

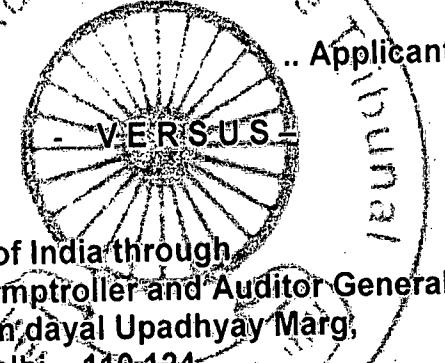
CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

No. O.A. 350/00435/2013

Date of order : 16.08.2018

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Shri Rajeev Ranjan,
s/o Late Dr. Suresh Prasad Singh,
Age 40 years,
Working as Hindi Officer under
Indian Audit and Accounts Department in the
O/o the Principal Director of Commercial Audit &
Ex-Officio Member Audit Board - II,
Old Nizam Palace (First floor),
234/4, AJC Bose Road, Kolkata - 700 020,
Residing at Flat No. A-301, Greenland Park,
295, Kumrakhali, P.O. - Narendrapur,
Sonarpur Station Road, Near Kamalgazi More,
'Kolkata - 700 103.



1. Union of India through
The Comptroller and Auditor General of India,
9, Deen Dayal Upadhyay Marg,
New Delhi - 110 124.
2. The Asstt. Comptroller and Auditor General of India,
9, Deen Dayal Upadhyay Marg,
New Delhi - 110 124.
3. The Secretary,
Department of Expenditure,
Ministry of Finance,
Government of India,
North Block,
New Delhi - 1.
4. Comptroller and Auditor General of India,
9, Deen Dayal Upadhyay Marg,
New Delhi - 110 124.
5. The Secretary,
Department of Personnel and Training,
Government of India,
North Block,
New Delhi - 1.
6. The Secretary,

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Rajbhasha Vibhag (Department of Official Language),
Ministry of Home Affairs,
NDCC-II (New Delhi City Centre Bhawans),
'B' Wing (4th Floor), Jai Singh Road,
New Delhi - 110 001.

.. Respondents

For the Applicant : Mr. B. Bhushan, Counsel

For the Respondents : Ms. R. Basu, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The instant Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

"(a) An order to issue directing the respondents to fix the pay of the applicant in the Grade Pay of Rs. 5400/- in PB-3 with effect from 17.10.2011 in terms of DoE, MoF, OM dated 24.11.2008 and 27.11.2008 under CCS (RP) Rules, 2008 as per the recommendations of 6th CPC and also to pay the arrear with effect from 17.10.2011.
(b) The post of Hindi Officer may be re-designated as Assistant Director (Official Language) in terms of DoE, MoF, OM dated 24.11.2008 and 27.11.2008 and also in terms of Rajbhasha Vibhag OM dated 19.5.2009 and 1.6.2011 and also in accordance with Official Language Policy of the Union of India."

2. Heard Id. Counsel for the parties, examined pleadings and documents on record. The Ld. Counsel for applicants has submitted his written notes of arguments.
3. The case of the applicant, as canvassed by his Ld. Counsel, is that the applicant is holding a Civil Post under the provision of Article 148(5) of the Constitution of India as Hindi Officer in the Indian Audit & Accounts Department under the respondent No. 1, namely, Comptroller & Auditor General of India (CAG) and is presently posted at the office of Principal Director of Commercial Audit, Kolkata. He was promoted from the post of Junior Hindi Translator to Hindi

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Officer vide Office Order No. 132 dated 17.10.2011 in the PB-II of Rs. 9,300-34,800/- and Grade Pay of Rs. 4800/- on and from 17.10.2011.

That, subsequently, the applicant represented to the department for the revised pay scale of Hindi Officer, that is, PB-3 and Grade Pay Rs. 5400/- on the basis of the O.M. dated 24.11.2008 issued by the Ministry of Finance, Department of Expenditure whereby and whereunder it had been mentioned that, "in accordance with the recommendations of the 6th CPC as accepted by the Govt. similarly designated posts existing outside the C.S.O.L.S. cadre in various subordinate office of the Central Government have been granted the same pay scale as those granted to C.S.O.L.S."

That, on the basis of such O.M., the recommended pay scale of Hindi Officer/Asst. Director would be Rs. 8,000-13,500/- in PB-3 with Grade Pay Rs. 5400/- which was denied by the respondents' office while disposing the representation of the applicant.

That, being aggrieved and dissatisfied owing to non-grant of aforesaid Grade Pay of Rs. 5400/- in PB-3 with effect from 17.10.2011, the applicant filed the instant O.A. before this Tribunal praying, inter alia, that the post of Hindi Officer may be re-designated as Assistant Director (Official Language) in terms of O.M. dated 24.11.2008 and 27.11.2008.

4. Per contra, the respondents have argued that:

(i) The Scheme for filling up the Hindi posts was formulated for implementation of IA & AD vide CAG's letter No. 672-N.III/21-91-Vol.II dated 6.5.1991 and, accordingly, the posts of Hindi Officer (Rs. 2000-3500/-), Senior Translators (Rs. 1640-2900/-) and Junior Translators (Rs. 1400-2300/-) were created.

(ii) That, consequent upon implementation of recommendations of 6th Central Pay Commission, the Sr. Translators and Jr. Translators were placed in PB-2 with Grade Pay Rs. 4600/- and Rs. 4200/- respectively. But keeping in view the higher post of Hindi Officer as compared to Sr. Translators (Grade Pay Rs. 4600/-) the Hindi Officers were placed in PB-2 with Grade Pay of Rs. 4800/-.

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(iii) As per O.M. dated 27th November, 2008, the post of Assistant Director (OL) has been placed in PB-3 with Grade Pay of Rs. 5400/- (pre-revised scale Rs. 8000-13500/- which is the replacement scale of Rs. 2200-4000/- in 4th CPC). Since, the post of Hindi Officer was not created in the pre-revised (4th CPC) pay scale of Rs. 2200-4000/- and subsequently to Rs. 8000-13500/- (5th CPC), the post was not placed in PB-3 with Grade Pay of Rs. 5400/- and, hence, the applicant was not placed in PB-3 with Grade Pay of Rs. 5400/-.

(iv) The Departmental Promotion Committee was also constituted and held as per rules required for promotion with PB-2 and Grade Pay Rs. 4800/- only.

(v) The respondents have further argued that similarly designated posts in one department do not entail an official in another department to enjoy the same pay scale. They have cited the example of Section Officers in Ministries who are granted higher grade pay after 4 years of service in the grade. Similarly placed officials in IA & AD, however, are not granted similar higher grades of pay and, hence, the contention of the applicant that designation of Hindi Officer & Asst. Director (OL) are identical is misleading.

(vi) The advertisement published in the Employment News dated 30th March to 5th April, 2013 shows that the post of Hindi Officer has been placed in PB-2 with Grade Pay of Rs. 4800/-. In view of the above, the claim of the applicant is not justified.

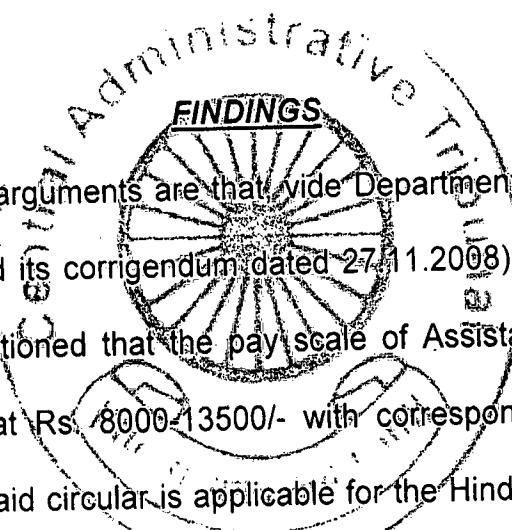
(vii) The Respondents have further argued that the applicant, who is an employee of the Office of the Principal Director of Commercial Office and Ex-Officio Member Audit Board-II, Kolkata is under the Administrative control of Comptroller and Auditor General of India, which is a constitutional body and is not subject to directions of MHA. Hence, according to the respondents the original application, being devoid of merit, deserves to be dismissed.

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ISSUES

7.(a). The two issues which we need to decide upon in the instant Original Application are :

- (i) Whether the post of Hindi Officer in the Office of Comptroller & Auditor General of India can be equated with that of the post of Assistant Director (Official Language) in C.S.O.L.S calling for an automatic redesignation.
- (ii) Whether the applicant is entitled to Grade Pay of Rs. 5400/- in accordance with Office Memorandum dated 24.11.2008 (as amended by Office Memorandum dated 27.11.2008) of the Department of Expenditure, Ministry of Finance as well as O.M. dated 19.5.2009 and 1.6.2011 of the Department of Official Language, Government of India.



8.(a) The applicant's arguments are that vide Department of Expenditure O.M. dated 24.11.2008 (and its corrigendum dated 27.11.2008), the said department has categorically mentioned that the pay scale of Assistant Director (OL) has been recommended at Rs. 8000-13500/- with corresponding revised GP Rs. 5400/- in PB 3. The said circular is applicable for the Hindi Officer also because the said circular states that the revised pay structure is applicable in the case of Official Language posts existing in subordinate offices of the Central Government. It was further emphasized by the applicant's Counsel that, in accordance with recommendations of the 6th CPC, as accepted by the Government, similarly designated posts existing outside C.S.O.L.S. have been granted the same pay scale. Therefore, it is apparent that at all material time, the applicant is eligible for grant of GP of Rs. 5400/- in PB 3 w.e.f. 17.10.2011 i.e. the date of promotion to the post of Hindi Officer. It has also been highlighted by the applicant's Ld. Counsel that the post of Hindi Officer may be re-designated as Assistant Director (OL) in terms of D/o Expenditure O.M. dated 24.11.2008 and

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27.11.2008 and also in terms of Rajbhava Vibhag O.M. dated 19.5.2009 and 1.6.2011.

To decide on the issue, at the outset, we refer to the O.M. dated 24.11.2008 of the Department of Expenditure, Ministry of Finance, Government of India. The said O.M. is reproduced below:-

F.No. 1/1/2008-IC
Government of India
Department of Expenditure
Implementation Cell

New Delhi, dated the 24th November, 2008

OFFICE MEMORANDUM

Subject: Revised pay scales for Official Language posts in various subordinate offices of the Central Government.

Consequent upon the implementation of the recommendations of Sixth Central Pay Commission, this Department has received queries from many Ministries / Departments regarding the revised pay structure applicable in the case of Official Language posts existing in subordinate offices of the Central Government. In this connection, it is clarified that in accordance with the recommendations of the Sixth Central Pay Commission as accepted by the Government, similarly designated posts existing outside the Central Secretariat Official Language Service (CSOLS) cadre in various subordinate offices of the Central Government have been granted the same pay scales as those granted to CSOLS. The Government has notified the following revised pay structure for the Official Language cadre belonging to CSOLS:-

(in Rs.)

Designation	Recommended Pay Scale	Corresponding Pay Band & Grade Pay	
		Pay Band	Grade Pay
Jr. Translator	6500-10500	PB-2	4200
Sr. Translator	7450-11500	PB-2	4600
Asstt. Director (OL)	8000-13500	PB-3	5400
Dy. Director (OL)	10000-13500	PB-3	6100
Jr. Director (OL)	12000-13500	PB-3	6600
Director (OL)	14300-18300	PB-3	7600

2. Accordingly, w.e.f. 1.1.2006, all Ministries/Departments etc., are required to grant the revised pay scales approved for various posts in the CSOLS to similarly designated Official Language posts existing in their subordinate offices.

(ALOK SAXENA)
DIRECTOR (IC)"

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Thereafter, the same department had issued a corrigendum on 27.11.2008 in which they had modified the Grade Pay payable to the Dy. Director, Joint Director and Director (OL) respectively. As the Grade Pay of these three posts are not in dispute in the present O.A., we do not consider it necessary to examine on the O.M. dated 27.11.2008.

From an analysis of the O.M. dated 24.11.2008 (supra), the following is inferred:-

- (i) That, the Department of Expenditure has issued this Office Memorandum in connection with queries on revised pay structure as applicable in the Official Language Posts existing in other offices of the Central Government.
- (ii) The O.M. further clarifies that, in accordance with the recommendations of the 6th CPC and as accepted by the Central Government, similarly designated posts existing outside the C.S.O.L.S. cadre in various offices of the Central Government has been granted the same pay scale as those granted to C.S.O.L.S.
- (iii) And, thereafter, the O.M. concluded that w.e.f. 1.1.2006, all Ministries /Departments are required to grant the revised pay scales approved for various posts in C.S.O.L.S. to similarly designated Official Language posts existing in their subordinate offices.

Next, we examine the contents of the O.M. dated 19.5.2009 followed by that dated 9.6.2011. The operational paragraph 3 of the O.M. dated 19.5.2009 / 21.5.2009 as issued by the Rajbhasha Vibhag of the Home Ministry of the Government of India reiterates the contentions of O.M.s dated 24.11.2008 and 27.11.2008 to all the subordinate offices of the Central Government in connection with similarly designated Official Language posts existing in subordinate offices.

The O.M. dated 9.6.2011 calls for reports from subordinate offices and is not relevant for the purpose of this adjudication.

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The crux of all the O.M.s is that the same pay scale is to be granted to "similarly designated posts" in the "subordinate offices" of the Central Government. This key issue has been clarified by the respondents in para 9 of their reply stating that:

- (i) The Office of the Comptroller & Auditor General is a Constitutional Body and not a subordinate office and that the applicant is an employee of the Office of the Principal Director of Commercial Office and Ex-Officio Member Audit Board-II, Kolkata under the administrative control of Comptroller & Auditor General of India, which is a constitutional body and does not participate under C.S.O.L.S. for filling up posts for Hindi Officers.
- (ii) The Office of the Comptroller & Auditor General had promulgated a Scheme for filling up of Hindi Posts vide their letter dated 6.5.1991 and, accordingly, the posts of Hindi Officer (Rs. 2000-3500), Senior Translators (Rs. 1640-2900) and Junior Translators (Rs. 1400-2300) were created.
- (iii) It was further stated that the applicant is an employee of the Office of the Pr. Director of Commercial Office and Ex-Officio Member Audit Board - II, Kolkata under the Administrative control of Comptroller and Auditor General of India which is a constitutional body which does not participate with respect to C.S.O.L.S. for filling up of Hindi posts. Further, IA & AD not having made any recommendations before the 6th CPC to place the post of Hindi Officer in the pre-revised pay scale of Rs. 8000-13500/-, the post of Hindi Officer was not created in Group 'A' scale, but in PB-2 with Grade Pay of Rs. 4800/- based on the pre-revised pay scales.

It is undisputed that Comptroller & Auditor General is a Constitutional Body and nowhere the applicant has disputed the same. Nor has the applicant been able to establish that he is attached to any Subordinate Office of the Rajbhasha Vibhag, Ministry of Home Affairs or any Ministry of Government of India.

We also refer to an O.M. of the Department of Official Language, Ministry of Home Affairs dated 22.7.2004 (Annexure A-2 to the O.A.) wherein the

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refixation of norms for creation of a minimum number of Hindi posts for compliance/implementation of the official policy of the Central Government has been laid down:-

"1.1. (i) One Assistant Director (OL) in each Ministry and independent Department having a full – time Secretary.

1.2. (i) One Hindi Officer (Assistant Director (OL) in each attached/subordinate office having 100 or more Ministerial employees."

Upon a perusal of the O.M. it transpires that the post of Assistant Director (OL) in each Ministry and Department was to be sanctioned in such Department which has a full time Secretary or has attached Subordinate Offices.

An office functioning under the CAG is neither a Ministry nor an attached/Subordinate office. Hence, there is no rationale or policy decision that can compel the office of the Comptroller & Auditor General to create a post of Assistant Director (OL) in supersession of their Scheme dated 6.5.91.

In this, we are also guided by *Union of India and anr. V. Amrik Singh & anr. (1994) 1 SCC 269* where the Hon'ble Apex Court has held:-

"9. This question relates to competence of the Comptroller and Auditor General of India to issue instructions dated March 21, 1978. As has been held by us in dealing with Question 1, the matter for which the provision under consideration is made in the Instructions of March 21, 1978, is not a matter covered by any provision in the Rules. If so, was it not competent for the Comptroller and Auditor General of India to make such provision in the point which now needs our examination. As is held by this Court in *Accountant General v. S. Doraiswamy* the Comptroller and Auditor General of India has the necessary competence to issue Departmental Instructions on matters of conditions of service of persons serving in his Department as its Head, even after Rules are made by the President on conditions of service of such persons in exercise of his powers under Article 148(5) of the Constitution. It is no doubt true that the administrative Instructions so issued on matters relating to conditions of service of persons in the Department cannot prevail over the Rules issued by the President under clause (5) of Article 148 of the Constitution, if the same comes in conflict with any provision made in the Rules on such matter. As already pointed out by us in dealing with Question 1, the provision in the Instructions under consideration does not come in conflict with, nor is it inconsistent with, provisions in the rules, for the matters dealt with in them are altogether different. On the other hand, the aforesaid provision in the Instructions provides for an essential matter relating to service conditions of persons in the Indian Audit and Account Department in respect of which no provision is made in the Rules. Hence, we hold that the provision in Instructions under consideration has been made with the required competence by the Comptroller & Auditor General of India and that is our answer to Question 2."

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Hence, (a) The claim of the applicant for the post of the Hindi Officer being equated with that of Assistant Director (Official Language) and to redesignate the post of Hindi Officer as Assistant Director (OL) in terms of Department of Expenditure, O.M. dated 24.11.2008/27.11.2008 as well as Rajbhasa Vibhag O.M. dated 19.9.2009 & 1.6.2011 is not substantiated and does not succeed.

In Central Railway Audit Staff Association v. Director of Audit, Central Railway, AIR 1993 SC 2467 and in R. Somasundarm v. Union of India 1973

(1) *SLR 1237 (Mad)* the Hon'ble Apex Court too has observed that the charge of discrimination may also fail if the employees belong to different units and that the scale of pay for any service depend upon several factors; hence, merely because the particular post is designated in the same way it does not mean that the same scale of pay should be applied to both the posts irrespective of all other considerations.

(b) The next issue whether the applicant is entitled for a Grade Pay of Rs. 5400/- In this, we seek the guidance from Hon'ble Apex Court's ratio as held in *Ajit Singh Cheema v. The Punjab Agricultural University, 1992 (8) SLR 70 (P&H) & Madan Gopal Singh v. Union of India, 1976 (2) SLR 353 (HP-(DB))*

wherein it was held that the claim of parity in pay is rejected when it was not demonstrated that otherwise they were functionally equivalent. In *Madan Gopal Singh (supra)* it was further decided that the authority for the proposition that sanctioning of a pay scale for a particular post was a matter turning on administrative policy and the formulation of such policy of Govt. servant was not entitled to be heard.

The applicant's contentions herein are that the applicant's fixation of GP 4800 in PB 2 is in violation of CCS (RP) Rules, 2008 in that the said fixation of Rs. 4800/- in PB - 2 shows that the GP of JHT, SHT and Hindi Officer is fixed at GP Rs. 4200/- in PB-2 and that despite the fact that the post of HO is promotional post of the feeder posts of JHT and SHT, the grade pay was

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identical. Therefore, the respondents upgraded the GP of HO to 4800 in PB-2, whereas in reality GP of 4800 in PB 2 is applicable in the scale of pre-revised Rs. 7500-250-12000/- . So, the fixation of GP at Rs. 4800/- is contrary to the provisions of CCS (RP) Rules, 2008. The declaration of the CCS (RP) Rules, 2008 stipulates that "*In exercise of powers conferred by the proviso to Article 309 and Clause 5 of the Article 148 of the Constitution and after consultation with the CAG in relation to persons serving in the IA &AD, the President makes the CCS (RP) Rules, 2008 and it shall apply to persons appointed to civil services and also to persons serving in IA & AD. Even if any interpretation is required pertaining to fixation, if any, the same shall be referred to the Central Government for a decision.*" On the basis of such proposition, the D/o Expenditure issued O.M. dated 24.11.2008 and its corrigendum dated 27.11.2008. It had been mentioned therein that for Asstt. Director (OL), the recommended pay scale is Rs. 8000-13500/- with corresponding GP of Rs. 5400/- in PB 3. According to the applicant, the said circular is applicable for the Hindi Officer also because the preceding paragraph of the said circular states that the revised pay structure is applicable in the case of Official Language Posts existing in subordinate offices of the Central Government and that recommendations of the 6th CPC as accepted by the Government and similarly designated post existing outside CSOLS have been granted the same pay scale. Therefore, according to the applicant that at all material times, the applicant is eligible the GP of Rs. 5400/- in PB-3 with effect from 17.10.2011 i.e. the date of promotion in the post of Hindi Officer.

The applicant had made two representations dated 30.11.2011 and 24.1.2012 and these were answered by regret letters by the respondent authorities. The applicant has referred to the Ministry of Finance notification dated 29.8.2008 and particularly paras (ii) and (v) which are extracted below:-

"(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

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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 considerations, the posts in the scale of Rs. 5000-8000 and Rs. 5500-9000/- should be 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/-.

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(v) *Upgradation as in (ii) above may be done in consultation with Department of Expenditure, Ministry of Finance. Regarding (iii) & (iv) above, upgradatton may be done by the Ministries concerned in consultation with their Integrated Finance."*

According to the respondents there was no recommendation of the IA & AD before the 5th CPC to place the post of Hindi Officer in pre-revised scale of Rs. 8000-13500/- and, hence, based on the pre-revised scale, the post of Hindi Officer was not created in Gr. 'A' scale but was placed in the scale of Gr. 'B' with G.P. of Rs. 4800/-. The respondents have gone on to argue that the post of Hindi Officer was not created in the pre-revised (4th CPC) pay scale of Rs. 2200-4000/- and subsequently to Rs. 8000-13500/- (5th CPC) the said posts were not placed in PB-3 with Grade Pay of Rs. 5400/-. As a result the claim of the applicant is not justified.

There is a lot of strength in the argument of the respondents as because the respondent authorities in the CAG had not deemed fit to recommend pre-revised scale of Rs. 8000-13500/- with Grade pay of Rs. 5400/- to the 5th CPC. Consequently, at this stage, it is meaningless to rely on an O.M. of 2008 and particularly merger of pay scales as relied upon by the applicant.

The Ld. Counsel for the applicant, during his oral arguments, has brought to our notice a series of orders of the Directorate of Printing, CGDA, DGFT, ICMR and Films Division in all of which the Hindi Officer has been granted GP of Rs. 5400/-. In response, the respondents have argued that the office of the RCS and the DOP&T circular dated 20.2.2008 have made it clear that such Grade Pay

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of Rs. 5400/- is not applicable to Offices which are not subordinate offices and undisputedly the Office of the CAG is not a subordinate office to a Ministry or Department of the Government of India.

The Hon'ble Apex Court in **Special Leave Petition (Civil) No. 17419 / 2009** read with Civil Appeal No. 1119 of 2013 with SLP (Civil) No. 37255/2012 had directed that if there is no functional distinction as far as the work of the applicants are concerned, there is no reason to deny parity in pay. In this case, however, the respondents by an affidavit of compliance filed on 31.3.2016 had pointed out the functional distinction between the work of Hindi cadre in CAG vis-à-vis that of the officers of C.S.O.L.S. In CAG, the Hindi Officer is entrusted with:

- (i) Translation work of audit reports to be placed before the Parliament;
- (ii) Translation work of audit reports to be placed before the Legislative Assembly in Hindi Region State;
- (iii) Translation of Circulars, letters etc.

In contrast, the duties performed by officials of C.S.O.L.S. is laid down as per para 3 of Department of Official Language O.M. No. 13/4/2007-OL(S) dated 20.10.2007. The post of Hindi Officer in IA & AD was created in 1991 in the then pay scale of Rs. 2000-3500/- and was classified as Group 'B' (Gazetted) and non-ministerial, wherein in Ministry / Department, the post was classified as Group 'B' Gazetted; Ministerial as per the model Recruitment Rules.

The IAAD Respondents have affirmed that in work of Hindi translation is required only in Hindi speaking States where audit reports are translated in local languages before placing them in the Legislative Assembly. Traditionally, the post of Hindi Officer has been held equivalent to Assistant Audit/Account Officer which is in the main cadre of the Department and the Department is maintaining the pay parity between the Hindi Officer and Assistant Audit/Account Officer. Considering the quantum of work, the Respondents

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state that there is no requirement for creation of post of Assistant Director (OL) and other higher posts in the Hindi cadre.

Hence, given the above noted policy decisions of Government of India, as well as the various decisions of the Hon'ble Apex Court, we are of the considered view that;

(a) The post of Hindi Officer of CAG cannot be equated with that of Assistant Director (OL) unless the CAG themselves decide to formulate a Scheme to re-designate such posts and this Tribunal refrains from issuing any mandatory directions in this regard.

(b) There being functional distinctions and disparate designations, the applicant's claim of Grade Pay of Rs. 5400/- fails to substantiate itself on merit.

Hence, the O.A. is dismissed on merit. There shall be no order as to costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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