

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

O.A No.3379/2013

**Reserved On:14.12.2017
Pronounced on:20.12.2017**

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

1. Pratap Singh Shahi
S/o Late Sh. Daulat Singh
R/o 1/426, Dakshinpuri Extn.,
New Delhi.
2. Kistu Kumar Hembrom,
S/o Late Sh. Ragda Hembrom,
R/o Kanda Niwas C-5, (2nd floor),
East Arjun Nagar, Delhi-110032.
3. Ramesh Chander,
S/o Late Sh. Daryao Singh,
R/o H.No.445, VPO, Mundka,
Delhi-110041.
4. Randhir Singh,
S/o Late Sh. Khem Chand,
R/o Vill & PO Pandwala Kalan,
New Delhi-110043.
5. Kehar Singh Dogra,
S/o Late Sh. Bhagat Ram,
R/o 120F, Janta Flat, GTB Enclave,
Delhi.
6. Ghan Shyam,
S/o Sh. Roop Chand,
R/o 228, Nangli Palam,
Delhi-110036.
7. Subhash Chand,
S/o Sh. Jagdish Chand,
R/o C-380, LIG Flat, Loni Road,
Delhi.
8. Virender Singh Rawat,
S/o Sh. B.S.Rawat,
R/o 535, Pkt-82, Q-Dilshad Garden, Delhi.

9. Rameshwar,
S/o Late Sh. Nathmal,
R/o A-16, East Arjun Nagar,
Shahdara, Delhi-110032.
10. Radha,
W/o Sh. Mirajuddin,
R/o 109-D, Pkt-F, Mayur Vihar-II,
Delhi-110091.
11. Manjeet Kaur,
S/o Jetinder Singh,
R/o II-C/83, Lajpat Nagar,
New Delhi.
12. Vaidyanath,
S/o Late Sh. Raghbir,
R/o H.No.410, Street No.9,
Shaheed Bhagat Singh Colony,
West Karawal Nagar, Delhi-110098.
13. Roma Sharma,
W/o Sh. Raj Kumar Sharma,
R/o Qtr-182-J, Pitampura,
Delhi-110034.
14. Savita Gupta,
W/o Late Sh. V.K.Gupta,
R/o 36, Jeewan Bima Aptt.,
East Arjun Nagar, Shahdara,
Delhi-110032.
15. Suman Bala,
W/o Late Sh. Shri Shiv Narayan,
R/o B-190, Vasant Kunj Enclave,
New Delhi-110070.
16. Nand Ram,
S/o Late Sh. Bhaawan Singh,
R/o 106, Village Badu Sarai,
New Delhi-110071.
17. Meer Singh,
S/o Late Sh. Tunda Ram,
R/o 314, Village Munirka,
New Delhi.

18. Pridhi Charal,
S/o Sh. Salig Ram,
R/o 63, GF Neelam Vihar,
Sec-14, Kaushambi,
Ghaziabad, UP.
19. S.D.Bokde,
R/o Late Sh. Dewaji Bokde,
R/o C-5, East Arjun Nagar,
Delhi-110032.
20. Narendra Singh,
S/o Late Sh. Puran Singh,
R/o 38, Sultan Alam Road,
Kolkata, West Bengal.
21. Biswajit Ghosh,
S/o Late Sh. Amit Kumar Ghosh,
R/o 112, Kali Bari, 1st Lane,
News Besabhoi, 24 (N),
West Bengal.
22. V.V.Ramachandra Sastry,
S/o Late Sh. V.V.Madhuvan Sastry,
R/o C-3/214, Janta Flat, Subhanpura,
Barodna.
23. K.Ramamurthy,
S/o Krishna Murthy,
R/o 55/56, Vinayas Vijat Flat No.002,
Ramashree Enclave, Bangalore-76.
24. Govind Bhagat,
S/o Mahadev Bhagat,
R/o 3/348, Biswas Khand, Gomti Nagar,
Lucknow, UP.

... Applicants

(By Advocate: Shri M.K. Bhardwaj)

Versus

UOI & Ors through:

1. The Secretary,
Ministry of Environment & Forests,
Govt. of India, Paryavaran Bhawan,
New Delhi.

2. Central Pollution Control Board,
Parivesh Bhawan, East Arjun Nagar,
Delhi through its Chairman.

... Respondents

(By Advocate: Shri S.M. Arif for respondent No.1
Shri Saquib for respondent No.2)

ORDER

By Hon'ble Ms. Nita Chowdhury, Member (A)

The applicants have filed this Original Application (OA) claiming the following reliefs:-

“(a) To declare the action of respondent in not granting pay scale of Rs.6500-10500 and grade pay of Rs.4600 from due date with all consequential benefits including arrears of pay with 12% interest as illegal, arbitrary and unjustified.

(b) Direct the respondents to grant pay scale of Rs.6500-10500 and grade pay of Rs.4600/- to the applicants from the date the same has been given to Assistants/Stenographer in CSS/CSSS with all consequential benefits of the applicants.

(c) To allow the OA with exemplary cost.

(d) To pass such other and further orders which their Lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case”.

2. The facts, in brief, are that applicants are serving as Assistant/Section Officer in the Central Pollution Control Board (CPCB) and have been treated at par with Central Secretariat Staff (CSS) in all respects since creation of their cadre. However, after recommendations of 6th CPC, the applicants have been discriminated in the matter of grant of Grade Pay of Rs.4600/4800 as given to their counter parts serving as Assistant/SO in CSS/CSSS. They have further submitted as per the 3rd Pay Commission, Assistant/Steno of CSS/CSSS were allowed minimum guaranteed initial pay of Rs.710/- in the pay scale of Rs.650-1200

on promotion as SO/PS vide OM dated 19.02.1974. As the Assistants/SO service in CPCB were at par with officials of CSSS, therefore, vide letter dated 28.07.1983, the aforesaid benefits of pay scale of Rs.650-1200 with guaranteed minimum pay of Rs.710/- was also extended to the CPCB Assistants/Stenographers on their promotion as Section Officers/Private Secretaries.

3. Applicants have further submitted that after the 4th Pay Commission, the revised pay scale of Rs.1640-2900 was made available for CSS/CSSS w.e.f. 01.01.1986. As the said revised scale was not given to Assistants & Stenographers serving in other Departments/Ministries, i.e., Ministry of External Affairs etc. which were not participating Departments in CSS/CSSS, therefore, the said Stenographers filed OA before this Tribunal. The OA No.1538/1987 filed by Assistants of Ministry of External Affairs was allowed by this Tribunal with directions to the respondents to grant the aforesaid scale to the Assistants working in the Ministry of External Affairs as well as other organisations where the comparable posts of Assistant is in existence. After the said order was passed by the Tribunal, the said revision was allowed by the DOP&T to the Assistants serving in other organisation as well as Ministry of External Affairs. A perusal of the OM dated 31.07.1990 makes it clear that the DOP&T did not make any distinction in the matter of grant of revised scale of Rs.1640-2900 to the Assistants serving in CPCB but they were not granted. Being aggrieved by the

said discriminatory action, the Assistants serving in CPCB filed W.P. (C) 381/1996 before the Hon'ble High Court of Delhi which was allowed by the Hon'ble High Court on 16.10.1998. The said order reads as under:-

"I have dealt with the points raised by the petitioners for the revision of pay scales in similar mater, i.e., C.W. No.3790/1995 and that would govern to this case. Therefore, the Writ Petition is allowed.

In this view, respondents are directed to pay to the petitioners all the amount payable to the petitioners in the pay scale of Rs.1640-2900 w.e.f. 1.1.1986. Respondents 1 and 2 are directed to revise the scale of pay and fix the same with effect from 1.1.1986 alongwith all consequential benefits. However, the respondents are not obliged to pay interest on the arrears. There shall be no order as to costs.

The payment shall be made on or before 31.03.1999. Accordingly, the writ petition is allowed in the above terms. There shall be no order as to costs".

The said order was challenged by the CPCB before the Division Bench of Delhi High Court in LPA No.286/1999. On 26.07.1999 the order passed by the Single Bench of Delhi High Court was upheld. Thereafter, respondents filed Special Leave to Appeal (Civil) No.51/2000 which too was dismissed by the Hon'ble Supreme Court on 17.01.2000. Accordingly, the respondents-CPCB vide order dated 13.03.2000 granted pay scale of Rs.1640-2900 to the Assistants/Personal Assistants in CPCB w.e.f. 01.01.1986.

4. The applicants further aver that after the 5th CPC, the pay scale of Assistants/Stenographers of CSS/CSSS was revised to Rs.5500-9000 but same was denied to the present applicants who

are working in CPCB. In CSS/CSSS non-functional scale of pay of Rs.8000-13500 was given but same was denied to the persons working in CPCB. The same view was held by the 6th CPC who revised the pay scale of CSS/CSSS in the pay scale of Rs.6500-10500 w.e.f. 15.09.2006 but was denied to the present applicants working in CPCB. They have thus submitted that historical parity maintained by them with CSS/CSSS has been disturbed by the respondents. The comparison of pay scales after 4th, 5th and 6th CPC of Assistants/Personal Assistants in CPCB with CSS/CSSS cadre is as under:-

	CPCB	CSS/CSSS Cadre
After 4 th CPC	1640-2900	1640-2900
After 5 th CPC	5500-9000	5500-9000
6 th CPC recommendation	Grade Pay Rs.4200	Grade Pay Rs.4200
After 16.11.2009	Grade Pay Rs.4200	Grade Pay Rs.4600

5. Applicants have further submitted that since respondent No.2 was conscious of the said illegality and discrimination caused to them, therefore, a letter dated 11.07.2011 was sent to respondent No.1 for granting the pay scale of Rs.6500-10500 to the applicants herein and thereby ensuring the Grade Pay of Rs.4600. In the said letter it was clearly mentioned that as per Regulation 6 (2) of CPCB (Method of Recruitment & Terms and conditions of service of officers and other employees other than Member Secretary)

Regulations, 1995, provides that the rules and orders applicable to the officers and servants holding post of corresponding scale of pay under Central Government shall regulate the conditions of the service of the employees of the Board. In terms of the aforesaid regulation, terms and conditions of applicant in respect of RRs, nature of duties etc. have been kept at par with Central Government and the same resulted in acceptance of parity between the Assistant/Stenographer in CSS/CSSS as well as CPCB. As no action was taken by the respondents, they addressed another letter dated 23.04.2012. Thereafter, the Ministry of Environment sent a letter dated 28.05.2012 to respondent no.2 for providing necessary details. In terms of the aforesaid letter, respondent No.2 sent the necessary details to respondent No.1 and it was made clear that parity in pay amongst Assistants/Stenographers of CSS/CSSS and other autonomous bodies like CSIR, ICAR, ICMR, EPFO, IGNOU, Railway Board etc. was maintained, therefore, the same was required to be done in the case of Assistants/Personal Assistants in CPCB. Since the said letter was ignored, therefore, the respondent No.2 sent another letter dated 25.02.2013 to respondent No.1 for ensuring parity between the Assistants/Personal Assistants of CPCB with Assistant/Stenographer/SO of CSS/CSSS.

6. Lastly, the applicants submitted that they have been forced to file this OA in spite of the fact that matter has been settled up to the level of Hon'ble Supreme Court establishing parity between the

present applicants as well as Assistants/Stenographers in CSS/CSSS. So far as the decision of the Ministry of Finance is concerned, the same was self contradictory and contrary to the decision of the Hon'ble Supreme Court in the case of the applicants. The Ministry of Finance had no authority to act contrary to decision of Hon'ble Supreme Court. They have also submitted that Respondent No.1 and Respondent No.2 being administrative ministry and supervisory authority have accepted that the applicants are entitled for maintenance of historical parity for more than one reason with CSS/CSSS, the applicants were required to be given the pay scale of Rs.6500-10500 (Grade Pay of Rs.4600) from due date. However, the said respondent Nos.1 & 2 have made it clear that the benefits would be given to the applicants only on directions of court of law. They have thus prayed that the OA be allowed.

7. They have relied on the following judgments:-

- (i) **Mewa Ram Kanojia Vs. All India Institute of Medical Sciences, ATJ 1989 (1) SC 654.**
- (ii) **U.O.I. and Others VS. Dinesh K.K. JT 2008 (1) SC 231.**
- (iii) **K.T. Verappa Vs. State of Karnataka (2006) 9 SCC 406.**
- (iv) **U.O.I. Vs. Kuldip Singh 2004 (2) SCC 590.**

(v) **Anil Rattan Sarkar Vs. State of West Bengal (2001) 5 SCC 327.**

(vi) **Purshottam Lal and Others Vs. U.O.I. and Others 1973 AIR SC 1088.**

(vii) **OA No.164/2005 – S.R. Dheer & Others Vs. U.O.I. and Others.**

8. The respondents have filed their reply and submitted that respondent No.1, i.e. Ministry of Environment and Forests issues instructions/advisories to the CPCB i.e. respondent No.2 herein in a limited number of Administrative and Financial Matters in due consultation with DOP&T and the Deptt. of Expenditure etc. so that the C.P.C.B's actions are in conformity with the Govt. instructions on the subject issued from time to time. It is pertinent to mention here that the subject matter of the present OA comes under the exclusive purview of the C.P.C.B. and the reliefs sought by the applicants also comes under the domain of the respondent No.2 herein and no relief can be sought by the applicants against the respondent No.1.

9. The respondent No.1 has further submitted that the matter regarding allowing the Administrative Cadre Officials like Assistants and Section Officers etc. of the respondent No.2, the pay scales at par with the pay scales applicable in case of the Assistants and Section Officers of the Central Secretariat Service (CSS) has been

examined on several occasions by the respondent No.1 in consultation with the Department of Expenditure. It has been amply been made clear to the respondent no.2 herein that the Pay Scales given to the CSSS as per the recommendations of the 6th Central Pay Commission exclusively have been made applicable in their case and Statutory Autonomous Bodies like C.P.C.B. are not allowed the same Scales of Pay. However, C.P.C.B. continued to represent to the respondent No.1 in this regard. Last time they were asked to provide this Ministry certain examples of the Statutory/Autonomous Bodies under various Central Government Ministries/Departments identical to them, where Pay Scales in respect of these posts have been allowed at par with the CSS. In response to that, the examples quoted by the C.P.C.B., were examined in detail and it was found that they were not identical to C.P.C.B. Moreover, they were not enjoying the parity of Pay Scales with CSS on the grounds put forward by C.P.C.B. Needless to mention here, that this case has been examined very carefully in detail by the respondents but it has not been found feasible to agree to the request of C.P.C.B. Therefore, aggrieved by the decision of the respondent No.1, the officials of the respondent No.2 herein, have approached this Tribunal.

10. The respondent No.2 has filed their reply and submitted that with a view to remove the anomaly in the scales of pay of Assistants and Steno Grade 'C' (PAs) of Central Secretariat Services (CSS) and

Central Secretariat Stenographer Services (CSSS) vis-a-vis analogous posts in the Central Board of Direct Taxes/Central Board of Excise and Customs, the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training vide O.M. dated 25.09.2006 issued instructions for upgrading their sales of pay from Rs.5500-175-9000/- to Rs.6500-200-10,500/- (since Revised from Rs.1640-2900/- by the 4th Central Pay Commission). These were made effective from 15.09.2006 and made specific to Assistants and Personal Assistants to CSS/CSSS only. The case of placing the Assistants/PAs working in office of the respondent No.2 in the pay scale of Rs.6500-200-10,500/- was placed before the CPCB in its 153rd meeting of the Board held on the 19th December, 2009 and it was decided that the Assistant/Personal Assistants may be allowed to opt for the upgraded scale of pay of Rs.6500-200-10,500/- w.e.f. 15.09.2006 and the matter was sent for approval to Ministry of Environment & Forests. The recommendations of the Board were referred to the Respondent No.1 i.e. the Ministry of Environment & Forests for their approval vide letter dated the 12th February, 2010. The Respondent No.1 further referred the case to the Ministry of Finance, Department of Expenditure. However, the Department of Expenditure regretted to implement the proposal in CPCB. The Respondent No.1 forwarded the comments of the Department of Expenditure for information with an enclosure of Department of

Expenditure U.O. Note No.3(3)-E.III/202, dated 7th September, 2010. The observations of the Department of Expenditure are reproduced below:

“(i) Assistants/Stenographers of CSS/CSSS were extended the higher pay scale of Rs.6500-10,500/- vide DOPT’s O.M. dated 15.09.2006. However, this dispensation was restricted to the Assistants/Stenographer of CSS/CSSS. Since, CPCB is an Autonomous Body under Ministry of Environment & Forests, therefore, the higher pay scale of Rs.6500-10,500/- w.e.f. 15.09.2006 cannot be extended to the Assistants/Stenographer of CPCB.

(ii) As per 6th CPC recommendations, parity upto the post of Assistant was granted to the Field Offices vis-a-vis Secretariat Offices. However, subsequently vide Department of Expenditure’s O.M. dated 16.11.2009, the Assistants/Stenographers of CSS/CSSS were placed in the Grade Pay of Rs.4600/- w.e.f. 01.01.2006. This dispensation has been extended to Assistants/Stenographers working in CSS/CSSS, AFHQs, IFS (B) & RBSS. However, the post of Assistants/PAs of Central Pollution Control Board does not belong to such secretariat service / Headquarter and Central Pollution Control Board is an Autonomous Body. Therefore, Assistants/PAs of Central Pollution Control Board are not covered under the said O.M.

(iii) The order dated 16.10.1998 passed by Delhi High Court which was upheld by orders dated 17.01.2000 and 14.02.2000 passed by Hon’ble Supreme Court, directed the respondents to extend the pay scale of Rs.1640-2900/- to the Assistant and PAs of CPCB, benefit of which have already been extended to the applicants. However, the directions given by High Court of Delhi in the said case cannot be made applicable in the instant case.

11. Respondents have further submitted that consequent upon the Notification of Central Civil Services (Revised Pay) Rules, 2008, the Government has approved grant of Pay structure of Grade Pay of Rs.4600/- in the Pay Band PB-2 to the posts that exists in the pre-revised scale of Rs.6500-10500/- as on 01.01.2006 and which were granted the normal replacement pay structure of Rs.4200/- in the PB-2. Accordingly, the Ministry of Finance, Department of Expenditure, 2009 also decided to extend the Pay structure of

Grade Pay of Rs.4600/- in the Pay Band PB-2 to Assistants belonging to CSS, Armed Forces Headquarter Service, Indian Foreign Service 'B' and Railway Board Secretariat Service and Personal Assistants (PA's) to their counterpart Stenographers Services w.e.f. 01.01.2006. Since Respondent No.1 i.e. Ministry of Environment & Forests did not agree to place the Assistant/PA in the Pay Scale of Rs.6500-10500/- in term of Department of Personnel & Training Office Memorandum dated 25.09.2006 as discussed above, the subsequent revised pay scale i.e. Grade Pay of Rs.4600/- could not be implemented in CPCB. They have thus prayed that the OA be dismissed.

12. We have heard the learned counsel for the parties, perused the pleadings and gone through the judgments and departmental record.

13. The only issue involved in this case is whether applicants who are working as Assistants/Stenographers in the CPCB are entitled to the same pay scale as granted to CSS/CSSS on the ground that since their cases have been dealt up to the level of Hon'ble Supreme Court and granted pay scale on the basis of historical parity can be denied Grade Pay of Rs.4600/- as granted to CSS/CSSS.

14. We may mention that on going through the record, it is evident that Ministry of Environment and Forests vide letter dated 13.03.2000 had held as under:-

“However, in view of the Supreme Court Orders dated 17.01.2000 and 14.02.2000 in SLP No.51/2000 – U.O.I. Vs. N.K. Chakraborti (since deceased) and others and SLP No.710/2000 – CPCB Vs. Chayanika Chakraborty and Others which were dismissed by the Hon’ble Supreme Court, this Ministry conveys its approval for implementation of the revised pay scale of Assistant/Stenographer Grade ‘C’ in Central Pollution Control Board from Rs.1400-2000 to Rs.1640-2900 (pre-revised) w.e.f. 1.1.1988”.

Thereafter, the Ministry of Environment and Forests issued another letter dated 23.09.2010 whereby they intimated the Member-Secretary that the proposal with regard to upgraded pay scale of Rs.6500-10500 was referred to the Ministry of Finance, Department of Expenditure and the proposal has been regretted by the Department of Expenditure. We have also gone through the Notification passed by the Ministry of Environment and Forests on 24.01.1995, wherein in para 10 it has been observed as under:-

“10. Matters with respect to which no provision has been made – Matters relating to the conditions of service of officers and other employees with respect to which no provision has been made in these regulations, shall be referred to the Central Government for its decision”

The latest noting passed on their file on 02.06.2017 by the Administrative Officer (P) reads as under:-

“4. The anomaly in the pay of the cadre of Section Officer and Private Secretary still exists. To remove the anomaly, the case may again be placed before the Board in its ensuing meeting.

5. The file is re-submitted for consideration and approval to place the matter before the Board to allow the pay structure of Grade Pay of Rs.4800/- in PB-2 w.e.f. 01.01.2006 and Grade Pay of Rs.5400/- in PB-3 on completion of four years of regular service to all the incumbents holding the post of Section Officer and Private Secretary please”.

15. Now we will be dealing with some of the judgments relied upon by the applicants on the point of grant of pay scales. The Hon'ble Supreme Court in **U.O.I. and Others Vs. Dinesh K.K. JT 2008 (1) SC 231** has held as under:-

“12. The principle of equal pay for equal work has been considered, explained and applied in a catena of decisions of this Court. The doctrine of equal pay for equal work was originally propounded as part of the Directive Principles of the State Policy in Article 39(d) of the Constitution. In Randhir Singh Vs. Union of India & Ors. , a bench of three learned Judges of this Court had observed that principle of equal pay for equal work is not a mere demagogic slogan but a constitutional goal, capable of being attained through constitutional remedies and held that this principle had to be read under Article 14 and 16 of the Constitution. This decision was affirmed by a Constitution Bench of this Court in D.S. Nakara & Ors. Vs. Union of India . Thus, having regard to the constitutional mandate of equality and inhibition against discrimination in Article 14 and 16, in service jurisprudence, the doctrine of equal pay for equal work has assumed status of a fundamental right.

13. Initially, particularly in the early eighties, the said principle was being applied as an absolute rule but realizing its cascading effect on other cadres, in subsequent decisions of this Court, a note of caution was sounded that the principle of equal pay for equal work had no mathematical application in every case of similar work. It has been observed that equation of posts and equation of pay structure being complex matters are generally left to the Executive and expert bodies like the Pay Commission etc. It has been emphasized that a carefully evolved pay structure ought not to be ordinarily disturbed by the Court as it may upset the balance and cause avoidable ripples in other cadres as well. (Vide: Secretary, Finance Department & Ors. Vs. West Bengal Registration Service Association & Ors. and State of Haryana & Anr. Vs. Haryana Civil Secretariat Personal Staff Association . Nevertheless, it will not be correct to lay down as an absolute rule that merely because determination and granting of pay scales is the prerogative of the Executive, the Court has no jurisdiction to examine any pay structure and an aggrieved employee has no remedy if he is unjustly treated by arbitrary State action or inaction, except to go on knocking at the doors of the Executive or the Legislature, as is sought to be canvassed on behalf of the appellants. Undoubtedly, when there is no dispute with regard to the qualifications, duties and responsibilities of the persons holding identical posts or ranks but they are treated differently merely because they belong to different departments or the basis for classification of posts is ex-facie irrational, arbitrary or unjust, it is open to the Court to intervene.

14. In State Bank of India & Anr. Vs. M.R. Ganesh Babu & Ors. , a three-Judge Bench of this Court, dealing with the same principle, opined that principle of equal pay is dependent upon the nature of work done. It cannot be judged by the mere volume of work; there may be qualitative difference as regards reliability and responsibility. The functions may be the same but the responsibilities do make a difference. It was held that the judgment of administrative authorities, concerning the responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgment of the authorities concerned which, if arrived at bona fide, reasonably and rationally, was not open to interference by the Court.

15. In State of Haryana & Anr. Vs. Tilak Raj & Ors. , it has been observed that the principle of equal pay for equal work is not always easy to apply as there are inherent difficulties in comparing and evaluating the work of different persons in different organizations or even in the same organisation. It has been reiterated that this is a concept which requires for its applicability, complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. It has been emphasized that the problem about equal pay cannot be translated into a mathematical formula.

XXX

XXX

XXX

17. Tested on the touchstone of the aforesaid broad guidelines and not cast-iron imperatives, we are of the opinion that in the present case, on the pleadings and the material placed on record by the parties in support of their respective stands, the High Court was justified in issuing the impugned directions.

18. Vide order dated 10th October, 1997 passed by the Ministry of Home Affairs in pursuance of para 7 of the Ministry of Finance, Department of Expenditure Resolution dated 30th September, 1997, it was notified that the President was pleased to rationalize the rank structure and pay scales of non gazetted cadre of central police organizations and as a result of this exercise certain ranks were to be merged and the rank structure was communicated in the order along with the revised pay scales and replacement pay scales. Copy of this order was sent to all the paramilitary forces, including the Assam Rifles.

19. On 22nd January, 1998, an office memorandum was issued by the Government of India, Ministry of Home Affairs, by way of a clarification. In the said letter, it was clarified that order dated 10th October, 1997 was equally applicable to all advertised categories. In the said letter, direction with regard to the re-designation of the three posts including Head Constable (RM) as ASI in central paramilitary forces along with their replacement pay scales were also ordered.

20. It appears that the disparity in rank and pay in various central paramilitary forces could not be resolved and on 24th April, 2001, the Director General Assam Rifles submitted a report to the Government with regard to the progress on pay anomaly cases. Para 4 of the said letter is of some relevance to the issue at hand and it reads as follows:

“Rank and pay of Technical Cadre Person RM. Ptmn, Pharma, and Compounder of AR with the same intake QR for remounts are given the rank of HAV wherein they are counterparts in CPOs are given ASI. The MHA had ordered to submit proposal in directing cadre to cadre comparison with BSF where the rank of ASI is available in other tech and also along with fin implication. The proposal alongwith fin implication has been submitted to MHA and the case is lying with MOF for approval.

21. Having failed to receive any positive response from the Government, one of the Radio Mechanics issued a Notice of Demand to the Ministry of Home Affairs and Director General of Assam Rifles, inter alia, praying for giving effect to office order dated 10th October, 1997 and office memorandum dated 22nd January, 1998. Vide order dated 26th December, 2001, the Ministry of Home Affairs informed the Director General of Assam Rifles that his proposal had been examined in consultation with Ministry of Finance and it was found that there was no point for comparison of grades and scales of pay for such posts across various central paramilitary forces.

22. It was stated that the proposed upgradation may disturb relativities of various trades and grades within the Assam Rifles and there was no functional justification for upgrading these posts. It is evident that on rejection of the recommendation made by the Director General of the Force, the respondent herein was left with no option but to approach the High Court for redressal of his grievance.

XXXX

XXX XXXX

24. From the afore-extracted paragraphs of the counter affidavit and the resume of correspondence referred to above, it clearly stands admitted by the petitioners herein that: (i) all the paramilitary forces, including Assam Rifles are at par with each other and (ii) there was apparent disparity in the pay scales of the personnel of Assam Rifles with their counterparts in other central paramilitary forces. In order to rectify this disparity, Director General Assam Rifles, petitioner No.2 herein, vide his letter dated 18th February, 1998 had, in fact, taken up the grievance of the respondent with the Ministry of Home Affairs, inter alia recommending re-designation of Havildar (RM) Gd.-I and II of Assam Rifles as Warrant Officer and for replacement of pay scale of Rs.4000-100-6000 to bring them at par with their counterparts in other central police organization.

25. However, the Ministry of Home Affairs vide letter dated 3rd March, 1998 while accepting the said proposal had

recommended re-designation of HAV/RM as Warrant Officer but subject to the condition that the pre-revised and revised pay scales of HAV/RM in other paramilitary forces were identical to the pay scales of Head Constable (RM) in CRFP and BSF. Manifestly, in the instant case, the differentiation in the pay scales of the two paramilitary forces is sought to be achieved not on the ground of dissimilarity of academic qualification or the nature of duties and responsibilities but only on the ground that there was initial anomaly in the Fourth Central Pay Commission Report. The counter affidavit does not even attempt to explain how the case of the HAV/RM in Assam Rifles is different from that of Radio Mechanics in other central paramilitary forces.

26. In the present case, therefore, in the light of the admitted factual position, the question of examination of external comparisons, internal relativities and other factors, to be kept in view for job evaluation, considered to be a complex issue to be studied only by expert bodies, does not arise. As a necessary corollary, the issue as to whether there is a complete or wholesale identity between the said paramilitary forces, does not survive for consideration.

27. Thus, the short question requiring our consideration is whether having admitted in their affidavit referred to hereinabove, the apparent disparity and anomaly in the pay scales of Radio Mechanics, the administrative authorities, the petitioners herein, could be permitted to perpetuate apparent discriminatory differentiation in the pay scales because of the disparity in pre-revised and revised scales of the personnel of Assam Rifles prior to the recommendations of the Fourth Pay Commission, irrespective of the identity of their powers, duties and responsibilities with other paramilitary forces. In our considered opinion, in view of the total absence of any plea on the part of the Union of India that Radio Mechanics in other paramilitary forces were performing different or more onerous duties as compared to the Radio Mechanics in Assam Rifles, the impugned decision of the Government was clearly irrational and arbitrary and thus, violative of Article 14 of the Constitution.

28. On a conspectus of the factual scenario noted above, we do not find any infirmity in the impugned directions given by the High Court, warranting interference. There is no merit in this appeal and it is dismissed accordingly with costs”.

16. Next they have relied upon the judgment in the case of **K.T. Verappa Vs. State of Karnataka 2006 (9) SCC 406** wherein the

Hon'ble Supreme Court has held as under:-

“13. He next contended that fixation of pay and parity in duties is the function of the executive and financial capacity of the

Government and the priority given to different types of posts under the prevailing policies of the Government are also relevant factors. In support of this contention, he has placed reliance on State of Haryana v. Haryana Civil Secretariat Personal Staff Assn. (2002) 6 SCC 72 : 2002 SCC (L&S) 822 and Union of India v. S.B. Vohra(2004) 2 SCC 150 : 2004 SCC (L&S) 363. There is no dispute nor can there be any to the principle as settled in State of Haryana v. Haryana Civil Secretariat Personal Staff Assn. (2002) 6 SCC 72 : 2002 SCC (L&S) 822 that fixation of pay and determination of parity in duties is the function of the executive and the scope of judicial review of administrative decision in this regard is very limited. However, it is also equally well settled that the courts should interfere with administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors.

14. In S.B. Vohra case(2004) 2 SCC 150 : 2004 SCC (L&S) 363 this Court dealing with the fixation of pay scales of officers of the High Court of Delhi (Assistant Registrars) has held that the fixation of pay scale is within the exclusive domain of the Chief Justice, subject to approval of President/Governor of the State and the matter should either be examined by an expert body or in its absence by the Chief Justice and the Central/State Government should attend to the suggestions of the Chief Justice with reasonable promptitude so as to satisfy the test of Article 14 of the Constitution of India. Further, it is observed that financial implications vis-a-vis effect of grant of a particular scale of pay may not always be a sufficient reason and differences should be mutually discussed and tried to be solved.

15. In the present cases, in compliance with the judgment of the Division Bench of the High Court, the Vice-Chancellor of the Mysore University constituted a committee headed by Shri Hiriyanna. The said Committee, in its report dated 8-6-1991, has recorded the observations that the details of the pay scales assigned by the Muddappa Committee, the Manjunath Committee, the Acharya Committee, the Gopala Reddy Committee as also the pay scales given effect to from 1-1-1977 and the claims of the appellants, on individual basis, could perhaps have been attended to by the University itself after the Muddappa Committee made its recommendations. The Vice-Chancellor and the Registrar of the Mysore University, while appearing before the Division Bench of the Karnataka High Court in CCs Nos. 84 to 103 of 1992 in compliance with the order dated 16-4-1992 had brought to the notice of the Bench that the direction issued by the learned Single Judge in WAs Nos. 2220-39 of 1989 dated 18-4-1990 and 29-1-1991 had already been complied with and arrears of salary had been paid to the employees of the University, who filed the said writ petitions. Thereafter, the respondent University submitted certain proposed amendments to the statute and the same were sent to the State Government for approval. The State Government, for the reasons best known to it, till date has not been able to state any good reason as to why the amendment of the statute as proposed by the University in regard to the fixation

of the pay scales of its employees could not have been approved by the competent authority. The Vice-Chancellor in its affidavit dated 25-1-2000 filed in Writ Appeals Nos. 7007-55 of 1999 has categorically stated that the respondent University, in its meeting held on 17-4-1999, decided to comply with the orders of the Court and also to extend the benefit of the revised pay scale with effect from 1-1-1977 to those employees who are eligible for such benefits and have not gone to the Court. This decision was taken on the representation submitted by the appellants.

16. The defence of the State Government that as the appellants were not the petitioners in the writ petition filed by 23 employees of the respondent University to whom the benefit of revised pay scales was granted by the Court, the appellants are estopped from raising their claim of revised pay scales in the year 1992-94, is wholly unjustified, patently irrational, arbitrary and discriminatory. As noticed in the earlier part of this judgment, revised pay scales were given to those 23 employees in the year 1991 when the contempt proceedings were initiated against the Vice-Chancellor and the Registrar of the University of Mysore. The benefits having been given to 23 employees of the University in compliance with the decision dated 21-6-1989 recorded by the learned Single Judge in WPs Nos. 21487-506 of 1982, it was expected that without resorting to any of the methods the other employees identically placed, including the appellants, would have been given the same benefits, which would have avoided not only unnecessary litigation but also the movement of files and papers which only waste public time.

17. Shri Sobha Nambisan, Principal Secretary to Government, Education Department (Higher Education), Government of Karnataka, in his latest affidavit dated 6-3-2006 filed in these proceedings has stated that after 1-1-1977, the Government of Karnataka has revised the pay scales of employees of the State Government in 1982, 1987, 1994 and 1999. From 1-1-1977 to 2006, the dearness allowance, house rent allowance and other allowances have also been revised. The revision of pay scales, dearness allowance, house rent allowance and other allowances extended to the State Government employees were also extended to the University employees from time to time. Moreover, a large number of Mysore University employees were promoted in terms of the time-bound promotion schemes of 10 years, 15 years and 20 years in terms of the government orders issued from time to time. The additional financial implications of Rs 60 lakhs will have to be borne by the State Government. He has categorically stated that the revision of pay scales extended to the employees of the State Government time and again will also be extended to all the University employees.

18. In our view, the impugned judgment of the High Court in WAs Nos. 7007-55 of 1999 dated 8-3-2000 is not legally sustainable. It is, accordingly, quashed and set aside.

19. Consequently, the appeals are allowed and the order of the learned Single Judge dated 29-10-1998 in Writ Petitions Nos. 11755 of 1994, CWs Nos. 3400-23 of 1993, 37901-04 of 1992,

35996 of 1992, 3426-43 of 1993 and 27004 of 1992 is restored and maintained. The respondents-the State of Karnataka and the University of Mysore, both are directed to extend the pay scales of 1977 and subsequent revisions to the appellants and pay the difference of monetary benefits to them within four months from the date of this order. In the facts and circumstances of the case, the parties are left to their own costs”.

Similarly this Tribunal in **OA No.164/2009** in the case of **S.R.**

Dheer and Others Vs. U.O.I. & Others decided on 19.02.2009 held as under:-

“51. In the above view of the matter regarding the parity of pay scale in 5th CPC in the wake of an admitted fact of the historical parity between the CSS/CSSS with counterparts in CAT, a final decision is awaited for grant of NFSG grade of Rs.8000-13500 notionally and actually to the employees of the Tribunal. However, as this is not the issue before us, except reiterating in law their demand, the issue of historical parity between the PSs/SOs of CAT and on the other hand SOs/PSs of CSS/CSSS is no more res integra and once accepted by the government and recommended by 6th CPC, the aforesaid recommendations contained in paragraphs 3.1.9 and 7.32.15 having been accepted by the Government, the stand now taken by the respondents that what is applicable to the applicants in the present OA is para 3.1.14 of the recommendations of the 6th CPC is absolutely misconceived. It is pertinent to note that this para applies to non-secretariat offices and to those for whom there is no historical parity with CSS/CSSS and in favour of whom a criteria of recommendations has not been laid down in the 6th CPC recommendations. On a juxtaposition, 6th CPC while making its recommendations in para 7.32.15 as to cadre structure of higher pay scale in CAT reiterated that Assistants and Stenographers in CAT have demanded pay scales at par with their counterparts in CSS/CSSS and as the Commission has already recommended parity between the similarly placed posts in field offices and Secretariat, no separate recommendation has been made. The only logical and rationale inference to be drawn is that whatever has been recommended in para 3.1.9 is to be applied mutatis mutandis to the employees of the CAT on the condition precedent being fulfilled, which is establishment of historical parity with CSS/CSSS. The recommendations contained in para 3.1.14 of 6th CPC Report where the field organizations and non-secretariat organizations have been recommended the pay scale are not at all applicable to the employees of

the CAT, as a specific recommendation made in paragraph 7.32.15 Commission having recommended parity between the similarly placed posts in field offices and secretariat the instant demand has been fulfilled. It is trite that when there is a specific recommendation made as transpired from para 3.1.9 as to parity with pay scale of CSS/CSSS structure the asterisk (*) clearly shows that even to the non-secretariat offices and organizations being carved out as an exception to the recommendations contained in para 3.1.14 is that those organizations which are not exhaustive but includes departments and organization which have had a historical parity the pay scale would be at par with CSS/CSSS. It is trite that under the principle of interpretation that in case of interpretation of a service rule, if two views are possible then the rule has to be interpreted with the practice followed in the department for long time as held in Shailendra Dania & Ors. vs. S.P. Dubey & Ors., 2007 (2) SCC (L&S) 202, a marginal note with a provision is an integral part of it and being an exception in the instant case as an asterisk (*) to para 3.1.9, the same has applicability to all field offices and non-secretariat organizations, all departments where there has been historical parity with the pay scale of their counterparts in CSS/CSSS. We cannot read para 3.1.14 in isolation of para 3.1.9 and 7.32.15 where both the recommendations having been accepted by the Government, only applying para 3.1.14 to the exclusion of 3.1.9 would amount to approbating and reprobating simultaneously, as a conscious and well taken decision when transformed into an affidavit of the Government before the Ernakulam Bench, an admission to acceptance of parity and acceptance also of established parity as a historical background leaves no doubt in our mind that there has been a historical parity of SOs/PSs in CAT with their counterparts in CSS/CSSS. They cannot now, as a contradictory stand, deny the same as it would not only be unfair but also is a misuse of their discretionary power which is to be exercised by an administrative authority judiciously after balancing all the relevant factors as ruled by the Apex Court in Union of India vs. Kuldip Singh, 2004 (2) SCC 590. A discretion vested in the administrative authority is neither unfettered nor absolute. It is to be exercised in consonance with the rights of a government employee and Constitution of India. A consideration worth in law is one, which thinks over on active application of mind all the relevant consideration and factors as ruled by the Apex Court in Bhikubhai Patel (supra). As a model employer just to deprive the applicants their rights and legitimate dues without any justifiable reasons and on misreading of their CSSS Revised Pay Rules, 2008, irrelevant considerations have been grounded to deprive the applicants the requisite pay scales on established historical parity with those of their

counterparts in CSS/CSSS. Learned counsel for the respondents relied upon the decision of High Court in Mohinder Pal Singh (*supra*) and in M.V.R. Rao (*supra*) by a Larger Bench of this Tribunal. In this regard it is pertinent to note that this issue of parity of CAT employees with CSS/CSSS has been dealt with by this Tribunal in S.K. Sareen's case (*supra*) which, on affirmation from the High Court, and also rejection of SLP, on implementation by the respondents not only attained finality but also is an admission to the effect by the respondents that the SOs/PSs of CAT are maintaining historical parity with those of their counterparts in CSS/CSSS. It is worthwhile to note that there is even a finding recorded that the duties and functional requirements of the CAT employees are more onerous than their counterparts in CSS/CSSS, which has not been overturned by any dicta. A judicial dicta when holds the field and the arena in which it operates, it is impermissible in law to the administrative authorities to infiltrate it as ruled by the Apex Court in Anil Rattan Sarkar v. State of West Bengal, 2001 (5) SCC 327. The Apex Court has also ruled in Dhampur Sugar Mill v. State of Uttranchal, 2007 (11) SCALE 374 that when a public authority acts with oblique motive, bad faith or takes into account extraneous or irrelevant consideration, the exercise has to be held as not in accordance with law.

52. In the above view of the matter the contention that the Government has not accepted the claim of the applicants as to the parity with CSS/CSSS is founded on a ground and justification, which has been misconceived by them and wrongly applied. Such a consideration cannot be a consideration worth in law.

53. In the matter of pay scale equation though the prerogative lies with the Government but any action taken especially when such a recommendation covers the claim of the applicants and accepted by the Government, no reasonable justification has come forth, which would deprive the applicants the grant of identical pay scale. Had there been a case where recommendations having been accepted by the Government in its discretion, the applicants would have no indefeasible right to claim the pay scale. One of the points raised is financial constraint in accord of benefits, which as a trite law, has not been found to be a valid defence by the Government, as a right of an employee cannot be defeated on this technical issue. In the matter of parity of pay scale, financial constraint cannot be a defence as ruled by the Apex Court in Union of India vs. Atonomic Engery Workers Staff Union, 2005 (1) ATJ (HC) (Bombay) 92.

54. As regards opening of flood gate litigation and administrative chaos, it is held to be no ground to take

away the valuable right of a person under the Constitution by the Apex Court in Coal India Ltd vs. Saroj Kumar Mishra, 2008 (2) SCC (L&S) 321. In G.S. Uppal (supra), financial constraints have not been found to be good ground on established implementation of doctrine of equal pay for equal work.

55. A discriminatory and contradictory stand is antithesis to the fairness in law. As the issue of NFSG of RS.8000-13500 to the OSs in case of CBI, a non-secretariat office at par with CSS/CSSS, decision in S.C. Karmakar (supra) was affirmed by the High Court of Delhi. Even the decision of the Tribunal in the case of R&AW Department has been implemented by the Government by grant of pay scale/NFSG to the concerned SOs, by order dated 19.01.2009 and also the SOs/PSs in AFHQ were allowed the pay scale on 25.09.2008. This clearly shows that the 6th CPC recommendations in para 3.1.9 have been adhered to not only in the case of SOs/PSs of the CSS/CSSS but also in the case of SO/PSs in other Organisations, who have had historical parity. As such, exclusion of the CAT employees and not meeting out the same treatment in respect of Grade Pay without any intelligible differentia having reasonable nexus with the object sought to be achieved, is an unreasonable classification and an invidious discrimination, which cannot be countenanced in the wake of Article 14 of the Constitution of India.

56. In the light of the discussions made above, issue no. (i) framed by us is answered to the extent that as in the matter of grant of pay scale there has been an unreasonableness and accepted recommendations having not been followed and applied to the applicants at par with their counterparts in CSS/CSSS, an exception has been carved out as per the trite law to interfere with the decision of the Government in judicial review by us.

As far as the issue No. (ii) is concerned, we have already concluded that the SOs/PSs of CAT have always had historical parity with their counterparts in CSS/CSSS.

Accordingly the issue no. (iii) is answered on the basis of the above observations that such an application is misconceived, misplaced and contrary to law.

57. Resultantly, for the foregoing reasons, we have no hesitation to hold that the decision of the Government to deny Grade Pay of Rs.4800/- in PB-2 to the PSs and SOs of the CAT initially and Grade Pay of Rs.5400/- in PB-3 on completion of four years service in the grade is arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India, since they are having

established historical parity with their counterparts in CSS/CSSS and, therefore, applicants are entitled to these Pay Bands with Grade Pay. The interim order is made absolute. The difference in arrears of pay shall be disbursed to the applicants within a period of one month from the date of receipt of a copy of this order. The OA is accordingly allowed to the aforesaid extent. No costs.

Recently this Tribunal in **OA No.3934/2017** titled as **Mathura Dutta Joshi and Others Vs. U.O.I & Others (Ministry of Environment and Forests and Central Pollution Control Board)** decided the case on 10.11.2017. The operative part of the said order reads as under:-

“2. The applicants presently working as Assistant in the Central Pollution Control Board (CPCB) are seeking Grade Pay of Rs. 4600/- at par with similarly situated Assistants in CPCB and Assistants in CSS/CSSS. The applicants are relying upon the decision of Hon’ble Delhi High Court dated 16.10.1998 in CW No. 3790/1995 affirmed by the Hon’ble Apex Court with the dismissal of the SLP vide order dated 17.01.2000. The said decision has been implemented also. The applicants are claiming parity with those Assistants. The applicants have made several representations including the one made on 16.03.2017. The said representation has not been decided till date.

2. In view of the above, this petition is disposed of at the admission stage itself with a direction to respondent no. 2 to take decision on the representation of the applicants in the light of the judgment of Hon’ble High Court referred to above and the cases of similarly situated Assistants within a period of two months from the date of receipt of certified copy of this order. Needless to say that the decision shall be by passing a reasoned and speaking order.

Order **Dasti.**”

17. We may mention that the CPCB was asked to produce the records with regard to the correspondence between them and respondent No.1 for grant of pay scales and their proposal for removal of anomalies in the light of the order passed by the Hon’ble High Court of Delhi in LPA No.286/1999. The said order was challenged by the CPCB before the Division Bench of Delhi High

Court in LPA No.286/1999. On 26.07.1999 the order passed by the Single Bench of Delhi High Court was upheld. Thereafter, respondents filed Special Leave to Appeal (Civil) No.51/2000 which too was dismissed by the Hon'ble Supreme Court on 17.01.2000. The same has been produced before us and a perusal of the record which has been made available shows that the CPCB has itself passed the resolution in their Board and made a proposal for granting of revised pay scales. The same has been considered by the Ministry in consultation with the Department of Expenditure but has not been acceded to. Subsequent to this, CPCB does not appear to have made any strong attempt to revisit this issue which was required to be done.

18. In view of the above decision passed by a coordinate bench of this Tribunal in **Mathura Dutta Joshi and Others** (supra) with regard to the same department, applicants' cases are squarely covered by the said decision. We, therefore, direct the respondents to examine the case of the applicants in regard to the decision passed in the case of Delhi High Court in C.W. No.3790/1985 affirmed by the Hon'ble Apex Court and of this Tribunal in OA No.3934/2017 (supra). The respondents shall consider the cases of the applicants for grant of pay scale of Rs.6500-10500 and Grade Pay of Rs.4600 with effect from the same date when people working in CSS/CSSS were granted. We may also mention that the respondents have recommended their cases favourably but it was

Ministry of Expenditure who have not acceded to their request. We further direct the respondents to take up the cases of the applicants with the Ministry of Finance, Department of Expenditure for grant of relief to the applicants and pass a detailed and speaking order within a period of 3 months from the date of receipt of a copy of this order.

19. The OA stands allowed with the above directions. No costs.

The Registry is directed to return the department record to the respondents.

(NITA CHOWDHURY)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

Rakesh