

OA.No.170/00293/2015/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00293/2015

DATED THIS THE 31st DAY OF OCTOBER, 2017

HON'BLE SHRI DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

N.Shanmugam
S/o.Namasivayam
Aged about 57 years
Working as Assistant Field Officer
Office of the Soil Survey Officer
Soil & Land Use Survey of India(SLUSI)
Ministry of Agriculture, Govt. of India
Department of Agriculture & Co-operation
R/a #207, Kodigehalli, Vidyaranyapura Post
Bangalore-560097.

.....Applicant

(By Sri Panchajanya Associates, Advocate)

Vs.

1. The Union of India
Rep. by the Secretary (A&C)
Ministry of Agriculture, Government of India
Department of Agriculture & Co-operation
Krishi Bhawan, New Delhi-110001.
2. The Joint Secretary
Natural Resources Management Division
Department of Agriculture & Co-operation
Ministry of Agriculture, Government of India
Krishi Bhawan, New Delhi-110001.
3. The Chief Soil Survey Officer
Soil and Land Use Survey of India
Department of Agriculture & Co-operation
Ministry of Agriculture, Government of India
I.A.R.I. Campus
New Delhi-110012.
4. The Soil Survey Officer
Soil and Land Use Survey of India, Bangalore Regional Centre
Dept. of Agri & Co-op.(NRMD)
Ministry of Agriculture, Government of India
207, Kodigehalli, Vidyaranyapura Post
Bangalore-560097.

....Respondents

(By Smt.P.K.Praneshwari, Advocate)

ORDER

(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN))

The subject matter in this OA was earlier considered by the Tribunal and an order was passed on 05.11.2015. However, the matter was taken to the Hon'ble High Court of Karnataka in WP.No.16706/2016(S-CAT) and the Hon'ble High Court vide its order dated 20.09.2016 observed that there is no specific consideration by the Tribunal to the decisions of the Hon'ble Ernakulam Bench of the Tribunal more particularly the order passed in OA.No.656/2012 and 953/2012 and hence it was remanded back for consideration afresh. Accordingly, the matter was taken up for hearing afresh.

2. The relief sought by the applicant in the present OA is as follows:

- i) *To issue a writ of certiorari or any other appropriate writ or order direction quashing the impugned order bearing no. E8-18/2014-SLU/33/8 dt.12.01.2015, passed by the third respondent vide Annexure-A19, as the same is unjust, arbitrary and contrary to the law declared by the Hon'ble Apex Court.*
- ii) *To issue a writ of mandamus or any other appropriate writ or order directing the respondents to consider the claim of the applicant on par with that of the action taken towards a similar persons in terms of the settled law relied by him in the representations made which is also directed to be considered but which is not even considered, in the interest of justice and equity with all consequential benefits.*

3. The basic facts as highlighted by the applicant are as follows:

The applicant is working as Assistant Field Officer in the office of Soil and Land Use Survey of India(SLUSI) under the Ministry of Agriculture, Government of India. Subsequent to the 6th Pay Commission recommendation, the CCS revised pay rules 2008 was issued by a notification dated 29.08.2008(Annexure-A1) followed by a further memorandum dated 13.09.2012(Annexure-A2) clarifying the aspect of seniority of officers holding posts/grades merged in pursuance of

OA.No.170/00293/2015/CAT/Bangalore Bench recommendations of the pay commission. Thereafter, an order dated 11.04.2013 was issued by the Department of Agriculture and Cooperation(Annexure-A4) vide which the posts of Field Assistant and Assistant Field Officer were merged and designated as Assistant Field Officer. Thereafter an order was issued on 3.5.2013 re-designating the post of Field Assistant of Soil & Land Use Survey of India as Assistant Field Officer. The present applicant who was a Field Assistant figured at Sl.No.5 and was re-designated as Assistant Field Officer. The applicant initially submitted representations on 14.11.2013 and 12.12.2013(Annexure-A6 & A7 respectively) requesting that the date of implementation of merger should be given effect from 1.1.2006 instead of 11.4.2013. Thereafter, the applicant submitted a further representation dtd.24.4.2014(Annexure-A9) urging that the posts of Field Assistant and Assistant Field Officer should be merged with that of the Field Officer and given a grade pay of Rs.4600/-. In the said representation, he referred to a judgment of CAT, Ernakulam Bench in OA.No.656/2012 wherein a Junior Hindi Translator was allowed a grade pay of Rs.4600. The said representation was forwarded by the Soil Survey Officer, Bangalore, Regional Centre to the Chief Survey Officer, Soil & Land Use Survey of India, New Delhi on 20.5.2014(Annexure-A12). The said representation was disposed of by the respondents vide their order dated 12.01.2015 (Annexure-A19) following an order passed by this Tribunal in OA.No.901/2014. Aggrieved by the said order, the applicant has approached this Tribunal seeking the relief as highlighted earlier.

4. The main contention of the applicant is as follows:

The recommendation of the 6th pay commission suggests that the three scales namely Rs.5000-8000, Rs.5500-9000 & Rs.6500-10500 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 consideration, the posts in the scale of Rs.5000-8000 and Rs.5500-9000 should be merged, with the posts in the scale of Rs.6000-10500 upgraded and given a higher grade pay. According to the applicant, the office order issued by the SLUSI merging the posts of Field Assistant and Assistant Field Officer with grade pay of Rs.4200 corresponding to the pre-revised pay scale of Rs.5500-175-9000 is not according to the 6th CPC recommendation. According to the applicant, the post of Field Assistant which the applicant was holding as on 1.1.2006 in the pre-revised scale of Rs.5000-150-8000 and the post of AFO in the pre-revised scale of Rs.5500-175-9000 should be merged with the post of Field Officer in the pre-revised scale of Rs.6500-200-10500 w.e.f. 1.1.2006 and should be further upgraded and granted and allowed pay scale of Rs.7450-225-11500 which corresponds to grade pay of Rs.4600/-. The applicant referred to an order of Ernakulam Bench of the Tribunal dated 14.10.2013 in OA.No.656/2012 and in OA953/2012 wherein the Junior Hindi Translator in Subordinate office of Central Government was allowed a grade pay of Rs.4600 and the order of the Ernakulam Bench of the Tribunal in K.K.Vijayan vs. the Principal Registrar in OA.856/2011 and order of the Principal Bench of the Tribunal in OA.No.1165/2010 wherein the Private Secretaries of the Central Administrative Tribunal staff were granted the grade pay of Rs.4600 on par with their counterparts in CSS/CSSS in support of his contention. He has also referred to various posts in other ministries and departments wherein an existing pre-revised pay scale of Rs.5500-175-9000 was upgraded and given a grade pay of

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Rs.4600. The applicant submits that the grant of pay scale of PB-2 with grade pay of Rs.4200 to the applicant in place of grade pay of Rs.4600 in the context of the above is unjustified. Thus he contended that post of Field Assistant and Assistant Field Officer should be merged with that of the Field Officer which has been allowed a higher grade pay of Rs.4600/-.

5. The contention of the respondents as reflected in the reply statement is as follows:

The recommendations of the 6th CPC as accepted by the Government were notified by the Ministry of Finance (Department of Expenditure) vide Gazette Notification dated 29.08.2008. Para 1 of the Ministry of Finance (Department of Expenditure) OM No.1/1/2008-IC dated 13.11.2009 clearly stipulates that wherever it is not feasible to merge pre-revised scales of pay of Rs.5000-8000, Rs.6500-10500 on functional considerations, the posts in pre-revised scales of Rs.5000-8000 and Rs.5500-9000 should be merged and posts in the scale of pay of Rs.6500-10500 be upgraded to next higher grade in PB 2 with grade pay of Rs.4600/-. The OM further stipulates that the posts which were in pre-revised scale of Rs.6500-10500 as on 01.01.2006 will be placed in Pay Band 2 with Grade Pay of Rs.4600/-. Accordingly, the merger of pre-revised scales of Rs.5000-8000(Field Assistant) with Rs.5500-9000 (Assistant Field Officer) has been done with placement in PB 2 with Grade Pay of Rs.4200. The post of Field Officer, which is the next higher promotional post of Assistant Field Officer has rightly been placed in PB 2 with Grade Pay of Rs.4600/-. As such the contentions of the applicant are vague and do not stand to any logic. The copy of the above said O.M. dated 13.11.2009 is at Annexure R-II. They further submitted that part-B of the notification in the CCS(RP) Rules give details of revised pay scales of certain common category of the staff which

does not include the post under consideration in SLUSI. The post in the pre-revised scale of Rs.5000-8000(Field Assistant) 5500-9000 (Assistant Field Officer) were not merged with pre-revised scale of Rs.6500-10500 (Field Officer) to avoid functional disturbance of the Field Survey cadres of SLUSI. The merger of the Field Assistant and Assistant Field Officer and their placement in PB2 with grade pay of Rs.4200 has been done in accordance with the rules and instructions issued by the Department of Expenditure. The post of Field Officer which is supervisory level has been kept in PB 2 with grade pay of Rs.4600/-. The pay of the applicant has been fixed correctly w.e.f. 1.1.2006 as per the extant rules. The contention made by the applicant for merger of the posts Field Assistant with Field Officer and grant of higher grade pay has no substance or justification. They further submitted that the cadre of Junior Hindi Translator is altogether different from the cadre of SLUSI and the same would have no applicability in this case.

6. We have heard the Learned Counsel for both the parties afresh. Learned Counsel for the applicant primarily referred to the judgment of the Ernakulam Bench of the Tribunal in OA.No.107/2011 which was upheld by the Hon'ble High Court of Kerala and further upheld by the Hon'ble Supreme Court. He also referred to another order of the Ernakulam Bench of the Tribunal in OA.No. 656/2012 and OA.953/2012 wherein the Junior Hindi Translators were allowed grade pay of Rs.4600/-. He submitted that on the line of these judgments the post of Field Assistant and Assistant Field Officer should also be merged along with the post of Field Officer and allowed the grade pay of Rs.4600/-. Therefore, as in the case of Junior Hindi Translators, the applicant should also be granted grade pay of Rs.4600/-.

7. The Ld.Counsel for the respondents submitted that the post of Junior Hindi Translator is completely different from that of the Assistant Field Officer in the agriculture sector and hence the said order of the Tribunal referred to by the Ld.Counsel for the applicant has no relevance to the present case. He referred to the recommendation of the 6th Pay Commission which suggested merger of three Pay Scales of 5000-8000, 5500-9000 and 6500-10500 and stated that it clearly stipulated that in such cases where it is not feasible to merge three scales on functional considerations, the posts in the pre-revised scales of Rs.5000-8000 and Rs.5500-9000 should be merged while the post in the scale of pay of Rs.6500-10500 should be upgraded to next higher grade in PB 2 with grade pay of Rs.4600. He mentions that it was a considered decision by the authorities that the posts of Field Assistant and Assistant Field Officer should be merged while the promotional post of Field Officer (which is a supervisory post) should be kept apart and granted higher grade pay of Rs.4600/-. The Learned Counsel for the respondents also referred to an order of the Principal Bench of the Tribunal in OA.No.1125/2011 wherein the Tribunal disallowed the similar request for merger of three pay scales and grant of higher grade pay of Rs.4600.
8. We have carefully considered the facts of the case and also the submissions made by either side. The issue in this case relates to merger of the pre-revised scales in terms of 6th Pay Commission recommendation. From the records it is evident that at the field level i.e where the present applicant is working, there were 3 levels namely Field Assistant in the scale of Rs.5000-150-8000, Assistant Field Officer, the next promotional post having the scale of Rs.5500-175-9000 and Field Officer which is next

promotional post which was in the scale of Rs.6500-200-10500. The applicant was Field Assistant in the pay scale of Rs.5000-8000. Following the 6th Pay Commission recommendation, the post of Field Assistant and Assistant Field Officer were merged and was given pay band-2 with grade pay of Rs.4200/- while the post of Field Officer which was a supervisor level was upgraded to PB-2 with grade pay Rs.4600/-. The claim of the applicant that the post of Field Assistant and Assistant Field Officer should be merged with that of Field Officer and allowed Grade Pay of Rs.4600/-.

9. The first schedule of part-A in CCS Revised Pay Rules 2008 specified the earlier pay scales and the corresponding pay scales in pay band 2 and the grade pays. The position in respect of S-9 to S-15 as far as the present scale and revised pay scale is as follows:

Sl.No.	Post/ Grade	Present Scale	Name of Pay Band /Scale	Revised Pay Structure	
		Present Scale Rs.		Corresponding Pay Bands / Scales Rs.	Correspon ding Grade Pay Rs.
1	2	3	4	5	6
1	S-9	5000-150-8000	PB-2	9300-34800	4200
2	S-10	5500-175-9000	PB-2	9300-34800	4200
3	S-11	6500-200-6900	PB-2	9300-34800	4200
4	S-12	6500-200-10500	PB-2	9300-34800	4200
5	S-13	7450-225-11500	PB-2	9300-34800	4600
6	S-14	7500-250-12000	PB-2	9300-34800	4800
7	S-15	8000-275-13500	PB-2	9300-34800	5400

As has been evident from the above the four scales in the erstwhile pay scales S-9 to S-12 carry the same pay scales and grade pay in the revised pay structure.

10. Part-B of the first schedule in the CCS Revised Pay Rules 2008 relating

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to the merger of the pre-revised scales reads as follows:

“On account of merger of pre-revised pay scales of Rs.5,000-8,000, Rs.5,500-9,000 and Rs.6,500-10,500, some posts which presently constitute feeder and promotion grades will come to lie in an identical grade. The specific recommendations about some categories of these posts made by the Pay Commission are included Section II of Part B. As regards other posts, the posts in these three scales should be merged. In case it is not feasible to merge the posts in these pay scales on functional considerations, the posts in the scale of Rs.5,000-8,000 and Rs.5,500-9,000 should be merged, with the post in the scale of Rs.6,500-10,500 being upgraded to the next higher grade in pay band PB-2, i.e. to the grade pay of Rs.4,600 corresponding to the pre-revised pay scale of Rs.7,450-11,500, the post being upgraded from the scale of Rs.6,500-10,500 should be merged with the post in the scale of Rs.7,450-11,500.”

From the above provisions, it is evident that the 6th Pay Commission recommended for merger of three scales namely 5000-8000, 5500-9000 and 6500-10500 which correspond to the same pay band 2 and carry same grade pay. However the Pay Commission in its recommendation also stipulated that it may not be feasible for merger of posts in all the cases on functional consideration as has been in the present scenario. A stipulation was made in the pay commission recommendation that in such cases where merger of three scales is not feasible on functional consideration, then the posts in the scale of Rs.5000-8000 and 5500-9000 should be merged while the other scale of Rs.6500-10500 should be upgraded to the next higher grade pay of Rs.4600 corresponding to pre-revised scale of 7450-11500. This is quite logical. If the lower scale could not be merged with scale Rs.6500-10500 then it would be prudent to raise the scale for the next level since it cannot carry the same grade pay as the lower levels. Moreover there has to be a clear distinction between two levels if they are not merged. It appears that in the present case taking into account the functional consideration, the respondent authority ordered for merger of two scales belonging to the Field Assistant, Assistant Field Officer into one while keeping the post of Field Officer at distinct and

allowed it a higher grade pay of Rs.4600. This appears to us as justified since, as claimed by the respondents, the post of Field Officer is supervisory level and cannot be merged with other two levels i.e. Assistant Field Officer and Field Assistant.

11. The applicant had initially made representation for antedating the date of implementation to 1.1.2006 in place of 11.4.2013. Thereafter, he represented for merger of the two pay scales of Rs.5000 and Rs.5500 with that of Rs.6500 and allowed a grade pay of Rs.4600 citing an order passed by the Ernakulam Bench of this Tribunal in the case of a Junior Hindi Translator which was upheld by the Hon'ble High Court of Kerala. This has been highlighted in this OA also. The applicant had also referred to some of the decisions of the Ernakulam Bench and Principal Bench of the Tribunal pertaining to entitlement of pay scales in case of Assistants, Stenographers, Court Masters etc., in the Central Administrative Tribunal. The respondents, on the other hand, had contended that the court orders related to the Hindi Translator and other posts cannot be applicable to other categories such the present case. They have also referred to an order of the Principal Bench in which similar claim made in the case of Personal Assistant, UDC of the Indian Council of Medical Research was turned down.

12. A reference has been made to the orders passed by the Ernakulam Bench of this Tribunal in OAs.No.656/2012 & 953/2012. The issue in those OAs related to the pay scale that should be given to Junior Hindi Translator vis-à-vis Senior Hindi Translator. It was mentioned in para-13 of the said order that the earlier the competent authority has given approval to grant PB-2 with grade pay of Rs.4600 to the applicant therein who was Junior Hindi

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Translator(JHT) who got upgradation to the scale of Senior Hindi Translator(SHT) under the ACP Scheme. The Court had also tried to adjudicate whether the Junior Hindi Translators in the Subordinate Offices of the Central Government are entitled to grade pay of Rs.4600. The issue therein related to the scale to be awarded to the Junior Hindi Translator vis-à-vis the Senior Hindi Translator following the 6th Pay Commission recommendation. However it is to be noted that in the 6th Pay Commission recommendation, there was categorical observation relating to the merger of scales including exceptions where it is not possible for merger of scales due to functional consideration. In the present case, as elaborated by the respondents, due to functional consideration, it was not considered feasible to merge the post of Field Assistant and Assistant Field Officer with that of Field Officer which is supervisory level and hence they kept it distinct. Therefore, while the post of Field Assistant and Assistant Field Officer were merged and granted PB-2 with grade pay of Rs.4200, the supervisory level of Field Officer post was upgraded and allowed the grade pay of Rs.4600. If all the three posts would have been merged then it might have resulted in an operational issue as the supervisory officer cannot monitor performance of other levels who are in the same grade pay. Therefore, the analogy of the Junior Hindi Translator and Senior Hindi Translator in the case of OAs.656/2012 & 953/2012 referred to by the applicant will have no applicability in the present case where the pay scales have been allowed in terms of the 6th Pay Commission recommendation.

13. Similar issue has also been raised for other category of posts also. In this context, we would like to note the observation of the Principal Bench of this Tribunal in its order dated 10.02.2015 in OA.125/2013 in case of Shri

Raj Kumar, Assistant, ICPO & ors. vs. DG, ICMR & ors. which states as follows:

“8. We would like to state at the outset that the Hon'ble Supreme Court has, time and again, cautioned that the Courts/Tribunals should avoid giving a declaration granting a particular scale of pay and compel the government to implement the same. Equation of posts and equation of salaries is a matter which is best left to an expert body like Pay Commission (State of West Bengal Vs. Subhas Kumar Chatterjee & Ors., (2010) 11 SCC 694]. Therefore, in the light of the fact that this is clearly a dispute regarding pay scales and the fact that the VII Pay Commission has already been set up, we would not have ideally liked to interfere in this matter. However, in this case, the premise on which the applicants have staked their claim, is incorrect and we have been observing time and again matters coming up due to a lack of clear understanding of the 6th CPC recommendations and subsequent government instructions. This needs to be set at rest. For ease of reference, we repeat again sub-para (ii) of Part B, which has been quoted above:

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

9. The VI Pay Commission in its recommendations proposed to reduce the number of pay scales by moving from a pay scale based structure to Pay bands coupled with Grade Pay. In order to reduce the pay scales, three pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 were merged. A distinction has to be made that the pay scales were merged; those substantive posts in the higher scale of Rs.6500-10500 were not to be merged. That is why, if one reads the above quoted paragraph carefully, it would be seen that it comprises two parts:

- i) that if it is not feasible to merge the posts in the pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 on functional considerations, the posts in the scale of Rs.5000-8000 and Rs.5500-9000 should be merged and
- ii) the post in the scale of Rs.6500-10500 be upgraded to the next higher grade in Pay Band 2 i.e. to the Grade Pay of Rs.4600/-, corresponding to the pre-revised pay scale of Rs.7450-11500.

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This does not mean that those in the pre-revised scale of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 would be automatically treated in the scale of Rs.7450-11500 and given the scale of Pay Band 2 in the Grade Pay of Rs.4600/-. This is a complete misinterpretation of the rules and, therefore, does not merit any consideration. If that was the intention then there was no need to go into such an elaborate construction. It would have sufficed to state that all scales and posts in Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 would be given PB-2 with GP Rs.4600/-.

10. As far as the judgment of Ernakulam Bench of this Tribunal is concerned, it is applicable to employees of Ernakulam Bench only, who were Assistants/UDCs. It is not that the Ernakulam Bench has laid down any universal principle regarding pay scales and, therefore, it would apply only in case of applicants in that particular case. In fact, in contrast to that, in OA.3869/2010 (supra), in case of another organization namely Air Officer Commanding, Air Force Central Accounts Office, this Tribunal held that the pay scale of Rs.7450-11500 will not be available to the applicants."

14. On careful consideration of the entire matter and in the light of the discussions made in the preceding paras, we are clearly of the view that the claim of the applicant in the present OA for merger of posts of Field Assistant and Assistant Field Officer with that of the Field Officer defies logic and cannot be accepted. We are inclined to hold that the action of the respondents in regard to merger of posts of Field Assistant and Assistant Field Officer into one and keeping the next supervisory level post of Field Officer at distinct and upgrading the same appears to be in accordance with the recommendation of the 6th Pay Commission and therefore cannot be faulted with. We also hold that the order passed by the respondents dated 12.01.2015 vide Annexure-A19 which was in pursuance to the order passed by this Tribunal in earlier OA.No.909/2014 is fully in accordance with the provisions of the revised pay rules and does not call for any interference. Therefore, we hold that the OA being devoid of any merit is liable to be dismissed.

15. Accordingly the OA is dismissed. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in the OA.170/00293/2015

- Annexure-A1: Copy of the notification dt.29.8.2008
- Annexure-A2: Copy of the OM dt.13.9.2012
- Annexure-A3: Copy of the OM dt.6.3.2013
- Annexure-A4: Copy of the office order dt.11.4.2013
- Annexure-A5: Copy of the office order dt.3.5.2013
- Annexure-A6: Copy of the representation dt.14.11.2013
- Annexure-A7: Copy of the reminder
- Annexure-A8: Copy of the order in OA.No.656/2012
- Annexure-A9: Copy of the representation dt.5.5.2014
- Annexure-A10: Copy of the Gazette notification dtd.29.8.2008

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Annexure-A11 series: Copies of the Communications

Annexure-A12: Copy of the Communication

Annexure-A13: Copy of the reminder

Annexure-A14: Copy of the representation dt.25.6.2014

Annexure-A15: Copy of the communication dtd.20.5.2014

Annexure-A16: Copy of the order of Ernakulam Bench

Annexure-A17: Copy of the order of Principal Bench

Annexure-A18: Copy of the order of this Hon'ble Tribunal

Annexure-A19: Copy of the impugned order

Annexures with reply statement:

Annexure-R1: Copy of the order No.E-8-18/2014-SLU/33/8 dtd.12.1.2015

Annexure-R2: Copy of the OM dtd.13.11.2009

Annexure-R3: Copy of the office order dtd.11.04.2013
