

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00663/2015

Thursday, this the 14th day of November, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

1. All India Naval Clerks Association, represented by the General Secretary, K.S. Sanjay Babu, All India Naval Clerks Association, Door No. 39/3293C/2nd Floor, KSN Menon Road, Kochi-16.
2. P.R. Parameswaran, aged 56 years, S/o. P.K. Ramaswamy, UDC, HQ Southern Naval Command, Cochin-16.
3. M.J. Martha, aged 57 years, W/o. T.O. Dominic, UDC, INS Garuda, Southern Naval Command, Cochin-16.
4. M.A. Joseph Roy, Aged 53 years, S/o. M.R. Antony, UDC, INS Venduruthy, Southern Naval Command, Cochin-16.
5. U.V. Kuriakose, aged 58 years, S/o. Late U.V. Varghese, UDC, INS Venduruthy, Southern Naval Command, Cochin-16.
6. V.P. Rama Devi, aged 56 years, W/o. D. Mukundan, UDC, INS Garuda, Southern Naval Command, Cochin – 16.
7. P.T.N. Shajeevan, aged 54 years, S/o. P.T.S. Narayanan, UDC, INS Garuda, Southern Naval Command,
Cochin-16. **Applicants**

(By Advocate : Mr. S. Radhakrishnan)

V e r s u s

1. Union of India, represented by the Secretary to the Govt. of India, Ministry of Defence, South Block, New Delhi.
2. The Chief of Naval Staff, Integrated Headquarters of Ministry of Defence (Navy), Sena Bhawan, New Delhi-11.
3. The Flag Officer Commanding in Chief, Headquarters, Southern Naval Command, Naval Base, Kochi-04.

4. Chief Staff Officer (P&A), Headquarters,
Southern Naval Command, Naval Base, Kochi – 04.

5. The Director, Principal Controller of Defence Accounts (Navy),
(Pay Section), No. 1 Cooperage Road,
Mumbai – 400 001. **Respondents**

(By Advocate : Mr. Thomas Mathew Nellimoottil, Sr. PCGC)

This application having been heard on 05.11.2019 the Tribunal on 14.11.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicants are as under:

- “a) Call for the records connected with the case;
- b) Declare that Annexure A1 & A2 orders are patently illegal, wrong and not sustainable in the eye of law.
- c) Declare that the applicants are entitled to get their higher grade fixed as per Rule 13 of the CDS (RP) Rules, 2008 by reckoning the minimum of the revised pay scale implemented w.e.f. 1.1.2006, since their upgradation was long after 1.1.2006.
- d) Direct the respondents to re-fix the pay of the applicants and other members of the 1st applicant association correctly in accordance with Rule 13 of CDS (RP) Rules, 2008 and to release the arrears of salary and other service benefits within a time frame to be fixed by this Hon'ble Tribunal.
- e) Grant such other reliefs as this Honourable Tribunal may deem fit, just and proper in the facts and circumstances of the case.”

2. The brief facts of the case are that the 1st applicant is a registered association of Clerks, Typists and Assistants working with the Indian Navy and the applicants 2 to 7 are individuals having personal grievances being raised through the association. The applicants have challenged the communication of the respondents refusing to grant the benefit of fixation of initial pay in the revised pay structure to the Clerks on granting of the 2nd financial upgradation under the ACP scheme in the Navy in accordance with

Rule 13 of CDS (RP) Rules, 2008 read with Government of India decision dated 13.9.2008. Similar matters were taken up before the Principal Bench of the Tribunal in OA No. 904 of 2012, Chandigarh Bench of the Tribunal in OA No. 1038 of 2010 and Ernakulam Bench of the Tribunal in OA No. 816 of 2012 and OA No. 856 of 2011. The applicants requested to extend the benefits granted in the above OAs to them as well but the respondents vide Annexure A1 informed that the decision of the Ernakulam Bench in OA No. 856 of 2011 has already been rectified by the Ministry and therefore, on the basis of the concession given by the applicant in OA No. 856 of 2011, the effect of the order stand cancelled. Therefore, the Clerks in Navy are not entitled to get the benefit of option they are claiming by virtue of the proviso to Rule 13 of CDS (RP) Rules read with Rule 13 of CDS (RP) Rules, 2008. The applicants will be put to irreparable loss, damage and hardship when their case is considered by the VIIth CPC. The grievance of the applicants is a continuing and recurring cause of action and they are incurring loss on day to day basis due to the wrong fixation of pay scale.

3. The applicants are working as Upper Division Clerks (UDC) in the ministerial cadre of the Indian Navy and are posted at Southern Naval Command, Kochi. The next promotion of UDC is Assistant. The Assistants in the Navy are drawing salary in the pay scale of Rs. 5,000-8,000/- (Vth CPC). The Office Superintendents were drawing salary in the scale of Rs. 5,500-9,000/-. On implementation of ACP scheme the LDC and UDCs were granted their 2nd and 1st financial upgradation respectively in the scale of pay of Assistants at Rs. 5,000-8,000/- (pre-revised). The VIIth CPC

recommendations were implemented w.e.f. 1.1.2006. The Navy adopted the same pattern w.e.f. 1.1.2006. As per the CDS (RP) Rules, 2008 posts carrying scale of pay of Rs. 5,000-8,000/- and Rs. 5,500-9,000/- were clubbed together and placed in the revised pay scale of Rs. 6,500-10,500/- and were granted PB-2 with Grade Pay of Rs. 4,200/-. As per the Pay Commission Report, the Grade Pay is calculated as 40% of the upper limit of the pre-revised basic pay and is granted to all the different pre-revised scales grouped together.

4. The applicants submitted that there are a group of persons who were granted financial upgradation under the ACP scheme after 1.1.2006 and before 29.8.2008. In their case the 2nd proviso to Rule 5 of the CDS (RP) Rules provides that in such situation the Government servant may elect to switch over to the revised pay structure from the date of promotion, upgradation etc. In explanation to Rule 5 it was specified that the option to retain the existing scale under the proviso to this Rule shall be admissible only in respect of one existing scale. The applicants and other members of the 1st applicant association had exercised option to come over to the revised scale w.e.f. different dates. The applicants who were working as UDC before 1.1.2006 in the scale of pay of Rs. 4,000-6,000/- were granted 1st financial upgradation under the ACP scheme on different dates before 29.8.2008 and were placed in the scale of pay of Assistants at Rs. 5,000-8,000/-. After the merger of posts, the Assistants were brought to the scale of pay of Rs. 6,500-10,500/- and was placed in PB-2 with Grade Pay of Rs. 4,200/-. On granting of the financial benefits under ACP scheme the

applicants' salary ought to have been fixed in the pre-revised scale of Assistant i.e. Rs. 6,500-10,500/- . However, this mistake in calculation crept due to the failure of the Department to reckon the revised pay in the pay band for the purpose of granting ACP benefits. The applicants submitted several representations. The respondents vide Annexure A1 rejected the claim of the applicants stating that the position pointed out by this Tribunal in OA No. 856 of 2011 is rectified by the Ministry and therefore, the applicants are not entitled to claim the benefits under Rule 13 of the CDS (RP) Rules, 2008. Aggrieved the applicants have filed the present OA.

5. Notices were issued to the respondents. They entered appearance through Shri Thomas Mathew Nellimoottil, Sr. PCGC who filed a detailed reply statement contending that some of the posts have either been merged or upgraded as a result of the recommendations of the VIth CPC and the manner in which the pay fixation of these upgraded posts is to be done has been explained in Note 2A to paragraph 7(1)(D) of Annexure A3. The Government has issued guidelines for fixation of pay in the pay bands where posts have been upgraded wherein it was provided that when a post has been upgraded as a result of the recommendations of the VIth CPC, the fixation of pay in the applicable pay band will be done in the manner prescribed in accordance with the Clause (A)(i) and (ii) of Rule 7 by multiplying the existing basic pay as on 1.1.2006 by a factor of 1.86 rounding the resultant figure to the next multiple of ten. The pay of the applicants herein was fixed as on 1.1.2006 according to these guidelines and they were granted the Grade pay of the upgraded post. Respondents pray for

dismissing the OA.

6. Heard Shri S. Radhakrishnan, learned counsel appearing for the applicants and Shri Thomas Mathew Nellimoottil, Sr.PCGC learned counsel appearing for the respondents. Perused the record.

7. The short controversy raised in the present Original Application is that whether pay fixation done by the respondents after granting of ACP scheme between 1.1.2006 to 29.9.2008 to the applicants should be as per Rule 13 or Rule 7 of CDS (Revised Pay) Rules, 2008 ?

8. The applicants' pay was fixed as on 1.1.2006 as under:

Scale of pay before promotion (UDC) - Rs. 4,000-6,000/-

Pay in the new pay band as on 1.1.2006 - Rs. 4,900/-

According to Rule 13, on 1st July, 2006
1st increment would be computed as the
3% of pay prior to the date of promotion i.e.- 3% of Rs. 9,120/-
= 350.00

On getting the 1st increment in July, 2006,
the pay - Rs. 9,120/-+R350/-
= Rs. 9,470/-.

On promotion subsequent to July 2006,
the 2nd increment should be computed as - 3% of 9,470/-
= Rs. 360.00

After the granting of higher grade the pay - Rs. 9,470/- + 360/-
= Rs. 9,830/-

The grievance of the applicants is that after grant of financial upgradation under ACP scheme it should have been fixed in the pre-revised scale of

Assistant in the pay scale of Rs. 6,500-10,500/- after taking into account the upgraded post and pay scale as the applicants have exercised the option to come over to the revised scale of pay w.e.f. the date of grant of financial upgradation under the ACP Scheme. In such case the fixation would be as under:

The revised pay corresponding to the minimum of the pre-revised basic pay of Rs. 6,500/- (available in the fitment table)	-	Rs. 12,090/-
Grade Pay applicable to the pay of Rs. 12,090/-	-	Rs. 4,200/-
Total pay	-	Rs. 16,290/-

9. According to the applicants this mistake took place because the respondents have not reckoned the revised pay in the revised pay band which they have got after getting the benefit of ACP. In order to deal with the controversy let us see the rules/legal position. Rules 5, 7 and 13 of CDS (RP) Rules, 2008 reads thus:

“5. Drawal of pay in the revised pay structure -

.....
Provided that a Government servant may elect to continue to draw pay in the existing scale until the date on which he earns his next or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale.

Provided further that in cases where a Government servant has been placed in a higher pay scale between 1.1.2006 and the date of notification of these Rules on account of promotion, upgradation of pay scale etc., the Government servant may elect to switch over to the revised pay structure from the date of such promotion, upgradation, etc.

.....
7. Fixation of initial pay in the revised pay structure:

(1) The initial pay of a Government servant who elects, or is deemed to have elected under sub-rule (3) of rule 6 to be governed by the revised pay structure on and from the 1st day of January, 2006 shall, unless in any case the President by special order otherwise directs, be fixed separately in respect of his substantive

pay in the permanent post on which he holds a lien or would have held a lien if it had not been suspended, and in respect of his pay in the officiating post held by him in the following manner, namely:-

(A) in the case of all employees:-

(i) the pay in the pay band/pay scale will be determined by multiplying the existing basic pay as on 1.1.2006 by a factor of 1.86 and rounding off the resultant figure to the next multiple of 10.

.....
.....

13. Fixation of pay on promotion on or after 1.1.2006 – In the case of promotion from one grade pay to another in the revised pay structure, the fixation will be done as follows:-

(i) One increment equal to 3% of the sum of the pay in the pay band and the existing grade pay will be computed and rounded off to the next multiple of 10. This will be added to the existing pay in the pay band. The grade pay corresponding to the promotion post will thereafter be granted in addition to this pay in the pay band. In cases where promotion involves change in the pay band also, the same methodology will be followed. However, if the pay in the pay band after adding the increment is less than the minimum of the higher pay band to which promotion is taking place, pay in the pay band will be stepped to such minimum.

.....
..... "

10. The Department has issued clarificatory OM on 13th September, 2008 in which clarification 2 reads thus:

“Clarification 2 : The method of fixation of pay on promotion after 01.01.2006

On promotion from one grade to another/financial upgradation under ACP, a Government servant has an option under FR 22(1)(a)(1) to get his pay fixed in the higher post either from the date of his promotion, or from date of his next increment, viz. 1st July of the year. The pay will be fixed in the following manner in the revised pay structure:-

..... ”

11. The learned counsel for the applicants have drawn our attention to the apex court decision in the matter of ***Union of India & Ors. v. Balbir Singh Turn & Anr.*** – 2018 (11) SCC 999 wherein the apex court held as under:

“10. We are only concerned with the interpretation of the Resolution of

the Government which clearly states that the recommendations of 6th CPC as modified and accepted by the Central Government in so far as they relate to pay structure, pay scales, grade pay etc. will apply from 01.01.2006. There may be some gainers and some losers but the intention of the Government was clear that this Scheme which is part of the pay structure would apply from 01.01.2006. We may also point out that the Resolution dated 30.08.2008 whereby the recommendation of the Pay Commission has been accepted with modifications and recommendations with regard to pay structure, pay scales, grade pay etc. have been made applicable from 01.01.2006. This is a decision of the Cabinet. This decision could not have been modified by issuing executive instruction. The letter dated 30.05.2011 flies in the face of the Cabinet decision reflected in the Resolution dated 30.08.2008. Thus, administrative instruction dated 30.05.2011 is totally ultra vires the Resolution of the Government.”

By this judgment the Hon'ble apex court has held that the decision of the Government cannot be modified by the executive instructions. In an another matter the apex court in ***Union of India & Ors. v. Raj Kumar Anand*** – SLP © No. 26336 of 2018 dealt with this issue at length and held as under:

“Once he has elected for revised pay scale w.e.f. 10.8.2006, the date on which he was placed in the upgraded pay scale, obviously, Rule 7 cannot be said to be applicable. It is Rule 11 which is applicable.

Rule 7 deals with the fixation of initial pay in the revised pay structure as per the 6th Central Pay Commission. Note 2A to Rule 7 relied upon by the appellants makes it vivid that where a pay scale has been upgraded on the recommendation of Central Pay Commission as indicated in para B and C of the first Schedule of the Rules of 2008, the fixation has to be made under Rule 7. However, it was not the case of upgradation of the post as a result of the recommendation of the 6th Pay Commission and Schedule of Rules of 2008, but it was under ACP scheme which is a different scheme than the one as provided in the first schedule to the Rules 2008. The respondent has opted for revision of pay scale from the date of upgradation in the ACP scale w.e.f. 10.08.2006. Obviously, his pay has to be fixed under Rule 11 which deals with fixation of the pay in the revised pay scale in case such an option is exercised under the Rules of 2008. The Division Bench of the High Court was absolutely correct in applying Rule 11 as Note 2A of Rule 7 is not applicable in the case.

.....

Resultantly, we have no hesitation to hold that the appeal is bereft of merit. Pay fixation has to be done under Rule 11 and not Rule 7 as discussed. Let pay revision be worked out and arrears, if any, be paid within a period of 3 months from today.”

12. The Rule 11 is akin to Rule 13 referred in the present case and the Hon'ble apex court had clearly laid down that Rule 11 would be applicable from the date of upgradations in the ACP scale and Rule 7 deals with fixation of pay in the revised pay structure. Rule 7 will be applicable where upgradation of scale/post is as a result of the VIth CPC. This Tribunal in OA No. 180/569/2014 vide order dated 3rd April, 2018 held as under:

“14. It has to be borne in mind that CDS (RP) Rules, 2008 is a rule notified under the proviso to Article 309 of the Constitution of India made by the President and hence it has a statutory status in the eye of law. Therefore any interpretation of the provisions in the said rules has to be in terms of the rules itself. Any O.M issued by way of clarification, explanation or prescribing the modalities for fixation of initial pay of the Government employees as per the revised pay structure can be only in terms of what is stated in the rules.

15. As observed above, going by the definitions of the terms 'existing basic pay' and 'existing scale' in the CCS (RP) Rules, 2008, Rule 7 fixation can be only in accordance with the afore-mentioned definitions of 'existing basic pay' and 'existing scale' only and not by way of administrative O.Ms and instructions contained in Annexure A-1 or Annexure A-2 communications. Therefore, we are inclined to quash and set aside Annexure A-1 and Annexure A-2 communications. We do so. We hold that the applicants are entitled to the declaration as prayed for and that the respondents should be directed to fix the initial pay of the applicants including all the members of Applicant No.1 association in the revised pay structure by fixing their salary in the revised pay scale of Rs.6500-10500 treating Rs 6500/- as the existing basic pay as on 1.1.2006 with all consequential benefits. We order accordingly. This order shall be complied within 3 months from the date of receipt of a copy of this order.”

13. The applicants had given options and elected revised pay structure w.e.f. 1.1.2006 on different dates and their pay got fixed at Grade Pay of Rs. 4,600/-. Though the learned counsel for the applicants Shri Radhakrishnan submitted that there is a typographical error as it was written as Grade Pay of Rs. 4,200/-, it was undisputed fact that applicants got Grade Pay of Rs. 4,600/- after getting ACP benefits because of merger of pay scales at Annexure A3 of Rs. 4,500-7,000/- and Rs. 5,000-8,000/- to revised pay

scale of Rs. 6,500-10,500/- in PB-2 with Grade Pay of Rs. 4,200/- with effect from 1.1.2006. The respondents have admitted this fact in their reply statement in paragraph 3. But they took a persistent stand that clause A(i) and (ii) of Rule 7 by multiplying the existing basic pay as on 1.1.2006 by factor of 1.86 and rounding the resultant figure to the next multiple of ten shall apply in the present case.

14. It was further stated by the respondents that the Grade Pay corresponding to the upgraded scale as indicated in column 6 of the Part B of Annexure A3 will be payable in addition as per the OM of the Department of Expenditure dated 13th October, 2008 which has taken a similar view. Paragraphs 2 & 3 of the above OM dated 13th October, 2008 reads thus:

“2. Accordingly, in cases of upgradation of posts as a result of recommendations of Sixth CPC, the fitment table attached with the OM of even number dated 30th August, 2008 corresponding to the 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 the revised pay of the Government servant who has been upgraded as a result of Sixth CPC recommendation.

3. To illustrate, CPMF Constables have been upgraded from pre-revised scale of Rs. 3050-4590 to the pay scale of Rs. 3200-4900 corresponding to the grade pay of Rs. 2000 in PB-1. In the case of a CPMF Constable drawing the basic pay of Rs. 3575 as on 1.1.2006, his pay in the pay band will be fixed in accordance with the fitment table of the pre-revised scale of Rs. 3050-4590/. Hence, his revised pay in the pay band will be Rs. 6650 as per the table corresponding to the pre-revised scale of Rs. 3050-4590. To this, the Grade Pay of Rs. 2000 corresponding to the upgraded pay scale of Rs. 3200-4900 will be added. Consequently, his revised basic pay would be Rs. 8650 as on 1.1.2006.”

15. Therefore, we hereby hold that the applicants are entitled to get their pay fixed as per Rule 13 of the CDS (RP) Rules, 2009 by reckoning the

minimum of the revised pay scale implemented with effect from 1.1.2006 and the pay of the applicants be fixed accordingly. However, we direct that the financial benefits so naturally accrued would be restricted to 3 years of filing of the OA in view of the law laid down by the apex court in ***Union of India & Ors. v. Tarsem Singh*** – (2008) 8 SCC 648. This order shall be implemented within four months of the date of receipt of a copy of the order of this Tribunal.

16. The Original Application is disposed of as above. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00663/2015**APPLICANTS' ANNEXURES**

Annexure A1 - True copy of the letter No. CP(P)/8416/VI CPC/Policy dated 22.8.2014 issued by the 4th respondent.

Annexure A2 - True copy of the communication No. CS 2759/4 dated 12.9.2014 issued by the Headquarters, Southern Naval Command with copy to the 1st applicant.

Annexure A3 - True copy of the Civilian in Defence Service (Revised Pay) Rules, 2008.

Annexure A4 - True copy of the order NO. CP(P)/8416/VI CPC/ADM/09/421/US(MP)/D(N-II) dated 5.4.2010.

Annexure A5 series - True copy of the option form duly submitted by the individual applicants.

Annexure A5(a) - True copy of the Government of India, Ministry of Finance by their OM F. No. 1/1/2008-IC dated 13.9.2008.

Annexure A6 - True copy of the representation dated 29.9.2008 to the Chief of the Naval Staff, Integrated Headquarters.

Annexure A7 - True copy of the reply given by the IHQ No. CP(P)/8416/VI CPC dated 6.10.2008.

Annexure A8 - True copy of the OM F. No. 1/1/2008-IC dated 13.11.2009.

Annexure A9 - True copy of the relevant extract of the Minutes of National Anomaly Committee held on 17.7.2012.

Annexure A10 - True copy of the representation submitted by the All India Naval Clerks Association dated 5.8.2013.

Annexure A11 - True copy of the representation dated 20.9.2014 submitted by the 7th applicant.

Annexure A12 - True copy of the pay fixation statement of the 4th applicant.

Annexure A13 - True copy of the pay fixation statement of the 7th applicant.

RESPONDENTS' ANNEXURES

Annexure R1 - GOI MOF Memorandum F. No. 1/1/2008-IC dated 30 Aug 08.

Annexure R2 - GOI MOF Memorandum F. No. 1/1/2008-IC dated 13 Oct 08.

Annexure R3 - Hon'ble CAT order dated 27 Nov 15 in OA 36/2013.

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