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**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH,
MUMBAI.**

O.A.210/00328/2016

Dated this Thursday the 3rd day of January, 2019.

**Coram: Dr. Bhagwan Sahai, Member (Administrative)
Ravinder Kaur, Member (Judicial).**

1. Uday P. Datar, U.D.C.,
Resident of
C-11, Rahul Park Co-op. Hsg.
Society, Paud Road, Kothrud,
Pune - 411 038. ✓
2. M.K. Surendran, Superintendent,
Resident of
Ganpathy Co-op Hsg. Society,
E Bldg flat no.102
Col. Sharma's Compound,
Nigadi Gaonthan, Nigadi,
Pune - 411 044.
3. P.M. Pradeep Kumar, Superintendent,
Resident of
C-6, Vrundavan Garden-2,
Kolhewadi, KDK,
Pune - 411 024.
4. D.B. Kulkarni, Superintendent,
Resident of
C-40, CWPRS Staff Colony,
Kirkatwadi, Kdk,
Pune - 411 024.
5. S.V. Dhotrikar, Superintendent,
Resident of
B-3, Tushar Park, Kolhewadi,
Kdk. Pune - 411 024.
6. A.M. Ghodake, Superintendent,
Resident of
B-2, Sonai Society,
Mukainagar,
Kdk. Pune - 411 024.
7. C.P. Rajkumar, Superintendent,
Resident of
Flat No.11, Neha Appt..

Above UCO Bank, Kondhwa,
Pune - 411 048.

8. Smt.B.H. Thakur, Superintendent,
Resident of
Flat No.G-22, Ganraj Estate HSG
Co-op Society,
Pune Solapur Road, Veduwadi,
Hadapsar, Pune - 411 013.
9. Smt.S.D. Sardesai, Superintendent,
Resident of
G-15/05, Saritanagari,
Aboli Bldg., Phase-1, Ganesh Mala,
Pune Sinhgad Road,
Pune - 411 030.
10. Smt.S.S. Apte, Superintendent,
Resident of
G-5, Poonam Park, S.No.-678,
Near Bhagali Hospital,
Bibwewadi, Pune - 411 037.
11. Smt.V.N. Kulkarni, Superintendent,
Resident of
B-14, Damodar Sankul,
Hingne Khurd, Sinhgad Road,
Pune - 411 051.
12. V.S. Purohit, Superintendent,
Resident of
Plot No.2/B, Vikramnagar,
Raksha Lekha Hsg Society,
Dhankawadi, Pune - 411 043.
13. D.B. Deshmane, UDC,
Resident of
S.No.31/3/3, Sashiban,
Katraj-Dhayari Road,
Near Tulja Bhawani Mandir,
Narhe, Pune - 411 041.
14. K.B. Nagle, UDC,
Resident of
Samarth Park, B-4, Anand Nagar
Vadgaon Budruk, Sinhgad Road,
Pune - 411 041.
15. S.B. Patole, UDC,
Resident of
Sukhawani Campus,

C-1, Flat No.2,
Sandal Wood, Opp. Vallabhanagar
S.T. Stand, Pune - 411 018.

16. D. Venkatesan, UDC,
Resident of
A-4/101, Kumar Samruddhi,
Tingre Nagar Road, Dhanori,
Vishrantwadi,
Pune - 411 015.
17. D.B. Dhere, UDC,
Resident of
Plot No.52, Gujarath Colony,
Karape House, Kothrud,
Pune - 411 038.
18. Smt.S.R. Dhamdhere, UDC,
Resident of
53/18 B, Vijaysmruti Bldg.,
Flat No.2, Vikas Nagar,
Wanwadi, Pune - 411 040.
19. Smt.A.M. Bodhe, UDC,
Resident of
Flat No.401, Bldg No.D 1,
Shivsagar City, Sun City Road,
Anand Nagar, Pune - 411 051.
20. Smt.S.D. Joshi, UDC,
Resident of
C/o. Shree S.R. Daithankar,
S.No.10/11, Sukhasagar Nagar,
Katraj, Pune - 411 046.
21. Smt.M.S. Kelkar, UDC,
Resident of
'Somesh' 1012, Sadashiv Peth,
Pune - 411 030.
22. Smt.R.B. Tondare, UDC,
Resident of
Flat No.1, Ganesh Kunj,
Hingnekhurd, Sinhgad Road,
Pune - 411 051.
All are employed at Central Water
& Power Research Station,
PO, Khadakwasla Research Station,
Pune - 411 024. .. Applicants.

(By Advocate Shri T. Radhakrishna).

Versus

1. The Union of India, through the Secretary, Government of India, Ministry of Water Resources, River Development & Ganga Rejuvenation, Shram Shakti Bhawan, Rafi Marg, New Delhi - 110 001.
2. Deputy Secretary (E-III/A), Room No.74/6, Government of India, Ministry of Finance, Deptt. Of Expd. North Block, New Delhi - 110 001.
3. Secretary, Government of India, Ministry of Personnel, Public Grievances & Pensions, Deptt. Of Personnel & Training, 3rd Floor, Lok Nayak Bhawan, Khan Market, New Delhi - 110 003.
4. The Director, Central Water and Power Research Station, PO. Khadakwasla Research Station, Pune - 411 024.
5. Pay & Accounts Officer, CWPRS, Pune - 411 024. .. Respondents.

(By Advocate Shri R.R. Shetty).

Order reserved on : 16.10.2018
Order pronounced on : 03.01.2019.

O R D E R
Per : Dr.Bhagwan Sahai, Member (A) .

The present 22 applicants in this O.A. are seeking -

(i) setting aside of the communication in

letter of 21.12.2015 to their Advocate from Chief Administrative Officer, Central Water and Power Research Station (CWPRS), Khadakwasla, Pune, Ministry of Water Resources, River Development & Ganga Rejuvenation, Government of India;

(ii) declaration that the applicants are entitled for 6th CPC pay scale of Rs.6500-10500; and

(iii) direction to the respondents to implement the 6TH Central Pay Commission recommendations along with payment of arrears of pay fixation from 01.01.2006 or from the date of 2nd financial upgradation and provide cost of this application.

2. Summarized facts:

2(a). The applicants working in the grade of UDC/Superintendent are members of the Ministerial Staff at the CWPRS, Khadakwasla, Pune which is subordinate office of the Government of India under the Ministry of Water Resources. It is claimed by the applicants that based on the recommendations of the 5th CPC, officials who were in the pay scale of Rs.5000-8000 as UDCs have been granted financial upgradation under ACP from 09.08.1999 in the pay scale of Rs.5500-9000 and the same pay scale has been upgraded to Rs.6500-10500 for employees working in the Secretariat Offices in the Ministries of Government of India as Stenographers

and UDCs in terms of DOPT OM dated 15.11.2006. But the employees working in the subordinate offices of the Central Government Ministries who were drawing the earlier pay scale of Rs.5000-8000 have not been given the benefit of upgrading the pay scale to Rs.6500-10500, although all these employees are performing duties on the same posts and the recruitment of such LDC/UDC for these offices is also through Staff Selection Commission.

2(b). This policy of difference in pay structures of the UDCs working in Field Offices (the applicants) and those in the Secretariat of Central Ministries, and the issue of merging the pay scale of the former with the upgraded pay scale of Rs.6500-10500 was brought to the notice of the Chairman of 6th CPC vide letter of 23.12.2006 by the present applicants. Thus this matter has also been examined by the 6th CPC and based on their recommendations, it is claimed that the staff members who were in the pay scales of Rs.5000-8000 and Rs.5500-9000 on or after 01.01.2006 were merged with the pay scale of Rs.6500-10500 to maintain uniformity and to bring parity in the pay scales of staff working in Field Offices, the Central Secretariat, and Technical and Workshop Staff. Financial upgradation as per the provision of ACP

Scheme of 1999 was also granted till 31.08.2008.

2(c). While implementing the 6th CPC recommendations, the pay scale of post of Assistant i.e. Rs.5000-8000, a promotional post for UDC was removed by merging it with the post of Superintendent and thus the employees working as UDC with ACP pay scales were directly promoted to the grade of Superintendent from 01.01.2006 in Pay Band-2 (Rs.9300-34800 + Grade Pay Rs.4200/-).

2(d). It is also claimed by the applicants that in 6th CPC report, Para 2.2.19 (vii) it has been indicated that where pre-revised pay scales have been merged, it has been done with the highest pay scale by merging with other lower pay scales. Accordingly it has been stipulated in para 7(1)(A) of the CCS (Revised Pay) Rules, 2008 that if the minimum of the revised Pay Band/Pay scale is more than what is determined by multiplying the existing basic pay as on 01.01.2006 by a factor of 1.86, the pay shall be fixed at the minimum of the Revised Pay Band vide gazette notification dated 29.08.2008 (Annex A-9).

2(e). The applicants claim that while fixing the pay of the employees who were performing duties of UDC and drawing the pay scale of Rs.5000-8000 on or after 01.01.2006 till 31.08.2008 while working in

the subordinate offices of the Central Government Ministries such as CWPRS, Khadakwasla, the recommendation towards merging of pre-revised scale has not been taken into account and the actual pay has been only multiplied by a factor of 1.86 in the pay scale of Rs.5000-8000 instead of the pay of Rs.6500/- (pay scale of Rs.6500-10500).

2(f). The Gazette Notification Part-B, Section I(v) has stipulated that upgradation as in (ii) above may be done in consultation with Department of Expenditure, Ministry of Finance. By OM dated 13.11.2009, the grade pay has been changed from Rs.4200/- to Rs.4600/- but it is irrelevant to the demands of the applicants and the above mentioned anomaly has not been resolved. The representation made by the applicants on 24.09.2014 to the Department was forwarded to the Ministry of Water Resources on 03.12.2014 clarifying that while fixing the pay scale of the employees who were drawing the pay in the pay scales of Rs.5000-8000 and Rs.5500-9000 as on 01.01.2006 or from the date of 2nd financial upgradation under the ACP, due to implementation of the 6th CPC pay scales, Part B Section 1(ii)/Part C Section 1(ii) has not been implemented in case of the applicants.

2(g). The said representation was considered by

the Ministry of Water Resources without consulting DOPT, and instructions/directions were given in the letter dated 20.05.2015 directing the Director, CWPRS to examine the applicants' representation and settle the issue at the level of the Research Station in terms of clarifications issued by the DOPT from time to time.

2(h). The C.A.O., CWPRS, Khadakwasla, Pune vide his letter dated 01.07.2015 requested the Pay & Accounts Officer (PAO) to examine the representation along with the guidelines issued on 13.09.2008. The PAO replied that after going through all the Office Orders associated with the subject, it could not find any clarification of DOPT which indicates that in case merger of two or more pre-revised pay scales, the pay should be fixed in the higher revised pay scales. The PAO also mentioned in his reply that in case of any doubt, the case may be referred to DOPT for clarification. A self content note was prepared on 24.07.2015 (Annex A-20).

2(i). The applicant Shri U.P. Datar also sent a letter under RTI to the Ministry of Finance raising the issue of merging of the pay scales of different cadres. It was replied on 10.08.2015. However, in spite of their subsequent representations to

various authorities in the Ministry of Water Resources, Department of Expenditure and DOPT, the applicants claim that their grievance has not been redressed and, therefore, this O.A.

3. Contentions of the parties:

3(a). the applicants contend that in view of genuineness of their demands, the Tribunal has already admitted the present O.A. and, therefore, the plea of the respondents that the O.A. is time-barred is of no consequence;

3(b). the issue of merging of pay scales was under discussion with the National Anomaly Committee (set up after receipt of 6th CPC recommendations) in its meetings held on 12.12.2009 and finally on 17.07.2012. It is also the claim of the applicants that the respondent authorities have not examined their representations thoroughly and the O.A. has been dealt with by the respondents in a very casual manner. In view of pendency of the issue with the National Anomaly Committee, one of the applicants Shri Datar approached the DOPT and Ministry of Finance under provisions of RTI Act, 2005, but did not get the desired response, though the applicants had not approached for pay fixation grievance through RTI. The National Anomaly Committee has not given crystal clear decision in respect of

merger of the other pay scales with upgraded pay scale of Rs.6500-10500 in their final meeting held on 17.07.2012;

3(c). the respondents have tried to misguide the Court by giving false and flimsy statements. The respondents cannot raise the question of now reopening of the pay fixation cases from 01.01.2006. The demand of applicants is only for granting or extending the benefit of upgraded pay scale to them based on recommendations of the 6th CPC. The basic demand of the applicants is for refixing their pay scale by merging it initially at Rs.6500/- in the pay scale of Rs.6500-10500 and not for raising the grade pay from Rs.4200 to Rs.4600/-;

3(d). limitation period for filing the case against the decision in a particular matter and filing the case for extending its benefit to others are totally different issues; and

3(e). their issue of merging of the pay scales was brought to the notice of the Chairman of the 6th CPC on 23.12.2006 and accordingly the benefit of merger of the pay scale of Rs.5000-8000 and Rs.5500-9000 with the pay scale of Rs.6500-10500 was awarded in the recommendations of 6th CPC.

The respondents and their counsel have

contended that -

3(f). the applicants at this belated stage after lapse of about 8 years have challenged the pay fixation done in 2008 while implementing the recommendations of 6th CPC. The applicants have also challenged the communication dated 21.12.2015 from respondent no.4 which was a reply to the legal notice of 26.10.2015 sent by Advocate of the applicants. The reply given by the respondents is a speaking order mentioning all the facts as to how the applicants pay fixation was done after exercising the option in the year 2008 and as per the guidelines contained in the notification dated 29.08.2008 issued by the Ministry of Finance, Department of Expenditure, Government of India which is common to all Central Government employees;

3(g). at such a belated stage the applicants are in fact now directly challenging the recommendations of the 6th CPC and notification of the Ministry of Finance dated 29.08.2008, and their pay fixation order from 01.01.2006 after enjoying all the benefits for the last 10 years. Nothing prevented the applicants in all these years to take recourse to proper forum for challenging 6th CPC pay fixation orders at relevant time, but certainly not

at this belated stage after lapse of 10 years when 7th CPC are now already under implementation. In view of demands of the applicants, the first cause of grievance arose on or about 01.01.2006 or at the time of notification dated 29.08.2008 when the 6th CPC recommendations were accepted by the Government of India. So they ought to have filed the O.A. within the next six months from that date;

3(h). the applicant No.1 has also taken recourse to provisions under RTI Act for his pay fixation grievance and his appeal has been finally disposed of by the appropriate authority on 17.11.2014 and, therefore, the matter came to an end on that date itself;

3(i). the applicants being common interest litigants also took up their grievance before the National Anomaly Committee/JCM in New Delhi. However, its outcome has not been placed on record by the applicants. As such the applicants are estopped at this stage to challenge the settled issue of 6th CPC pay fixation pertaining to the year 2006. The applicants have not taken recourse at appropriate time in the year 2006 or later on before or after OM dated 29.08.2008 was issued. Therefore, the O.A. should be dismissed with cost. Beside being devoid of merit, the O.A. is also

time-barred as provided under Section 21 of the Administrative Tribunals Act, 1985. Through this O.A. the applicants have not come with clean hands;

3(j). in respect of their contention regarding delay and laches, the respondents have also listed 11 caselaws but without providing their copies and highlighting the final views taken in them;

3(k). the DOPT OM on 15.11.2006 pertains to cadre of Secretariat Staff in the Ministries of Government of India and it is not applicable to the UDC/Assistant working in the subordinate offices and, therefore, the pay scale merger related recommendation claimed by the applicants had not been made applicable in the case of the present applicants who are working with the subordinate office of the respondent no.4;

3(l). the applicants' pay has been correctly fixed as per the guidelines contained in O.M. Dated 29.08.2008. As per submission of the applicants, this issue had already been taken up by them with National Anomaly Committee and Ministry of Finance, besides the Appellate Authority in the Ministry of Water Resources, and after due examination of the issue, their appeal was disposed of on 17.11.2014;

3(m). the issue pertaining to pay of Group 'D' employees' was totally different. In view of

stagnation in their cadre, and responsibilities attached to their posts, subsequently new posts of Multi-Tasking Staff were created by the Government. Based on specific recommendation of the expert body i.e. 6th CPC and after its due examination, the Government decided to extend certain benefits to them i.e. to Group 'D' employees. But that decision is not relevant for the present applicants;

3(n). the applicants have tried to mix up the issue of their case by referring to even the 5th CPC pay scale with that of the 6th CPC pay scales. After due consideration of all the relevant aspects and representations, the 6th CPC had recommended appropriate pay scales for different categories of CSS staff working in various departments of the Government of India but the staff cadres of subordinate offices are different because of functional responsibilities attached to those posts and their service conditions, and, therefore, the claim of the applicants for parity with the pay scale of Central Secretariat Staff is not acceptable. In view of this the O.A. may be dismissed with cost; and

3(o). the claim of the applicants in this O.A. are misleading and they have attempted to cover up

their time-barred/frivolous O.A. under the garb of RTI, OMs and JCM machinery, etc by making comparison between Central Secretariat Staff and those with subordinate offices of the Central Ministries. The allegation of the applicants about violation of Article 14 and 16 of the Constitution is not true. Hence the O.A. be dismissed.

4. Analysis and conclusions:

We have perused the O.A. memo and its annexes, rejoinder filed by the applicants, reply and sur-rejoinder filed by the respondents and considered the arguments advanced by the parties during the hearing on 16.10.2018. After consideration of all these, we conclude as follows:

4(a). In this O.A. the first issue to be dealt with is of delay in its filing. After perusal of the case and rival submissions, it becomes clear that the actual cause of action for the grievance of the applicants arose in 2008 i.e. when the order dated 29.08.2008 was issued by the Government of India for implementing the recommendations of the 6th CPC. But the impugned communication under challenge is only the reply of 21.12.2015 from the Chief Administrative Officer, CWPRS, Pune to the Advocate for the applicants with reference to his legal notice of 26.10.2015. Although the

applicants have resorted to submission of several representations/applications in respect of their demands, repeated representations cannot help them to escape the law of limitation.

4(b). As per provisions of Section 21 of the Administrative Tribunals Act, 1985, the delay in filing the claim is to be reckoned from the date of arising of original cause of action, which in this case was the order of 29.10.2008. When viewed from this angle, the period of limitation will have to be considered from end of February, 2009 while the present O.A. has been filed on 10.03.2016. Thus the O.A. is certainly belated and without satisfactory explanation to justify the delay.

4(c). The main claim of the applicants in the O.A. is that the merged pay scale granted to the UDC and Superintendents working in the Central Secretariat in various Ministries of Government of India while implementing the 6th CPC pay scales should be made applicable to them. In this context it has to be appreciated that the posts of UDCs and Superintendents working in the Central Secretariat of various Central Ministries constitute a separate and distinct service under the Government of India with its own service conditions such as recruitment, promotion, pay scale, etc depending

upon their functional responsibilities. The applicants may be performing some duties similar to those of the UDC and Superintendents in the Central Secretariat Staff of the Ministries of Government of India, but their functional responsibilities and rules governing their service, conditions are different and, therefore, the merged pay scale granted to the former cannot be made automatically applicable to the present applicants. The subject matter of what pay scales are to be made applicable to which categories/cadres of Central Government Staff falls in the realm of policy decision, and hence in the domain of the Government of India.

4(d). As a result the merged pay scale made applicable to the Central Secretariat Staff (UDC/Superintendent) cannot be made applicable automatically to the present applicants unless there is a policy decision on this issue taken by the Government of India. No such decision has been taken by the Government of India so far. Therefore, the Tribunal has no power to frame a policy and grant relief sought by the applicants. In view of this the present O.A. is thus not maintainable.

4(e). The applicants had also themselves submitted their representations to the Chairman, 6th

CPC as well as National Anomaly Committee and after due consideration of their and other similar representations, the 6th Pay Commission made the recommendations. Similarly after due consideration of various representations received by it, the National Anomaly Committee also submitted its recommendations to the Government of India to take care of any anomalies arising while implementing 6th CPC recommendations.

4(f). This clearly brings out the fact that the grievance of the applicants was duly considered by concerned expert bodies i.e. the 6th CPC as well as the National Anomalies Committee and thereafter by the Government of India before the 6th CPC pay scales were implemented by the order of 29.08.2008. In view of this, thereafter any grievance pertaining to the 6th CPC pay scales implemented from 01.01.2006 has become a stale issue.

Subsequently even the 7th CPC must have dealt with such issues and grievances submitted to it by various respective staff associations/unions and thereafter the recommendations submitted by the 7th CPC have also been accepted by the Government of India and implemented from 01.01.2016. Thus after constitution of the 7th CPC and thereafter implementation of its recommendations, the

applicants now cannot agitate on any issue pertaining to implementation of the pay scales of 6th CPC.

4(g). As submitted by the respondents, the representations of the applicants on this issue also seem to have been examined in depth by the respondents and accordingly the reply was given on 23.12.2006.

4(h). Considering all these facts and aspects of the case, we feel that the present O.A. is not only barred by limitation but also devoid of merit and, therefore, deserves to be dismissed.

5. Decision:

The O.A. is dismissed for unjustified long delay and on merits.

(Ravinder Kaur)
Member (J)

(Dr. Bhagwan Sahai)
Member (A).

H.

