

**Central Administrative Tribunal  
Principal Bench, New Delhi.**

**OA No.2682/2012**

**Reserved on: 19.12.2018**

**Pronounced on: 18.01.2019**

**Hon'ble Mr. V. Ajay Kumar, Member (J)**  
**Hon'ble Mr. A.K. Bishnoi, Member (A)**

A.K. Raina,  
Qr No. 571,  
Sector-III, R.K. Puram,  
New Delhi-110022

-Applicant

(By Advocate: Shri C. Bheemanna)

**Versus**

Union of India (Through)  
The Secretary to the Govt. of India,  
Cabinet Secretariat (R&AW)  
Bikaner House Annexe  
Shahjahan Road, New Delhi-110011

-Respondent

(By Advocate: Shri Rajesh Katyal)

**ORDER**

**Hon'ble Mr. A.K. Bishnoi, Member (A):**

The applicant has filed the present OA seeking the following relief:-

- “8.1 to quash and set aside the impugned order of the Respondent No. 1/98/2008-EA-I dt. 18.03.2011 whereby the respondent illegally and arbitrarily and in violation of the Constitutional Provisions of Article 14 and 16 have reduced the pay scales of the applicant and his other colleagues working as Accountants/Accounts Officers in the R&AW Accounts Cadre.
- 8.2 to direct the respondents to revise the pay scale and grade pay of the applicant in the grade of Accountant in the R&AW Accounts Cadre in accordance with the recommendations of

the 6<sup>th</sup> Central Pay Commission and as per CCS (Revised Pay) Rules, 2008 as applicable to Members of ORGANIZED ACCOUNTS SERVICE in view of the Judgment/Orders dt. 24.05.2012 of the Hon'ble High Court of Judicature, Delhi in WP (C) No. 17546-65/2006-Krishna Raja P. Vs. UOI & Ors.

- 8.3 to direct the respondent to immediately refund the amount that has been illegally and arbitrarily deducted from the pay bill of the applicant allegedly towards recovery of excess pay and allowances disbursed to the applicant;
- 8.4 to direct respondent to pay penal interest on the recovered amount at the rate of 12% p.a.
- 8.5 to award costs of the litigation as the applicant has suffered medical agony and put avoidable financial difficulties for no fault of his.
- 8.6 to pass such further or other Order/orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case”.

2. A set of applicants had earlier filed OA No.382/2006, which was considered and decided by this Tribunal on 14.02.2006, and the claim of the applicants was rejected. Aggrieved by the order of this Tribunal, the applicants approached the Hon'ble High Court of Delhi by filing Writ Petition (Civil) No.17546-65/2006 -**Krishna Raja P. & Ors. vs. Union of India & Ors**, which was allowed vide order dated 24.05.2012 with the following directions:

“7. Consequently, while we hold that the accounts cadre in the research and Analysis Wing of the Cabinet Secretariat is an organized cadre, we remit the matter to the Tribunal on the aspect as to whether the petitioners are entitled to the pay scale 6500-10500 or not upon a consideration of the OM dated 28.02.2003 and other relevant material which is already on record. The Tribunal while deciding the matter shall also consider its decision in the case of J.R. Chobedar v. Union of India & Ors. in OA No. 208/1997 decided on 24.02.2004.”

2.1 OA No.2682/2012, which is presently under consideration before this Tribunal was disposed of on 25.08.2015 alongwith OA No.382/2006 with the following directions:

“Hence, we dismiss the OA with directions that the department should take steps to refer such disputes to the 7<sup>th</sup> Pay Commission, including present case under consideration.”

2.2 Aggrieved by the common order of this Tribunal, the applicant in OA No.2682/2012 approached the Hon’ble High Court of Delhi through Writ Petition (Civil) No.11020/2015, which was disposed of on 05.04.2018 with the following directions:

“6. The limited submission made by the learned counsel for the petitioner before us is that the Tribunal has not considered the two-fold grievance raised by the petitioner before the Tribunal in the subsequent OA filed by him, firstly a challenge was laid to the order dated 18.03.2011 passed by the respondent whereby they had introduced two different pay-scales i.e. a higher grade pay for the Accounts Officers & Accountants possessing SAS qualification and a lesser grade pay for the non-SAS qualified Accounts Officers & Accountants in the cadre and secondly, the petitioner contended that the respondent could not direct recovery of the purported over payments made to him for the period between 06.04.2009 to 30.06.2012, without first issuing him a notice to show cause particularly when the alleged mistake in the wrong fixation of his pay and emoluments were not on the basis of any misrepresentations made by him.”

7. We have carefully perused the impugned judgment. In so far as the said judgment relates to the findings returned in respect of the issue raised by the petitioner in OA No.2682/2012 is concerned, we note that the Tribunal appears to have overlooked both the pleas taken by the petitioner in the said OA as referred to above. No finding has been returned on either of the issues. The focus of the said judgment is on the issues raised in OA No.382/2006. In fact, the said issue as crystallized by the Tribunal in para No.2 of the impugned judgment has alone been decided. The issue framed was as follows:-

“Whether the applicants are entitled to the benefit of upgraded pay-scale of Rs.6500-10500 on notional

basis with effect from 01.01.1996 with actual payment being made from 19.02.2003.”

8. The judgment has discussed the pleas taken by both sides on the aspect of upgradation of the pay scale and thereafter declined to grant any relief to the applicants. While doing so, the pleas taken by the petitioner in O.A. No.2682/2012 have neither been discussed nor decided. In view of the aforesaid position, we deem it appropriate to remand O.A.No.2682/2012 back to the Tribunal for a fresh adjudication, limited to the two issues highlighted in para 6 above.”

2.3 Briefly the facts of the case, as stated by the applicant, are as follows:-

2.4 The applicant is working as Accounts Officer in Research and Analysis Wing (R&AW), which is a part of the Cabinet Secretariat. While working as Accountant his pay scale was revised to Rs.18,620/- in PB-2 (Rs.9300-34800 + Grade Pay 5400) through order dated 17.11.2008, which was subsequently withdrawn vide order dated 18.03.2011 and the pay scale was reduced with grade pay of Rs.4600/-.

2.5 It is submitted that the R&AW Accounts Cadre is an Organized Accounts Cadre as has been held by the Hon'ble High Court of Delhi in its judgment dated 24.05.2012 in **Krishna Raja P. & Ors.** (supra) and, therefore, the decision of the respondents in revising the grade pay and putting the applicant and his other colleagues in the R&AW Accounts Cadre in pay scales lesser to those applicable to Organized Accounts Cadre personnel is illegal and arbitrary.

2.6 The respondents vide the impugned decision dated 18.03.2011 had introduced two different pay scales, i.e., higher grade pay to Accounts Officers and Accountants possessing SAS qualification and lesser grade pay to those of non-SAS qualified Accounts Officers and Accountants. There is no such provision in the notified Recruitment Rules (RRs). It is submitted that the appointments to the cadre are made as per the RRs and R&AW Accounts Cadre is maintaining same seniority list for all the posts included in the R&AW Accounts cadre and until the said RRs are in operation, without an amendment to that effect it is illegal and unconstitutional to have two different grade pays to Accounts personnel.

2.7 It is further submitted that the applicant has not played any fraud or misrepresentation contributing to the alleged mistaken wrong fixation of his pay and emoluments. Hence, it is unjust and illegal to recover any excess amount allegedly paid to him without giving any show cause notice and is in flagrant violation of the principles of natural justice.

3. In support of his claim, the applicant has raised the following grounds:

3.1 The applicant was not at fault for any wrong fixation of pay and also there was no misrepresentation on his part, therefore,

recovery of an amount of Rs.14,654/- as first instalment of the purported overpayment from the pay of the applicant for the month of July, 2012 is arbitrary and illegal. He has been made to suffer huge financial loss without being heard as a result of arbitrary and illegal action. In support of his contention he has relied on the decisions of the Hon'ble Supreme Court in the following cases:

- i) **Sahib Ram v. State of Haryana & Ors.**, [(1995) SCC Suppl. (1) 18].
- ii) **Purshottam Lal Das v. State of Bihar**, [JT 2006 (12) SC 581].
- iii) **Babu Lal Jain v. State of M.P. & Ors.**, [2007 (4) SLR 123].
- iv) **Bhagwan Shukla v. Union of India**, [(1994) SCC (L&S) 1320].

3.2 The action of the respondents that personnel possessing SAS qualifications would be entitled to draw a higher grade pay is unconstitutional since such a classification cannot be sustained for there is no intelligible differentia which has reasonable nexus with the object sought to be achieved and such a distinction is illogical and in breach of Article 14 of the Constitution of India. This is also contrary to the notified Recruitment Rules.

3.3 It has been held by the Hon'ble High Court of Delhi vide judgement dated 24.5.2012 in **Krishna Raja P. & Ors.** (supra) that R&AW Accounts Cadre is an organised accounts cadre and so its

pay scales cannot be kept lower to those applicable to other accounts cadres. Any such action is illegal and arbitrary

4. The respondents in the counter reply have contended that the Accounts Cadre of Cabinet Secretariat of R&AW is different from organized accounts cadre like CGDA, CGA, Railways etc. in terms of Recruitment Rules, pay scales, eligibility criteria etc. They have given the comparative position of posts in Organized Accounts Services and accounts cadre of R&AW. They have further submitted that in the Organized Accounts Cadre, passing of SAS exam for promotion to the post of Asstt. Accounts Officer (AAO) is compulsory and thereafter promotion is made to the post of Accounts Officer/Sr. Accounts Officer. In the Accounts Cadre of R&AW, no post of AAO exists and for promotion to the post of Accounts Officer, no condition for compulsory passing of SAS Examination exists.

4.1 The respondents have drawn attention to the recommendations of the VI Central Pay Commission in which differentiation has been made between Organized Accounts Cadres and the posts outside the Organized Accounts Cadre.

4.2 The respondents have further referred to the order of the Cabinet Secretariat dated 18.03.2011, differentiating between SAS passed Accounts Officer and Non-SAS passed Accounts Officer in terms of Grade Pay. The order dated 18.03.2011 was issued with

the concurrence of Ministry of Finance, Department of Expenditure U.O. dated 25.02.2011. The relevant portions of the said communication of Department of Expenditure are as follows:-

“2. The matter has been examined in the department and the following has been approved:

- (i) Accountants have to be placed in the normal replacement scale of GP Rs. 4200/- (Rs. 3500-9000) instead of GP Rs.4800/-. As the serving Accountants are drawing GP of Rs. 4800/- at present, their basic pay may be protected as per rules as a special case, in order to avoid litigation, but GP Rs.4200/- be allowed to them i.e. GP for existing Accountants will be Rs.4200 but pay being drawn (Pay Band + GP) will be protected so that there is no loss. Further, those Accountants who pass the SAS Exam in future may be placed in the Grade Pay of Rs.4800/- upon passing.
- (ii) So far as the Accounts officers are concerned, GP of Rs.5400/- be allowed only to those incumbents who are SAS qualified as per the department's clarification dt. 3.9.2009 that conditions applicable in the case of organized accounts services will need to be met for grant of parity with the accounts cadre while extending the GP of Rs.5400/-.
- (iii) For non SAS Accounts Officers, they may be allowed normal replacement scale of Rs.7450-11500 i.e. GP of Rs.4600/-.

3. Accordingly, the current Court cases are required to be dealt with.

4. It is further advised that R&AW may also restructure their Accounts Cadre on par with ARC as has been permitted recently. For doing so, a proposal may be sent to this Department indicating the proposed RRs”.

4.3 The respondents have also referred to the order of the Hon'ble Delhi High Court in Writ Petition No. 17546-65/2006 -**Krishna Raja P. & Ors.** (supra) and have stated that the Hon'ble Delhi High Court has not allowed pay scales to the post of Accounts Cadre in R&AW at par with the pay scales applicable to organized accounts service and have left the issue to be examined by this Tribunal.



4.4 Respondents have made further submissions through an additional reply in which they have more or less reiterated what has been submitted in the counter reply.

5. The applicant has filed rejoinder to the reply filed by the respondents essentially reiterating the pleas taken in the OA.

6. Heard the learned counsels for the applicant and also the respondents in which they dwelt upon at length on the points that have been made in the pleadings.

7. We have gone through the pleadings and given careful consideration to the arguments advanced by the learned counsel for both the sides.

8. On perusal of the order of the Hon'ble High Court of Delhi, adjudication in the instant OA is to be limited to the following points:

i) Validity of the order dated 18.03.2011 passed by the respondents whereby they had introduced two different pay scales , i.e., a higher grade pay for the Accounts Officer and Accountants possessing SAS qualifications and a lesser grade pay for the non-SAS qualified Accounts Officers and Accountants in the cadre.

ii) Justification of the action of the respondents in making recovery of the purported over-payments made to the applicant for the period between 06.04.2009 to 30.06.2012, without first issuing him a notice to show cause, particularly when the

alleged mistake in the wrong fixation of his pay and emoluments were not on the basis of any misrepresentation made by him.

9. As regards the first point, the entire submission made by the respondents is essentially based on the distinction between Organized Accounts Cadre and those posts which are outside the Organized Accounts Cadre and the issue of parity between the Accounts cadre of R&AW and those of the other Accounts cadres. Here also, on the point of parity, though mention is made of factors like skill, cadre rules, educational qualifications and duties and responsibilities, in essence, the argument advanced is as if the Accounts Officers of R&AW are not a part of an Organized Accounts Service. Even the U.O. dated 25.02.2011 of Department of Expenditure giving concurrence with which the order of Cabinet Secretariat dated 18.03.2011 was issued, states that “so far as the Accounts Officers are concerned, GP of Rs.5400/- be allowed only to those incumbents who are SAS qualified as per the department’s clarification dated 3.9.2009 that **conditions applicable in the case of Organized Accounts Services will need to be met for grant of parity with the Accounts Cadre while extending the grade pay of Rs.5400/-**” [emphasis supplied].

10. When it has been clearly held by the Hon’ble High Court of Delhi in Writ Petition No. 17546-65/2006-**Krishna Raja P. & Ors.** (supra) that the Accounts Cadre in the R&AW of the Cabinet

Secretariat is an Organized Cadre, there is no scope for advancing any argument which is explicitly or implicitly dependent upon considering them otherwise and making a distinction from an Organized Cadre. Thus, any action on the part of the respondents based on such an assumption is bad in law.

11. The question raised in the instant OA is one of making a distinction between SAS passed officers and non-SAS passed officers and hence there is no need for any discussion on the point of parity between Accounts Cadre in R&AW and other departments, especially since it has already been settled by the Hon'ble High Court of Delhi that the Accounts Cadre in the R&AW of the Cabinet Secretariat is an Organized Cadre.

12. If we look at the Research & Analysis Wing (Recruitment, Cadre and Service) Rules 1975, there is no mention of SAS qualification.

13. The Hon'ble Supreme Court in the case of **Ajaya Kumar Das v. State of Orissa & Ors.**, [(2011) 11 SCC 136, cited by the learned counsel for the applicant, has held as under:-

“It is well settled that Statutory Rules framed under Article 309 of the Constitution can be amended only by a Rule or Notification duly made under Article 309 and not otherwise. Whatever be the efficacy of the Executive Orders or Circulars or Instructions, Statutory Rules cannot be altered or amended by such Executive Orders or Circulars or Instructions nor can they replace the Statutory Rules. The Rules made under Article 309 of the Constitution cannot be tinkered by the administrative instructions or circulars.”

14. The settled position in law being as laid down in the judgement of the Hon'ble Supreme Court referred above the action of the respondents in introducing the SAS qualification through an Executive Order in contradiction to the position laid down in the relevant Rules is clearly not tenable in law.

15. In the light of the above discussion, we come to the conclusion that the order dated 18.03.2011 passed by the respondents whereby they had introduced two different pay scales, i.e., a higher grade pay for the Accounts Officer and Accountants possessing SAS qualifications and a lesser grade pay for the non-SAS qualified Accounts Officers and Accountants in the cadre is not valid in law.

16. Now we come to the second point of adjudication, that of the requirement of issuance of notice before making recoveries as mentioned in the order of the Hon'ble High Court of Delhi referred to in para 2.2 as also in para 8 (ii) above.

17. On this point the respondents in their counter-affidavit have referred to OM dated 30.08.2008 which stipulates that:

“5. In order to ensure correct and systematic fixation of pay in the revised pay structure, a proforma for the purpose (Statement of Fixation of Pay) is enclosed. The statement should be prepared in triplicate and one copy thereof should be passed in the Service Book of the Government servant concerned and another copy made available to the concerned accounting authorities [Chief Controller of Accounts/Controller of Accounts/Accounts Officer] for post-check.

6. The requirement of pre-check of pay fixation having been dispensed with it is not unlikely that the arrears due in some cases may be **computed incorrectly** leading to overpayments that might have to be recovered subsequently. The Drawing & Disbursing Officers should, therefore, make it clear to the employees under their administrative control, while disbursing the arrears, that the payments are being made subject to adjustment from amounts that may be due to them subsequently should any discrepancies be noticed later. For this purpose, an undertaking may also be obtained in writing from every employee at the time of disbursement of the arrears/pay and allowances for September, 2009 to the effect that any excess payment that may be found to have been made as a result of incorrect fixation of pay in the revised scales will be refunded by him to Government either by adjustment against future payments or otherwise.” (Emphasis supplied)

It is clear that the intent and spirit of this OM is to address such cases as arise due to computational errors and not where substantial issues are involved. Clearly in the present case, it is not a matter of error in calculation but one in which the entire fundamental concepts regarding pay fixation are involved. Hence, the fact of the applicant submitting any undertaking in this matter has to be viewed accordingly. It cannot be said that because of such an undertaking, which is in the context of errors in calculation, principles of natural justice can be dispensed with and the applicant's right to be given due notice, and be heard, before making a change in his pay fixation, can be taken away. Moreover, this has been done when there was never any misrepresentation by the applicant on the basis of which the applicant's pay was fixed and even the respondents have not so claimed.

18. During the course of arguments, the learned counsel for both the sides referred to a number of judgments.

19. In particular, the learned counsel for the respondent referred to the judgement in **High Court of Punjab & Haryana & Ors. v. Jagdev Singh**, [JT 2016 (7) SC 409].

20. From a reading of this judgment, we find that the Hon'ble Supreme Court has considered applicability of **State of Punjab & Ors. vs. Rafiq Masih (White Washer) etc.** It relates to a situation of effecting recoveries when an officer has furnished an undertaking while opting for the revised pay scale. However, the issue here on the second point of determination, is restricted to the necessity of issuance of notice before making recoveries. Clearly, the two situations are distinct.

21. On the other hand learned counsel for the applicant has referred to **Bhagwan Shukla** (supra), in which the Hon'ble Supreme Court has held as follows:-

"3. We have heard learned counsel for the parties. That the petitioner's basic pay had been fixed since 1970 at Rs. 190 p.m. is not disputed. There is also no dispute that the basic pay of the appellant was reduced to Rs. 181 p.m. from Rs. 190 p.m. in 1991 retrospectively w.e.f. 18.12.1970. The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not, even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There, has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be

passed without putting the concerned to notice and giving him a hearing in the matter. Since, that was not done, the order (memorandum) dated 25.7.1991 which was impugned before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell in error in dismissing the petition of the appellant. The order of the Tribunal deserves to be set aside. We, accordingly, accept this appeal and set aside the order of the Central Administrative Tribunal dated 17.9.1993 as well as the order (memorandum) impugned before the Tribunal dated 25.7.1991 reducing the basic pay of the appellant From Rs. 190 to Rs. 181 w.e.f. 18.12.1970.”

22. It is abundantly clear that the present point of adjudication is squarely covered by the law laid down by the Hon'ble Supreme Court in **Bhagwan Shukla** (supra).

23. Regarding other judgments, without going into details it can be said that they are not applicable in the instant case.

24. Thus, we come to the conclusion that the respondents were not justified in making recovery of the purported over-payments made to the applicant for the period between 06.04.2009 to 30.06.2012 without first issuing him a show cause notice. This finding is in addition to and independent of the finding on the first point of adjudication referred above.

25. As a result, for the foregoing reasons, the OA is allowed and the impugned order dated 18.3.2011 is quashed and set aside. The respondents are directed to accordingly revise the pay scale and grade pay of the applicant and refund the amount that may have been deducted from the pay of the applicant along with interest at

the prevailing GPF rates. These directions shall be complied with by the respondents within a period of two months from the date of receipt of a certified copy of this order. No costs.

**(A.K. BISHNOI)**  
**MEMBER (A)**

**(V. AJAY KUMAR)**  
**MEMBER (J)**

cc.