

(2014) 10 DEL CK 0149

In the Delhi High Court

Case No : Writ Petition (Civil) 4606/2013 and C.M. No. 10601/2014

D.G.O.F. Employees Association

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 309

Citation : (2014) 145 DRJ 604

Hon'ble Judges : Vipin Sanghi, J; S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Kiran Suri, Sr. Advocate and Ritika Gambhir, Advocate for the Appellant; Ajay Digpaal, Advocate for the Respondent

Judgement

S. Ravindra Bhat, J.

C.M. NO. 10601/2014

For the reasons mentioned in the application, C.M. No. 10601/2014 is allowed.

W.P. (C) 4606/2013

1. The petitioner (hereafter called "the Association") is aggrieved by the impugned order of the Central Administrative Tribunal (CAT) dated 18.10.2012 in O.A. No. 39/2011 and the further order dated 01.04.2013 in R.P. No. 43/2011 (hereafter called "the review order"). The Association had sought a direction to quash the order of the Ordnance Factories Board, Ministry of Defence (hereafter called "the OFB") dated 01.09.2009 and the further order of the Central Government, Ministry of Finance dated 20.04.2010, declining the request for grant of parity of pay scales to employees in Ordnance Factories ("OF") with that of identically ranked employees in the Central Secretariat Service (CSS) and Central Secretariat Stenographer's Service (CSSS).

2. Briefly the facts are that the petitioner is the association of the ministerial staff of the Ordnance Factory Board, Kolkata, and was formed to protect the

interests and espouse the cause of such OF employees. The staff's services are regulated by the OFB of which the third respondent is the Director General, whose Headquarters are at Kolkata. The cadre of Assistants in the OFs is governed by the Directorate General Ordnance Factories Headquarter Civil Service Rules, 1977 (hereafter called the "OFB Rules, 1977") framed under the proviso to Article 309 of the Constitution of India. The cadre of Assistants is filled by promotion from the feeder cadre of UDCs with at least five years of experience on regular basis; UDCs, in turn, are a promotional post to the cadre of LDCs. The UDCs and LDCs are governed by the DGOF HQ Clerical Service Rules, 1977 - again statutory in character. The Ministry of Defence, by an order dated 29.07.1975, had declared extension of civil service rules of the Armed Forces Headquarters (AFHQ) to the Ordnance Factories Headquarters Service. The Association states that employees of the OFB have always enjoyed parity of pay scale with the AFHQ Services scheme. It is stated that this parity of scales vis-?-vis LDCs, UDCs, Assistants/PAs, and Stenographers, was maintained even prior to 01.01.1986 under the Third Central Pay Commission recommendations (for the period 01.01.1973 to 31.03.1985). This parity was continued in the Fourth Central Pay Commission recommendations (with effect from 01.01.1986 to 31.12.1995) and the Fifth Central Pay Commission recommendations (for the period 01.01.1996 to 14.09.2006). Thus, it is stated that the pay scales as recommended by the Third Central Pay Commission, i.e. Rs. 425-800/- was granted to OF employees as well as all other employees, i.e. Central Secretariat Service/Central Secretariat Stenographers Service ("CSS/CSSS") cadre, Armed Forces Head Quarters ("AFHQs"), as well as the Ministry of External Affairs, the Railway Board, UPSC and other departments of the Central Government which are "non-participating Ministries" etc. Likewise, the pay scale recommended as replacement by the Fourth Central Pay Commission, i.e. Rs. 1640-2900/-, and by the Fifth Central Pay Commission i.e. Rs. 5500-9000/- was granted, thereby maintaining the same parity. They thus rely upon a chart which showed that as far as Assistants are concerned, for the period 01.01.1973 to 14.09.2006, there was complete identity and parity in pay scales. It is stated that in all these departments - including employees of OFB, i.e. members of the Association, there was complete identity and parity. It is submitted that in this background, when the Sixth Central Pay Commission recommendations (hereafter referred to as the "Sixth CPC") were pending consideration of the Central Government, an upgradation of the existing pay scale from Rs. 5500-9000/- to Rs. 6500-10500/-, for the Assistants/PAs was sought to be given to employees of the CSS/CSSS, by an order of 15.9.2006. This upgradation benefit was given by individual orders separately issued by various other non-participating Ministries and Departments, such as the orders of the Ministry of Railways dated 19.10.2006; the Ministry of Parliamentary Affairs dated 12.02.2007; the Central Vigilance Commission dated 13.07.2007 etc.

3. The petitioners place reliance upon the decision of the CAT rendered on 14.05.2007 in the O.A. No. 2591/2006., in which denial of this upgraded pay

scale to employees in the AFHQs was challenged before the CAT. The CAT directed that the benefit of upgradation should also be given to identically ranked offices of the AFHQs. The observations of the CAT on that count were that parity had existed all the while and that denial of the benefit of upgradation was discriminatory:

"3. This has been admitted by the respondents in their reply that all these cadres have been enjoying parity with one and another and the 5th Central Pay Commission (CPC) also upgraded the pay scales of Assistants and PAs from Rs. 5500-9000 to Rs. 6500-10500 w.e.f. 15.9.2006 vide OM dated 19.10.2006. The only reason to deny the benefits to the applicants that legitimate right in the wake of principles of "equal pay for equal work" is that when the matter was referred to DOPT and Ministry of Finance, a decision has been taken to include this anomaly for consideration of 6th CPC and accordingly, the entire issue right from the genesis and parity with analogous post with all the possible ramifications of the upgradation is referred to 6th CPC.

4. As in our Constitution, Article 14 forbids invidious discrimination, i.e., equals cannot be treated differently without any intelligible differentia or any reasonable nexus with the object sought to be achieved, when the Government itself admitted that there had been parity between the Assistants and PAs of RBSS, CSS and CSSS with that of Assistants in AFHQ and with regard to their mode of recruitment, charter of duties and training imparted in the grade and also selection process being identical, we do not see any good reason to distinguish between the Assistants of AFHQ and CSS in the matter of grant of revised pay scales."

4. The Association had, by way of representations to the respondent dated 15.3.2007 and 10.8.2007, advanced claims for pay parity, which were rejected on 1.9.2009 stating that the Ministry of Finance had negated the request of the third respondent, for extension of upgraded pay scales. The opinion of the Ministry of Finance was communicated by the OFB to the Association; that view is extracted below:

"The Ministerial staff Stenographers cadre in the Government can be categorized into 3 viz.(i) CSS/CSSS/non CSS/non CSSS working in Headquarters of Central Government; and (iii) Ministerial/stenographers cadre working in organizations outside the secretariat. OFB is an attached office and would come under category (iii) above. There is no lack of clarity regard Pay scales of category (iii) above. The same have been implemented as recommended in Para 3.1.14 of 6th CPC report. There is no justification for further up-gradation of their pay scales. 6th CPC has granted parity between the pay scales of CSS/CSSS and Ministerial/Stenographers" cadre in offices outside the Secretariat only up to Assistant level and the same has been implemented."

5. The Association thereafter addressed an elaborate representation dated 04.11.2009 which was forwarded to the Ministry of Defence. On 20.04.2010, the

Ministry of Defence communicated the views of the Union Finance Ministry which had reiterated its earlier opinion that upgradation benefits should not be extended to members of the Association.

6. The Association, in support of its original application O.A. 39/2011, had relied upon various orders of the Central Government, extending the benefit of upgradation and the replacement scales given by the Sixth CPC, by virtue of the Rules framed under proviso to Article 309 in 2008. The CAT took note of the recommendations of the Sixth CPC, especially para 3.1.14 and held, by the impugned order dated 18.10.2012, that OF employees had the status of those of attached offices of the Ministry of Defence with its own separate structure of governance, and could not claim equation with the Secretariat Services or the Ministry of Defence or any other Union Ministry. In this regard, it was observed in para 40 of the impugned order, that the cadre strength of CSS and CSSS and the method of recruitment and deployment in various departments of the Ministry was inter alia based upon different terms and a claim for parity by those working in the OFB Factories could not be made on a superficial comparison. The CAT thereafter held that upon a close analysis of para 3.1.14 of the Sixth CPC recommendations, the Association's application had to fail. The CAT also rejected the argument with regard to the historical parity being disturbed and concluded that the executive government could frame appropriate policies having regard to the exigencies of the hour.

7. The petitioners' senior counsel, Ms. Kiran Suri, argued that the CAT's reasoning is based upon wrong assumptions. It is contended that the cadre structure of CSS and CSSS is identical to that of the OFBs. In both the organizations, the cadre of UDCs is filled by the feeder cadre of LDCs, and likewise, the post of Assistant inter alia is filled by promotion from the cadre of UDCs. It is argued that the ability of an employee to participate in recruitment in other departments and the inability to do so under the OFB Rules is an irrelevant factor. Stressing upon the circumstance that right from 1968 till 2006, for almost 40 years, parity of pay scales had been extended to Assistants/PAs in organizations such as CSS/CSSS, Railway Board, other "non-participating Ministry and Departments", the employees of the AFHQs and the employees of the OFBs, it was urged that this parity was not sought to be disturbed by the Sixth CPC recommendations. It was submitted that the CAT fell into error in completely overlooking that the Sixth CPC recommendations with regard to the merger and upgradation of ministerial posts in non-Secretariat offices was in effect given a go-by and not accepted, as is evident from CCS (Revised Pay) Rules, 2008 which do not anywhere mention the revised pay scale of Rs. 5500-9000/- for Assistants and PAs. It was submitted that the pay scale hierarchy itself was Rs. 5000-8000/- and Rs. 7500-12000/- whereas the pay scale hierarchy in the OFBs earlier was Rs. 4000-6000/- and Rs. 5500-9000/-.

8. Learned senior counsel next urged that the CAT overlooked and fell into error in not giving any importance to Paras 3.1.9 and Para 7.10.22 of the Sixth CPC

recommendations. In this regard, it was submitted that both these conclusively pointed to pay scales in the AFHQs and other organizations involved with the Defence Ministry, such as Defence Production. It was submitted that the need for parity of OF employees with the members of the CSS and CSSS was emphasized and underlined by the Sixth CPC. It was further argued that upgradation of pay scales of Assistants in the CSS/CSSS made effective from 25.09.2006 was just before acceptance of the Sixth CPC recommendations. However, the recommendations themselves- in para 3.1.14 were that the existing pay scale of Rs. 5500-9000/- ought to be increased to Rs. 6500-10500/-. At the time when the recommendations were accepted, the upgradation had already been done. This resulted in the Assistants in the CSS and non-participating Ministries securing the benefit of replacement in a yet higher scale of Rs. 7500-12000/-. Clearly this was not envisioned in the Sixth CPC which had merely, in para 3.1.14 sought to merge different pay scales into one replacement scale of Rs. 6500-10500/-. By misconstruing these events and particularly overlooking that the statutory rules constituted the terms accepted by the Central Government - which nowhere reflected the pre-existing scale of Rs. 5500-9000/-, the CAT fell into error of law.

9. Learned senior counsel argued that while the executive primacy in policy formulation is well recognized and cannot be undermined, yet that imperative has to yield to the dictates of the right to equality. In the present case, not only was the parity between employees of various organizations maintained and established; it was evenly conceded up to 25.09.2006. The denial of this parity to only members of OFB was inexplicable given that the CSS pattern upgrading the existing pay scale of Rs. 5500-9000/- to Rs. 6500-10500/- was extended to other non-participating organizations and departments such as employees of Railway Board, CVC, Ministry of Parliamentary Affairs, the employees of CAT etc. The Finance Ministry nowhere objected to the extension of this upgradation and the consequent placement in an even higher scale after the recommendations of the Sixth CPC even though the structure of these organizations differed from that of CSS/CSSS. That parity was denied to members of AFHQs who, however successfully challenged the denial before the CAT. Besides citing executive primacy, no rationale had been given by the respondents to justify resultant discrimination.

10. The respondents urged that this Court should not interfere with the well-reasoned order of CAT. They argued that the Ministerial staff and cadre in the Central Government are categorized into three:

- (1) CSS/CSSS;
- (2) Non-CSS/Non-CSSS working in Central Government;
- (3) Ministerial and stenographic cadres working in organizations outside the Secretariat;

11. It was submitted that OFB is a non-attached office falling in the third

category and being employed in a non-attached office which is a non-secretariat organization, there cannot be parity of pay scales. It was submitted in the respondent's counter affidavit that "petitioners are employed in an attached office which is a non-Secretariat organization and there cannot be any parity of pay scales amongst dissimilar lot and across different organizations the statutory rules relating to eligibility/appointment/recruitments conditions of posts with which comparison is being attempted to be made and parity of pay scale being sought, are very different from the posts which the applicants hold".

12. The respondents rely upon various decisions of the Supreme Court such as State of Haryana and Another Vs. Tilak Raj and Others, ; State of Haryana and Another Vs. Haryana Civil Secretariat Personal Staff Association, ; Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others, ; State of Madhya Pradesh and Another Vs. Pramod Bhartiya and Others, and SBI v. K.B. Subbaih AIR 2003 SC 306. It was further contended that judicial review in matters pertaining to pay scales is extremely limited and barring demonstrable arbitrariness and palpable discrimination, the Court would desist from exercising what are undoubtedly executive powers. The respondents reiterate the submission that the primacy accorded to para 3.1.14 which recommended replacement pay scale was justified. However, it was stated that Para 3.1.9 does not refer to employees of the OFB nor does it extend any extra benefits.

Analysis and Findings

13. It can be seen from the above discussion, certain facts are undisputed:

(1) the successive Central Pay Commission recommendations (i.e. the third, fourth and fifth) had resulted in parity in pay scales between members of CSS/CSSS, especially in the cadre of Assistants on the one hand and other non-Secretariat organizations.

(2) these non-Secretariat organizations included the Departments within the Central Government (Ministry of Railways, Ministry of Parliamentary Affairs, Ministry of External Affairs, etc) autonomous bodies like the Central Vigilance Commission, Central Administrative Tribunal etc. and civil organizations in the Ministry of Defence (AFHQ and the OF employees).

(3) The Fifth Central Pay Commission recommendations were made effective from 01.01.1996 for the cadre of Assistants/PAs in CSS/CSSS, the pay scale recommended and granted was Rs. 5500-9000/-. This pay scale existed for more than a decade and that the pre-existing parity between members of CSS/CSSS and other non-Secretariat services, including organizations falling under the Ministry of Defence enjoyed identical pay scales.

(4) The "dissonance", if one were to term it as such, occurred on 25.09.2006 when the existing pay scale (as recommended by the Fifth Central Pay Commission) within the CSS/CSSS alone was upgraded to Rs. 6500-10500/-).

(5) The order granting the benefit dated 15.09.2006 spoke about an anomaly in regard to parity of scale between Assistants/PAs in the CSS/CSSS vis-?-vis Inspectors/analogous posts in the CBDT and CBEC which "has been engaging the attention of Government for some time. It has now been decided that the posts of Assistants and PAs in CSS and CSSS respectively shall be upgraded and placed in the scale of Rs. 6500-10500/- prospectively from the date of issue of orders." This resulted in a demand in CSS/CSSS and other departments which had identical pay scales.

14. The upgradation (of pay-scales of Assistants in CSS/CSSS) which broke the parity (between CSS/CSSS and other departments) which had existed for nearly four decades resulted in demands for parity by non-Secretariat service employees, which were quickly acceded to. The Ministry of Railways Circular of 19.12.2006 granted the benefit to Assistants expressly citing the upgradation in the CSS. Likewise, the upgradation to the employees in the Ministry of Parliamentary Affairs and CVC (by orders dated 12.02.2007 and 13.07.2007) expressly mentioned the upgradation in CSS/CSSS. Significantly, the upgradation orders in such non-participating Ministries and organizations was not based on any determination or evaluation of its need, but the mere existence of parity in pay scales of Assistants in CSS/CSSS and those in such other departments.

15. It is thus evident that the up-gradation of pay scales from Rs. 5500-9000/- to Rs. 6500-10500/- was not consequent to recommendations of the Sixth CPC. In fact, this preceded and was prior to the acceptance/recommendations of the Sixth CPC. The implementation of the recommendations was in the form of Central Civil Service (Revised Pay Scales) Rules, 2008. This fact, in the opinion of the Court, has been lost sight of by the CAT even though it took note of the events which led up-to the demand for parity. The significance of the upgradation is that it took place independently of the Sixth CPC recommendations and pending its acceptance. Thus, when the recommendations were in fact considered, the stage had been set for Assistants in the CSS/CSSS and Assistants in other non-participating Ministries (but who were beneficiaries of the up-gradation consequent upon its implementation by their respective departments) to demand replacement for the upgraded scale, i.e. Rs. 6500-10500/-. The two non-participating/non-Secretariat service employees, i.e. AFHQ employees and employees of OFBs stood excluded. Employees of the AFHQs approached the CAT successfully. The CAT's decision is categorically upon the existence of historical parity - as is evident from extracts of its findings reproduced earlier in the judgment. The members of the Association and other employees of the OFBs, however, were left behind and had to rest content by grant of pay scale of Rs. 6500-10500/- as against replacement pay scale enjoyed by all other identically placed employees, i.e. Rs. 7500-12000/- in the wake of the 2008 Rules.

16. In this background, it would be necessary to extract the relevant recommendations of the Sixth CPC, i.e. paras 3.1.9 and 3.1.14 which reads as

follows:

"3.1.9 Accordingly, the Commission recommends upgradation of the entry scale of Section Officers in all Secretariat Services (including CSS as well as non participating ministries/departments/organizations) to Rs. 7500-12000 corresponding to the revised pay band PB 2 of Rs. 8700-34800 along with grade pay of Rs. 4800. Further, on par with the dispensation already available in CSS, the Section Officers in other Secretariat Offices, which have always had an established parity with CSS/CSSS, shall be extended the scale of Rs. 8000-13500 in Group B corresponding to the revised pay band PB 2 of Rs. 8700-34800 along with grade pay of Rs. 4800 on completion of four years service in the lower grade. This will ensure full parity between all Secretariat Offices. It is clarified that the pay band PB 2 of Rs. 8700-34800 along with grade pay of Rs. 4800 is being recommended for the post of Section Officer in these services solely to maintain the existing relativities which were disturbed when the scale was extended only to the Section Officers in CSS. The grade carrying grade pay of Rs. 4800 in pay band PB-2 is, otherwise, not to be treated as a regular grade and should not be extended to any other category of employees. These recommendations shall apply mutatis-mutandis to post of Private Secretary/ equivalent in these services as well. The structure of posts in Secretariat Offices would now be as under:-

* This scale shall be available only in such of those organizations/services which have had a historical parity with CSS/CSSS. Services like AFHQSS/AFHQSSS/RBSS and Ministerial/Secretarial posts in Ministries/Departments organisations like MEA, Ministry of Parliamentary Affairs, CVC, UPSC, etc. would therefore be covered."

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Recommendations for non-Secretariat Organizations

3.1.14 In accordance with the principle established in the earlier paragraphs, parity between Field and Secretariat Offices is recommended. This will involve merger of few grades. In the Stenographers cadre, the posts of Stenographers Grade II and Grade I in the existing scales of Rs. 4500-7000/Rs. 5000-8000 and Rs. 5500-9000 will, therefore, stand merged and be placed in the higher pay scale of Rs. 6500-10500. In the case of ministerial post in non-Secretariat Offices, the posts of Head Clerks, Assistants, Office Superintendent and Administrative Officers Grade III in the respective pay scales of Rs. 5000-8000, Rs. 5500-9000 and Rs. 6500-10500 will stand merged. The existing and revised structure in Field Organization will, therefore, be as follows:-

Note 1 The posts in the intermediate scale of Rs. 7450-11500, wherever existing, will be extended the corresponding replacement pay band and grade pay."

Note 2 The existing Administrative Officer Grade II /Sr. Private Secretary/ equivalent in the scale of Rs. 7500-12000 will, however, be placed in the

corresponding replacement pay band and grade pay till the time they become eligible to be placed in the scale of Rs. 8000-13500 corresponding to the revised pay band PB 2 of Rs. 8700-34800 along with grade pay of Rs. 5400."

17. The Sixth CPC had this to say about the AFHQ Civil Service, AFHQ Stenographer's Services and other similarly placed posts in different Headquarter organizations:

"AFHQ Civil Services and AFHQ Stenographers Service 7.10.22 AFHQ Civil Services and AFHQ Stenographers Service have demanded parity with CSSS and CSS. Since the Commission has recommended parity between posts in headquarters and field offices, it is only justified that such parity also exists between similarly placed posts in different headquarter organisations. The Commission, accordingly, recommends that parity should be maintained between the posts at the level of Assistant and Section Officer in these services."

18. It is evident from the above discussion that the denial of parity is based upon the Central Governments interpretation of the 6th CPC recommendations. As observed earlier, there is doubt that parity had existed as between Assistants working in the OFs falling within the jurisdiction of the OFB and identically situated Assistants working in CSS/CSSS. This parity had also existed as between CSS/CSSS Assistants on the one hand and similar ranking employees in all other non-Secretariat employees working in different departments in the Central Government. This parity existed for 10 years even after the Fifth CPC recommendations and its implementation. The singular event which brought about a change was not the result of the Sixth CPC recommendations; it was the intervening upgradation of the pay scales that had existed for Assistants in all these organizations pending the acceptance of those recommendations. The upgradation given to all others but denied to employees in OFs was the point of departure, and also the turning point of the discrimination practiced against them.

19. The Central Government's first explanation for denial is that this is in terms authorized by Para 3.1.14 of the Sixth CPC recommendations. That is plainly incorrect, because that portion of the Sixth CPC merely indicated the replacement scales from the existing Rs. 5000-8000/- to be Rs. 6500-10,500/-. By the time this recommendation was accepted, Assistants in the CSS/CSSS were already enjoying the higher scale of Rs. 6500-10,500/-. Even the CCS (Revised Pay) Rules, 2008 support this inference. Under Rule 3(1) of the said Rules, "existing basic pay" means "pay drawn in the prescribed existing scale of pay, including stagnation increment(s), but does not include any other type of pay like "special pay", etc. Rule 3(2) on the other hand, prescribed "existing scale" in relation to a Government servant as "the present scale applicable to the post held by the Government servants on the 1st day of January 2006". Rule 3 (7) defined "revised pay structure" as one in relation to any post specified in column 2 of the First Schedule and meaning "the pay band and grade pay specified against that post or the pay scale specified in column 5 & 6 thereof, unless a different revised pay band and grade pay or pay scale is notified

separately for that post." Rule 11 prescribed the mode of fixation in pay after 01.01.2006. Part B of Section II of the First Schedule to the Rules specifically stated as follows:

* This scale shall be available only in such of those organizations/ services which have had a historical parity with CSS/CSSS. Services like AFHQSS/AFHQSSS/RBSS and Ministerial/Secretarial posts in Ministries/ Departments organisations like MEA, Ministry of Parliamentary Affairs, CVC, UPSC, etc. would therefore be covered.

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The interesting part of the above table is that but for the explanation it affords, the substantive part of the Rules are based on the replacement scales being in accordance with the ones indicated in Part A of the First Schedule--read with definition of "revised pay". The scales indicated, under the First schedule are in the form of merger of four pay scales- Rs. 4500-7000/-; Rs. 5000-8000/-; Rs. 5500-9000/- and Rs. 6500- 10,500/-. All are merged into one pay scale, i.e., Rs. 9300-34800/-. The Rules, as well as the Sixth CPC recommendations specifically talk of continuation of pay benefits on the basis of "historical parity". As observed earlier, this historical parity is not denied; however, the explanation for denial of the benefit of upgradation " and the consequent placement in higher pay scales, to employees in Ordnance Factories is that OFB employees are not specifically mentioned, as opposed to mention of other non-secretariat employees: "like AFHQSS/AFHQSSS/RBSS and Ministerial/Secretarial posts in Ministries/ Departments organisations like MEA, Ministry of Parliamentary Affairs, CVC, UPSC, etc." This argument is both unpersuasive and specious, because mention of specific department was meant only by way of illustration; else a contrary intention would have been clearer. That the mention of some, not all non-secretariat employees is illustrative and not exhaustive is clear from the qualifying terms " "like" and "etc." The allusion to historical parity with reference to only a few illustrations was to encompass all those organizations where employees had identical pay scales and not merely those in enumerated departments or organizations. Any other interpretation would negate the whole intention of maintaining historical parity altogether.

20. The other reason why the respondents' submission has to fail is because the Sixth CPC recommendations specifically talks again- in Para 7.10.22 of its report that "Since the Commission has recommended parity between posts in headquarters and field offices, it is only justified that such parity also exists between similarly placed posts in different headquarter organisations. The Commission, accordingly, recommends that parity should be maintained between the posts at the level of Assistant and Section Officer in these services." This reinforces the construction of this Court, that the Sixth CPC did not intend to create a disparity for the first time, but rather wished to continue the existing parity or equality between all the group of employees regardless of their location in different organizations- the parity was in respect of what was determined to

be parity in work. If seen from this viewpoint, whether the cadre structure, especially the hierarchy of posts and promotional chances in the organization was identical or not, was irrelevant. This certainly was not the basis for all previous determinations; there is nothing on the record to indicate that these considerations weighed even with the Sixth CPC. This Court consequently rejects the respondents' submissions that the differentia between CSS/CSSS and other non-participating organizations on the one hand, and of OFBs, on the other, could be based in differential cadre structure. For the record, there is no denial that the cadre structure in Ordnance Factories both below and above Assistants corresponds to that in the CSS/CSSS.

21. The other submission of the respondents was that employees in Ordnance Factories were not working in Headquarters based organizations. The history of Ordnance Factories, available from the record is that by the Central Government order dated 27th September, 1975, the President had extended the Armed Forces Headquarters Service scheme *mutatis mutandis* to the Directorate General Headquarters Staff. Later, by order of 09.01.1979, the Ordnance Factory Board was set up at the Headquarters office of the DGOF. These documents point to the untenability of the respondents' submission that OF services are not Headquarters based services. In this context, it is worth mentioning that what comprises "Headquarters" is indicated in the Sixth CPC recommendations although no such definition exists under the CCS (Revised Pay) Rules. At para 3.1.1 of the Sixth CPC recommendations, it is stated that:

"Office staff in Headquarters and Field Organisations of Government of India

3.1.1 The various Secretariats of the Ministries and Departments of Government of India together constitute the headquarters organization. The Secretariats are chiefly involved in matters relating to formulation of policy and ensuring that these policies are executed in a coordinated and effective manner. Actual execution of these policies, however, is left to field agencies outside the Secretariat which may be either attached or subordinate offices or quasi-Government/autonomous/public sector undertakings."

22. If the respondents' submission is that Headquarters implies the headquarters being located in New Delhi, there is no warrant " either express or implied- for such a contention. Headquarters of different Central Government organizations can and are geographically dispersed- some, deliberately having regard to functional necessity and others as a historical reality. These can, without anything more, not be the basis of discrimination or valid differentiation.

23. The executive "free play in the joints" in devising pay revisions was explained by the Supreme Court in the following passage in *Secretary, Finance Department and others Vs. West Bengal Registration Service Association and others*, where also the scope of judicial review in such decisions was spelt out:

"We do not consider it necessary to traverse the case law on which reliance has been placed by counsel for the appellants as it is well settled that equation of

posts and determination of pay scales is the primary function of the executive and not the judiciary and, therefore, ordinarily courts will not enter upon the task of job evaluation which is generally left to expert bodies like the pay commissions, etc. But that is not to say that the court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary state action or inaction. Courts must, however, realize that job evaluation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performances of different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing nature of job requirements. The factors which may have to be kept in view for job evaluation may include (i) the work programme of his department (ii) the nature of contribution expected of him (iii) the extent of his responsibility and accountability of the discharge of his diverse duties and functions (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharge of his duties (v) the extent of powers vested in him (vi) the extent of his dependence on superiors for the exercise of his powers (vii) the need to co-ordinate with other departments, etc. We have also referred to the history of service and the effort of various bodies to reduce the total number of pay scales to a reasonable number. Such reduction in the number of pay scales has to be achieved by resorting to broadbanding of posts by placing different posts having comparable job charts in a common scale. Substantial reduction in the number of pay scales must inevitably lead to clubbing of posts and grades which were earlier different and unequal. While doing so care must be taken to ensure that such rationalization of the pay structure does not throw up anomalies. Ordinarily a pay structure is evolved keeping in mind several factors, e.g. (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v) avenues of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay, etc. We have referred to these matters in some detail only to emphasize that several factors have to be kept in view while evolving a pay structure and the horizontal and vertical relativities have to be carefully balanced keeping in mind the hierarchical arrangements, avenues for promotion, etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well. It is presumably for this reason that the Judicial secretary who had strongly recommended a substantial hike in the salary of the sub-registrars to the second (state) pay commission found it difficult to concede the demand made by the registration service before him in his capacity as the chairman of the third (state) pay commission. There can, therefore, be no doubt that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given

post and court's interference is absolutely necessary to undo the injustice."

24. In the CAT's order, several decisions which have declared that the principle of equal pay for equal work means parity in pay scales only when there is "wholesale identity" of the work and nature of the posts involved, have been relied upon. The principle as stated is correct. However, that itself does not explain why the almost four decades old parity " even one decade after the fifth CPC recommendations (which too continued the parity) was sought to be disturbed on the basis of an event entirely outside Pay Commission recommendations, i.e. upgradation of scale on 25.09.2006, just prior to the Pay Commission recommendations" implementation. The upgradation, initially confined only to CSS/CSSS was given to all others- save OF employees and AFHQ employees, on the basis of historical parity itself. However, ironically, because that parity (in upgradation) was omitted to the OF employees, it became a point of departure. Save and except that point of departure- which is the starting point of discrimination, there is no basis at all for disturbing OF employees who were classified along with non-secretariat employees in the matter of grant of same pay scales. It is not the respondent's case that the Sixth CPC consciously went into the subject matter and recommended a break from the past - Para 3.1.14 and its reference to organizations "like" AFHQ, Ministry of External Affairs, UPSC "etc" specifically are meant to cover OF employees. In the opinion of the Court, the submissions of the respondents to justify the discriminatory implementation of the Sixth CPC recommendations are illogical and artificial; they are not based on any nexus with the objective of scientific pay revision, based on the need to have separate pay scales, differing from others who formed part of the same class (CSS/CSSS, Railway Board employees, Assistants in Railway Ministry, UPSC, AFHQ etc). The anxiety at somehow striving to reach to a basis for classification in this case is in effect a hyper or over-classification, the like of which was warned against by the Supreme Court in *Roop Chand Adlakha and Others Vs. Delhi Development Authority and Others*, :

"But the process cannot in itself generate or aggravate the inequality. The process cannot merely blow-up or magnify in- substantial or microscopic differences on merely meretricious or plausible differences. The over-emphasis on the doctrine of classification or any anxious and sustained attempts to discover some basis for classification may gradually and imperceptibly deprive the article of its precious content and end in replacing Doctrine of equality by the doctrine of classification."

25. In another decision, i.e. *T. Sham Bhat Vs. Union of India (UOI) and Another*, , the vires of Regulation 2 of the Indian Administrative Service (Appointment by Selection) Second Amendment Regulations. 1989 - the IAS Second Amendment Regulations was challenged before the Supreme Court. Holding the increase in number of years of continuous service of non-State Civil Service Class-I officers, required in the eligibility condition for selection to the Indian Administrative service, which deprived non- State Civil Service Class-I officers of the right to be

considered for selection under the IAS Selection Regulations (which held the field for over 33 years), as unjust, arbitrary, unreasonable and contrary to legitimate expectations and Article 14 of the Constitution, the regulation was struck down as unconstitutional:

"Further, we are unable to see, any reason as to why the period of 8 years continuous service of non-State Civil Service Class-I officers which made them eligible for selection to the Indian Administrative Service under the IAS Selection Regulations should have been increased to 12 years of their continuous service by Regulation 2 of the IAS Second Amendment Regulations. In fact, no plausible reason has been put forth as to why such increase was made. Since such increase in number of years of continuous service of non-State Civil Service Class-I officers to make them eligible for selection to the Indian Administrative service deprived them of the right to be considered for selection under the IAS Selection Regulations which held the field for over 33 years, with no palpable reason, Regulation 2 of the IAS Second Amendment Regulations which brought about such deprivation has to be regarded as unjust, arbitrary, unreasonable and that which arbitrarily affected the legitimate and normal expectations of non-State Civil Service Class-I officers and was that inhibited by Article 14 of the Constitution"

26. The petitioners were treated historically as equals to CSS/CSSS employees and enjoyed equal pay and all benefits flowing from equal pay. This was based on the previous four instances of determinations by successive Pay Commissions that they performed equal work. No other evidence of "complete identity" of work was necessary in the circumstances of the case. The materials on the record do show that the Sixth CPC stated in more than one place specifically that historical parity in pay scales ought not to be disturbed. Such being the case, this Court is of the opinion that the CAT fell into error in holding that differentiation was facially justified, and could not be gone into given the nature of restricted judicial review. Consequently, a direction is issued to the respondents to fix the members of the Petitioner Association and other similarly placed Assistants working in Ordnance Factories and in OFB in the same pay scale as was given to Assistants similarly placed in CSS/CSSS, Army Headquarters, UPSC, CAT, MEA, Ministry of Parliamentary Affairs, etc. with effect from the same date as was first given to them. Consequential pay fixation and fitment orders shall be issued within eight weeks from today. The writ petition is allowed in the above terms without any order as to costs.