

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

ORIGINAL APPLICATION NO.135 of 2012

Date Of Decision: 14th August, 2018.

**CORAM: HON'BLE SHRI. R. VIJAYKUMAR, MEMBER (A).
HON'BLE SHRI. R.N.SINGH, MEMBER (J).**

1. M.P. Sankaran
Aged 73 years, Scientific Officer,
[SE] (Retired), at present
residing at A-15, Geetanjali,
Plot No. 52, Sector- 17 Vashi,
Navi Mumbai- 400 703.
2. K.V. Raghavendran,
Aged 76 years, Scientific Officer,
[SE] (Retired), at present
residing at C-5:26/3-I:Sector-5,
CBD, Navi Mumbai- 400 614.
3. M.M. Venkateshmurthy,
Aged 70 years, Scientific Officer,
[SE] (Retired), at present
residing at G-6/1:.Suryog
CHS Ltd, Sector-18, Nerul (W),
Navi Mumbai- 400 703.
4. V.N. Venkitaraman,
Aged 70 years, Scientific Officer,
[SE] (Retired), at present
residing at Flat No. 11,
Phoenix CHS, Sector-9A,
Vashi Navi Mumbai- 400 703.
5. L.N. Singh,
Aged 73 years, Scientific Officer,
[SE] (Retired), at present
residing at D-1602, Runwal Centre,
Govandi Station Road, Deonar,
Mumbai- 400 088.
6. K.C. Kunju,
Aged 70 years, Scientific Officer,
[SE] (Retired), at present
residing at B-32/0:3,
Kendriya Vihar, Khargar,
Navi Mumbai- 410 201.

7. R.S. Gupta,
Aged 73 years, Engineer SO/E:,
[SE] (Retired), at present
residing at 101, Saket,
Plot No. 132, Sector- 21,
Nerul (East), Navi Mumbai- 400 706.

8. A.K. Dabke,
Aged 66 years, Scientific Officer,
[SE] (Retired), at present
residing at E2, 604,
Bhimashankar Society, Sector 19A,
Nerul, Navi Mumbai- 400 706.

9. T.B. Sheshshai,
Aged 68 years, Scientific Officer,
[SE] (Retired), at present
residing at E2/401,
Bhimashankar Society, Sector 19A,
Nerul, Navi Mumbai- 400 706.

10. R.J. Kulkarni,
Aged 73 years, Scientific Officer[SO],
[SE] (Retired), at present
residing at Ground Floor,
Anantashram, Block No.3,
Carter Road, No.3, borivili, (East),
Mumbai- 400 066.

11. V.K. Santha Singh,
Aged 73 years, Scientific Officer[SO],
[SE] (Retired), at present
residing at B-301,
Sree Mahavir Sadhana
CHS, Sector 14, Plot No. 18 EFG,
Sanpada, Off Palm Beach Road,
Navi Mumbai- 400 705.

12. Shiv Datta,
Aged 75 years, Scientific Officer,
[SE] (Retired), at present
residing at Flat No. 403,
Building No. E/3, Highland Park,
Emerald CHS Ltd, Mulund Colony,
Mulund (W), Mumbai- 400 082.

13. Dr. (Smt.) Vsanthi,
Shridhar Bangera,
Aged 72 years, Scientific Officer,
[SE] (Retired), at present

residing at B-8, Tulsi Nivas,
Prabhat colony, Road No.2,
Opp. H.Ward Municipal Office,
Santacruz (East), Mumbai- 400 055.

14. P. Balasubramanian,
Aged 74 years, Dy. Director [P&S],
(Retired), at present
residing at 17, Swagat, Heavy
Water Staff CHS Ltd, Plot A,
Sector A Vashi, Navi Mumbai- 400 703.

15. M. Venugopalan,
Aged 64 years, Dy. Secretary (Retired),
at present residing at Flat No.1-A-601,
Seawood, Heritage, Sector-4,
Kharghar, [Navi Mumbai- 410 210]

16. B.S. Kulloli,
Aged 62 years, Scientific Officer,
[SE] (Retired), at present
residing at B-23/180, Kendriya Vihar,
Sector 38, Nerul (W),
Navi Mumbai- 400 706.

17. Dr. K.N. Suseelan,
Aged 63 years, Scientific Officer,
[SE] (Retired), at present
residing at A-203, E.V. Residency
CHS Ltd, Plot No.15, Sector 42,
Seawoods Nerul (West),
Navi Mumbai- 400 706.

17. Atomic Energy Retirees' Welfare
Association, a registered body having
its address at C-5-26, 31 Sector-5 CBD,
Navi Mumbai- 400 614.

....Applicants.

(By Advocate Shri Sai Kumar Ramamurthy)

Versus

1. Union of India,
Through the Secretary,
Department of Atomic Energy,
Anushakti Bhavan,
CSM Marg, Mumbai- 400 001.

2. The Secretary,
 Department of Expenditure,
 Ministry of Finance,
 Government of India,
 North Block, New Delhi- 110 001.

3. The Secretary,
 Department of Pension &
 Pensioners Welfare, Ministry of Personnel,
 Public Grievances and Pension,
 Loknayak Bhavan,
 Khan Market, New Delhi- 110 003.

(By Advocate Shri N. K. Rajpurohit)

Reserved On : 06.08.2018.

Pronounced on: 14.08.2018.

ORDER

PER:- R. VIJAYKUMAR, MEMBER (A).

This application was filed on 21.01.2012 by 18 applicants, the 18th applicant being the Atomic Energy Retirees' Welfare Association, under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"a) That this Tribunal be pleased to hold and declare that the action on the part of the respondents to create disparity in the pensions payable to the pensioners in the erstwhile S.21 and S.24 pay scales of the 5th Pay Commission under the 6th Pay Commission pay bands is illegal, arbitrary, discriminatory, unfair and violative of Articles 14 and 16 of the Constitution of India and is liable to be

quashed and set aside.

b) That the Hon'ble Tribunal be pleased to hold and declare that all the erstwhile pay scales from S.21 to S.24 under 5th Pay Commission which form the Junior Administrative Grade pay scales are required to be clubbed together by placing them in the same pay band of PB-4 under the 6th Pay Commission Pay Scales for the purpose of pay scale and grant of pensionary benefits accordingly.

c) That this Tribunal be pleased to direct the Respondents to place the erstwhile pay scales in S.21 and S.24 grades in the same pay band as granted to S.24 i.e. pay band-4 under the 6th CPC and also direct the Respondents to calculate and pay pensionary benefits on that basis.

d) That this Hon'ble Tribunal be pleased to direct the Respondents to refix the pay/pension of the Applicant and all other similarly situated persons in terms of prayer clause (a) to (c) above and further direct the Respondents to pay the Applicants and other similarly situated persons the arrears arising out of such refixation along with interest at the rate of 18% per annum from the due date till actual payment.

e) That this Hon'ble Tribunal be pleased to direct the Respondents to pay the Applicants and other similarly situated persons the enhanced

pension due to them in pursuance of prayer (a) to (d) above month to month.

f) That such other and further order or orders be passed in the facts and circumstances of the case, as may be required.

g) That the costs of this Original Application be provided for."

2. The applicants have cited the following grounds in support of their application:

"a) That the action of the Respondents in creating disparity in the pension payable to the pre-2006 and post-2006 pensioners in S.21 and S.24 pay scales is arbitrary, discriminatory unfair and violative of Articles 14 & 16 of the Constitution of India.

b) That the action of the Respondents to selectively modify the recommendations of the 6th Pay Commission in regard to pay scales included in the Junior Administrative Grades as well as the grant of pensionary benefits is not correct and proper. By this action, the Respondents have created a division amongst persons belonging to the same class and thereby they have given rise to serious anomalies in the pension payable to the pensioners in S.21 & S.24 grades.

c) That recommendation of the 6th Pay Commission placing the erstwhile pay scale from S.21 to S.24 in PB-3 was correct and proper since all the four pay scales were in Junior Administrative Grade. The action of the Respondents to

pick up and upgrade S.24 pay scale selectively by shifting the same from PB-3 to PB-4 ignoring S.21 scale is without any justification or basis.

d) That in so far as the Department of Atomic Energy is concerned, S.21 and S.24 scales are adjacent grades close to each other and most of the persons from S.21 were granted S.24 pay scale without any changes in the duties and responsibilities and grant of the said grade for scientific posts was also not depending upon the availability of vacancies.

e) That the 6th Pay commission in Chapter 5.1 dealing with the pensionary benefits has categorically laid down that the fitment formula for payment of pension of pre-2006 and post-pensioners in the same pay scale. The Pay Commission has categorically stated that there should not be disparity amongst the pension payable between the persons who have retired before and after 2006 in the same or familiar/equivalent pay scale which formula has been in fact followed by the 5th Pay Commission also. In the 5th Pay Commission as well as the 6th Pay Commission the said formula has been accepted by the Government of India but has not been given effect to properly instead of maintaining the uniformity in the pension payable, there is disparity created because of the selective modification of the recommendations of the Pay Commission. Thus, the action of the Respondents in that behalf is not valid or legal and is required to be struck down by bringing S.21 scale also to PB-4.

f) The applicants state that in

view of the decision of the Government of India to upgrade the pay in the rank of Lt. Colonel in the Indian Army who were having a corresponding similar pay scale in S.21 scale i.e. PB-3 and who are now placed in PB-4 there is a need to place similar scales in the Junior Administrative Grades, i.e., from S.21 onwards in PB-4 so that there is no disparity in the pay scale and pension payable to the erstwhile officers who were working in the Junior Administrative Grade in grades S.21 to S.24 whether pre-2006 or post-2006. Therefore, there is justification for granting the relief as prayed for by the pensioners.

g) That the disposal of the representations made by the applicants by a general Office Memorandum by the DOP&PW is not correct and proper. The applicants submit that by this approach the specific grievance of the employees or of certain Departments or Ministries are not addressed. By taking action in this manner, the genuine grievances of affected persons are not rectified and, thereby disparity or grievances is allowed to persist. This approach of the DOP&PW while disposing of the representations is not correct and proper. The specific grievances of the applicants are required to be addressed by the DOP&PW which was not done by the said Ministry and thereby serious prejudice has been caused to the applicants.

h) The Applicants submit that after receipt of File Noting which is Annexure "A-11", it is clear that the action taken to shift erstwhile S-24 Pay Scale from PB-3 as recommended by the 6th Pay Commission to PB-4 scale is without any justification or need to do so.

Therefore, the said action is required to be declared as being improper and has to be interfered by this Hon'ble Tribunal.

i) That in the Department of Atomic Energy as stated in the Original Application persons working in the erstwhile S-21 and S-24 grades were treated on par since the nature of duties and responsibilities were identical and in some cases the posts were also interchangeable. Therefore, so far as the Department of Atomic Energy is concerned, the shifting of the erstwhile S-24 grade to PB-4 under the 6th Pay Commission has created unnecessary disparity in the pensioners who are employed in the said two grades.

j) The applicants further submit that in view of the lack of (or absence of) any justification or basis for creating the disparity, it is required that even the S-21 grade should be placed in PB-4 Pay Band so that disparity in Pay and pension is defused to a great extent specially in the Department of Atomic Energy with which the Applicants are concerned.

k) That file Noting at Annexure "A-11" and the judgment given by full Bench of the Tribunal at Annexure "A-12" indicates that selective modification of the recommendations of the Pay Commission by the Government of India was totally unwarranted and without any justification. The applicants submit that the parity as demanded by them in this Original Application can be considered and granted by the Tribunal on the basis of justification given by full Bench of this Tribunal while decide the case of erstwhile S-29 pensioners,

because the grievances of the said category of pensioners were identical/similar to the Applicants.

1) *The applicants would crave leave to add, amend, alter, change, delete, vary, cancel, replace any or all the above grounds in the matter if so required."*

3. The individual applicants in this application have all retired prior to 01.01.2006 except for Applicant Nos. 15, 16 & 17, who retired subsequent to that year. Prior to the 6th Pay Commission recommendations effective from 01.01.2006, these employees were placed in the S-21 scale of 12,000-375-16,500 which corresponds to the recommendation of the 6th Pay Commission for placement in PB-3 of 15600-39100 with Grade Pay of Rs.7600/-. The previous scale of S-22 and S-23 were the same and were fitted on par with S-21 as per the 6th Pay Commission. The applicants argue that the 6th Pay Commission recommended the same placement for persons in the pay scale S-24 who were obtaining, prior to the 6th Pay Commission, the pay scale of 14,300-400-18300. However, when the Government of India issued the notification

and gazetted it on 29.08.2008, giving effect to the 6th Pay Commission recommendations from 01.01.2006, the S-24 scale was fitted, contra the 6th Pay Commission recommendations, into the next higher scale of PB-IV with pay band of 37,400-67000 with Grade Pay of Rs. 8700/-. As a result of this arrangement, the applicants allege that a disparity was created between persons holding the scales S-21, S-22, & S-23 and those holding the scales S-24 and consequently, between persons who retired prior to 2006 and those who retired subsequently. Therefore, this was a hostile discrimination which also went against the Pay Commission Recommendations.

4. The applicants contend that persons in the S-21 scale were routinely appointed on ad-hoc basis in posts that were meant to be occupied by persons in the S-24 scale and have cited some examples (A-15) in which temporary transfers were effected for individuals in the lower scale of Deputy Secretary (S-21) to the post of Director (S-24) which was in the PB-IV scale and of other

forms of upgrading and downgrading which they assert was a routine aspect of the department as a result of which, persons were moved between the S-21 and S-24 scales, S-22 & S-23 scales not being utilized in DAE, and for which the respondents offered excuses that these were administrative exigencies. They have referred some cases in the Army where adjustments have been made in the fitment (A-10).

5. In their application, the applicants have urged, that the Government while placing the erstwhile S-24 pay scale in PB-IV with Grade Pay of Rs. 8700/-, had not indicated any specific reasons while issuing the notification dt. 29.08.2008. According to them, in case the Government had felt it necessary and has, thereafter, taken such steps to shift the S-24 scale to PB-IV Grade, the same reasons should be applicable to their S-21 scale also especially since S-22 & S-23 scales are not utilized in the Department of Atomic Energy, who are their employers, and respondent No. 1 in this case.

They claim that because of the merit promotion scheme in the DAE, there is no clear cut demarcation in the functions attached to the posts of Scientific Officer-E in S-21 Grade and Scientific Officer-F in S-24 Grade. For clarity, they have also noted that in the Secretariat, these Grades are posts of Deputy Secretary(S-21) and Director(S-24). According to them, since both these grades of Scientific Officer report to the same supervisor who is a few levels higher than S-24, and such is the case, as claimed by them in support, for the Deputy Secretary and the Director, they are interchangeable posts and only relevant for the purpose of Selection Grade. They argue that in all the cadres of Scientific, Administrative, Accounts, Purchase and Stores, the S-21 & S-24 Grades form a totally integrated entity from the view point of responsibility and functional importance. In particular, they refer to the impact that they claim has occurred in their pension. According to them, pensioners who retired

prior to 01.01.2006 in S-21 Grade were getting a little less pay than those in the S-24 Grade. However, after the 6th Pay Commission and the notification issued by respondents, their difference became extremely substantial. For this purpose, they have made a comparison between a person getting the highest pay in the S-21 Grade (12000-375-16500) at Rs. 16,500/- and a person getting the lowest pay, Rs. 14,300/- in the S-24 Grade (14300-400-18300). The first set of S-21 were now placed in the PB-III scale while the S-24 Grade were placed in PB-IV for these two categories of one who had arrived at the top of S-21 scale and the other who was at the bottom of S-21 scale. The previous difference in pension by which the first pensioner, who was getting Rs. 1100/- more than S-24 pre-2006 pensioner, was now getting Rs. 4,405/- less compared to the same S-24 pre-2006 pensioner. It is for these reasons and with other examples that they have sought parity by integrating the decision taken for S-24 Grade with their own

grade of S-21 pay scale.

6. The respondents have argued that fixation of pay and fitment was well within the administrative domain of the respondents and they had chosen to upgrade one previous scale of S-24 as described above. They have explained their decision in the following terms:

"Consequent on the acceptance of the Sixth Central Pay Commission (CPC) by the Government of India, the Ministry of Finance, D/o Expenditure (Respondent No.2) announced vide Resolution dated 29.08.2008, the decision of the Government of India to accept the recommendations of the Sixth CPC w.e.f. 01.01.2006 and notified the Central Civil Service (Revised Pay) Rules, 2008. In place of 36 pay scales operated in the Fifth CPC, the Government vide CC S (RP) Rules, 2008 notified four (4) distinct running Pay Bands with 14 Grade Pay attached to it, two (2) HAG Scales and two (2) Apex Scales. This resulted in merger of many of the pay scales operated during Fifth CPC. The following table shows the merger of Fifth CPC pre-revised pay scales of S-21 to S-23 and S-24 & S-25, its corresponding Sixth CPC revised pay band plus grade pay:

S. No	Fifth CPC(Upto 31.12.2005)		Sixth 01.01.2006) CPC (w.e.f.	
	Scale No.	Scale of Pay	PB No.	Pay Band + Grade Pay
1	S-21	Rs. 12000-375-16500	PB-3	Rs. 15600-39100+ Rs. 7600
2	S-22	Rs.12750-375-16500	PB-3	
3	S-23	Rs.12000-375-18000	PB-3	
4	S-24	Rs.14300-400-18300	PB-4	Rs.37400-67000+ Rs.8700
5	S-25	Rs.15100-400-18300	PB-4	

7. Further, they argue that the posts S-21 & S-24 have always remained distinct and separate and cannot be equated as pay, duties and degrees of responsibility were always different although they have not rebutted the issue of transfer adjustments taking place by posting junior officers in the senior post and by other kinds of upgradation and down-gradation. In this case relating to the pay scales, they assert that Government took a conscious decision to place the pre-revised S-24 pay scale in the revised PB-4 after taking into account the relative seniority, duties and responsibility of the officers in the erstwhile S-24 pay scale.

8. The respondents have also argued that the Courts are not an expert body to determine pay fixation. As in this case, one

pay scale has been upgraded and nothing has happened to the detriment of the applicants who were previously in the lower scale.

9. The respondents have rebutted the arguments of applicants and have cited two judgments of the Hon'ble Apex court ***in State of Haryana & Anr. Vs. Haryana Civil Secretariat (AIR SCW 2896) in C.A. No. 3518 of 1997 decided on 10.07.2002 & in Union of India & Ors. Vs. Makhan Chandra Roy [1997(2) SC Law Judgment 19] decided on 23.04.1997*** by which it has been ruled that the decision about pay scales and their enhancement is within the domain of the administrative authorities and Courts shall not intervene in this domain granting particular scales of pay and seeking to compel the Government to implement the same.

10. We have gone through the O.A. along with Annexures A-1 to A-11, Rejoinder along with Annexures A-12 to A-25, filed on behalf of the applicants.

11. We have also gone through the reply along with Annexures R-1 to R-4, Reply to

Rejoinder along with Annexures SR-1 to SR-6, filed on behalf of the respondents.

12. We have heard the learned counsel for the applicant and the learned counsel for the respondents and carefully considered the facts and circumstances, Written Submissions, law points and rival contentions in the case.

13. At the outset, it is settled law that Courts cannot intervene in the administrative domain unless there is evidence of arbitrariness or that discrimination has been practiced within a class of employees or classes have been created without any basis in fact and in law.

14. In the present case, the Pay Commission had made certain recommendations and the Government appears to have selectively maintained the difference between S21-S23 ranks and the rank of S-24 with perhaps, a substantial effect, by which the S-24 pay scale granted by the 5th Pay Commission was upgraded to PB-IV which is a pay scale listed by the 6th Pay Commission. It has not been rebutted by the respondents that the 6th Pay

Commission fixed S-24 on par with S21-S23 but that does not constitute a barrier for the Government to selectively improve the status and salary of those lying in the S-24 scale so long as no negative impact falls upon the persons in the lower scales.

15. The argument that previously interchange was taking place between the persons or positions in the S-21 scale and persons or positions in S-24 scale does not have a bearing on what pay scale the person is entitled to. The only requirement under the Fundamental Rules is that when a person occupies a position and discharges higher responsibility which is a higher responsibility than his substantive position, he can make a claim for additional pay and which can be considered by the concerned department. However, that cannot become a basis for either trying to pull down the scale of the higher post or to seek benefits on par with the higher post with higher responsibilities for which the respondents have chosen to make a different arrangement

with higher pay subsequent to the Sixth Pay Commission. It is noteworthy that even in the Fifth Pay Commission, S-24 had a higher pay scale and any arguments that all the pay scales were lumped together as Joint Administrative Grade has no meaning whatsoever when seen in the proper context.

16. It is also apparent that Government have not created any nebulous classes of employees within these categories of pay scales and which were not existing earlier. They have merely taken out S-24 scale which was always higher than the S-21 scale and adjusted it differently in the new schema. There is also no apparent distinction between the pensioners who retired prior to 01.01.2006 and those who retired subsequent to 01.01.2006 except in the manner set out by the Pay Commission and which is not an issue and which are not issues under challenge in this OA since those were entirely decisions of the Pay Commission itself. It is also amply clear that the respondents are at liberty to grant higher pay scales to posts

such as S-24 or equivalently, Director, and grant higher pensions to them. The fact that the differences in pay as well as in pension were accentuated because the S-21 scale was retained in PB-III while S-24 was taken to PB-IV cannot become a basis for characterizing the decision of respondents as arbitrary. Under the rule for file handling for reducing number of officers seeing a file, an Under Secretary as well as a Deputy Secretary may report to a Director but that does not enable a case for equal treatment in pay or pension. These are clearly, unsupportable arguments with no basis in logic or administrative practice in the country. The pensioners appear only to be seeking the sympathy of this Court on the ground that they had possibly held the senior posts on occasion and then had been repositioned back in their substantive posts from which they retired. Yet, their pension differences have become quite substantial and may merit consideration. That, however, cannot be a basis for seeking adjudication

before this Tribunal, in the manner that the applicants have sought. As pointed out by the respondents and is settled law, Tribunals and Courts cannot ordinarily enter into the administrative domain and make suggestions or pass orders that encroach in areas of legitimate administrative considerations or impose consequent costs that have a bearing on their budgets.

17. In the circumstances, this OA is dismissed without any order as to costs.

(R.N. Singh)
Member (J)

(R. Vijaykumar)
Member (A)

Ram.