

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHENNAI BENCH**

**OA/310/00065/2017**

**Dated the 31<sup>st</sup> day of October Two Thousand Eighteen**

**PRESENT**

**HON'BLE MR. P. MADHAVAN, Member (J)**

**&**

**HON'BLE MR. T. JACOB, Member (A)**

N.Anuthabaran,  
Aged 58 years,  
S/o R.Nijarauban,  
No. 102/6, CPWD Quarters,  
K.K.Nagar,  
Chennai 600078.

....Applicant

By Advocate M/s. P. Ulaganathan

Vs

1.Union of India,  
rep by its Secretary,  
Ministry of Urban Development,  
Nirman Bhavan, New Delhi 110001.

2.Director General (Works),  
Central Public Works Department,  
Ministry of Urban Development,  
Nirman Bhavan, New Delhi 110001.

3.Chief Engineer (Southern Zone-I),  
Central Public Works Department,  
Besant Nagar, Chennai 600090.

4.Executive Engineer (CCD-IV),  
Central Public Works Department,  
GPRA Campus, Thirumangalam,  
Anna Nagar, Chennai 600040.

....Respondents

By Advocate Mr. K.Rajendran

**ORDER**

**(Pronounced by Hon'ble Mr. T. Jacob, Member(A))**

Heard. The applicant has filed this OA seeking the following relief:

“To call for the records on the file of 4<sup>th</sup> respondent in connection with his (i) Office Order No. 9(1)/CCEDIV/2013/143 dated 17.02.2014 (ii) Office Order No. 2 (9)/CB/EC-I/CCD-IV/2016/1084 dated 30.12.2016 and (iii) his speaking order, conveyed to the applicant vide his letter No. 12(1)/CCDIV/Court Case/2016/1335-40(4) dated 25.11.2016 and set aside the same as illegal and direct the respondents to restore the Office order No. 10(4)/CCED-IV/2011/CB/1133 dated 12.08.2011 fixing his pay at Rs. 12090 + GP Rs. 4200/- as on 28.03.2007 and consequently direct the respondents not to make any recovery from the applicant on account of any excess payment made to him in this regard or to pass any other order, direction or grant any other relief that this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and thus render justice.”

2. The brief facts of the case as stated by the applicant are as follows:

The applicant was initially appointed as Lower Division Clerk on 7.8.1983 in the respondent's office and promoted as Upper Division Clerk in the pay scale of Rs. 4000-100-6000/- on 4.8.1995. He was further promoted as Head Clerk in the pre revised pay scale of Rs. 5000-150-8000 by an order dated 23.3.2007. The said post was subsequently merged with the post of Office Superintendent as both posts were given the same revised scale of pay ie, PB 2 (Rs. 9300-34800) with Grade Pay of Rs. 4200/-. Subsequently after the introduction of the Revised Pay Rules, 2008, he came over to the revised pay rules 2008 w.e.f 1.1.2006. The revised pay scale for the post of Upper Division Clerk as per the Rules of 2008 was PB 1 (Rs. 5200-20200 plus GP Rs. 2400) and on his promotion as Head Clerk, his pay in the post of Head Clerk was fixed in PB Rs. 9300-34800 with GP Rs. 4200/- in the revised Pay Rules 2008 with effect from 28.3.2007. It is pertinent to note as per the recommendations of the

VI Pay Commission, the pre revised pay scales of Rs. 5000-150-8000, Rs. 5500-175-9000 and Rs. 6500-200-10500/- got merged and got the same replacement scale in PB 2 Rs. 9300-34800 with Grade Pay of Rs. 4200/- with effect from 1.1.2006. Thereafter, the applicant exercised a revised option to come over to the Revised Pay Scales of 2008 with effect from the date of his promotion as Head Clerk as it was more advantageous to him, in accordance with the Ministry of Finance, Dept of Expenditure OM dated 5.7.2010. Hence, his pay was refixed in the revised pay scales PB 2 (Rs. 9300-34800) plus GP Rs. 4200 with effect from 28.3.2007, the date of his promotion. In consequence, he continued to draw his pay in the pre-revised scale of UDC in Rs. 4000-100-6000 till the date of his promotion. His pay was accordingly re-fixed by the 4<sup>th</sup> respondent vide his order dt. 12.8.2011. The 4<sup>th</sup> respondent in his order dt. 12.8.2011, initially treated his basic pay as Rs. 6500 in the pre-revised scale of Rs. 6500-200-10500 the scale to which the pay scale of Head Clerk was upgraded as on 1.1.2006 and thereafter fixed in the pay in the Revised Pay Rules in PB 2 with GP of Rs. 4200 using the fitment table corresponding to the pre-revised pay scale of Rs. 6500-10500. The applicant would further submit that the above fixation of pay was done, on the analogy adopted in the case of Assistant Grade in the Central Secretariat Service CSS, whose pay scale also upgraded from Rs. 5500-175-9000 to Rs. 6500-200-10500 with the replacement scale of PB-2 in Rs. 9300-34800 initially plus GP Rs. 4200, initially which was later raised to Rs. 4600/- with effect from 1.1.2006. Accordingly, his pay was fixed at Rs. 12090 with GP

Rs. 4200 with effect from 28.9.2007. The above pay fixation dated 12.6.2011 was sought to be withdrawn as per the order of the 4<sup>th</sup> respondent dated 17.2.2014 which was challenged by the applicant by filing OA 1110/2014 which was disposed of by an order dt. 18.11.2015 directing the respondents to give a personal hearing about his objections to the impugned pay fixation done by the respondents and pass a speaking order on the representation of the applicant. The applicant submitted another representation dt. 15.4.2016 and the 4<sup>th</sup> respondent rejected the representation of the applicant by a speaking order that was communicated to him vide letter dated 25.11.2016. The 4<sup>th</sup> respondent further issued another order of pay fixation 30.12.2016 which by and large followed the pay fixation order dt. 17.2.2014. The respondent has also sought to recover the excess payment of arrears of pay and allowances. The applicant has challenged the correctness of the impugned order dt. 17.2.2014 and 30.12.2016 withdrawing the pay fixation done by order dt. 12.6.2011 by this OA. Interim injunction was also granted by this Tribunal restraining the respondents from making any recovery of alleged excess payment of pay and allowances on 23.1.2017.

3. The applicant would submit that the analogy of pay fixation formula applied in the case of Assistants/PAs who got the benefit of fixation with reference to the pre-revised pay scale of Rs. 6500-10500/- CSS/CSSS as per the Department of Expenditure U.O.No. 10/1/2009 dated 14.12.2009 was repelled by the respondents vide their OM dated 29.5.2012 stating that “the dispensation

granted to Assistants of CSS/PSs of CSSS vide Department of Expenditure's UO note dated 14.12.2009 cannot be extended to them". Further, the respondents have observed in the said OM dated 29.5.2012 that the Ministry of Finance, (Department of Expenditure) have clarified that the UDCs who are promoted as Head Clerk between 1.1.2006 and 31.8.2008 need to have their pay fixed as per Rule 13 (i) of CCS (Revised) Pay Rules, 2008. The applicant has relied upon the decisions of the Patna High Court in the Civil Jurisdiction Case No. 6969 of 2015 filed by the Union of India assailing the order passed by the Patna Bench of the CAT. The applicant also relied upon the decisions of the Hon'ble Supreme Court in Civil Appeal No. 213 of 2013 in State of Punjab & Ors. Vs Jagjit Singh & Ors dated 26.10.2016 and Union of India & Ors Vs Dhananjay Singh in Civil Appeal No. 1119 of 2013, the Hon'ble High Court of Calcutta (Mr. Ibrahim Mollah and anr Vs Union of India and Ors).

4. The applicant would contend that applying the ratio of judgment of CAT- Ernakulam Bench in the case of C.Sreekantan & Ors Vs The Principal Registrar, CAT, New Delhi and Ors in OA 840 of 2011 which is followed in CAT-Principal Bench judgment dt. 7.5.2014 in OA No. 3679/2012 (Sheeja Santosh & Ors Vs. The Director General, ESIC Headquarter, New Delhi and others), the applicant is entitled to have the benefit of upgradation in the pre-revised scale of Rs. 6500-10500 and then get the fixation of pay done in the minimum in the upgraded pay scale of Rs. 6500-10500 and in consequence have the pay raised in the revised pay band of PB2- Rs. 9300-34800 corresponding the pay of Rs. 6500/- as per the

fitment table, with grade pay of Rs. 4200.

5. The respondents filed reply. For better appreciation of the facts, attention is drawn to para 13 of the reply affidavit and is thus:

“13. With regards to the averment made in 5(h) it is submitted that the applicant was working as Upper Division Clerk in the subordinate cadre of CPWD on 1.1.2006 ie, on the date of implementation of 6<sup>th</sup> CPC Revised Pay Rules, 2008 and was promoted as Head Clerk on 28.3.2007. The pay scale for the post of Head Clerk was not upgraded as per 6<sup>th</sup> CPC Revised Pay Rules, 2008, which came into effect w.e.f 1.1.2006. The applicant who is in a responsible position as Head Clerk and working under the Executive Engineer, Chennai Central Electrical Division-IV, K.K.Nagar, Chennai – 78 (This division closed now), at the time of fixation of his pay took advantage of his position and wrongly advised the Executive Engineer, Chennai Central Electrical Division-IV, K.K.Nagar, Chennai – 78 (This division closed now), to accept his option and thereafter got his pay re-fixed at Rs. 12090/- in the PB2 of 9300-34800 vide Office order dated 12.08.2011. The applicant on the receipt of clarification dated 29.5.2012 from the Directorate General, CPWD regarding the pay fixation, should have re-fixed his pay with reference to the pay drawn in the pay scale of 5000-150-8000. However, he continued to enjoy inadmissible higher pay whereas many of his senior Head Clerks of this Department have chosen to wait for clarification from the competent authority, followed the rule and regulations and consciously avoided the controversial fixation of pay in the upgraded scale

of pay which was unavailable to them. The Internal Audit in their observation stated that the pay of the official was wrongly fixed at Rs. 12090/- taking his pre-revised pay as Rs. 6500/- for which he is not eligible. The Internal Audit advised to re-fix his pay taking his pre-revised pay as Rs. 5300/- with Grade Pay of Rs. 4200/- and the excess pay and allowances drawn may be recovered immediately from the official. After noticing the discrepancy in pay fixation of Office Superintendents in some offices of CPWD, the Directorate General, CPWD vide their letter dated 13.4.2016 issued instructions to the Controlling officers to rectify such wrong pay fixation by strictly following illustration 4A of CCS RP Rules 2008.”

6. The respondents would submit that this is not a case where the monetary benefits were given to the employee in excess their entitlement due to unintentional mistakes committed by the concerned competent authorities and the employees were not guilty of furnishing any incorrect information/misrepresentation which had led the concerned competent authorities to commit the mistake of making the higher payment to the employees. In the instant case, the applicant did not approach the Tribunal with clean hands since the applicant is fully aware of the fact that pay scales recommended for Assistants/PAs of CSS cadre by the VI CPC are not applicable to him. The applicant wilfully suppressed the clarifications issued on 29.5.2012 by the Government of India and did not take remedial action by rectifying his erroneous pay fixation. The 4<sup>th</sup> respondent came to know that the pay fixation of

the applicant was a flawed one only on receipt of findings of the Internal Audit wing of the Ministry of Urban Development. In support of their contentions, the respondents have relied upon the judgments of Hon'ble Supreme Court in the cases of S.C.Chandra & Ors Vs. State of Jharkhand and Ors. (2007 AIR 3021) and CA No. 1119/2013 and SLP(C) 37255/2012 dt. 25.7.2013. Accordingly, the respondents prayed for dismissal of the OA. The respondents filed MA to vacate the interim injunction

7. Learned counsel for the applicant produced a number of citations to argue that the the impugned orders dt. 17.2.2014 and 3012.2016 and the speaking order dt. 25.11.2016 are liable to be set aside as illegal and the office order dt. 12.8.2011 fixing the pay has to be restored to the applicant with all consequential benefits. He has relied on the following decisions:

- a. Order dt. 28.1.2014 in OA 1184/2013 of the Calcutta Bench of this Tribunal.
- b. Order dt. 9.8.2012 of the Allahabad Bench of this Tribunal in OA 293/2011.
- c. Order dt. 7.5.2014 of the Principal Bench of this Tribunal in OA 3679/2012.
- d. Order dt. 11.12.2015 of the of the Jabalpur Bench of this Tribunal in OA 1004/2010.
- e. Order dt. 25.1.2017 of the Jodhpur Bench of this Tribunal in OA 187/Jodhpur/2014.



f. Order dt. 11.11.2016 of the Madras Bench of this Tribunal in OA 324/2014.

g. Order dt. 7.3.2013 of the Ernakulam Bench of this Tribunal in OA 840/2013.

h. Order dt. 1.10.2015 of the Hon'ble Patna High Court in Civil Writ Jurisdiction Case No. 6969 of 2015..

8. Learned counsel for the respondents would submit that the applicant has been trying to mislead the Tribunal by drawing parity between pay scales of two distinct cadres viz Central Secretariat Service and CPWD Subordinate Service, which does not exist. Hence, the pay fixation order dt. 12.8.2011 on the basis of the alleged upgraded pay scales was completely wrong and ultra vires ab initio and his pay fixation order dt. 17.2.2014 with CCS (Revised Pay) Rules, 2008. Further pay fixation order issued on 30.12.2016 in accordance with CCS (Revised Pay) Rules, 2016 is also correct.

9. Arguments were heard and documents perused.

10. The facts of this case are not in dispute and the only question that needs adjudication is whether the fitment granted to the applicant while fixing his pay in revised scale of pay is in accordance with the Revised pay rules, 2008.

11. It is settled law that in matters of pay fixation, the same being an exercise requiring going into various aspects and nature of duties, it is the expert body like the Pay Commission that considers and makes recommendations (State of UP vs. UP Sales Tax Officer Grade II Assn. (2003) 6 SCC 250. The Revised Pay

Rules, 2008 has been framed on the basis of VI Pay Commission Recommendations and the provisions thereof are to be applied for pay fixation. While interpreting the terms of pay fixation, as per the law relating to interpretation of statutes, it has been held by the Apex Court in the case of Orient Paper & Industries Ltd. Vs. State of MP (2006) 12 SCC 468 as under:-

if the words used are capable of one construction only, then it would not be open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly be not given effect to in opposition to the plain language of the sections of the Act.

Keeping in view the above dictum, the rule relating to fixation of pay of the applicant has to be considered. The Ministry of Finance also has issued the clarifications in so far as the manner of fixation of pay and necessary fitment tables and a few illustrations as also have been given thereunder. Further, the Ministry of Finance has clarified that UDC's who are promoted as Head Clerks between 1.1.2006 and 31.8.2008 or on or after 1.9.2008 need to have their pay fixed as per Rule 13(i) of CCS (Revised) Pay Rules, 2008.

12. In the instant case, the fallacy in the calculation of pay by the applicant in arriving at Rs. 12,090/- could be explained in that the applicants first brought his pay in the pre-revised pay scale to the minimum of Rs. 6500/- and then incremented the same with the multiplier of 1.86. Thus, 1.86 times of Rs. 6500 becomes Rs. 12,090/-. The pay of the applicant was wrongly fixed as Rs. 6500 as minimum in the upgraded pay scale of Rs. 6500-200-10500 by multiplying

(Rs. 6500 X 1.86) instead of multiplying 1.86 with his existing pay of Rs. 5300 in the eligible pay scale of Head Clerk ie, 5000-150-8000. This calculation is in variation to the calculation given in the Revised Pay Rules, 2008. The fixation formula adopted is – first, the basic pay in the pre-revised pay scale is multiplied by the multiplier 1.86, rounded off to the next denomination of Rs. 10/- and the resultant amount is placed in the pay band of PB-2 Rs. 9300-34800. Thus the correct pay fixation on promotion is as under:

Pay as on 01.11.2005 (in the pre-revised scale 4000-100-6000)	:	Rs. 5000
Pay as on 01.11.2006 (in the pre-revised scale 4000-100-6000)	:	Rs. 5100
Existing Scale of Pay as on 28.03.2007	:	Rs.4000-100-6000 (Corresponding to the Grade pay of Rs. 2400)
Pay Band Applicable	:	PB-I-Rs. 5200-20200
Pay as on date of promotion ie., 28.3.2007	:	Rs. 5100
Add one increment in the lower scale to a : Rs. 5100+100 = Rs. 5200 minimum of Rs. 100/- due to promotion		
Pay in the promotional Existing pre-revised Scale of Head Clerks (5000-150-8000) as on date of promotion on 28.3.2007 based on his option given dated 31.12.2010	:	Rs. 5300
As per the fitment table corresponding to the pay for 5300 in the scale 5000-150-8000	:	Rs. 9860
Grade Pay attached to the above Scale (5000-150-8000)	:	Rs. 4200

This method alone would ensure that those in different stages of pay in the pre revised pay scale get uniform increase, proportional to their pre-revised pay.

13. The entire claim of the applicant is based on the notion of the alleged upgradation of pay scale of the Head Clerk. The applicant has not submitted any document in support of his claim. The Ministry of Finance has clarified that the dispensation granted to the Assistants of CSS/PA of CSSS cannot be extended to them. Thus it is crystal clear that upgraded pay scale of Rs. 6500-10500 was not applicable to Head Clerk/ Superintendents of CPWD.

14. The Assistants of CSS and Head Clerks of CPWD belong to different services and they are two distinct set of employees and since the functions, duties and responsibilities are not equal in two cases, the principle of equal pay for equal work has no applicability here. The applicant has given an undertaking on 30.12.2010 in connection with revised pay fixation. Therefore, the recovery of excess pay and allowances drawn by the applicant is correct and in accordance with the rules and undertaking given by him. Further, the court cases cited by the applicant has no relevance in the facts and circumstances of the present case

15. In view of the above, we find that the OA is devoid of merit and accordingly the same is dismissed. Interim order dt. 23.1.2017 is hereby vacated. No costs.

**(T.Jacob)**  
**Member(A)**

**(P.Madhavan)**  
**Member(J)**

**31.10.2018**

SKSI