

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00104-114/2018

DATED THIS THE 19th DAY OF FEBRUARY, 2019

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

HON'BLE SHRI CV.SANKAR MEMBER (A)

1.H.V. Venkata Rama Rao,
S/o H.S. Venkata Rao,
Aged about 87 years,
Residing at Kapila Extension,
Hulla Halli,
Nanjangud-571 314.

2.K. Narayana Varier,
S/o A. Shankar Varier,
Aged about 79 years,
Residing at No. 10,
15th Cross, 3rd Stage,
Gokulam,
Mysore-570 -002.

3.C.G. Krishna,
S/o C.S. Govindachar,
Aged about 83 years,
Residing at 700,
14th Cross, 2nd Main,
3rd Stage, Gokulam,
Mysuru-570 002.

4.K. Ramanujam,
S/o K. Krishna Iyengar,
Aged about 82 years,
Residing at HIG 29,
Krishna Flat, NH-1,
Thiruvazluvar Salai,
Maraimalai Nagar-603 209.

5.G. Armugam,
S/o Ganapati,
Aged about 82 years,
Residing at No.150,
C/o Gajendra Kumar,

2nd Cross, 2nd Main,
Gayathripuram,
Mysuru-570 019.

6.N. Jayaram,
S/o V. Natesh,
Aged about 79 years,
Residing at No.287,
12th Cross, Railway Layout,
Vijayanagar,
Mysuru-570 016.

7.Y.D. Srinivasa Setty,
S/o Dasa Setty,
Aged about 78 years,
Residing at No.671, 2nd Main,
3rd Stage, Gokulam,
Mysuru-570 002.

8.C. Saldhana,
S/o B. Saldhana,
Aged about 87 years,
Residing at No.5, 8th Main,
6th Cross, Saraswathipuram,
Mysuru-570 009.

9.S.R. Laxman Rao,
S/o Ramachandra Rao,
Aged about 82 years,
Residing at No.325, 13th Main,
Saraswathipuram,
Mysuru-570 009.

10.H.S. Srinivasa Rao,
S/o H. Subba Rao,
Aged about 84 years,
Residing at No.249,
9th Cross, H.M. T, Layout,
R.T. Nagar,
Bengaluru-560 032.

11.M. Srikantaiah,
S/o H.S. Mallappa,
Aged about 89 years,
Residing at No.995, 1st Main,
5th Cross, Srirampura 2nd Stage,
Mysuru-570 023.

...Applicants

(By Shri AR.Holla..... Advocate)

Vs.

1.Union of India,
By Secretary,
Ministry of Railways,
Railway Board,
Rail Bhavan,
New Delhi – 110 001.

2. The General Manager,
South Western Railway,
Gadag Road, Hubli: 580 020

3.The Senior Divisional Personnel Officer,
South Western Railway,
Irwin Road,
Mysuru.573 103.

...Respondents

(By Shri.N.Amaresh, Senior Panel Counsel)

ORDER (ORAL)

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

1. Heard. We discussed the matter with both the counsels. Apparently, this matter is similar to the matter in OA.Nos. 223 /2018 and other connected cases dated 22.01.2019, which we quote:-

“1.Heard. Apparently the matter is covered by several judgements of CAT, Ernakulam Bench in O.A. No. 656/ 2012 & O.A. No. 953/2012 dated 14.10.2013 and O.A. No.107/2011 dated 27.9.2011 which we quote:-

“C O R A M :

THE HON'BLE MR. JUSTICE P. SWAROOP REDDY, MEMBER(J)

THE HON'BLE MR. G. SHANTHAPPA, MEMBER (J)

THE HON'BLE MR. P.K. BASU, MEMBER (A)

O R D E R

(Per Hon'ble Mr. Justice P. Swaroop Reddy, Member (J)

As the Division Bench of the Hon'ble CAT Ernakulam Bench referred the matter with regard to OA 656/2012 and OA 953/2012 to Full Bench observing that scrutiny of the order of the Coordinate Bench in OA No. 107/20111 can be construed as to take the colour of sitting in appeal over it, the Full Bench was constituted by the Hon'ble Chairman of CAT.

2. No specific point for reference is made but in view of the issue framed in the order in OAs 656/2012 and 953/2012 which is as follows :

"Whether JHTs in the Subordinate Offices of the Central Government are entitled to Grade Pay of Rs.4600/- from 01.01.2006 on the basis of OM dated 13.11.2009 or not. "

the same issue has to be held to be the issue referred to the Full Bench

3. In OA 656/2012, the applicant is a Junior Hindi Translator (JHT) in the National Institute of Fisheries Post Harvest Technology and Training, Cochin. She was regularised as JHT in the pay scale of Rs.5500- 8000. Her pay scale was upgraded to Rs.5500-9000 with effect from 01.01.1996 notionally and with monetary benefits with effect from 11.02.2003 on the direction of the Tribunal in OA No. 675/2005. She was granted grade pay of Rs.4600/- in Pay Band of Rs.9300-34800 with effect from 01.01.2006 vide order dated 22.03.2010.

Holding that the order for grant of Grade Pay of Rs.4600/- was not in accordance with OM dated 24.11.2008 and OM dated 13.11.2009, it was cancelled vide order dated 21.07.2012.

The applicant was granted first financial upgradation under the ACP Scheme with effect from 09.05.2006 after the implementation of the 6th Central Pay revision with retrospective effect from 01.01.2006.

4. Applicant in OA 953/12 is also a JHT in the office of the Development Commissioner, Cochin Special Economic Zone, Kakkanad whose pay scale was Rs.5000-8000. He was given the replacement scale in Pay Ban of Rs.9300-34800 with grade pay of Rs.4200/- with effect from 01.01.2006. He is aggrieved by the denial of Grade pay of Rs.4600/- as was given to other officials similarly placed as him. He was given first financial upgradation under the ACP scheme on 12.12.2006 to the pay scale of Rs.5500-9000 after the VI Pay revision with retrospective effect from 01.01.2006.

5. Thus the applicants in both the OAs claim that they are entitled for Grade Pay of Rs.4600/- in PB-2 of Rs.9300-34800 with effect from 01.01.2006 on the basis of OM dated 13.11.2009. According to them on the basis of above OM dated 13.11.2009 those posts which were in the pre-revised pay scales of Rs.5000-8000 / 5500-9000 as on 01.01.2006 should be granted the grade pay of Rs.4600/- in the Pay Band PB-2, corresponding to the pre-revised scale of Rs.7450-11500 which were granted the normal replacement pay structure of Grade Pay of Rs.4600/- in the Pay Band PB-2 with effect from 01.01.2006.

6. The contention of the applicants is also that if the Government had no intention of raising their Grade Pay from Rs.4200/- to Rs.4600/- there was no need to revise their pay as their pre-revised pay itself would have been enough to get the Grade Pay of Rs.4200/-

7. Both the applicants have relied on the decision of Coordinate Bench of the Tribunal in OA No. 107/2011. The applicant in OA No. 656/2012 also relied upon the decision of the Tribunal in OA No. 675/2005 which has been confirmed by the Hon'ble High Court of Kerala.

8. The respondents contested the OA and with respect to the applicants in OA 656/2012 it was contended that granting her Grade Pay of Rs.4600/- with effect from 01.01.2006 was issued on a wrong interpretation of the OM dated 13.11.2009. The pay scales of Rs.5000- 8000, 5500-9000 and Rs.6500-10500 were merged and were placed in the revised Pay Ban PB-2 of Rs.9300-34800 with Grade Pay of Rs.4200/- For certain posts in the pay scale of Rs.6500-10500, the VI Central Pay Commission had specifically recommended the Grade Pay of Rs.4600/- in Part-B, Section-II of the CCS (Revised Pay) Rules,2008. For those categories of posts in the pay scale of Rs.6500- 10500 mentioned in paras (ii)(iii) and (iv) of Section I, Part-B, the upgradation as in (ii) above may be done in consultation with the Department of Expenditure, Ministry of Finance. Regarding (iii) and (iv) above, upgradation may be done by the Ministries concerned in consultation with their integrated finance. As per OM dated 24.11.2008 and corrigendum dated 27.11.2008 the pay scales of JHT and SHT were upgraded with effect from 01.01.2006 as 6500-10500 and 7450- 11500 in the pre-revised scale respectively and in Pay Band PB-2 with Grade Pay of Rs.4200/- and Rs.4600/- respectively. As per the amended Recruitment Rules, the Pay Band of JHT is Rs.9300-34800 with Grade Pay of Rs.4200/-. As per Annexure R-3 in OA No. 656/12 dated 24.08.2012 the pay scale of JHT as on 01.01.2006 was Rs.5500- 9000 and not Rs.6500-10500. It was upgraded to Rs.6500-10500 vide OM dated 24.11.2008 with effect from 01.01.2006 as per the VI Pay Revision. In view of that, the OM dated 13.11.2009 is not

applicable in the case of JHT who has been given the grade pay of Rs.4200/- . The Grade Pay of Rs.4600/- was given to the Sr. Hindi Translator (SHT).

The Division Bench framed the following issue :

9. Whether JHTs in the Subordinate Offices of the Central Government are entitled to Grade Pay of Rs.4600/- from 01.01.2006 on the basis of OM dated 13.11.2009 or not.

10. After extracting the relevant OM i.e. OM dated 13.11.2009 which reads as below :

"F.No. 1/1/2008-IC
Government of India

Ministry of Finance
Department of Expenditure
Implementation Cell

New Delhi, dated 13th November, 2009

OFFICE MEMORANDUM

Subject: Grant of the revised pay structure of grade pay of Rs.4600 in the pay band PB-2 to posts that existed in the pre-revised scale of Rs.6500-10500 as on 1.1.2006 and which were granted the normal replacement pay structure of grade pay of Rs.4200 in the pay band PB-2

Sixth Pay commission recommended merger of the three pre-revised scale of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 and replaced them by the revised pay structure of grade pay of Rs.4200 in the pay band PB-2. Vide para 2.2.21(v) of its report, the Commission recommended that on account of the merger of these 3 scales, some posts which constituted feeder and promotion grades would come to like in an identical grade. The Commission gave specific recommendations in its Report granting higher grade pay of Rs.4600 to some categories of these posts. As regards the other posts, the Commission recommended that it should first be seen if the posts in these 3 scales can be merged without any functional disturbance and if possible, the same should be done. Further, the Commission recommended that in case it is not feasible to merge the posts in these pay scales on functional considerations, the posts in the scale of Rs.5000-8000 and Rs.5500-9000 should be merged with the posts in the scale of Rs.6500-10500 being upgraded to the next higher grade in the pay band PB-2 with grade pay of Rs.4600 corresponding to the pre-revised 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.7450-10500.

2. The above recommendations of the Sixth Pay Commission were notified vide para (ii), Section I in Parts B and C of the First Schedule to the CCS(RP) Rules,2008. While Part B of the First Schedule of the CCS(RP) Rules relates to revised pay scales for common categories of staff, Part C notifies revised pay structure for certain posts in Ministries, Departments and Union Territories. The above provisions of the Rules specifically mentioned that upgradations in terms of para (ii) Section I may be done in consultation with Department of Expenditure, Ministry of Finance.

3. Consequent upon the Notification of CCS(RP) Rules,2008, Department of Expenditure has received a large number of references from administrative ministries / departments proposing upgradation of the posts which were in the pre-revised scale of Rs.6500-10500 as on 1.1.2006 by granting them grade pay of Rs.4600 in the pay band PB-2. The matter has been considered and it has now been decided that the posts which were granted the normal replacement pay structure of grade pay of Rs.4200 in the pay band PB-2, will be granted grade pay of Rs.4600 in the pay band PB-2 corresponding to the pre-revised scale of Rs.7450-11500 w.e.f. 1.1.2006. Further, in terms of the aforementioned provisions of CCS (RP) Rules,2008, in case a post already existed in the pre-revised scale of Rs.7450-11500, the posts being upgraded from the scale of Rs.5600-10500 should be merged with the post in the scale of Rs.7450-11500.

4. Accordingly, in terms of Rule 6 of CCS (RP) Rules, 2008, revised pay of Government servants in the pre-revised scale of Rs.6500-10500 who were earlier granted grade pay of Rs.4200 and who have already exercised their option for drawal of pay in the revised pay structure in the format prescribed in the Second Schedule to the Rules, will be fixed again in accordance with illustration 4A annexed to CCS(RP) Rules,2008.

5. In case of all such Government servants in the pre-revised scale of Rs.6500-10500 who were earlier granted grade pay of Rs.4200 and who had opted to have their pay fixed under CCS(RP) Rules, 2008, action as prescribed in this Department's O.M. Of even number dated 30th August,2008 will be taken. In case a Government servant desires to revise his earlier option for coming over to the revised pay structure, he may be permitted to do so without making any reference to this Department.

6. On account of pay fixation in the revised pay structure of grade pay of Rs.4600 in the pay band PB-2, arrears of pay will be recalculated and difference of arrears in respect of the entire amount will be paid immediately. The manner of drawal of arrears has already been indicated in this Departments/s O.M. of even number dated 30.8.2008.

7. Hindi version will follow.

Sd/-

Alok Saxena/Director"

(emphasis supplied)

the Division Bench held that it is only to some categories of these posts, not to all categories of these posts which got merged that the Grade Pay of Rs.4600/- is to be given and that the applicants have not grasped that aspect.

The Division Bench has also referred to the Section-I of Part-C of the First Schedule to CCS (Revised Pay)Rules,2008 which is as follows :

'FIRST SCHEDULE

PART - C

REVISED PAY STRUCTURE FOR CERTAIN POSTS IN MINISTRIES, DEPARTMENTS AND UNION TERRITORIES

Section I

(i) The revised pay structure mentioned in Column (5) and (6) of this part of the Notification for the posts mentioned in Column (2) have been approved by the Government. The initial fixation as on 1.1.2006 will be done in accordance with Note 2 below Rule 7 of this Notification.

(ii) On account of merger of pre-revised pay scales of Rs.5000- 8000, Rs.5500-9000 and Rs.6500-10500, some posts which presently constitute feeder and promotion grades will come to lie in an identical grade. The specific recommendations about some categories of these posts made by the Pay Commission are included Section II of Part C. As regards other posts, the posts in these three scales should be merged. In case it is not feasible to merge the posts in these pay scales on functional considerations, the posts in the scale of Rs.5000-8000 and Rs.5500-9000 should be merged, with the post in the scale of Rs.6500-

10500 being upgraded to the next higher grade in pay band PB-2 i.e. to the grade pay of Rs.4600 corresponding to the pre-revised pay scale of Rs.7450-11500. In case a post already exists in the scale of Rs.7450-11500, the post being upgraded from the scale of Rs.6500- 10500 should be merged with the post in the scale of Rs.7450-11500.

(iii) Posts in the scale of Rs.6500-10500 carrying minimum qualification of either Degree in Engineering or a Degree in Law should also be upgraded and placed in the scale of Rs.7450-11500 corresponding to the revised pay band PB-2 of Rs.9300-34800 along with grade pay of Rs.4600.

(iv) Posts of scientific staff in the scale of Rs.6500-10500 carrying minimum qualification of engineering degree or a post-graduate degree should also be upgraded and placed in the scale of Rs.7450-11500 corresponding to the revised pay band PB-2 of Rs.9300-34800 along with grade pay of Rs.4600

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

11. In para-10 of the order the Division Bench held that on a wrong understanding of OM dated 13.11.2009 many organisations granted JHT in the pay scales of Rs.5000-8000 or 5500-9000 upgradation to the post in the pay scale of Rs.7450-11500 corresponding to the Grade Pay of Rs.4600/- in PB-2 and in all probability, that must have been done without consulting the Department of Expenditure and that the applicant in OA No. 656/2012 has not proved that she was granted the grade pay of Rs.4600/- in consultation with the Department of Expenditure, Ministry of Finance.

12. In para-13 of the order the Division Bench has observed that in OA No. 107/2011, the grievance of the applicant was the wrong fixation of pay on the grant of 1st and 2nd financial upgradations ignoring para 5 of the Modified Assured Career Progression Scheme (MACPS). In para-14 the Division Bench observed that in order to arrive at the findings made, the Co-ordinate Bench relied on the following factual matrix as stated in para 11 of the order dated 27.09.11 in the said OA.

".....This pay scale of Rs.5,500 - 9000/- was replaced by Rs.7450 - 11,500/- vide Annexure A-3 dated 24.11.2008 (as modified by Annexure A-4 dated 27.11.2008). This pay scale of Rs.7,450 - 11,500/- is replaced by the Revised Pay

scale (PB-2_ of Rs.9,300/- - 34,800 with a grade pay of Rs.4,600/-). There is no quarrel upto this stage.

" It is further observed :

".....It is at a very late stage i.e. w.e.f. 01.01.2006 that the pay scale of Junior Hindi Translator was revised to Rs.7,450 - 11,500/- and the grade pay attached to the same is Rs.4600/- as per the aforesaid First Schedule. This is the admitted position, as could be seen from Annexures A-6 Pay fixation as well as the statement annexed thereto, Annexure A-8 proforma (vide entry against para 3(i) and (iv) thereof, Annexure R-6 and para-7 of Annexure MA1."

13. The Division Bench further observed that the pre-revised pay scale of Rs.7450-11500 mentioned above related to Senior Hindi Translator. The applicant in OA NO. 107/11 was given financial upgradation under the ACP Scheme to the scale of Rs.5500-9000 on 30.03.2002, i.e. before the VI Pay Revision.

That as per the above factual matrix, the pay scale of Rs.5500-9000 is revised to Rs.7450-11500. The admitted position is based on the documents produced by the applicant therein except Annexure R-6. The respondents have not admitted the aforesaid factual matrix in respect of JHT in their reply statement.

That Annexure R-6 in the above OA conveys approval of the competent authority to grant PB-2 of Rs.9300-34800 plus Grade Pay of Rs.4600/- to the applicant therein who was junior JHT who got upgradation to the scale of SHT under ACP Scheme.

14. The Division Bench further observed that they are of the considered view that the above statement (not admitted by the respondents in their reply) that the pay scale of JHT was revised to Rs.7450-11500 cannot be taken out of the context in the OA No. 107/2011 of a JHT who had been granted financial ugradation under the ACP Scheme as early as 2002 and made to serve as a finding to sustain the claim of the applicants in OA Nos. 656/2012 and 953/2012 for a second upgradation of their pay on 01.01.2006 to Rs.7450-11500 to get the Grade Pay of Rs.4600/- on 01.01.2006. In para-15 of the judgment the Tribunal held that the correctness of granting Grade Pay of Rs.4600/- to JHT as on 01.01.2006 was not focused at all. The bone of contention was para 5 of the MACP Scheme in OA No. 107/2011. In O.P. (CAT) No. 467/2012 filed against the decision of the Co-ordinate Bench the Honble High Court of Kerala upheld the finding that the applicant therein was entitled to the benefit of para 5 of the MACP Scheme and also took note of the

fact that her claim for the financial upgradations in the manner claimed, was virtually found in her favour in the Internal Audit Department note. That the contention of the applicants in the said O.P. (CAT) before the Hon'ble High Court was that the remarks / recommendations of the Internal Audit Department which were not finalised cannot give any support to the claim was not deliberated upon in the judgment of the Hon'ble High Court of Kerala. The Division Bench also held that it is erroneous to contend, in the absence of a declaration by the Co-ordinate Bench, that it had decided or explained the issue of granting the Grade Pay of Rs.4600/- to JHT in OA No. 107/11 and that the Hon'ble High Court had confirmed it in O.P. (CAT) No. 467/2012.

In para-17 of the judgment the Division Bench observed that facts and issues being different the OAs are not similar and the reliance of the applicants on the decision in OA No. 107/2011 or 675/2005 is misplaced. The applicants have not reproduced the part of the order of the Co-ordinate Bench or judgment of the Hon'ble High Court on which they relied to claim the Grade Pay of Rs.4600/-

15. Thus as already referred, in para-8 of the order, the Division Bench framed the issue as to whether JHTs in the Subordinate Offices of the Central Government are entitled to Grade Pay of Rs.4600/- from 01.01.2006 on the basis of OM dated 13.11.2009 or not.

16. Thus, the Division Bench observed in para-15, that it is erroneous to contend in the absence of a declaration by the Coordinate Bench, that it had decided or explain the issue of granting the grade pay of Rs.4600/- to JHT in OA No. 107/11 and again the Division Bench observed in para-17 of the order that the facts and issues being different, the OAs are not similar and the reliance of the applicants on the decision in OA No. 107/2011 or 675/2005 is misplaced.

Thus, when the opinion of the Division Bench was that the issue with regard to the applicability of grade pay of Rs.4600/- to JHTs on the basis of OM dated 13.11.2009 was not decided in OA 107/2011 and when the issue raised in the present OAs 656/2012 and 953/2012 is different, that is applicability of the same (whether JHTs in the Subordinate Offices of the Central Government are entitled to Grade Pay of Rs.4600/- from 01.01.2006 on the basis of OM dated 13.11.2009 or not), the Hon'ble Division Bench could have taken a view.

17. In the judgment in OA 107/2011, para-11 would show that the pay scale of Rs.7450 - 11,500 is replaced by the Revised pay scale (PB-2) of Rs.9300-34,800/- with a grade pay of Rs.4600/- ie with reference to the JHTs. In para-12 of the same judgment it was observed by the Division Bench, that "And since, the grade pay the

applicant was drawing was Rs.4600/-" In para-14 of the same judgment the Division Bench observed that "It is at a very late stage ie w.e.f. 01.01.2006 that the pay scale of Junior Hindi Translator was revised to Rs.7450-11,500/- and the grade pay attached to the same is Rs.4600/- as per the aforesaid First Schedule"

18. Thus, in OA 107/2011 there is specific finding with regard to JHTs grade pay being Rs.4600/- No doubt as observed by the Hon'ble Division Bench in OAs 656/2012 and 953/2012, in OA 107/2011 there was no substantial focus on the question of JHTs being entitled for the grade pay of Rs.4600/- and as observed that question was not the bone of contention, but still there was finding to the extent that JHTs are entitled for Grade Pay of Rs.4600/- with effect from 1-1-2006.

19. The above decision of the Division Bench in OA 107/2011 was confirmed by the Hon'ble High Court of Kerala in OP(CAT) No. 467/2012. In the concluding portion of para-5 of the judgment, the Hon'ble High Court observed that "As per Annexure A5 office memorandum dated 13.11.2009, the pay scale of Rs.6500-10500 with grade pay of Rs.4200/- was revised to 7450-11500 w.e.f. 1.1.2006 and the grade pay was enhanced to Rs.4600/-" In para-11 of the judgment the Hon'ble High Court observed that the contention of the petitioner was that the Tribunal ought not to have found that the pay scale of Junior Hindi Translator was revised to Rs.7450-11500 w.e.f. 1.1.2006 because the said scale is attached to the post of Senior Hindi Translator and not to the post of Junior Hindi Translator. That since the grade pay of Rs.4600/- is attached to the post of Senior Hindi Translator, the Tribunal ought to have found that the respondent who is Junior Hindi Translator was only be treated as continuing in the very initial grade pay of Rs.4200/- instead of the grade pay of Rs.4600/-.

Thus the contention that the JHT was entitled to grade pay of Rs.4600/- was raised before the Hon'ble High Court while dealing with the writ petition No. OP(CAT) No.467/2012 against the order in OA 107/2011 and it has to be accepted that the question was considered and confirmed by the Hon'ble High Court.

20. In the paragraph-11, of its judgment in O.P. (CAT) 467/2012 the Hon'ble High Court observed that, essentially the contentions of the petitioner would reveal that according to them, paragraph-5 of the OM dated 13.11.2009 is not applicable to the respondent. Thus, the issue raised as per para-8 in the order in OA Nos.656/2012 & 953/2012 to which at the cost of repetition we would refer again whether JHTs in the Subordinate Offices of the Central Government are entitled to Grade Pay of Rs.4600/- from 01.01.2006 on the basis of the OM dated 13.11.2009

or not was considered specifically in the judgment of the Hon'ble High Court in OP(CAT) No. 467/2012 against the order in OA 107/2011.

21. Thus it has to be accepted that the question, as to whether the JHTs are entitled for Grade Pay of Rs.4600/- on the basis of the OM dated 13.11.2009 was answered positively in OA 107/2011 and was confirmed by the Hon'ble High Court in OP(CAT) No. 467/2012.

22. In the circumstances, the reference as to whether JHTs in the Subordinate Offices of the Central Government are entitled to Grade Pay of Rs.4600/- from 01.01.2006 on the basis of the O.M. Dated 13.11.2009 or not has to be held to be in favour of the applicants and in the circumstances of the case there is no necessity of again referring the matter to the Division Bench for deciding the matter on facts. We hold that both the OAs are liable to be allowed and the same are accordingly allowed.

23. No order as to costs. "

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judgement of CAT, Ernakulam Bench in O.A. No.107/2011 dated 27.9.2011

" O R D E R

By Hon'ble Dr.K.B.S Rajan, Judicial Member -

1. The applicant is aggrieved by the alleged wrong fixation of pay on the grant of first/second financial upgradation to hie under the Modified Assured Career Progression scheme which came into existence w.e.f. 01-09-2008.

2. The following dates and pay particulars of the applicant are essential for the purpose of deciding the issue:-

(a) 30-09-1990: The applicant joined the service of the Respondents as Hindi Translator (Group C Non-Gazetted) on regular basis. At that time her pay scale was Rs. 1400 - 2300. This is an isolated post - a 'stand alone' post with no post of feeder or promotional grade.

(b) 01-01-1996: Introduction of revised pay rules, 1996 in the wake of acceptance of the Fifth Pay Commission Recommendations and the replacement scale to the above scale of Rs 1400 - 2300 was Rs 4,500 - 7000/-

(c) 08-11-2000: The above said Revised pay scale of Rs 4,500 - 7,000 for Hindi Translator was replaced with retrospective effect from 01-01-1996 at Rs 5,000 – 8000/-

(d) 13-07-2004: The post of Hindi Translator was re-designated as Junior Hindi Translator (without any change in pay scale or functional responsibilities)

(e) 09-08-1999: Introduction of Assured Career Progression whereby financial upgradations are made available to those who could not get their promotion within a specific period (12 and 24 years) though these were eligible for promotion. The financial upgradation for isolated post is in accordance with the grade of pay i.e. S-1, S-2 etc., as given in an annexure to the order dated 09-08-1999.

(f) 29-03-2002: The applicant completed 12 years of service in the post of Junior Hindi Translator (erstwhile Hindi Translator) without any promotion and as such was entitled to be considered for grant of the first financial upgradation under the then existing ACP Scheme. Accordingly, she was placed in the pay scale of Rs 5,500 - 9000 w.e.f. 30-03-2002.

(g) 01-01-2006 : Revised Pay Rules 2008 came into existence with retrospective effect from 01-01-2006.

(h) 01-01-2006: By a Memorandum dated 24-11-2008, Pay of Rs 5,500 - 9000 replaced by Rs 7450 - 11500/- with retrospective effect from 01-01-2006. (i) 01-01-2006: Pay scale for Rs 7,450 - 11,500 under the Revised Pay Rules (2008) replaced by the Pay Band of Rs 9,300 - 34,800 with Grade Pay of Rs 4,600/-.

(j) 01-01-2006 : By an order dated 04-05-2009, the pay of the Applicant was fixed in the pay Band of Rs 9300 - 34800 by virtue of her having been drawing the pay in the erstwhile scale of Rs 7,450 - 11500 as first financial upgradation.

(l) 01-01-2006 : As per the Revised Pay Rules, 2008, the erstwhile pay scales of Rs 5,000 - 8,000, 5,500 - 9,000, 6,500 - 10500 have been merged and replaced by the Revised Pay Band P 2 of Rs 9,300 - 34,800/- with Grade Pay of Rs 4,200/-.

(m) 19-05-2009: The erstwhile ACP scheme introduced on 09-08-1999 has been replaced by Modified Assured Career Progression (MACP) effective from 01-09-2008. This contains a provision that promotions

earned/upgradations granted under the ACP Scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/upgradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations under the Modified ACPS.

(n) 13-11-2009: By Office Memorandum, the pay scale of Rs 6,500 - 10,500 with Grade Pay of Rs 4,200/- had been revised to Rs 7,450 - 11500 w.e.f. 01-01-2006 and the grade pay enhanced to Rs 4,600/-

(n) 30-03-2010: The Applicant completes 20 years of Service and is thus entitled to be considered for 2nd Financial Upgradation under the MACP.

3. A proposal from the respondents was made for grant of second financial upgradation to the applicant, increasing her grade pay from Rs 4,600 - 5,400/- vide Annexure A-8. However, the respondents have, ultimately, granted the second financial upgradation to the applicant w.e.f. 30-03-2010 placing her in the same PB of Rs 9,300 - 34,800/- but increasing the Grade pay from Rs 4,600 to Rs 4,800/- vide impugned Annexure A-1 and A-2 orders. In other words, the specific provision of ignoring the earlier financial upgradation granted under the erstwhile ACP scheme had not been considered in the case of the applicant

4. The claim of the applicant is that she should, by virtue of para 5 of the MACP scheme should be deemed to have not earned any promotion/upgradation and thus, she should be considered for the first financial upgradation with the grade Pay of Rs. 4,800/- as on 01-09-2008 and for the 2nd Financial upgradation, with the grade pay of Rs 5,400/- w.e.f. 30-03-2010. . The ground for her claim is as given in Ground C which contains the internal Audit Department note and the same is reproduced as under:-

" In fact it is respectfully submitted before this Hon'ble Tribunal that the internal audit Department of the Respondents has already pointed out this aspect of mistake to the respondents. As per para 7 of their report, it is understood that they have pointed out this mistake and directed the 2nd respondent to correct the same. It is understood that the audit team has stated;

" As per Government, of India, Department of Per. & Trg, OM No.35034/3/2008-Estt.(D) dated 19th May 2009, the Central Government considered the recommendation of the VI Pay Commission for introduction

of MACPS to grant three financial upgradation under the MACPs at intervals of 10, 20 and 30 years of continuous regular service.

Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade pay. Benefit of pay fixation available at the time of regular promotion shall also be allowed at the time of financial Scheme Promotions earned/upgradations granted under the ACP Scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/upgradations of posts recommended by the VI Pay Commission shall be ignored for the purpose of granting upgradation under MACPs. The condition in detail for grant of financial upgradation under the Scheme are given in the OM referred to above.

On verification of Service Book and files of MACPs, it is observed that Smt.T.P Leena, Jr.Hindi Translator was granted 2nd financial up gradation under the MACPs vide Office Order No.F.8-32/2009 dated 19.04.2010 with effect from 30.03.2010 which is not in order. She may be considered for 1st and 2nd MACPs in the following manner.

Post	Junior Hindi Translator
Date of initial appointment	30.03.1990
Date of completion of 10 years	29.03.2000
Date of completion of 20 years	29.03.2010
Initial scale of pay	Rs.1400-40-1800-EB-50-2300
	upgraded to Rs.5000-150-8000- Ministry of Agriculture letter No.2-5/2001-Fy Admn. Dated 31.07.2001
Financial upgradation under ACP w.e.f 30.03.2002	Rs.5500-175-9000(Office order No.1-1/2002-Estt.dated 11.02.2003-FSI, Mumbai)

VI - CPC Recommended to upgrade the pay scale of Jr.Translator to Rs.6500-200-10500 - GP Rs.4600/- w.e.f 01.01.2006. The promotions/financial upgradation granted under ACP to the pre-revised scale of Rs.5500-9000 may be ignored on account of merger of the pre- revised scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-

10500 recommended by the VI PC -(Please refer MACPs - Annexure - 1(5)(1)) Accordingly, the official is entitled to get 1st and 2nd MACPs. 1st 01.09.2008 - GP - Rs.4800 2nd 30-03-2010 - GP- Rs.5400

The official's pay may be refixed w.e.f 01.09.2008 after considering two MACPs. However, before making payment of arrears to the official's, pay fixation statement may be verified by the PAO and the same may be pasted in the Service Book. Similar cases may be reviewed and revised accordingly.

It would appear that inspite of their own audit team objecting to the present proposal the respondents are still reluctant to grant the said benefits to the applicant. The action of the respondents reeks with malafide and is to be interfered by this Hon'ble Tribunal in the interest of justice. "

5. Respondents have contested the O.A. According to them, the applicant is entitled to the grade pay of Rs 4,800/- only as per the provisions of the MACP Scheme. Their contentions are given in para 5 of their reply wherein it has been stated, "The post of Junior Hindi Translator in the Respondent No. 2 Department was in the pay scale of Rs 5,000 - 150 - 8,000 till 31-12-2005 and not in the pay scale of Rs 6,500 - 10,500. This pay scale of Rs 6,500 - 10,500 was granted to the post of Junior Hindi Translator w.e.f. 01-01-2006, vide Annexure A-4 order with corresponding P B-2 + GP of Rs 4200/-. Therefore, this post cannot be treated as having existed in the pay scale of Rs 6,500 - 10,500 prior to 01-01-2006. The second situation in the A-5 OM is about the grant of the Grade Pay of Rs 4200/- to the pre-revised pay scale of Rs 6500 - 10500 and not to the pay scale of Rs 5000 – 8000/-."

6. The applicant has filed her rejoinder reiterating her stand and adding a number of O.Ms and orders to hammer home her claim. This was rebutted in the additional reply, wherein, the respondents contended that the higher pay scale for Hindi Staff has been meant for only the Central Secretariat Staff and not for the subordinate staff. After the case was heard and orders reserved, counsel for the applicant filed an M.A. adding a copy of the extract of the audit report, in which the internal audit have advised the respondents to fix the pay of the applicant under the 2nd and 3rd MACP with the grade pay of Rs 4,800 and 5,400 respectively. In their second additional reply, the respondents have stated that the remarks or recommendations of the internal audit, which is yet to be finalized by the respondents cannot give any support to the claim of the applicant.

7. Counsel for the applicant argued that para 5 of the MACP scheme mandates that the earlier ACP drawn or promotion gained should be ignored in case the pay scale attached to the promotional post or the financial upgradation gets merged with the pay scale of the lower post and a common Pay Band with the same Grade pay has been introduced. Again, in so far as the revised pays scales for the Hindi Staff, though the respondents claim that the same is meant only for Secretariat Staff, the Hyderabad Bench has clearly held, "We entirely agree with the view that Junior & Senior Hindi Translators working in subordinate offices are entitled for the pay scales on par with Junior and Senior Hindi Translators working in CSOLS."

8. Counsel for the respondents invited our attention to the order dated 02-04-2004 which talks of Hindi Staff of Central Secretariat Official Language Service and thus the same cannot be extended to the subordinate offices.

9. Arguments were heard and documents perused. The question is whether the applicant is entitled to the grant of first financial upgradation w.e.f. 01-09-2008 and second w.e.f. 30-03-2010 as claimed and if the answer is in affirmative, what should be the pay band and grade pay of the applicant as on 01-09-2008 on grant of first financial upgradation and as on 30-03-2010 on grant of second financial upgradation.

10. We must at this juncture get a hang of the import of the provisions of Clause 5 of the MACP Scheme, which has been given with illustration as under:-

5. Promotions earned/upgradations granted under the ACP Scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/upgradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations under Modified ACPs.

The pre-revised hierarchy (in ascending order) in a particular organisation was as under:-

Rs.5000-8000, Rs.5500-9000 & Rs.6500 - 10500.

(a) A Government servant who was recruited in the hierarchy in the pre-revised pay scale Rs.5000-8000 and who did not get a promotion even after 25 years of service prior to 01.01.2006, in his case as on 1.1.2006 he would have got two financial upgradations under ACP to the next grades in the hierarchy of his organisation, i.e, to the pre-revised scales of Rs.5500-9000 and Rs.6500-10

(b) Another Government servant recruited in the same hierarchy in the pre-revised scale of Rs.5000-8000 has also completed about 25 years of service, but he got two promotions to the next higher grades of Rs.5500-9000 & Rs.6500-10500 during this period.

In the case of both (a) and (b) above, the promotions/financial upgradations granted under ACP to the pre-revised scales of Rs.5500- 9000 and Rs.6500-10500 prior to 01.01.2006 will be ignored on account of merger of the pre-revised scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 recommended by the Sixth CPC. As per CCS (RP) Rules, both of them will be granted grade pay of Rs.4200 in the pay band PB-2.

After the implementation of MACPs, two financial upgradations will be granted both in the case of (a) and (b) above to the next higher grade pays of Rs.4600 and Rs.4800 in the pay band PB-2.

11. The applicability of the above rule in so far as the applicant is concerned has to be considered now. Initially, the applicant joined as Hindi Translator (later on redesignated as Junior Hindi Translator) in the pay scale of Rs 1,400 - 2,300/- which under the Pay Rules 1997 effective from 01-01-1996 underwent an upward revision of Rs 5,000 - 8000/- (Grade S-9). W.e.f. 30-03-2002, the applicant gained the first ACP and her pay was fixed in the scale of Rs 5,500 - 9,000/- which is the next grade in the normal pay scales from S-9 and S-10. Annexure R-5 Office Order dated 11-02-2003 refers. This pay scale of Rs 5,500 - 9,000/- was replaced by Rs 7,450 - 11,500/- vide Annexure A-3 dated 24-11-2008 (as modified by Annexure A-4 dated 27-11-2008.) This pay scale of Rs 7,450 - 11,500/- is replaced by the Revised Pay Scale (PB-2) of Rs 9,300 - 34,800/- with a grade pay of Rs 4,600/-. There is no quarrel upto this stage.

12. When the question of applicability of MACP came, it is the case of the applicant that since the pay scales of Rs 5,000 - 8,000/-, Rs 5,500 - 9,000/-, 6,500 - 10,500/- have been merged, the financial upgradation granted from Rs 5,000 - 8,000/- to Rs 5,500 - 9,000 in 2003 has to be ignored by virtue of clause No. 5 of the Scheme (extracted above). Thus, the applicant has to be treated to be in the very initial grade without any financial upgradation and thus, she is entitled to two financial upgradations, one as on 01-09-2008 (from the date the MACP became operative) and another on completion of 20 years i.e. 30-03-2010. And since, the grade pay the applicant was drawing was Rs 4,600/-, the first Financial Upgradation should carry Grade pay of Rs 4,800/- while the second one Rs 5,400/-. This is objected to by the respondents as according to them, the higher pay scale claimed

by the applicant relates to Hindi Translators of the Central Secretariat Services and not to the subordinate offices in which the applicant is functioning.

13. Now, a close look again at para 5 of the Scheme is essential. The wordings are "Promotions earned/upgradations granted under the ACP Scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/upgradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations under Modified ACPs." It is pertinent to mention that after the sixth Pay Commission Recommendations, in respect of grant of MACP, it is not the pay scale that undergoes any upward revision but only the Grade Pay, as is evident from para 2 of the scheme itself. Thus, for invoking the provision of Rule 5 of MACP, what is to be seen is as to whether the grant of financial upgradation resulted in a higher grade pay in the upgraded pay scale. The first Schedule vide Rules 3 and 4 (section I, Part A) annexed to the Revised Pay Commission Rules 2008 provides for the the scale, revised pay structure and corresponding grade pay for the erstwhile pay scale of Rs 5000 - 8000 and 5,500 - 9000 as under:-

SI No.	Post/Gr	Present scale	Name of	Revised Pay Structure		
				Corresponding pay	Corresponding Pay	
10	S-9	5000 - 150 -	PB-2	9,300 - 34,800/-		4200
11	S-10	5500 - 150 -	PB-2	9,300 – 34,800/-		4200

14. The illustration appended to para 5 would clarify the point. When the scales of pay of Rs 5,000 - 8000 and Rs 5,500 - 9,000/- get merged, the grade pay in these two grades remained the same i.e. Rs 4,200/. It is only under such a circumstance, (i.e. The two pay scales should have the same grade pay) that the promotion or upgradation should be ignored. In the instant case, admittedly, the financial upgradation resulted in the pay scale of the applicant substituted the earlier Rs 5,000-8000/- Rs 5,500 - 9000 and thus, the Pay Band remained the same, as also the grade pay. Under such circumstances, when there is a merger of the two, into a single pay scale, the earlier upgradation granted under the ACP scheme has to be ignored. Thus, clause 5 of the scheme does apply to the case of the applicant. Hence, though the applicant had earned one Financial upgradation in 2002, the same has to be ignored. It is at a very late stage i.e. w.e.f. 01-01-2006 that the pay scale of Junior Hindi Translator was revised to Rs 7,450 - 11,500/- and the grade pay attached to the same is Rs 4,600/- as per the aforesaid First

Schedule. This is the admitted position, as could be seen from Annexures A-6 Pay fixation as well as the statement annexed thereto, Annexure A8 proforma (vide entry against para 3(i) and (iv) thereof, Annexure R-6 and para 7 of Annexure MA1. Thus, though the pay scale of Junior Hindi Translator underwent upward revisions (from the initial scale of Rs 4,500 - 7000 to ultimate pay scale of Rs 7,450 - 11,500/-), practically, the applicant remained in the same post without any promotion for twenty years. This makes her eligible to two financial upgradations one on completion of ten years of service or 01-09-2008 whichever is later and the other on completion of 20 years. The upgradation shall be in respect of the grade pay i.e. Rs 4,800/- and Rs 5,400/- respectively. Thus, w.e.f. 01-09- 2008 the pay scale of the applicant shall be 9,300 - 34,800 with grade pay of Rs 4,800/- and w.e.f. 30-03-2010 the pay scale and grade pay of the applicant should be Rs 9,300 - 34,800 and Rs. 5,400 respectively. It is the same which has been claimed by the applicant and this is the same which has been observed by the internal audit as well, vide MA 1 (para 7). The claim of the applicant is not based on the pay scale applicable to the Central Secretariat Services but one purely within the ambit and scope of the provisions of the MACP including para 5 of the scheme, which is applicable to the facts and circumstance of this case.

15. In view of the discussion as in the preceding paragraphs the OA succeeds. The impugned order at Annexure A-1 and A-2 are hereby quashed and set aside. Respondents are directed to pass suitable orders, revising the pay of the applicant as hereunder:-

- (a) w.e.f. 01-09-2008: admissible pay in the scale of Rs 9,300 - 34,800 with grade pay of Rs. 4,800/-.
- (b) w.e.f. 30-03-2010: Admissible pay in the scale of Rs 9,300 - 34,800 with grade pay of Rs 5,400/-.

16. Arrears arising from the above fixation of pay shall also be made available to the applicant

17. It is made clear that the upgradation in the case of Junior Hindi Translator under MACP is peculiar to this post in view of merger as well as revision of pay scale of Jr.Hindi Translators. Other cases where such a merger coupled with revision of pay scale as in the case of Jr.Hindi Translators does not exist, cannot claim parity with the case of Jr.Hindi Translator.

18. This order shall be complied with, within a period of three months from the date of receipt of this order.

19. Under the above circumstances, there shall be no orders as to costs."

2. It is also covered by one of our judgements in O.A. No.730/2017 dated 18.6.2018 which also we quote:-

"O R D E R

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

The applicant aggrieved by the non-revision of his pension by the respondents has approached this Tribunal seeking the following relief:

- I. To quash the order No.12/Legal (45)/CP 21/2016 dated nil.08.2017, issued by the respondent No.3, Annexure-A12,
- ii. Direct the respondents to fix the pension of the applicant at 50% of the minimum of pay in the pay band (irrespective of the prrevised scale of pay) plus grade pay corresponding to the prrevised pay scale with effect from 01.01.2006 and extend consequential benefits accordingly in line with the terms of letter dated 28.03.2017, Annexure-A10.

2. According to the applicant who is 80 years old, he worked as Chief Telephone Supervisor at the time of his retirement on 30.04.1994. He was in the pay scale of Rs.2000-60-2300-75-3200 and the same was revised to Rs.6500- 200-10500 w.e.f. 01.01.1996 following the 5th Pay Commission. Following the 6 th Pay Commission recommendation, the revised pension structure came into effect from 01.01.2006. The recommendations of the 6th Central Pay Commission were accepted with the modification that fixation of pension shall be based on a multiplication factor of 1.86 i.e. basic pension + dearness allowance (whichever is applicable) + dearness relief of 24% as on 01.01.2006 instead of 1.74(Annexure-A2). Subsequently, vide OM dtd.01.09.2008, it was stipulated that the fixation of pension will be subject to the provision that the revised pension, in no case, shall be

lower than 50% of the minimum of the pay in the pay band plus grade pay corresponding to the pre-revised pay scale from which the applicant had retired(Annexure-A3). Vide OM dtd.13.11.2009, 3 pre-revised scales of Rs.5000-8000, Rs.5500- 9000 and Rs.6500-10500 were merged and the grade pay of Rs.4600 which corresponds to the pre-revised scale of Rs.7450-11500 was granted to those employees who were in the pay scale of Rs.6500-10500(Annexure-A4). Since the applicant was drawing his pension in the scale of Rs.6500-10500, he became entitled to the grade pay of Rs.4600 in terms of the said OM. As the applicant was not allowed the benefit of the grade pay of Rs.4600 for the purpose of fixation of his pension, he approached this Tribunal along with the OA.No.170/00730/2017/CAT/Bangalore Bench similarly situated pensioners in OA.No.253/2012. This Tribunal vide order dtd.08.03.2013 allowed the OA directing the respondents to re-fix the pension of the applicant and others considering the grade pay of Rs.4600 w.e.f.01.01.2006(Annexure-A6). The said order of the Tribunal was challenged by the respondents before the Hon'ble High Court of Karnataka in WP.No.49080-82/2013 and WP.No.55222-55223/2013. Both the WPs were dismissed by the Hon'ble High Court of Karnataka vide order dtd.06.03.2014(Annexure-A7). Again the respondents have approached the Hon'ble Apex Court challenging the above order in SLP(C) No.36148- 36150/2013 and connected matters. The SLP was dismissed by the Hon'ble Supreme Court vide order dtd.17.03.2015(Annexure-A8). Therefore, the order of the Tribunal had attained finality. Since the respondents did not implement the order, the applicant submitted a representation to the respondent No.3 on 25.01.2016 with a request to re-fix his pension in accordance with the order passed by the Tribunal(Annexure-A9). Since there is no response, the applicant approached this Tribunal in CP.No.21/2016. However, during the Contempt Proceedings, the respondent No.3 expressed his desire to implement the order of this Tribunal and hence the Contempt Petition was closed. In spite of this, the respondents issued an erroneous order in August, 2017 saying that the existing pension of the applicant w.e.f.

01.01.2006 is Rs.8973 which is more than the minimum pension of Rs.8345 and hence it does not warrant any further revision in the pension. The said order(Annexure-A12) is under challenge in the present OA.

3. The applicant further submits that respondent No.3 in Annexure-A10 communication has calculated the pension payable to the applicant correctly and arrived at the figure Rs.9230 per month. However, in the impugned order of August 2017, the pension was again assessed and conclusion drawn that the earlier pension was correct. Since the order of the respondents is against the order of this Tribunal, the applicant prays for granting the relief as sought by him.

4. The respondents in their reply statement submit that the applicant was given the benefit of grade pay of Rs.4600 for the purpose of fixation of pension as per the orders of this Tribunal in OA.No.253/2012 dtd.8.3.2013 after duly following the procedure in respect of calculation of pension in concerned orders of Govt. of India issued from time to time in respect of fixation of pension and pay in such case of upgradation of Grade Pay. They referred to para 4 of OM dtd.13.11.2009(Annexure-R1) saying that the revised pay of the Government servants who were in the pre-revised pay scale of Rs.6500- 10500 and who have been granted grade pay of Rs.4600 are to be fixed in terms of Rule 6 of CCS(RP) Rules 2008 in accordance with illustration 4A annexed to CCS(RP) Rules 2008. They have also referred to OM dtd.13.10.2008(Annexure-R2) issued by the Ministry of Finance in respect of fixation of pay in the pay bands where posts have been upgraded as a result of recommendations of Sixth CPC. According to para 2 of the said OM, in cases of upgradation of posts as a result of recommendations of Sixth CPC, the fitment table attached with OM of even number dated 30.8.2008(Annexure-R3) corresponding to pre-revised scale shall be used for the purpose of determination of pay in the pay band. To the pay in the pay band so determined, the grade pay corresponding to the upgraded post is to be added. This will be revised pay of the Government servant who has been upgraded as a result of Sixth CPC recommendation. Further

in para 3 of the OM dated 13.10.2008 the fixation of pay of CPMF constables whose pay scale has been upgraded from pre-revised pay scale of Rs.3050-4590 to Rs.3200-4900 corresponding to grade pay of Rs.2000 in PB1 has been 5 OA.No.170/00730/2017/CAT/Bangalore Bench illustrated. The Govt. servant drawing a pay of Rs.3575/- in pre-revised pay scale of Rs.3050-4590 has been fixed at Rs.6650 in the pay band PB1 5200- 20200 corresponding to pre-revised scale of Rs.3050-4590 and the grade pay of Rs.2000 corresponding to pre-revised scale of Rs.3200-4900 has been added to arrive at the revised basic pay of Rs.8650 on 1.1.2006. Accordingly, the minimum pay in pay band corresponding to pre-revised pay scale of Rs.6500-10500 in the fitment table is Rs.12090. As per para 4.2 of OM dated 1.9.2008(Annexure-R4) read with OM dated 28.1.2013 & 30.7.2015(Annexure-R5 & R6 respectively) sum of 50% of minimum of pay in the pay band corresponding to pre-revised scale of Rs.6500-10500 and grade pay of Rs.4600 amount to Rs.8345/- (i.e. 50% of (12090+4600)). The detailed calculation of pension under various circumstances is given in Annexure-R7. The respondents further submitted that the speaking order conveying the fixation of pension of Rs.8973 and minimum pension of Rs.8345 applicable in the case of the applicant has been issued in accordance with the approval conveyed vide DoT Hqrs. Letter dtd.18th August, 2017(Annexure-R8) after due consultation with Department of Pensions & Pension welfare and Department of Expenditure. Therefore, they submit that the contention of the applicant regarding fixation of pension is not correct and he is not entitled to any further relief.

5. The applicant has filed a rejoinder in which he mentioned that the pension of the applicant has been fixed at Rs.8973 taking into account the minimum pay of the pay band + grade pay of Rs.4200. The pay scale of Rs.6500-200-10500 has been upgraded to Rs.7450-11500 with the grade pay of Rs.4600 w.e.f. 01.01.2006 in terms of the OM dtd.13.11.2009(Annexure-A4). Therefore, the pension of the applicant requires to be fixed taking in to account his pay in PB-2 Rs.7450-11500 + Grade Pay of Rs.4600 and not otherwise. The contention of the respondents that

the upgradation of the pay scale Rs.6500- 200-10500 to Rs.7450-11500 in terms of OM dtd.13.11.2009 is not applicable to the retired employee is not correct. Therefore, the calculation made by the respondents is contrary to the orders of the Full Bench of CAT, N.Delhi in OA.No.655/2010 dtd.01.11.2011 which has been confirmed by the Delhi High Court and subsequently by the Hon'ble Supreme Court.

6. The respondents have filed additional reply statement reiterating the contentions already made in the reply statement and not come up with any new point.

7. We have heard the Learned Counsel for both the parties. The Learned Counsel for the applicant while highlighting the contention already made in the OA specifically drew attention to para-8 of the earlier order of the Tribunal dtd.08.03.2013 in OA.No.231 & 253/2012 which had referred to the order passed in OA.No.655/2010 of the Principal Bench and reference to the principle enunciated by the 6th CPC for the future revision of pensions to the effect that complete parity should normally be conceded up to the date of last pay revision and modified parity (with pension equated at least to the minimum of the revised pay scale) be accepted at the time of each fresh pay revision. He submitted that the applicants had contended that the revised grade pay of Rs.4600 corresponding to the scale of Rs.7500-11500 has to be allowed to them in terms of the recommendation of the 6th Pay Commission and OM dtd.13.11.2009. This benefit is not only applicable to the employees who are working as on 01.01.2006 but also to those who retired before 01.01.2006. He contended that when Grade Pay of Rs.4600 is allowed corresponding to scale of Rs.7400-11500, the stand taken by the respondents that it has to be based on pay scale of Rs.6500-10500+4600(GP) is clearly 7 OA.No.170/00730/2017/CAT/Bangalore Bench erroneous. Further in terms of OM dtd.28.01.2013 relating to the revision of pension of pre-2006 pensioners, the minimum pension applicable to the scale of PB-2 i.e. Rs.7450-11500 with Grade

Pay of Rs.4600 comes to Rs.9230. Therefore, the stand taken by the respondents is completely erroneous and the direction should be issued to them to grant minimum pension of Rs.9230 from .01.01.2006.

8. The Learned Counsel for the respondents, on the other hand, referred to Annexure-R7 showing calculation of pension and saying that the applicant is getting the pension of Rs.8973 in corresponding revised pay scale in 5th Pay Commission i.e. Rs.6500-10500 and only grant of Grade Pay of Rs.4600 corresponding to Rs.7450-11500 has been allowed. When a query was made that if that is their interpretation, they should have stated the same in that OA itself saying that even if Grade Pay Rs.4600 is allowed it would not result in any difference in the entitled pension and when it would not have resulted in any benefit to the applicant then there was no justification on their part to approach the Hon'ble High Court and Hon'ble Apex Court in this matter, they had no answer to the same.

9. We have carefully considered the facts of the case and submissions made by either side. The Office Memorandum issued by the Ministry of Finance on 13.11.2009 is quite clear. Para-3 of the said OM reads as follows:

3. Consequent upon the Notification of CCS(RP) Rules, 2008, Department of Expenditure has received a large number of references from administrative ministries/departments proposing upgradation of the posts which were in the pre-revised scale of Rs.6500-10500 as on 1.1.2006 by granting them grade pay of Rs.4600 in the pay band PB-2. The matter has been considered and it has now been decided that the posts which were in the pre-revised scale of Rs.6500-10500 as on 1.1.2006 and which were granted the normal replacement pay structure of grade pay of Rs.4200 in the pay band PB-2, will be granted grade pay of Rs.4600 in the pay band PB-2 corresponding to the pre-revised scale of Rs.7450-11500 w.e.f.

1.1.2006. Further, in terms of the aforementioned provisions of CCS(RP) Rules, 2008, in case a post already existed in the pre-revised scale of Rs.7450-11500, the posts being upgraded from the scale of Rs.6500- 10500 should be merged with the post in the scale of Rs.7450-11500.

10. When the applicant approached this Tribunal in OA.No.231/2012 & connected matters, this particular issue was raised and the applicant contended that they are entitled to the Grade Pay of Rs.4600 corresponding to pre-revised pay scale of Rs.7450-11500. When the grade pay corresponding to particular pay scale is allowed, it obviously means that it is corresponding to that particular pay scale only and not the lower pay scale. Therefore, in terms of OM dtd.13.11.2009 as well as from the order of Tribunal, it is quite clear that the applicant had been allowed Grade Pay of Rs.4600 which corresponds to Pay Scale of Rs.7450-11500 only. The presumption of the respondents that the pay scale shall be retained at Rs.6500-10500 and only the grade pay would be changed from Rs.4200 to Rs.4600 is therefore illogical and unjustified. In terms of revision of pension of pre-2006 pensioners vide OM dtd.28.01.2013, the minimum pension corresponding to pay scale of Rs.7450-11500 with grade pay of Rs.4600 comes to Rs.9230. Therefore, the pay arrived at by the respondents by giving multiplication of factor which is Rs.8973 should have been changed to Rs.9230 and the applicant is entitled to a minimum pension of Rs.9230. The stand taken by the respondents to only increasing the grade pay keeping the earlier pay scale of Rs.6500-10500 as it is is completely wrong and does not stand to any reason. Moreover, if this was the interpretation of the respondents according to which the order of the Tribunal in OA.No.231/2012 will not result in any change in the pension of the applicant and similarly placed persons, there was no justification on their part for approaching the Hon'ble High Court against the order of the Tribunal and thereafter Hon'ble Supreme Court.

11. The OM dtd.13.11.2009 had clearly stipulated that the posts which were in the 9 OA.No.170/00730/2017/CAT/Bangalore Bench pre-revised pay scale of Rs.6500-10500 as on 1.1.2006 and which were granted the normal replacement pay structure of grade pay of Rs.4200 will be granted grade pay of Rs.4600 corresponding to the pre-revised scale of Rs.7450-11500 with effect from 01.01.2006. This makes evidently clear that the applicants were to be considered against the pay scale of Rs.7450-11500 with grade pay of Rs.4600. The revised pay and pension has to be calculated on that basis and that comes to Rs.9230. The manner of computing the pension by the respondents is therefore completely wrong and bereft of any logic. Therefore, we hold that the order of August 2017 at Annexure-A12 is completely erroneous and unjustified and the same stands quashed. The respondents are directed to grant revised pension of Rs.9230/- to the applicant w.e.f. 01.01.2006 along with consequential benefits within a period of one(1) month from the date of receipt of copy of this order.

12. The OA is accordingly allowed. No order as to costs.”

3. Therefore, OA is allowed. All benefits as provided earlier will be granted to the applicant also.

4. We found that Annexure-R6 and Annexure-R7 may not have application on facts in this case. OA is allowed. Same benefits as provided earlier will be made available to the applicant also. No order as to costs.”

2. Therefore, the benefits as mentioned in the said Judgment will be allowable to the applicants herein also. OA allowed. No order as to costs.

(CV.SANKAR)
MEMBER (A)

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

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Annexures referred to by the applicant in OA.No.104-114/2018

Annexure A1: Copy of pension payment orders dt. pre-2006 of applicants

Annexure A2: Copy of the resolution of the Government dtd.29.8.2008

Annexure A3: Copy of the O.M. Dtd.01.09.2008

Annexure A4: Copy of order Dtd.11.9.2008 dt.12.7.2014

Annexure A5: Copy of the OM dtd. 13.11.2009

Annexure A6: Copies of the pension payment orders dtd. 10.4.2010 to 24.9.2012

Annexure A7: Copy of the applicants representations dtd. 26.11.2015 to 10.1.2017

Annexure referred to by the Respondents in the OA

Annexure R1: Copy of service particulars of applicants

Annexure R2: Copy of RBE.181/08 & OM dtd.14.10.2008

Annexure R3: Copy of OM dtd. 28.1.2013

Annexure R4: Copy of OM dtd..30.7.2015

Annexure R5: Copy of RBE.35/2016 & OM dtd.6.4.2016

Annexure R6: Copy of RBE.33/2009 & OM dtd. 11.2.2009

Annexure R7: Copy of order in OA.No.576/2015 & OA.No.584/2015

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