the cadre of Income Tax Inspectors/AOs/PSs belonging to the Income Tax Department.

20. However, in the very next paragraph, in reply to Para 4.5 of the OA, it was submitted in the same affidavit that the pay fixation of the officials promoted to the posts of Income Tax Inspectors/PSs/AOs in the Income Tax Department between 01.01.2006 to 31.08.2008 had been done in accordance with the Department of Expenditure UO dated 14.12.2009, which UO issued in respect of Central Secretariat Assistants/PAs/AOs, was said to be not applicable to the officials of the department in reply to the immediately preceding paragraph. No specific reply was given to the averments of the applicants made in Para 4.6 of the OA regarding the Clarification dated 13.06.2011 (Annexure A-4) issued by the Asstt. C&AG.

21. It was further replied that since the application of the Department of Expenditure U.O. Clarification dated 14.12.2009 (Annexure A-3) was not agreed to by the Ministry of Finance, instructions were issued through letter dated 25.11.2013 (Annexure R-1) to all the Commissioners of Income Tax, who were Cadre Controlling Authorities, communicating the decision of Department of Expenditure, stating as follows:-

“F. No. HRD/CM/175/9/2010-11/3798 Dated: 25.11.2013

To,

All the Chief Commissioners of Income Tax(CCA)/DGIT's

Sir/Madam,

Subject: Fixation of Pay consequent upon 6th Pay Commission
Recommendations in the cadres of Inspectors/P.A's/
Administrative Officers-reg.

Sir,

Kindly refer to the above subject.

In continuation to this office letter of even no.3740 dated 22.02.2013 and 2621 dated 30.09.2013 (Copies enclosed), I am directed to convey that proposal of Department of Revenue for extension of the provision of Department of Expenditure U.O. No.10/1/2009-IC dated 14.12.2009 to the Inspectors (ITIs)/PSs/AOs of the Income Tax Department, who were promoted between 1.01.2006 and 31.08.2008 as allowed to Assistants/PAs of CSS/CSSS has not been agreed to by the Department of Expenditure.

Encl : A/c

Yours faithfully,

(Sanjay Gosain)
Dy. Director of income Tax (HRD) ”

22. It was further submitted that in view of the decision of the Govt. of India Ministry of Finance communicated by the Department of Expenditure through the impugned OM dated 16.07.2013, the earlier pay fixation of Applicant No.2, in terms of the Department of Expenditure clarification dated 14.12.2009 (Annexure A-3), was held to be not correct, and, therefore, the modified pay fixation order was issued to her vide letter dated 30.09.2013, which stated as follows:-

"F. No. HRD/CM/175/9/2010-11/2621 Dated: 30.09.2013

To,
All the Chief Commissioner of Income Tax (CCA)

Sir/Madam,

Subject: Fixation of Pay consequent upon 6th Pay commission Recommendations in cadres of Inspectors/P.A.'s/ Administrative Officers- reg.

Kindly refer to the above subject.

In continuation to this office letter of even no.3740 dated 22.02.2013 (copy enclosed), I am directed to convey as under :

- (i) In so far as issue of recovery of excess payments already made, the matter may be referred by the CCIT (CCA) to the Department of Expenditure for remission of excess payments already made as per rule 17 of DFPRs. The reference may be made through DIT (B&E). This would be necessary since :-
 - (a) Recovery will place undue hardship on the concerned employees.
 - (b) The concerned employees have received the extra amount under a reasonable belief that they were entitled to it (the disallowance by ZAO having been made one year after the payment commenced).

Enc : As above

Yours faithfully,

(S.P. Gupta)
Dy. Director of Income Tax (HRD)"

23. However, it was further submitted that the matter has since attained finality, with the rejection of the proposal by the Department of Expenditure, Ministry of Finance, which has been communicated to all the CCITs through letter dated 20/22.02.2013 (Annexure R-3) as follows:-

“2. The matter was referred to Department of Expenditure who have now conveyed their final advice as under :-

“Accordingly, Department of Revenue is informed that the fixation of pay as on 1.1.2006 is to be done only with reference to the actual pay scale of Rs.6500-10500 and pay in the pay band so fixed will be the revised pay and thereafter, the Grade pay of Rs.4600/- now admissible in the revised structure will be paid. In case there is anomaly whereby a senior promote officer draws less pay than the minimum Entry pay of DRs who has joined after 01.01.2006, then the stepping up of pay of senior promote may be considered at par with the pay of the junior DR appointed on or after 01.01.2006, subject to the following conditions :-

- a. Stepping up of the pay of senior can be claimed only if in these cadres there is an element of direct recruitment and in cases where a directly recruited junior appointed on or after 01.01.2006 is actually drawing more basic pay than the senior. In such cases, the basic pay of the seniors will be stepped up with reference to the pay of the directly recruited junior provided they belong to the same seniority list for all purposes.
- b. Government servants cannot claim stepping up of their revised basic pay with reference to the entry pay in the revised structure for direct recruits appointed on or after 01.01.2006, as laid down in section 11 of part A of the first schedule to the CCS (RP) Rules, 2008, if their cadre does not have an element of direct recruitment or in cases where no junior is drawing basic pay higher than them.
- c. Stepping up of pay of the seniors shall not be applicable in cases where direct recruits have been granted advance increments at the time of recruitment.

Overpayment over and above this will have to be recovered in an administratively suitably way”.

3. In pursuance to the final advice given by Department of Expenditure, it is directed that pay fixation of the Inspectors/PAs/AOs in the Sixth CPC revised pay scales should be done w.r.t. the pre-revised scales of Rs.6500-10500 along with Grade Pay of Rs.4600 with stepping up being reported to whenever applicable as advised by DOE.

4. In so far as the issue of recovery of excess payments already made in deserving cases, it is clarified that such excess payments already made can be waived as per provision of Rule 17 of the DFPRs. Under certain specific

circumstances all the CCIT(CCAs) may accordingly analyse all the cases in which recoveries are to be made and refer the deserving cases for further necessary action under Rule 17 of the DFPRs to the Board. The cases should be referred to the DIT(B&E) under DGIT (Logistics) as separate budget will need to be provided for the proposed remissions and the matter will need to be taken up first with the IFU before it is sent to the DOE.

5. This issues with the approval of the Chairperson, CBDT”.

24. It was, therefore, prayed that being devoid of any merits, the OA deserves to be dismissed with costs.

25. The applicants filed a rejoinder more or less reiterating their contentions, and maintaining that they have the cause of action in their favour to file the present OA. It was further reiterated that even the C&AG has also prescribed the mode of fixation of pay to those officials who had been promoted to the posts of Inspectors/PSs/AO during the period from 01.01.2006 to 31.08.2008, but the same has not been heeded to by the respondents. The applicants had further relied upon the order passed by a Coordinate Bench of this Principal Bench of this Tribunal in OA No.3679/2012 dated 07.05.2014 **Sheeja Santosh & Ors. vs. The Director General, ESIC HQr. and Others**, in which, in case of the Staff Nurses of the ESIC Hospitals, the Coordinate Bench had, in the concluding Para of its order, stated as follows:-

“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 01.10.2006

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.”

26. It was, therefore, once again prayed that since the Grade Pay of Rs.4600 in Pay Band PB-2 corresponding to pre-revised pay scale of Rs.7450-11500, had been granted w.e.f. 01.01.2006, the pay of Inspectors/PSs/AOs in Income-Tax Department may be fixed in terms of the provisions of Rule-7 of CCS (Revised Pay) Rules, 2008 taking the minimum in the Pay Band of Rs. 13800, with reference to the pre-revised pay of Rs.7450, and not fixing the minimum pay at Rs.12500 in the respective Pay Band (with reference to Rs.6500).

27. The respondents thereafter filed an additional affidavit, once again on behalf of Respondent No.3 only, but this time signed by Assistant Commissioner of Income Tax (Hq.) (Litigation). It was submitted that when the Department of Expenditure had clarified that their earlier clarification dated 14.12.2009 was applicable only in respect of Asstt./PAs of CSS, and was not applicable to Income Tax Department, that decision communicated by Department of Expenditure, Ministry of Finance, vide U.O. dated 16.07.2013, was accepted by the Department of Revenue, Ministry of Finance, and the relevant communication was sent in this regard to all the CCITs (CCA), who are the Cadre Controlling Authorities, through letter dated 25.11.2013. It was admitted that even

though in respect of recoveries on account of overpayment, a letter has been addressed to the Department of Revenue, but since the substantive matter has attained finality, it was prayed that the OA be rejected.

28. Heard. We would do well to reproduce the entire OM dated 13.11.2009 issued by the Department of Expenditure, Implementation Cell, as below:-

“Sixth Pay commission recommended merger of the three pre-revised scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 and replaced them by the revised pay structure of grade pay of Rs.4200 in the pay band PB-2. Vide para 2.2.21 (v) of its report, the Commission recommended that on account of the merger of these 3 scales, some posts which constituted feeder and promotion grades would come to lie in an identical grade. The Commission gave specific recommendations in its Report granting higher grade pay of Rs.4600 to some categories of these posts. As regards the other posts, the Commission recommended that it should first be seen if the posts in these 3 scales can be merged without any functional disturbance and if possible, the same should be done, Further, **the Commission recommended that 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 posts in the scale of Rs.6500-10500 being upgraded to the next higher grade in the pay band PB-2 with grade pay of Rs.4600 corresponding to the pre-revised scale of Rs.7450-11500, the posts being upgraded from the scale of Rs.6500-10500 should be merged with the post in the scale of Rs. 7450-11500.**

2. The above recommendations of the Sixth Pay Commission were notified vide para (ii), Section I in Parts B and C of the First Schedule to the CCS (RP) Rules, 2008. While Part B of the First Schedule of the CCS(RP) Rules relates to revised pay scales for common categories of staff, Part C notifies revised pay structure for certain posts in Ministries, Departments and Union Territories. The above provisions of the Rules specifically mentioned that upgradations in terms of para (ii) Section I may be done in consultation with Department of Expenditure, Ministry of Finance.

3. Consequent upon the Notification of CCS (RP) Rules, 2008, Department of Expenditure has received a large number of references from administrative ministries / departments proposing

upgradations of the posts which were in the pre-revised scale of Rs.6500-10500 as on 1.1.2006 by been granting them grade pay of Rs.4600 in the pay band PB-2. The matter has been considered and **it has now been decided that the posts which were granted the normal replacement pay structure of grade pay of Rs.4200 in the pay band PB-2, will be granted pay of Rs.4600 in the pay band PB-2 corresponding to the pre-revised scale of Rs.7450-11500 w.e.f.1.1.2006.** Further, in terms of the aforementioned provisions of CCS (RP) Rules, 2008, **in case a post already existed in the pre-revised scale of Rs.7450-11500, the posts being upgraded from the scale of Rs.5600-10500 should be merged with the post in the scale of Rs.7450-11500.**

4. **Accordingly,** in terms of Rule 6 of CCS (RP) Rules, 2008, **revised pay of Government servants in the pre-revised scale of Rs.6500-10500 who were earlier granted grade pay of Rs.4200** and who have already exercised their option for drawal of pay in the revised pay structure in the format prescribed in the Second Schedule to the Rules, **will be fixed again in accordance with illustration 4A** annexed to CCS (RP) Rules, 2008.

5. In case of all such Government servants in the pre-revised scale of Rs.6500-10500 who were earlier granted grade pay of Rs.4200 and who had opted to have their pay fixed under CCS(RP) Rules, 2008, action as prescribed in this Department's O.M. of even number dated 30th August, 2008 will be taken. **In case a Government servant desires to revise his earlier option for coming over to the revised pay structure, he may be permitted to do so without any reference to this Department.**

6. On account of pay fixation in the revised pay structure of grade pay of Rs.4600 in the pay band PB-2, arrears of pay will be recalculated and difference of arrears in respect of the entire amount will be paid immediately. The manner of drawal of arrears has already been indicated in this Departments/s O.M. of even number dated 30.8.2008."

(Emphasis supplied)

29. The whole story, therefore, revolves around only four pre-revised pay scales. It is clear from the Paragraph-1 of the above OM that the VI CPC had recommended that in case it is not feasible to merge the posts in three pre-revised pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500, which merger had been recommended by the Pay Commission, and these three pre-revised pay scales were ordered to be

replaced by the revised pay structure in the Grade Pay of Rs.4600 in PB-2, this OM had considered that the merger shall take place only in respect of the posts in the first two pay scales of Rs.5000-8000 and Rs.5500-9000, while the posts in the third pay scale of Rs.6500-10500 were ordered to be upgraded to the next higher grade in PB-2, with Grade Pay of Rs.4600, which was otherwise corresponding to the pre-revised scale of Rs. 7450-11500. It was also recommended that in case a post already exists in the 4th pay scale of Rs.7450-11500, the post now being upgraded from the third pay scale of Rs.6500-10500 should be merged with the post in that 4th scale of Rs.7450-11500.

30. These recommendations of the VI CPC were notified vide Para (ii), Section 1 in Parts B and C of the First Schedule to the CCS (Revised Pay) Rules, 2008. While the Part B of the First Schedule related to the Revised pay scales for common categories of staff of the Union of India all over the Country, the Part-C had notified revised pay structure for certain posts only in the Ministries, Departments and Union Territories, as indicated in detail in Part-C. It was also indicated in the CCS (Revised Pay) Rules, 2008 that upgradations in terms of Para (ii) Section 1 may be done in consultation with Department of Expenditure, Ministry of Finance.

31. The decision taken by the Government in this regard was communicated through Para-3 of the above cited O.M., in which it was notified that it has been decided that the posts which were in the pre-revised (third) pay scale of Rs.6500-10500 as on 01.01.2006, and which were earlier granted the normal replacement pay structure of grade pay

of Rs.4200 (by merger of the three pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500) will now be de-linked from the two lower merged pay-scales, and granted Grade Pay of Rs.4600 in the Pay Band PB-2, which was earlier held to be corresponding to only the pre-revised (fourth) pay scale of Rs.7450-11500 w.e.f. 1.1.2006.

32. With this decision, the Respondents No. 1 & 2 had delinked the fate of the erstwhile merged pay scales of Rs.5000-8000 and Rs.5500-9000 from the fate of the erstwhile (third) pay scale of Rs.6500-10500. Further, it was clarified in ample measure that in terms of the aforementioned provisions of CCS (RP) Rules, 2008, in case a post already exists in the (fourth) pre-revised scale of Rs.7450-11500, the posts now being upgraded from the delinked (third) pay scale of Rs.6500-10500 should be merged with the posts in the higher (fourth) pay scale of Rs.7450-11500.

33. Through Para-4 of the above cited OM, even in respect of those Government servants who were in the since de-linked pre-revised (third) pay scale of Rs. 6500-10500, and had earlier been granted the Grade Pay of Rs.4200 because of their fate having been linked earlier with the two lower pay scales of Rs.5000-8000 and Rs.5500-9000, and even if they had already exercised their option for drawal of pay in the revised pay structure in the format prescribed in the Second Schedule, their pay was ordered to be fixed once again in accordance with Illustration 4A annexed to the CCS (Revised Pay) Rules, 2008. In this connection, it will be relevant to reproduce Illustration 4A as below:-

“ILLUSTRATION 4A:

Pay fixation in case where posts have been upgraded e.g. post in pre-revised pay scale of Rs 3050-75-3950-80-4590 to Rs 3200-85-4900 scale.

1. Existing Scale of pay	Rs 3050-4590 (Corresponding Grade Pay Rs 1900)
2. Pay band applicable	PB-1 Rs 5200-20200
3. Upgraded to the scale of pay	Rs. 3200-4900 (Corresponding Grade Pay Rs 2000)
4. Existing basic pay as on 1.1.2006	Rs 3125
5. Pay after multiplication by a factor of 1.86	Rs 5813 (Rounded off to Rs 5820)
6. Pay in pay band PB-2	Rs 5820
7. Pay in the pay band after including benefit of bunching in the pre-revised scale of Rs.3,050-4,590, if admissible.	Rs.6,060
8. Grade Pay attached to the scale of Rs 3200-4900	Rs 2000
9. Revised basic pay- total of pay in the pay Band and grade pay”	Rs 8060

34. Para-5 of this OM as cited above had reiterated this instruction, and had further added that in case a Government servant desires to revise his earlier option for coming over to the revised pay structure, he may be permitted to do so, without making any reference to the Department of Expenditure of the Union of India. This revision of option has to be read in conjunction with the Form of Option, which had been prescribed as follows:-

“THE SECOND SCHEDULE

Form of Option

[See Rule 5]

*(i) I _____ hereby elect the revised pay structure with effect from 1st January, 2006.

*(ii) I _____ hereby elect to continue on the existing scale of pay of my substantive/officiating post mentioned below until:

-> the date of my next increment

- > The date of my subsequent increment raising my pay to Rs.
- > I vacate or cease to draw pay in the existing scale.
- > The date of my promotion to_____

Existing Scale_____

Signature_____

Name _____

Designation_____

Office in which employed_____”.

35. It was further ordered in Para-6 of this OM as cited above that on account of pay fixation in the revised pay structure of Grade Pay of Rs.4600 in the pay band PB-2, arrears of pay will be recalculated, and difference of arrears in respect of the entire amount will be paid immediately.

36. Annexure A-3 of the OA dated 14.12.2009 is only a file noting signed by the same officer who was signatory to the OM dated 13.11.2009 (Annexure A-2), slightly retracting from the instructions which had been already issued, while providing clarifications to the queries raised by the Central Secretariat Section of the Department of Personnel & Training in their file No. 7/7/2008-CS.1(A) regarding the manner in which the pay of Assistants (CSS)/PAs (CSSS) had to be fixed consequent upon the grant of revised pay structure of Grade Pay of Rs.4600 to them in the pay band PB-2 on the basis of the Department of Expenditure's OM dated 16.11.2009 (sic. 13.11.2009) (as reproduced above).

37. Para-2 (c) & Para-4 of the file noting, which are relevant in the context of the present case before us, are being reproduced by us here, because from this we do not discern that this clarification, as was

provided, was flowing from the Department of Expenditure, Ministry of Finance to be applicable only in respect of the CSS services controlled by the DoP&T Central Secretariat Division, as has been the stand of the respondents in the subsequent OMs, and the counter reply in this O.A. The same read as follows:-

Point raised	Clarification
"2. (a & b)xxxxxx Not reproduced here	
c) The manner of fixation of pay of officials promoted Assistants/PAs between 1.1.2005 and 31.8.2008	<p>In the case of Government servants who were promoted as Assistants/PAs between 1.1.2006 and 31.8.2008, their pay will be fixed as per the option exercised by them. In terms of CCS (RP) Rules, 2008, they have the option to (i) either have their pay fixed w.e.f. 1.1.2006 with reference to the lower scale which they were holding as on 1.1.2006. or (ii) from the date of promotion which took place after 1.1.2006, in such cases, their pay will be fixed with reference to the fitment table of the higher pay scale, however, they will not be entitled to arrears of pay from 1.1.2006 till the date of option.</p> <p>Accordingly, in the case of officials who were promoted as Assistants/PAs between 1.1.2006 and 31.08.2008, they have the option to have their pay fixed w.e.f. 1.1.2006 with reference to the pre-revised scale of the lower grade i.e. UDC/Steno 'D'. In such cases, on the date of their promotion, their pay will be fixed by granting them one</p>

	<p>increment in the pay band (subject to the minimum pay in the pay band being Rs.9300) and grade pay of Rs. 4600.</p> <p>Alternatively, they can opt to have their pay fixed from the date of promotion with reference to the fitment table of the upgraded pay scale i.e. pre-revised scale of Rs.7450-11500, in which case, they shall not be entitled to arrears of pay from 1.1.2006 till the date of option.</p>
(d) xxxxxxxx Not reproduced here	

3. xxxxxxxx Not reproduced here.

4. Further, it is noticed that **DOPT proposes to issue a separate order on the subject of grant of pay structure of grade pay of Rs.4600 in the pay band PB-2 to Assistants of Central Secretariat Service.** In this connection, it is intimated that generally the Government issues only one Order regarding modification in pay scale of a particular category of Government servants, **in the present case since Department of Expenditure had already issued an O.M. on the subject of grant of pay structure of grade pay of Rs.4600 in the pay band PB-2 to Assistants and Personal Assistants of CSS and CSSS respectively, there does not seem to be any need to issue another Order on the same subject.** Internal instructions may, however, be issued on matters like manner of fixation of pay, etc.”

(Emphasis supplied).

38. Though the learned counsel for the applicants had relied heavily upon the contents of the letter dated 13.06.2011 addressed by the Asstt. Comptroller & Auditor General to all the Heads of Department coming under his control, which had been reproduced at pages 16 & 17 of the paper book of the OA, we need not reproduce the contents of that Circular letter here, firstly because it applied only to the officials coming under the control of Comptroller and Auditor General of India, and secondly because while describing the mode of fixation of pay of officials

promoted after 1.1.2006 and between the period from 02.01.2006 to 29.08.2008, the instructions had merely followed the relevant provisions of FR, and Illustration 4A of the CCS (RP) Rules, 2008, already reproduced by us above.

39. Learned counsel for the applicants had also relied heavily upon the pay fixation in respect of Applicant No.2 through Annexure A-7, which stood withdrawn, and her pay was reduced through Annexure A-8, but when deciding the law on the matters of principle, we need not go into the details of individual cases, and hence the same need not be discussed here, though it is a representative case.

40. We have given our anxious consideration to the facts of this case. The law regarding hierarchy or the status of Act, Rules and Regulations etc. is very well settled. It is trite that the Constitution is supreme, and the Acts passed by Parliament in respect of a subject on which it is empowered to enact under Schedule-VII List-1 or List-3, and a Law passed by the State Legislature in respect of a subject in List-2 or List-3 of the VII Schedule, have to conform to the Constitution. Below the enacted laws come the Rules/Regulations which may be framed by way of Subordinate Legislation, for framing of which normally an enabling provision is always prescribed for in the relevant statute passed by the Parliament, or by the State Legislature. However, even if no such enabling provision exists, it has been held by the Hon'ble Apex Court that if the field is unoccupied, Rules and Regulations can be framed in order to give effect to the provisions of the Legislation itself. The status of such

Rules and Regulations, provided for mostly in the enactment itself, is very high, as they have to be placed on the Table of the respective House, which has passed/enacted the original Legislation.

41. However, there may be many cases in which legal field may still be unoccupied and clarifications may still require to be provided. As per the practice of the Union of India, the next in hierarchy would come a General Statutory Regulation (GSR), which is notified through a Gazette Notification, or an Extraordinary Gazette Notification, which have to have a serial number in themselves, but which need not necessarily be placed on the table of the concerned House, which had enacted the Original Legislation, unless the Legislation so provides for.

42. If the legal field still remains unoccupied for any clarification, or the Government wants to give certain further instructions for them to be in public domain, it may issue a Notification, which may not be Gazetted, or it may take resort to issuance of an Office Memorandum, which only states the legal position of the particular office from which that Office Memorandum is issued, and does not attain the status of a Subordinate Legislation, though it covers the legal field which had still remained unoccupied, and grants further clarification or relief, which the Government may have wanted to provide, even after having enacted the relevant Subordinate Legislation. Clarificatory Circulars come next in the hierarchy, and the Circular cannot occupy the legal field always, if an Office Memorandum exists which states otherwise. The last in the hierarchy come Office Notings, which by themselves constitute the means

of one Ministry or Department communicating with another, or one Officer within the same Ministry or Department communicating with another higher or lower Officer.

43. It has been held by the Hon'ble Apex Court in numerous cases that Office Notings do not have any value in themselves, unless they are reduced to final conclusions of a binding nature, which are issued as a GSR, or an O.M., or a Circular, which come in public domain. In this case, we have the whole catena of Subordinate Legislation before us. The CCS (Revised Pay) Rules, 2008 are in the nature of Statutory Rules. Annexure A-2 dated 13.11.2009 is in the nature of an Office Memorandum, the letter of C&AG dated 13.06.2011, as has been correctly recorded, is a Circular, and has been numbered accordingly, and Annexure A-3 is an internal file noting from the Director (IC) of the Implementation Cell of the VI CPC in the Department of Expenditure, Ministry of Finance, Govt. of India, addressed to the Joint Secretary of the Administrative Tribunal and Administration Division of the DoP&T, within the same building of North Block, and is in the nature of a U.O. Note, which is an Un-Official Note, and does not even have the status equal to that of the OM dated 13.11.2009 (Annexure A-2).

44. Therefore, under law, one thing is clear that whatever Annexure A-2 OM dated 13.11.2009 gives, cannot be taken away, even partially, in any manner whatsoever, by the un-official Noting (Annexure A-3) dated 14.12.2009. It may further be added here that the Circular dated

13.06.2011 issued by the C&AG cannot also over-ride what has been provide for in the OM dated 13.11.2009 (reproduced by us above).

45. As is clear from the contents of Annexure A-2 dated 13.11.2009, already reproduced by us, Para-2 of that OM only reiterated the power vested with the Department of Expenditure, Ministry of Finance, to grant upgradations in terms of Para (ii) of Section-1 of the First Schedule to the CCS (RP) Rules, 2008, while in respect of Part B relating to revised pay scales for common categories of staff, or relating to Part-C which had notified revised pay structure for certain posts in Ministries, Departments and Union Territories, as given in the Annexure.

46. Further, as is clear from a reading of Para-3 of the said OM dated 13.11.2009 (Annexure A-2), the de-clubbing of the pre-revised pay scale of Rs.6500-10500 as on 01.01.2006 from its earlier clubbing with the two lower pay scales of Rs.5000-8000 and Rs.5500-9000, and the decision that those posts which were in that pre-revised pay scale of Rs.6500-10500 as on 01.01.2006, and which had till then been granted only normal replacement pay structure of the grade pay of Rs. 4200 in the pay band PB-2, because of that pay scale having been clubbed with the two lower pay scales earlier, were ordered to be now granted the higher Grade Pay of Rs.4600 in the PB-2, which was otherwise corresponding to the pre-revised pay scale of Rs.7450-11500 w.e.f. 01.10.2006.

47. We have not been able to discern or read from this Paragraph any distinction having been made in regard to such de-clubbing of the pay scale of Rs.6500-10500 from its earlier clubbing with the pay scale of Rs. 5000-8000 and Rs.5500-9000, to its now being clubbed with the higher pre-revised pay scale of Rs.7450-11500 w.e.f. 01.01.2006, being applicable only to any particular Part, either Part-A, or Part-B, or Part-C of the First Schedule to the CCS (RP) Rules, 2008.

48. The plain and simple meaning of the last sentence of Para-3 of this OM was that the posts being upgraded from the erstwhile pay scale of Rs. 6500-10500 as on 01.01.2006 should be merged with those posts which had already existed in the higher pre-revised pay scale of Rs.7450-11500.

49. Para-4 of this OM was even more strongly worded, and it provided even for the options already exercised by the individual Government servants to be over-ruled *suo motu*, and to provide that the revised pay of all those Government servants, who were in the pre-revised scale of Rs. 6500-10500, and who were earlier granted the grade pay of Rs.4200 only because of clubbing of that pay scales with the two lower pay scales, as mentioned above, will be fixed again, even though the concerned Government servants had already exercised their option for drawal of pay in the revised pay structure earlier in the format prescribed, and such re-fixation was ordered to be done once again in accordance with the Illustration 4A annexed to CCS (RP) Rules, 2008.

50. From this Para-4 of the OM also, we fail to discern or identify any distinction having been made in regard to Parts A, or B, or C of Section-1 of the First Schedule of the CCS (RP) Rules, 2008, and the respondents cannot be allowed to plead that these two concessions *suo motu* extended by the Union of India to its employees through Paragraphs 3 & 4 of the said OM were meant only to cover the employees in Part-C of the First Schedule, and not to the employees coming under Part B of the First Schedule.

51. This conclusion of ours is further strengthened by the provisions of Para-5 of this OM dated 13.11.2009, which provided that the Government servants concerned were even permitted to revise their earlier option for coming over to the revised pay structure, as prescribed in the VI CPC, without any back reference to Implementation Cell, Department of Expenditure, Ministry of Finance, as we have reproduced above.

52. Para-6 of the OM was even further clear, and stated that on account of such revised pay fixation of grade pay of Rs.4600 in the Pay Band PB-2 of those in the pre-revised pay scale of Rs.6500-10500 as on 01.01.2006, the arrears of entire amount would be paid immediately.

53. We cannot, therefore, read any different meaning to emanate from the U.O. Note as recorded on the file by the same officer, who had signed

the OM on 13.11.2009, and communicated it to the DoP&T through Annexure A-3.

54. It is the normal Rule that whenever any revision in pay scales takes place, like it had taken place after the VI CPC, the option form itself prescribes for the Government Servant to opt as to whether to start, to draw the revised pay under the Revised Pay Rules from the very first day from which they became eligible for it, or, in the alternative, to continue to draw his pay in the pre-revised pay scale till the date of his next substantive promotion, and then elect to draw the revised pay scale only from the date of his next substantive promotion.

55. Obviously, if he had not chosen to opt to draw the revised salary under the Revised Pay Rules from the very first date he became eligible for it, and decides to draw the revised pay under the Revised Pay Rules only after the first substantive promotion after the Revised Pay Rules come into effect, he cannot draw any arrears of pay till the date of such promotion, for which he had opted. Therefore, the Clarification-C is nothing but a reiteration of the same Rule and principle.

56. Further, Para-4 of the U.O. Note dated 14.12.2009 only clarifies that the Clarification issued through the OM dated 13.11.2009 already covers the Assistants under CSS and PAs under CSSS, and there is no need to issue any separate order on the same subject, because obviously Para-2 of the OM dated 13.11.2009 had covered not only those coming

under Part-B of First Schedule of the CCS (RP) Rules, 2008, but had also covered the Assistants of CSS and PAs of CSSS falling under Part-C of Section-1 of the First Schedule of the CCS (RP) Rules, 2008. Therefore, the officer concerned had rightly clarified that there was no need to lay down any separate prescription.

57. The need for a separate prescription being sought by DoP&T had arisen only because (as pointed out by the applicants in Para-4 (sic.5) and Ground-B of their OA), the Assistants of CSS and PAs of CSSS were not in the pay scale of Rs.6500-10500 as on 01.01.2006, and had come into that pay scale only w.e.f. 15.09.2006. Therefore, from a combined reading of Paragraphs 1 to 6 of the OM dated 13.11.2009 (supra), the Assistants of CSS and PAs of CSSS were not automatically entitled to the benefit of Paragraph-3,4,5, & 6, and they became entitled to it only from the said date of 15.09.2006.

58. This stand of the applicants has remained uncontroverted by the respondents, as neither Respondent No.1 nor Respondent No.2 had chosen to file any reply in this OA, and Respondent No.3 did not have a vision wide enough to be able to reply on behalf of the employees of CSS & CSSS.

59. Therefore, we find merit in the OA and the Annexure A-1, as issued, declining the revision of pay scales to be opted from the date of first

substantive promotion by those who were promoted between 01.01.2006 and 31.08.2008, is held to be illegal and is set aside.

60. In the result, the OA is allowed with the above observations, but there shall be no order as to costs.

(Sudhir Kumar)
Member (A)

(Permod Kohli)
Chairman

cc.