

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.624 of 2011

Cuttack this the 5th day of December, 2017

CORAM:

HON'BLE SHRI S.K.PATTNAIK, MEMBER (J)
HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

1. All India Association of Central Excise Gazetted Executive Officers, Bhubaneswar Unit, Bhubaneswar, represented through the General Secretary, Loknath Mishra, S/o-late Babaji Mishra, aged about 55 years, Present Posting: Superintendent, Central Excise, Customs, Bhubaneswar-I Commissionerate, Bhubaneswar
2. Gouranga Ch.Roul, S/o. Padma Ch.Roul, aged about 59 years, presently working as Supdt. Of Central Excise & Customs, Bhubaneswar-I, Commissionerate, Bhubaneswar
3. Niranjana Pradha, S/o. late Ananta Pradhan, Superintendent, Central Excise & Customs, Bhubaneswar-II, Commissionerate, Bhubaneswar

...Applicants

By the Advocate(s)-M/s.D.P.Dhalasamant

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Finance and Company Affairs, Department of Revenue, North Block, New Delhi-110 001
2. Chairman, Central Board of Excise and Customs, North Block, New Delhi-110 001
3. The Chief Commissioner, Central Excise, Customs & Service Tax, Bhubaneswar Zone, C.R. Building, Bhubaneswar-751 007

...Respondents

By the Advocate(s)-Mr.S.K.Patra
M/s.S.Rath
B.K.Nayak-3

D.K.Mohanty

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant No.1 is the All India Association of Central Excise Gazetted Executive Officers, Bhubaneswar Unit, Bhubaneswar, represented through the General Secretary, Sri Loknath Mishra. The 2nd and 3rd applicants are working as Superintendent of Central Excise & Customs, Bhubaneswar-I & II Commissionerate respectively. They have filed this O.A. under Section 19 of the A.T.Act, 1985, praying for the following reliefs:

- i) The impugned order under Annexure-A/13 dtd. 06.10.2010 be quashed declaring the same as illegal in the eye of law.
- ii) The Hon'ble Tribunal be pleased to direct the respondents to grant the pay scale of Rs.8000-275-13500/- to the cadre of Supdt. Central Excise Customs w.e.f. 01.01.1996 and the pay scale of Rs.10,000-325-15200 to those Supdt. Who have been awarded 2nd Financial upgradation der ACP Scheme w.e.f. 09.08.1999 and consequently the corresponding pay sale/Grade Pay be allowed after 6th Central Pay Commission recommendations.
- iii) Apart from the above scale consequent to 6th Central Pay Commission the Supdt. Of Central Excise & Customs may be given grade pay of Rs.5400 in PB-3 w.e.f. 1.01.2006 and grade pay Rs.6600 in PB-3 w.e.f. 01.01.06 to shoes Supdt. Central Excise and Customs who have completed 4 years of service in the grade and grade pay of Rs.7600 in PB-3 w.e.f. 01.01.06 to those Supdt. Of Central Excise & Customs who have been awarded the 2nd financial upgradation in ACP Scheme.
- iv) It may be declared that the disparity in the pay scale is required to be removed from the date when such disparity arose and direction be given to the respondents to effect the appropriate higher scale of pay to the Supdt. Of Central Excise and Customs retrospectively i.e. from 01.01.1986.

- iv) The Hon'ble Tribunal may be pleased to direct the respondents to grant all the consequential reliefs with arrear of pay and interest.
- v) Appropriate direction be given to pay the differential arrear within the time stipulated by the Hon'ble Tribunal.

2. The order dated 06.10.2010 which is under challenge in the O.A. deals with the issue of grant of pay scale to the Superintendent of Central Excise & Customs on par with their counter part in CBI/IB. For reasons of clarity and cogency, it is relevant to quote the letter in verbatim as under:

“Subject: Compliance of order dated 25.01.2010 of Hon'ble Central Administrative Tribunal, Cuttack Bench in O.A.No.181/2006 filed by the All India Federation of Central Excise Gazetted Officers, Bhubaneswar.

WHEREAS, the All India Federation of Central Excise Gazetted Officers, Bhubaneswar have filed OA No.181/2006 before Hon'ble CAT, Cuttack Bench, Cuttack with the following prayers:

- (a) This Hon'ble Tribunal may be pleased to direct the respondents to grant the pay scale of Rs.8000-275-13,500/p to the cadre of Superintendent of Central Excise and Customs w.e.f. 01.01.96 and the pay scale of Rs.10,000-325-15,200 to those Superintendent who have been awarded second financial upgradation under ACP scheme with effect from -09.08.99.
- (b) This Hon'ble Tribunal may be pleased to direct the respondents to grant all the consequential reliefs with arrear of pay and interest.
- © Appropriate direction may be given to pay the differential arrear within the time stipulated by the Hon'ble Tribunal.

- (d) Any other appropriate order be passed or direction be made which deems just and proper.
2. The CAT vide order 25/01/2010 has observed that more often functions of two posts may appear to be the same or similar, but there may be difference in degree in the performance. The quantity of work may be the same but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the executive wing of the Government. It must be determined by expert bodies like pay commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts.
 3. AND WHEREAS, vide Order dated 25.01.2010 the Cuttack Bench of CAT direction was issued to the Respondent No.3 to consider and dispose of the said representation under Annexure-A/10 at this stage within a stipulated which is fixed by the end of March, 2010 and communicate the result thereof.
 4. In pursuance of the aforesaid directions of the Hon'ble CAT, Cuttack Bench, Cuttack order dated 25.01.2010, in the O.A.No.181/2006 the question of retrospective revision of the pay scale of the Superintendents of Customs and Central Excise with that of Dy.S.P. of CBI w.e.f. 1.1.1996 has been considered in consultation with Department of Expenditure, taking into account the contents of Applicants' representation dated 27.04.05, the judicial pronouncements quoted therein and the observation of Hon'ble CAT in their order dated 25.01.2010.
 5. The points raised by the Applicants in their representation dated 27.04.2005 in support of their claim for parity with the officers of CBI/IB and the supporting judgment relied upon have been considered carefully. It has been observed that the demand of the Superintendent for grant of higher pay scales of Rs.8000-13500/- at par with the Dy.SP of CBI has already been examined by the 6th CPC

in para 7.15.17. These recommendations are reproduced below:

- (i) "7.15.17: Higher scale of Rs.8000-13,500/- has been sought for the posts of Appraiser/Superintendents/Income Tax Officer/equivalent in CBEC and CBDT. The higher scale has been demanded on the ground that these posts are comparable with Deputy Superintendents of Police in CBI who are already in the scale of Rs.8000-13,500/-. It is observed that the Firth Central Pay Commission had specifically noted that no relativity could be established between executive posts in Income Tax and Customs vis-à-vis those existing in CBI. Although the recommendation was made with reference to the post of Inspector, the same cannot but hold true for the next higher posts in the hierarchy of these organizations. Further, the pay scale of Rs.8000-13,500/- is the entry pay scale for a Group A posts of Assistant Commissioner/equivalent. The post of Assistant Commissioner is a promotion post for Superintendents/Appraisers/ITOs. Etc. Therefore, even otherwise, this scale cannot be granted".
- (ii) Further, the retrospective revision of the pay scales of Executive post of CBEC & CBDT w.e.f. 01.01.1996 has also not been accepted by the 6th CPC in their recommendation contained in para 7.15.16 reproduced below:

"A demand has also been made for allowing the scale of Rs.6500-10,500 in case of Inspectors/equivalent and of Rs.7500-12000 in case of Appraiser/Superintendents/Income tax Officers/Equivalent retrospectively from 1.1.1996. The Commission as a general rule is

not considering demands seeking retrospective applications of some or the other Order unless a clear cut and manifest anomaly that cannot be corrected other than through such retrospective revision is made out. Such is not the case here. The demand cannot, therefore, be considered”.

Therefore, Sixth CPC have not accepted retrospective upgradation of the pay scale of the executive post CBDT/CBEC”.

3. The Respondents have relied upon the judgment of the Hon’ble Supreme Court in State of Punjab & Ors. vs. Jagjit Singh & others [(2017) 1 SCC 148], in which the Hon’ble Supreme Court has emphatically held that persons holding the same rank/designation (in different Departments) without having dissimilar powers, duties and responsibilities can be placed in different scales of pay and cannot claim the benefit of the principle of “equal pay for equal work” and that the claimants must prove that the said posts occupied by them require them to discharge equal work of equal value as the reference post.

4. After hearing the learned counsels from both the sides and perusing the documents submitted by them, we are of the view that the points of law and the facts in the present O.A. are similar to O.A.No.292 of 2011 disposed of on 02.11.2017. The relevant paras of our order of the same Bench are quoted hereunder.

“14. An analysis of the above clearly shows that there has been proper application of mind on the part of the concerned authorities and a conscious decision has been taken by the Government to avoid similar demands from

others. Certain benefits should be conferred after due deliberation with effect from a particular date. We have taken into account the case laws cited by the applicants and the respondents. We have also carefully examined the applicability of those case laws in the present case. On one hand it is the duty of the Government to correct any anomaly in the fixation of scale of pay for its employees. On the other hand it is for the Government to decide the date from which orders granting higher scales of pay have to be given effect to. The Hon'ble Supreme Court in a catena of judgment as cited in Paragraph-3 above has repeatedly stressed that the question of parity of pay and the decision of implementation of the recommendations of Pay Commission etc. are to be decided by expert bodies after taking into account various aspects such as the nature of duties and responsibilities. The overall repercussions on the Government exchequer and the comparative and competitive demands of various categories of employees are also primary considerations which the Government have to take into account while granting the benefits of fixation of pay. The Hon'ble Supreme Court in ***State of West Bengal vs. Subash Kumar Chatterjee & Ors.*** [(2011) 1 SCC(L7S) 785] pronounced on 17.08.2010 has cogently and vehemently summed up the position on this issue as under:

“13. This Court time and again cautioned that the court 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. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. Even the recommendations of the Pay Commissions are subject to acceptance or rejection, the Courts cannot compel the State to accept the recommendations of the Pay

Commissions though it is an expert body. The State in its wisdom and in the furtherance of its valid policy may or may not accept the recommendations of the Pay Commission [See: Union of India v. Arun Jyoti Kundu and State of (2007) 7 SCC 472 Haryana & Anr. Vs. Haryana Civil Secretariat Personnel Staff Assn.]. It is no doubt, the constitutional courts clothed with power of judicial review have jurisdiction and the aggrieved employees have remedy only if they are unjustly treated by arbitrary State of action or inaction while fixing the pay scale for a given post.

26. Yet another question that arises for our consideration is whether a writ of mandamus lies compelling the State to act contrary to law ? The State Government having accepted the recommendations of the successive Pay Commissions gave effect to those recommendations by framing statutory rules being ROPA Rules and scales of the employees have been accordingly fixed. The respondents did not challenge the vires of the said Rules under which they were entitled to only a particular scale of pay. The State Government is under obligation to follow the statutory rules and give any such pay scales as are prescribed under the statutory provisions. Neither the Government can act contrary to the rules nor the Court can direct the Government to act contrary to rules. No Mandamus lies for issuing directions to a Government to refrain from enforcing a provision of law. No court can issue Mandamus directing the authorities to act in contravention of the rules as it would amount to compelling the authorities to violate law. Such directions may result in destruction of rule of law. In the instant case, the impugned order of the High Court virtually compelled the State to give pay scales contrary to statutory rules

under which pay scales of the employees are fixed. The decision of the Chief Engineer being contrary to ROPA Rules, 1998, cannot be enforced even if such a decision was taken under the direction of the Administrative Tribunal. The orders of the Tribunal as well as of the High Court suffer from incurable infirmities and are liable to be set aside”.

15. Taking the above facts and case laws into consideration, we are of the view that it is for the Government to decide about the relative merits of the demands raised by various employees and their Associations and to take a conscious and reasoned decision on the scale of pay to be adopted for various employees, parity between various categories of employees and the dates from which the benefit of pay fixation is to be given. In view of the above, we hold that the order passed by the CBEC dated 9.2.2010 has considered the various aspects of the demand raised by the applicants and in the background of the history of the recommendations of different Expert Bodies, has rightly come to the conclusion that the demand raised by the applicants for retrospective implementation of parity in pay scale on par with Inspectors of CBI/IB is unreasonable and is likely to set up a wrong precedent. We, therefore do not see any reason to interfere with the impugned order dated 9.2.2010.
16. The O.A. is accordingly dismissed as devoid of merit. No order as to costs.

5. The central issue in the present O.A. is also about grant of pay scales to the Superintendent of Central Excise & Customs on par with their counter-parts in CBI/IB with retrospective effect. The ratio adopted in our order dated 02.11.2017 in O.A.No.292 of 2011 would be applicable in the present case. We

are of the view that it is for the Government to decide the issue of parity in pay scales and the date of grant of such pay scales taking into account the nature of work and the job responsibilities of various levels of officers and employees and the Government is duty-bound to consider the broader implication of grant of different pay scales and the effective date of such sanction to its vast army of employees. Adopting the ratio followed by our order dated 02.11.2017 in O.A.No.292 of 201, we find no reason to interfere with the impugned order and to grant the relief to the applicants as prayed for.

6. Under the circumstances, the O.A. is dismissed as devoid of merit. No order as to costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

(S.K.PATTNAIK)
MEMBER(J)

BKS

Pre-delivery order in O.A.No.624 of 2011 is placed below
for kind perusal and concurrence.

MEMBER(A)

HON'BLE MEMBER(J)

SIMILAR MATTER IN O.A.No.292 of 2011

The first applicant in the present O.A. is the All India Association of Central Excise Gazetted Executive Officers, Bhubaneswar Unit. The second applicant is the All India Central Excise Inspectors' Association, Odisha Circle, Bhubaneswar. Applicant Nos. 3, 4 and 5 are individuals who are working as Superintendents and Inspector, respectively, of Central Excise, Customs and Service Tax, Bhubaneswar-I Commissionerate, Bhubaneswar. They are aggrieved by the non-fixing of their scale of pay on par with their counterparts in other Departments, like, Intelligence Bureau (I.B.) and Central Bureau of Investigation(CBI) etc. and have claimed such parity from the date that disparity arose. They have been representing on this issue from time to time. They had also filed O.A.No.180 of 2006 before this Tribunal which disposed of the matter on 20.11.2009 with the following direction:

“It appears from the record that the applicants submitted their grievance under Annexure-A/6 in a logical manner which was turned down by the Respondents under Annexure-A/7 without disclosing any reason except stating that the pay scale sought by them cannot be granted to them retrospectively ue to avoidable repercussion. But what is the avoidable repercussion has not been disclosed in the order of rejection yet in the counter they have taken the grounds distinguishing the work of both the posts. If the nature and level of responsibility of both the posts are not the same, it is not known as to how the same scale of pay has been granted to the applicants at a later date. In view of the above, in our mind the entire matter needs reconsideration by the Respondents afresh

by taking into consideration the grounds put forth by the applicants in the representation under Annexure-A/6 and various decisions relied on by them on the subject which we hereby direct the Respondents to do within a period of 60(sixty) days from the date of receipt of this order and pass a reasoned order”.

In compliance of the direction of this Tribunal, the C.B.E.C. had passed an order on 9.2.2010 in F.No.A/26017/65/2006-Ad.IIA (A/9) rejecting enhancement of pay scale of Inspectors of Central Excise & Customs with effect from 1.1.1886/1.1.1996. Para-9 of the said order reads as follows:

“9. The grounds put forth by the Applicants’ Association in their communication dated 27.04.05 have been further considered in the light of the following factors:

- i) The Sixth CPC, an expert Body in these matters have already considered the retrospective revision for Executive post of CBEC & CBDT vide its Para No.7.15.16. These recommendations are reproduced below:
 “A demand has also been made for allowing the scale of Rs.6500-10500 in case of Inspectors/equivalent and or Rs.7500-12000/- in case of Appraisers/Superintendents/Income Tax Officers/Equivalent retrospectively from 1.1.1996. The Commission as a general rule is not considering demands seeking retrospective applications of some or the other Order unless a clear cut and manifest anomaly that cannot be corrected other than through such retrospective revision is made out. Such is not the case here. The demand cannot, therefore, be considered”.
 Therefore, Sixth CPC have not accepted retrospective upgradation of the pay

scale of the executive posts of
CBDT/CBEC.

- ii) In Arun Jyoti Kundu & Ors. vs. Union, Appeal (Civil) 2468-2469 of 2005, the Apex Court has observed “when a concession was being extended as distinct from implementing a specific recommendation of the pay commission with reference to a particular point of time, it is open to the Government to provide that the benefit it proposes to give, would be available only from a notified date”.
- iii) In a number of cases, upgraded pay scales have been granted prospectively by the Government. The acceptance of instant proposal will attract the demands from for grant of higher pay scales retrospectively and the financial implication would be quite high”.

This order of the C.B.E.C. was communicated to the applicants in the Office Order No.I(10)(4)/LAW/BBSR-II/2006/4233A dated 05.03.2010 by the Chief Commissioner, Central Excise, Customs & Service Tax, Bhubaneswar. The applicants have challenged both the abovementioned orders and have filed this O.A. praying for the following reliefs:

- i) The Office Order No.I(10)(4)/LAW/BBSR-II/2006/4233A dated 05.02.2010 issued by the respondent no.3 along with the orders F.No.A-26017/65/2006-Ad.IIA dt. 09.02.2010 issued under the authority of Government of India (Annexure-A/9) be quashed declaring the same as illegal and not sustainable in the eye of Law.
- ii) This Hon’ble Tribunal may be pleased to direct the respondents to award the pay scales of Rs.2000-3200/- w.e.f. 01.01.1986 and Rs.6500-10500/- w.e.f. 01.01.1996 to the cadre of Inspector of Central Excise &

Customs with all service benefits and appropriate direction be also made to pay the differential arrear with interest within the time to be stipulated by this Hon'ble Tribunal.

- iii) Any other appropriate order be passed or direction be made which deems just and proper and this O.A. be allowed with cost.

2. The grounds on which the applicants have prayed for the reliefs are as follows:

- i) Before the implementation of the 4th CPC, there were two scales of pay, i.e. Rs.500-900 for Inspectors (Ordinary Grade) and Rs.550-900 for Inspectors (Senior Grade) of Central Excise and Customs. The 4th CPC recommended the merger of Inspectors (OG) and Inspectors (SG) in Central Excise Department and a common scale of pay Rs.1640-2900/- was accepted for the Inspectors of Central Excise & Customs. Similarly, pay scale of Rs.1640-2900 was recommended and implemented for the post Inspectors of CBI & IB. The Central Government enhanced the pay scale of Inspectors of CBI/IB and the Delhi Police to Rs.2000-3200 by a notification dated 22.9.1986 with effect from 1.1.1986. The 5th CPC examined the various aspects of the comparative position of the Inspectors of Central Excise & Customs and Inspectors of CBI/IB and recommended the common scale of pay of Rs.5500-9000/- to the above two cadres. The Government of India, however, fixed the pay scale of Inspectors of CBI/IB at Rs.6500-10500 with effect from 1.1.1996, but allowed pay scale of Rs.5500-9000 to the Inspectors of Central Excise & Customs. This was an act of hostile discrimination both at the time of 4th & 5th CPCs. The matter was agitated by the Executive Officers' Staff Federation, the Inspectors of Central Excise & Customs through representations and Council Meetings. Since favourable decision was not given to them, they filed O.A.No.541 of 1994 before the C.A.T., Jabalpur Bench praying for direction to grant the pay scale of Rs.2000-3200 to the Inspectors of Central

Excise & Customs with effect from 1.1.1986 as granted to the Inspectors of CBI/IB. The O.A. was disposed off by the CAT, Jabalpur Bench by order dated 24.2.1995 with a direction to the respondents to refer the matter to the 5th Pay Commission and to place the Inspectors of Central Excise & Customs in the pay scale of Rs.2000-3200 with effect from the date the Inspectors of CBI/IB were placed in the said pay scale and pay arrears in the light of the 5th Pay Commission's findings. As a result of the reference made by the Government, the 5th CPC decided to place the Inspectors of CBI/IB in the pay scale of Rs.1640-2900/- instead of Rs.2000-3200/-. The Government did not accept the recommendations of the 5th CP in respect of Inspectors of CBI/IB and allowed them the scale of Rs.6500-10500. An Expert Committee was formed by the Finance Ministry by Notification dated 1.7.1998 which recommended that the Inspectors of Central Excise & Customs should be placed on par with the Inspectors of CBI/IB whose duties and responsibilities are comparable and should be given the scale of Rs.2000-3200. However, the Committee while recommending the scale of Rs.2000-3200 (pre-revised) observed that they need not be given the status of Group 'B'. The All India Federation of Central Excise Executive Officers along with one K.P.S.Rai, Inspector of Central Excise & Customs again approached the C.A.T., Jabalpur Bench by filing O.A.No.45 of 2000. On 22.03.2002, the CAT, Jabalpur Bench disposed off the said O.A. with the following observations:

- "8. In the result, we find the action of the Government to deny the applicants pay scale at par with those of Inspectors of CBI/IB as violative of Articles 14 and 16 of the Constitution of India. However, we refrain from ordering accord of pay scale to the applicants and in this view of the matter the O.A. is disposed of with the direction to the respondents to re-consider the claim of the applicants for being accorded the pay scale at par with the Inspectors of

CBI and IB having regard to the observations made above by us and to take a final decision by passing a detailed and speaking order, within a period of three months from the date of receipt of a copy of this order. No costs”.

- ii) On 21.4.2004, the Ministry of Finance, Department of Expenditure issued Office Memorandum F.No.6/37/98-IC granting the scale of Rs.6500-10500 to the Inspectors of Central Excise with immediate effect. However, the demand of the Officers’ Federation to get the pay scale on par with the Inspectors of CBI/IB with effect from 1.1.1986/1.1.1996 was not acceded to. Subsequently, O.A.No.473 of 2003 was filed in the C.A.T., Cuttack Bench which was disposed of on 11.01.2005 with the observations that it is the applicants who are to find out the remedies available to them under the relevant service rules to ventilate their grievance, if any, before the authorities competent in the Department in this regard. The O.A. was disposed of for having become infructuous. After the passing of the Office Memorandum dated 21.4.2004, a representation submitted by the General Secretary of All India Federation of Central Excise Gazetted Executive Officers, Bhubaneswar Unit dated 27.4.2005 was rejected by the C.B.E.C., Ministry of Finance, Department of Revenue on 2.8.2005 on the ground that the demand of upgradation of pay scale of rs.2000-3200/- retrospectively with effect from 1.1.1986 and the pay scale of Rs.6500-10500/- with effect from 1.1.1996 cannot be allowed retrospectively due to avoidable repercussion. It was also observed in letter dated 2.8.2005 that the Government after careful consideration of all the relevant facts involved from a prospective date has allowed to the pay scale of Rs.6500-10500 despite the fact that the Fifth Central Pay Commission had not recommended upgradation of pay scales of the concerned post. The All India Federation of Central Excise Gazetted Executive Officers had approached CAT, Cuttack Bench in O.A.No.180 of 2006 which disposed of the said O.A. by order dated 20.12.2009 with the following observations:”
“It appears from the record that the Applicants submitted their grievance under Annexure-A/6 in a

logical manner which was turned down by the Respondents under Annexure-A/7 without disclosing any reason except stating that the pay scale sought by them cannot be granted to them retrospectively due to avoidable repercussion. But what is the avoidable repercussion has not been disclosed in the order of rejection yet in the counter they have taken the grounds distinguishing the work of both the posts. If the nature and level of responsibility of both the posts are not the same, it is not known as to how the same scale of pay has been granted to the applicants at a later date. In view of the above, to our mind the entire matter needs reconsideration by the Respondents afresh by taking into consideration the grounds put forth by the Applicants in the representation under Annexure-A/6 and various decisions relied on by them on the subject which we hereby direct the Respondents to do within a period of 60(sixty) days from the date of receipt of this order and pass a reasoned order”.

- iii) It appears that the Ministry of Finance, Department of Revenue, C.B.E.C. in pursuance of the direction of this Tribunal in O.A.No.180 of 2006 passed an order F.No.A-26017/65/2006-Ad.IIA dated 9.2.2010 stating its position that in a number of cases upgraded pay scales have been granted prospectively by the Government. The acceptance of the proposal for retrospective implementation of the enhanced pay scale for the Inspectors of Customs & Excise will attract demands from others for grant of higher pay scales retrospectively and the financial implication will be quite high. Aggrieved by this order dated 9.2.2010, applicants have filed this O.A. praying for the reliefs as mentioned in Para-1 above.
- iv) The Respondents have as a matter of principle agreed with the observations in the two judgments passed by the C.A.T., Jabalpur Bench, the Department of Law has also in principle accepted that there is nothing wrong in the judgment passed by the CAT, Jabalpur Bench and therefore, the Inspectors of Central Excise & Customs are entitled to the higher scale of pay on par with Inspectors of CBI/IB. The net result of the elaborate exercise and the recommendations of the High Power Committee is to remove the disparity from the date it arose and therefore, there is no scope for the Government not to allow the higher scale of pay from the retrospective date when the anomaly

actually arose. The applicants' claim that the Hon'ble Supreme Court and various High Courts as well as C.A.T. have settled the principle that once the appropriate authority comes to the conclusion that the claim of parity has to be granted, there is no reason for showing different dates for giving effect to that. The revised pay scale should be given from the same date as in case of other category of employees with whom the parity is established. Not allowing the higher scale of pay from that date on which the similarly situated employees were given the same scale amounts to discrimination and is not sustainable in the eyes of law.

3. Respondents in their counter-reply filed on 15.11.2011 have contested the claim of the applicants. While tracing the history of the dispute, the respondents have submitted that individual applicants were not parties to the O.As earlier filed and therefore, do not have any *locus standi* in the matter. They cannot be considered as aggrieved parties to the decision contained in the Office Order dated 9.2.2010 since the said order dated 9.2.2010 was addressed to Shri L.N.Mishra,, General secretary, All India Federation of Central Excise, Gazetted Executive Officers, Bhubaneswar Unit who is not a party in the present O.A. The C.A.T., Cuttack Bench vide its order dated 20.11.2009 had not accepted the contentions of the applicants in O.A.No.180 of 2006, but only directed the respondents to reconsider the entire matter afresh within a period of sixty days from the date of receipt of the order. The Nagpur Unit of the Applicants' Association had moved the C.A.T., Jabalpur Bench through O.A.No.442 of 2005 for similar relief and the CAT, Jabalpur Bench dismissed the same. Being aggrieved by the order of disposal, the applicants filed a Writ

Petition before the Hon'ble High Court of Jabalpur which was still pending at the time of filing of the counter and the matter was *sub judice*. The Hon'ble High Court had not stayed the operation of CAT's order in O.A.No.441 of 2005 which is in favour of the Respondent-Department and the absence of a stay still remains in force. The Respondents claim that the order of the C.B..E.C. dated 9.2.2010 is a reasoned order and has taken into account all necessary aspects of the matter and therefore, need not be interfered with. The demand of the applicants for retrospective implementation of the upgraded pay scale with effect from 1.1.1986/1.1.1996 is unreasonable and therefore, the O.A. deserves to be dismissed.

The Respondents have cited the judgment of the Hon'ble Supreme Court in the case of State of ***U.P. vs. U.P. Sales Tax Officers' Grade-II Association (AIR 2003 SC 2305)*** in which it has been held that the decisions of Expert body like Pay Commission are not ordinarily subject to judicial review, because, pay fixation is an exercise requiring going into various aspects of the posts held in various services and the nature of duties of the employees. The same view has also been held by the Hon'ble Supreme Court in ***Secretary, Finance Department & Ors. vs. West Bengal Registration Services Association (AIR 1992 SC 1203)***. In ***Onkar Nath vs. Delhi Administration (AIR 1977 SC 1108)***, the Hon'ble Supreme Court had ruled that equation of post is not a duty which the High Court was

competent to carryout in proceedings under Article 226 and the Supreme Court has no wider powers or that it can do it with greater facility what a High Court cannot do when exercising its writ issuing jurisdiction. In ***R.S.Makashi vs. I.M.Menon (AIR 1982 SC 10)***, the Hon'ble Supreme Court held that it is preliminarily for the Government or the Executive concerned to decide as a matter of policy how the equation of post should be effected. The Courts will not interfere with such a decision unless it is shown to be arbitrary, unreasonable or unfair. In ***Joint Action Council of Service Doctors Organization vs. Union of India [1996 SCC (L&S) 568]***, the Hon'ble Supreme Court held that the recommendations of a High Power Committee like Pay Commission are not rejected without cogent reasons. In ***State of U.P. vs. J.P.Chaurasia (AIR 1989 SC 19)***, the Hon'ble Supreme Court had laid down the principle that equation of posts or equation of pay must be left to the Executive Government . It must be determined by the Expert Bodies like Pay Commission and the Court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration. In the case of ***Geological Survey of India vs. R.Yadaiah (AIR 2000 SC 3551)***, the Hon'ble Supreme Court has held that determination of pay scale and fitness of officers for particular post and pay scale thereof are not to be ordinarily gone into by Courts or Tribunals and it is better to leave the matter to be dealt with by Expert Bodies like

Pay Commission unless the matter is infested with some apparent error. The Respondents have also cited the judgment of the Hon'ble Supreme Court in ***State of Haryana vs. Jagroop Singh [200(5) SLR 645]*** in which it was held that a decision from which date the modification/revision of pay scale to take effect is the discretion of the Government. Similarly in ***State of Haryana vs. Rai Chand Jain (AIR 1997 SC 2691)***, it has been held by the Hon'ble Supreme Court that it is for the Government to decide as to from which date arrear should be granted to the employees.

4. The applicants have filed a rejoinder on 25.1.2017 in which they have reiterated their earlier stand that the Department having agreed to grant the similar pay scale to the Inspectors of Central Excise & Customs on par with Inspectors of CBI/IB by their order dated 21.4.2004 should also grant similar pay scales with retrospective effect from 1.1.1986 and 1.1.1996 when the Inspectors of CBI/IB enjoyed a higher scale of pay. Having established that both the posts are of equal status and carrying out similar duties and responsibilities, the respondents cannot deny equal pay to a group of employees compared to the other group. Such an act is illegal and discriminatory. The applicants have contested the claim of the respondents that they have no *locus standi* in the matter. According to them, since the matter is of general interest to all the Inspectors of Central Excise & Customs, the order passed in

O.A.No.437 of 2003 cannot be treated as a bar for ventilating the grievances of the employees as a whole. The entire process of ventilating the grievances of Inspectors of Central Excise & Customs is a continuing process which started since 1986 and the applicants are entitled to the upgraded pay scales as were prevailing on 01.01.1986 and 01.01.1996.

5. We have heard the learned counsels for both the sides and perused the documents submitted by them. The issue to be decided in the present O.A. is whether the applicants will be entitled to the upgraded pay scales on par with the Inspectors of CBI/IB retrospectively from 1.1.1986 and 1.1.1996. It is pertinent to note that the issue regarding parity in pay scale is no longer *res integra*. The Respondents have already passed orders on 21.4.2004 granting the same pay scale on par with the Inspectors of CBI/IB to the Inspectors of Central Excise & Customs. In their orders dated 5.3.2010 and dated 9.2.2010, they have rejected the demand of the applicants for retrospective implementation of the upgraded pay scale with effect from 1.1.1986 and 1.1.1996. The applicants have challenged the Office Order dated 5.3.2010 communicating the order of the CBS.E. dated 9.2.2010 and have prayed for direction to the respondents for awarding the pay scale of Rs.2000-3200 with effect from 1.1.1986 and Rs.6500-10500 with effect from 1.1.1996 at par with Inspectors of CBI/IB.

6. From a perusal of the history of the demand made by the applicants certain facts emerge which have a clear impact on the issue raised before us. The High Power Committee consisting of the chairman, CBDT, Chairman, C.B.E.C., Member (P&V), CBDT, Member (P&V), C.B..E.C. constituted in July, 1998 made the following observations:

“The Committee felt since there had been no alteration in the duties of the Inspectors falling in the two categories, it is reasonable to expect that the Inspectors of CBEC/CBDT should have been given a replacement scale of Rs.2000-3500/- on par with the Inspectors of CBI/IB whose duties and responsibilities are comparable. There has been no reduction or diminution in the duties and responsibilities of the executive staff in CBEC/CBDT. In fact they are engaged in revenue collection, detection and investigation of economic offences, search, seizures, etc. involving considerable risk to their persons. The Committee therefore, considered and decided to recommend the scale of Rs.2000-3500/- (Pre-revised) but felt that while recommending the scale of Rs.2000-3500, they need not be given the status of Group-B”.

7. The 4th CPC had recommended the merger of Inspectors (OG) and Inspectors (SG) in Central Excise & Customs with a common scale of Rs.1640-2900/-. Although the same scale of pay was recommended for the posts of Inspectors CBI/IB, subsequently the Central Government enhanced the pay scale relating to Inspector CBI, IB and Delhi Police to Rs.2000-3200/- with effect from 1.1.1986. The 5th CPC again recommended another pay scale to the Inspectors of Central Excise & Customs and the Inspectors of CBI/IB. But the Government granted a

higher pay scale to the Inspectors of CBI/IB at Rs.6500-10500 with effect from 1.1.1996.

8. At various times, this issue has been agitated in the CAT.

In O.A.No.541 of 1994, CAT, Jabalpur Bench had observed as under:

“3. The learned counsel for the applicants have strenuously contended before us that the duties and responsibilities of Inspectors, Customs and Central Excise are no less arduous than the duties and responsibilities of the Inspectors of Central Bureau of Investigation. They have very firmly contended before us that their duties and responsibilities are far more arduous than the duties and responsibilities of the Inspectors of Central Bureau of Investigation or Intelligence Bureau etc. A reading of the report of the IVth Pay Commission does provide an inkling that the Inspectors, Customs and Central Excise were intended to be brought at par with the Inspectors, Central Bureau of Investigation. However, since IVth Pay Commission has not expressly evaluated the job contents of the above said two category of employees, we consider proper to withhold our hands in regard to any comparative assessment. All the same, we do not find any justification for the Govt. Of India not to specifically refer the issue to Vth Pay Commission with full justification as to why the recommendations of the IVth Pay Commission for parity of pay of the above two categories of Inspectors was not adhered to. It is still unfortunate that reasons have not been disclosed to us at any stage during the proceedings pending for last six months. We have therefore every reason to assume that there does not exist cogent reasons for creating a disparity in the pay scale of the above two categories of Inspectors. We have therefore inclined to grant the relief prayed for but taking into account the fact that equalization of pay is the domain of an Expert Body, we are restraining ourselves to adjudicate the matter. In the circumstances,

we are of the opinion that the applicants have a strong case for consideration of parity of pay by the Vth Pay Commission. Since the Govt. of India has failed to refer the matter to the Pay Commission despite the grievance ventilated by the applicants, we consider it proper to issue a mandamus.

4. In the result, Union of India is here by mandated to issue a notification within thirty days of the communication of the judgment referring the matter to the Vth Pay Commission disclosing its stand as to why the Inspectors of Central Bureau of Investigation and Intelligence Bureau have been granted higher pay than the Inspectors, Customs and Central Excise for consideration of the Vth Pay Commission. The Union of India is further directed to place the Inspectors, customs and Central Excise in the pay scale of Rs.2000-32--- with effect from the date Inspectors of Central bureau of Investigation were placed in the said scale and pay arrears in the light of the Vth Pay Commission's findings a result of the reference made by the Govt. The petition is disposed of without any order as to costs accordingly".

9. On the other hand, in O.A.No.45 of 2000, CAT, Jabalpur Bench made the following observations:

- "7. As regards the nature of duties and discharge of liability, educational qualifications and mode of recruitment, we find from the record that the Ministry of Finance, Department of Revenue by their letter dated 27.10.95 wrote to the 5th CPC that the duties and responsibilities performed by the applicants are more arduous and hazardous than the Inspectors of Delhi Police and CBI and recommended parity in the pay scale. Subsequently on agitation by the applicants a HPC has been constituted by none else than the Finance Minister, which include the Chairman, CBEC, CBDT, Joint Secretary of both the Boards etc. They recommended accord of higher pay scale at par with CBI and IB to the applicants and this has been

approved by the Secretary, Revenue as well as the Minister for State who was also holding the charge of Ministry of Personnel. In a way the recommendations have been approved and cleared but have not been acceded to by the Department of Expenditure. The contention of the respondents by referring to the recommendations in para 66.118 and 66.119 is that the applicants have not been found comparable with that of Inspectors of Police Organization, we find that the same does not inter alia, include the BIC and IB and what has been referred in the Delhi Police and the CBI and IB does not come within the purview of the Police Organization and cannot be treated as such. Apart from it by their further recommendation placing the Inspectors in IB/CBI in the replacement scale of Rs.1640-2900 the anomaly which has been created in the year 1986 has been removed. In our considered view this recommendation after going into all the aspects and factors for determination of pay scale, i.e., eligibility, educational qualification, nature of duties and responsibilities as well as professional skills the applicants Inspectors of Customs and Excise have been found at par with the Inspectors of CBI and IB. The recommendation of expert body also places these two sets of employees in parity in all respects. Subsequent decision of the Government by disagreeing with the recommendations of the expert body as far as CBI and IB is concerned and recommending the pay scale of Rs.2000-3200 to the Inspectors of CBI and IB vide their letter dated 6.10.97 certainly creates an anomaly in the pay scale of two equally placed sets of employees. This decision of the government is without any logic, rational and shows hostile discrimination between the two sets of employees having been treated alike by the 5th CPC. In our considered view the expert body, i.e., HPC set up by the Ministry of Finance has recommended the revision of pay scale of the applicants at par with the Inspectors of CBI and IB and the same has been accepted by the Ministry of Finance there was no reason for the Government to

have taken a contrary view by rejecting their request without recording any justified reasons. The stand of the Government to adopt restructuring in no way would be relevant for upgradation of their pay scale at par with their counter-parts in CBI/IB. As per the ration of P.V.Hariharan's case (supra) the Tribunal can interfere in the matter of pay scale if there existed a hostile discrimination between the two sets of employees similarly situated, without any justification.

8. In the result, we find the action of the government to deny the applicants pay scale at par with those of Inspectors of CBI/IB as violative of Articles 14 and 16 of the Constitution of India. However, we refrain from ordering accord of pay scale to the applicants and in this view of the matter the O.A. is disposed of with the direction to the respondents to reconsider the claim of the applicants for being accorded the pay scale at par with the Inspectors of CBI and IB having regard to the observations made above by us and take a final decision bypassing a detailed and speaking order, within a period of three months from the date of receipt of a copy of this order. No costs".

10. In O.A.No.473 of 2003, the CAT, Cuttack Bench had dismissed the O.A. with the following observations:

- "6. The learned counsel for the applicant, in course of his submission repeatedly urged before us that whereas their grievance is that the pay scales so revised should be given effect from 1.1.1986/1.1.1996, the said order revising the pay scales having made effective only with effect from 21.4.2004, the applicants should be given liberty to represent before the Respondents with regard to the date for implementation of the revised pay scales. We are not inclined to express any opinion on this aspect of the matter. It is the applicants, who are to find out the remedies available to them under the relevant service rules to ventilate their

grievance, if any, before the authorities competent in the Department in this regard”.

11. The issue was again agitated in O.A.No.180 of 2006 before the CAT, Cuttack Bench and the Tribunal had passed the following order:

“6. Having given in-depth consideration to various arguments advanced with reference to the respective pleadings of the parties, perused the materials placed on record. In regard to the stand taken by the Respondents that once OA filed by the Applicant No.1 with the prayers made in this OA has been dismissed by this Tribunal for becoming infructuous, this OA is not maintainable we may state that this proposition of the Respondents does not sound good in view of the liberty granted by this Tribunal for agitating their grievance before the authorities for grant of the pay scale retrospectively and after rejection of their representation they have rightly approached this Tribunal in the present OA. There is no question of any acquiescence. There is nothing wrong with the same nor does the law of res judicata have any application in this case. Similarly the ground of limitation taken by the Respondents has no application because the cause of action in this case arises only after letter of rejection under Annexure-A/7 of the representation submitted by the applicants with the leave of this Tribunal. Now coming to the merit of the matter, it is noted that law is well settled in a plethora of judicial pronouncements that grant of pay to a particular post/grade is a matter within the domain of the executive and no Tribunal is empowered to interfere in the same. Further it is well settled law that Pay Commission recommendations can be accepted or rejected by Government pursuant to its policy. No Court/Tribunal can direct the Government to accept the recommendations and implement the same from the date recommended in that behalf – Union of India v. Arun Jyoiti Kundu and others (2007) 2 SCC

(L&S) 695. At the same time, it is well propounded principle of law that the state action indisputably must be fair and reasonable. No arbitrariness on its part is a significant fact in the field of good governance. The direction conferred upon the state yet again cannot be exercised whimsically. It appears from the record that the Applicants submitted their grievance under Annexure-A/6 in a logical manner which was turned down by the Respondents under Annexure-A/7 without disclosing any reason except stating that the pay scale sought by them cannot be granted to them retrospectively due to avoidable repercussion. But what is the avoidable repercussion has not been disclosed in the order of rejection yet in the counter they have taken the grounds distinguishing the work of both the posts. If the nature and level of responsibility of both the posts are not the same, it is not known as to how the same scale of pay has been granted to the applicants at a later date. In view of the above, to our mind the entire matter needs reconsideration by the Respondents afresh by taking into consideration the grounds put forth by the Applicants in the representation under Annexure-A/6 and various decisions relied on by them on the subject which we hereby direct the Respondents to do within a period of 60(sixty) days from the date of receipt of this order and pass a reasoned order”.

12. The impugned order dated 9.2.2010 as communicated vide letter dated 5.3.2010 has been passed in compliance with the order of this Tribunal dated 20.11.2009 in O.A.No.180 of 2006. A perusal of the same order reveals that various recommendations of the Pay Commission and the observations of this Tribunal have been taken into consideration. At Para-5 of the order the Department has reiterated that although the

applicants have claimed parity based on the recommendations of the 5th CPC the decision to upgrade their scale of pay with effect from 21.4.2004 was independent of the recommendations of the Pay Commission. Otherwise also the 5th CPC had specifically stated that the two categories are not comparable. With regard to 6th CPC, the order of the Department reads as follows:

“9. The grounds put forth by the Applicants’ Association their communication dated 27.4.05 have been further considered in the light of the following factors:

- i) The Sixth CPC an expert Body in these matters have already considered the retrospective revision for Executive post of CBEC & CBDT vide its Para No.7.15.16. These recommendations are reproduced below:

“Demand has also been made for allowing the scale of Rs.6500-10500 in case of Inspectors/equivalent and of Rs.7500-1200 in case of Appraisers/Superintendents/income Tax Officers/Equivalent retrospectively from 1.1.1996. The Commission as a general rule is not considering demands seeking retrospective applications of some or the other Order unless a clear cut and manifest anomaly that cannot be corrected other than through such retrospective revision is made out. Such is not the case here. The demand cannot, therefore, be considered”.

13. The said order dated 9.2.2010 specifically states that the acceptance of the proposal of the applicants will attract similar demand from others retrospectively and the financial implication will be quite high. This stand of the Department is

due to the earlier stand of avoidable repercussions in their letter dated 2.8.2005.

14. An analysis of the above clearly shows that there has been proper application of mind on the part of the concerned authorities and a conscious decision has been taken by the Government to avoid similar demands from others. Certain benefits should be conferred after due deliberation with effect from a particular date. We have taken into account the case laws cited by the applicants and the respondents. We have also carefully examined the applicability of those case laws in the present case. On one hand it is the duty of the Government to correct any anomaly in the fixation of scale of pay for its employees. On the other hand it is for the Government to decide the date from which orders granting higher scales of pay have to be given effect to. The Hon'ble Supreme Court in a catena of judgment as cited in Paragraph-3 above has repeatedly stressed that the question of parity of pay and the decision of implementation of the recommendations of Pay Commission etc. are to be decided by expert bodies after taking into account various aspects such as the nature of duties and responsibilities. The overall repercussions on the Government exchequer and the comparative and competitive demands of various categories of employees are also primary considerations which the Government have to take into account while granting the benefits of fixation of pay. The Hon'ble

Supreme Court in *State of West Bengal vs. Subash Kumar Chatterjee & Ors. [(2011) 1 SCC(L7S) 785]* pronounced on 17.08.2010 has cogently and vehemently summed up the position on this issue as under:

- “13. This Court time and again cautioned that the court 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. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. Even the recommendations of the Pay Commissions are subject to acceptance or rejection, the Courts cannot compel the State to accept the recommendations of the Pay Commissions though it is an expert body. The State in its wisdom and in the furtherance of its valid policy may or may not accept the recommendations of the Pay Commission [See: Union of India v. Arun Jyoti Kundu and State of (2007) 7 SCC 472 Haryana & Anr. Vs. Haryana Civil Secretariat Personnel Staff Assn.]. It is no doubt, the constitutional courts clothed with power of judicial review have jurisdiction and the aggrieved employees have remedy only if they are unjustly treated by arbitrary State of action or inaction while fixing the pay scale for a given post.
26. Yet another question that arises for our consideration is whether a writ of mandamus lies compelling the State to act contrary to law ? The State Government having accepted the recommendations of the successive Pay Commissions gave effect to those recommendations by framing statutory rules being ROPA Rules and scales of the employees have been accordingly fixed. The respondents did not challenge the vires of the said Rules under which they were entitled to only a particular scale of pay. The State Government is under obligation to follow the

statutory rules and give any such pay sales as are prescribed under the statutory provisions. Neither the Government can act contrary to the rules nor the Court can direct the Government to act contrary to rules. No Mandamus lies for issuing directions to a Government to refrain from enforcing a provision of law. No court can issue Mandamus directing the authorities to act in contravention of the rules as it would amount to compelling the authorities to violate law. Such directions may result in destruction of rule of law. In the instant case, the impugned order of the High Court virtually compelled the State to give pay scales contrary to statutory rules under which pay scales of the employees are fixed. The decision of the Chief Engineer being contrary to ROPA Rules, 1998, cannot be enforced even if such a decision was taken under the direction of the Administrative Tribunal. The orders of the Tribunal as well as of the High Court suffer from incurable infirmities and are liable to be set aside”.

15. Taking the above facts and case laws into consideration, we are of the view that it is for the Government to decide about the relative merits of the demands raised by various employees and their Associations and to take a conscious and reasoned decision on the scale of pay to be adopted for various employees, parity between various categories of employees and the dates from which the benefit of pay fixation is to be given. In view of the above, we hold that the order passed by the CBEC dated 9.2.2010 has considered the various aspects of the demand raised by the applicants and in the background of the history of the recommendations of different Expert Bodies, has rightly come to the conclusion that the demand raised by the

applicants for retrospective implementation of parity in pay scale on par with Inspectors of CBI/IB is unreasonable and is likely to set up a wrong precedent. We, therefore do not see any reason to interfere with the impugned order dated 9.2.2010.

16. The O.A. is accordingly dismissed as devoid of merit. No order as to costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

(S.K.PATTNAIK)
MEMBER(J)

BKS

