

(2018) 09 CAT CK 0068

In the Central Administrative Tribunal

Case No : Original Application No. 3370 Of 2012

Suraj Parkash And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 24-09-2018

Acts Referred:

Citation : (2018) 09 CAT CK 0068

Hon'ble Judges : V. Ajay Kumar, J;A.K. Bishnoi, Member(A)

Bench : Division Bench

Advocate : S.K. Gupta, Anil Kumar Singh

Final Decision : Allowed

Judgement

A.K. Bishnoi, Member (A)

1. The brief facts of the case as submitted by the applicants are as follows:

i) The applicants are holding the post of Assistants in the office of Registrar I, II and III of Debts Recovery Tribunal (DRT), respondents no.3, 4 & 5 and Registrar, Debts Recovery Appellate Tribunal (DRAT), respondent no.6 with the same classification (Group "B" Non-Gazetted) as that of their counter-parts in Central Secretariat Service (CSS) and other Tribunals and departments.

ii) The office of Respondents No. 3 to 6 was constituted under a Central Act, viz; The Recovery of Debts Due Banks and Financial Institutions Act, 1993 (Annexure A-4).

iii) As per the Notification issued by the Ministry of Finance, Department of Economic Affairs (Banking Division) dated 04.02.1994, it is provided that:

"5. Conditions of Service - The conditions of service of the Recovery Officer and other officers and employees of the Tribunal in the matter of pay, allowance, leave, joining time, joining time pay, provident fund, age of superannuation, pension and retirement benefits, medical facilities, conduct, disciplinary matters

and other conditions of service, shall be regulated in accordance with such other rules and regulations as are, from time to time, applicable to officers and employees of Central Government belonging to Group "A" Group "B", Group "C" and Group "D" as the case may be and drawing the corresponding scales of pay."

iv) The Recruitment Rules (RRs) were framed for the posts held by the applicants as per which the pay scale attached to the posts held by the applicants was Rs.5500-9000, which is corresponding to the pay scales of Assistants/Stenographers Grade C in CSS and similar recommendations were made by the 5th Central Pay Commission (CPC).

v) Subsequently, vide DoPT OM dated 25.09.2006 the pay scale of Rs.5500-9000 in respect of Assistants/Stenographers Grade "C" of CSS was raised to Rs.6500-10500 w.e.f. 15.09.2006 (Annexure A-5). However, this benefit was not extended to Assistants of DRTs and DRAT, who are similarly placed and no reasons were assigned for it.

vi) On coming to know about it, the applicants made representations to the respondents in June 2007 [Annexure A-6 (colly)], claiming parity following which respondent No.1 forwarded the matter to the Secretary, 6th CPC on 29.11.2007 (Annexure A-7).

vii) As per information revealed through RTI, Respondent No.1 had proposed upgradation of pay scales of DRT/DRAT employees. Thereafter, the 6th CPC made certain recommendations but the benefit of OM dated 25.09.2006 was not given to the applicants.

viii) Thereafter, the matter was further processed within the Ministry of Finance but was rejected on 31.12.2008, as revealed by the notings obtained through RTI. It was sent for reconsideration but was again rejected. Copies of several notings have been annexed intimating further processing of the matter in the Ministry of Finance, which were obtained through RTI.

ix) Subsequently, vide OM dated 13.11.2009 of Department of Expenditure, Ministry of Finance, upgraded the grade pay of the posts of Assistant (Group "B" Non-Gazetted) which were in the pre-revised scale of Rs.6500-10500/- as on 01.01.2006 by granting them grade pay of Rs.4600/- in Pay Band PB-2 corresponding to the pre-revised scale of Rs.7450-11500 w.e.f. 01.01.2006/-.

x) The Assistants of DRT were again deprived of the benefit of this OM as well as they were not given the benefit of earlier OM dated 25.09.2006. The applicants further represented but no decision was communicated to them.

xi) Consequently, the applicants filed OA No.399/2012 before this Tribunal challenging the non-extension of the benefit of OM dated 25.09.2006 and 13.11.2009, which was disposed of at the admission stage itself vide order dated 07.02.2012 with a direction to the respondents to take final decision in the matter and pass reasoned and speaking order within three months.

xii) The applicants did not receive any communication but obtained the file notings through RTI, through which it is revealed that the proposal was considered and was not agreed upon.

2. The applicants have sought the following reliefs:

"(i) quash and set aside the decision dated 27.02.2012 (Annexure A-1) and also quash and set aside the action of the respondents in not granting the benefit of OM dated 25.09.2006 and 13.11.2009 and also quash the communication dated 21.11.2012 (Annexure MA-1);

(ii) direct the respondents to extend the benefit of OM dated 25.09.2006 and 13.11.2009 upon the Assistants of DRTs/DRAT by placing them in revised pay structure of grade pay 4600 in PB-2 corresponding to the pre-revised scale of Rs.7450-11500 w.e.f. 01.01.2006 with all benefits like arrears of pay etc.;

(iii) May also pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice".

3. The applicants have pleaded the following grounds in support of their claim:-

3.1 The denial of the benefit of revised pay scale in terms of OM dated 25.09.2006 and higher pay scale in PB-2 with grade pay of Rs.4600/- in terms of OM dated 13.11.2009 to the applicants, who are similarly situated with their counter-parts in CSS/CAT and other Tribunals is erroneous in law and facts.

3.2 The claim of the applicant has been rejected by way of non-speaking and cryptic order. In terms of the order dated 07.02.2012 passed by this Tribunal in OA No.399/2012, the respondents were required to pass a reasoned and speaking order, which had not been complied with, and hence the impugned order is bad in law.

3.3 It is submitted that in respect of employees of National Consumer Disputes Redressal Commission (NCDRC), the Tribunal had allowed the similar benefit, which is being prayed by the applicants and that the DRT, which has been constituted by the Act of Parliament namely, the Recovery of Debts Due to Banks and Financial Institution Act, 1993 and in terms of the provisions of the Act, the proceedings before the DRT are judicial proceedings like the proceedings under NCDRC or for that purpose in other Tribunals and hence, there are no difference in duties and responsibilities of the present applicants vis-a-vis the applicants in OA No.2002/2010 decided on 11.11.2011.

3.4 The offices of respondents have not denied the fact that there was a historical parity between the staff of CSS and the staff of DRTs and hence parity cannot be disturbed.

3.5 As per the Statutory Notification dated 04.02.1994, in terms of Rule 5, the applicants are entitled to get the pay scale as given to Central Government Employees and as such the applicants have a statutory rights to get the higher pay scale.

3.6 It is submitted that the pay scale of DRTs and DRATs employees were similar to the pay scale of CSS and majority of the employees from Central Secretariat had gone to DRTs and DRATs and had got absorbed. It is further submitted that after the implementation of 5th CPC recommendations, the pay scale amongst Central Secretariat and DRTs employees, to which the applicants belong, remained the same and disparity which has been created is illegal and arbitrary.

3.7 It is further stated that in terms of OM dated 25.09.2006 as issued by the Department of Personnel & Training, the pay scale of Assistants in CSS and Personal Assistants (Stenographer C) of Central Secretariat Stenographers Services (CSSS) have been upgraded to the scale of Rs.6500-10500 w.e.f. 1.1.2006 and that though the DoP&T had carved out an exception to the aforesaid category but the same has been extended to other offices of Central Government like Central Administrative Tribunal, Courts constituted under Consumer Protection Act and various other bodies like AFHQ, NHRC etc. and hence non-extension of the aforesaid benefit upon the applicants on the ground that DRT are the offices outside the Secretariat is no longer available.

3.8 In terms of OM dated 13.11.2009, Department of Expenditure had granted the grade pay of Rs.4600/- in PB-2 in terms of CCS (RP) Rules, 2008, as a result of merger of pay scale of Rs.5500-9000 and Rs.6500-10500/- upgrading the pay scale of Rs.6500-10500 to the Pay Band corresponding to the pre-revised pay scale of Rs.7450-11500/-. Non-grant of the aforesaid benefit to the applicants, who are similarly situated, is illegal and arbitrary.

3.9. From the perusal of various notings, it is clear that the applicants are entitled for the higher pay scale but the Department of Expenditure is bent upon in enforcing general replacement scale of pay as recommended by the 6th CPC, which is evident from the decision taken by the respondents on 26.10.2009.

3.10. Because it has been admitted by the respondents that there had been a historical parity amongst the Assistants of DRT as well as Assistants of Central Secretariat Services.

3.11. It is submitted that this Tribunal in case of R. Natrajan & Ors. vs. Union of India & Ors. [OA No. 2002/2010 decided on 11.11.2011] has specifically held that the applicants in NCDRC are similarly placed as their counterparts in CSS/ CSSS and so the pay band and grade pay extended to the SOs/PSs and other employees in the CAT and to CSS/CSSS in the 6th CPC would need to be extended to their counterparts in NCDRC.

3.12. Registrar of DRT-III had forwarded the representation of applicants stating therein as under:-

"3. Prior to the upgradation of scales as referred in para 1, since the Gr. "B" (Non Gazetted) officials (holding the post of Assistants, Accounts Assistants and Stenographers Gr. "C" in DRTs) were at par with their counterparts in the Ministry, their case also deserves all merit for upgradation of pay scales."

4. The respondents in their counter-affidavit have stated that the posts of Assistant in DRTs and DRATs belong to common category posts of ministerial staff working in the offices outside the Secretariat, and in view of the specific recommendation of the 6th CPC, with regard to their replacement pay scale, grade pay of Rs.4200/- has been allowed to them. The Inspectors in CBEC/CBDT were placed in the scale of Rs.6500-10500 w.e.f. 21.04.2004, i.e., prior to 6th CPC keeping in view their parity with Inspectors of CBI/IB in terms of the directions of Jabalpur Bench of the Tribunal. Accordingly, the pay scale of Assistants of CSS was upgraded to Rs.6500-10500 vide OM dated 15.09.2006 on the basis of their historical parity with Inspectors CBEC/CBDT. This dispensation was extended exclusively to Assistants/PAs of CSS/CSSS with a decision that all the possible ramifications of this upgradation be referred to 6th CPC for taking a holistic view.

4.1 Keeping in view the mode of recruitment, it was decided vide OM dated 16.11.2009 to extend the pay structure of grade pay of Rs.4600/- in PB-2 to Assistants of CSS, AFHQ, IFS (B) and RBSS and PAs in their counter-part Stenographers Service with effect from 01.01.2006. However, as the mode of recruitment for the post of Assistant in DRT is promotion/deputation, it was a conscious decision of the Government to keep Assistants in CSS/Inspectors and analogous posts in CBDT/CBEC in the higher pre-revised scale i.e., Rs.7450-11500/- (revised pay scale of Rs.9300-34800, grade pay of Rs.4200, PB-2) considering their pre-revising relativities, hierarchical structure, mode of recruitment, duties and responsibilities etc.

4.2 The 6th CPC made recommendations as regard ministerial post in non-secretariat offices. Since the post of Assistant in DRT belongs to Non-Secretariat Organization, the said recommendations of 6th CPC is applicable to them. As such, they have been rightly placed in the revised pay scale of Rs.9300-34800 with Grade Pay of Rs. 4200/- PB-2 as per recommendations of 6th CPC.

4.3 The duties and responsibilities of Inspector, CBDT/CBEC relates to enquiry & survey, assessment, tax evasion petitions, prosecutions, TDS, tax recovery, before Tribunals, investigations etc. The Assistant of CSS performs the duties relating to parliament matters/cabinet matters, service matters, formulation/review/monitoring of national/ International policy/programs on various subjects, assistance to executives/legislatures in the smooth functioning of the Government etc. However, the duties of Assistant, DRT are confined to the recovery of debt. Therefore, the duties and responsibilities assigned to Assistant of CSS & Inspectors CBDT/CBES and Assistant, DRT are different.

4.4. No analogy can be drawn from Assistant of CAT. They were granted upgraded scale of pay in pursuance of CAT, Principal Bench judgment dated 09.04.2010 keeping in view their historical parity with Assistants of CSS. Moreover, CAT is judicial body whereas DRT is quasi-judicial body and duties of Assistant CAT and Assistant DRT are not similar.

4.5. That the post of Assistants in DRTs and DRATs belong to the common category posts of ministerial staff working in the offices outside the Secretariat, and in view of the specific recommendation of Sixth Central Pay Commission (CPC) with regard to their replacement pay scale (para 3.1.14 of the Report Annexure-1), Grade Pay of Rs.4200/- has been allowed to them.

4.6 It is submitted by the respondents that the Pay Commission is an expert body which makes recommendations on pay and allowances of Central Govt. staff keeping in view all relevant factors. The 6th CPC has made a clear distinction between the pay structure of Secretariat and Non-Secretariat staff.

5. We have heard the learned counsel of both sides and also examined the various submissions and arguments advanced.

6. We now proceed to examine the main aspects of this case with reference to their sequence of occurrence. An order was passed in OA No. 399/2012 (supra), wherein the respondents were directed to pass a reasoned and speaking order on the issue of pay parity between employees of DRTs/DRATs and CSS etc.

7. Respondent No.1, Ministry of Finance, Department of Financial Services have passed an order dated 21.11.2012 whereby they have turned down the proposal of upgradation of grade pay of Assistants of DRT/DRAT from Rs.4200/- to Rs.4600/-. The respondents have basically relied on the following points:

(i) The post of Assistants in DRTs and DRATs belong to the common category post of ministerial staff working in the offices outside the Secretariat, and therefore, in view of the specific recommendations of the 6th CPC (para 3.1.14 of the Report) Grade Pay of Rs.4200/-has been allowed to them.

(ii) Keeping in view the mode of recruitment, i.e., the direct recruitment through an All India Competitive Examination it was decided vide OM dated 16.11.2009 to extend the pay structure of Grade Pay of Rs.4600/- in PB-2 to Assistants of CSS, AFHQ, IFS (B) and RBSS and PAs in their counterparts Stenographer Service w.e.f. 1.1.2006. However, as the mode of recruitment to the post of Assistant in DRT is promotion/deputation, it was a conscious decision of the Government to keep Assistant in CSS/Inspector and analogous post in CBDT/CBEC in the higher pre-revised scale, i.e., Rs.7450-11500 (revised pay scale of Rs.9300-34800 GP of Rs.4200/- PB-2) considering their pre-revising relativities, hierarchical structure, mode of recruitment, duties and responsibilities etc.

(iii) The duties and responsibilities assigned to Assistant of CSS and Inspector of CBDT/CBEC and Assistant in DRT are different.

(iv) As regards upgradation of scale of pay of Assistant, CAT from Rs.5500-9000 to Rs.6500-10500, they were granted upgraded scale of pay. This was done in pursuance of the CAT, Principal Bench judgment dated 09.04.2010 in OA No.1165/2010 and MA No.866/2010 keeping in view their historical parity with Assistants of CSS. Therefore, no analogy can be drawn from Assistant of CAT. Moreover, CAT is judicial body whereas DRT is quasi-judicial body and duties of

Assistant, CAT and Assistant DRT are not similar.

(v) The 6th CPC is an expert body which makes recommendations on pay and allowances of Central Government Staff keeping in view all relevant factors and they have made a clear distinction between the pay structure of Secretariat and Non-Secretariat staff.

(vi) The Inspectors in CBEC/CBDT were placed in the scale of Rs.6500-10500 w.e.f. 21.04.2004, i.e., prior to 6th CPC by an executive order of the Govt. keeping in view their parity with Inspectors of CBI/IB and Court directions of CAT, Jabalpur Bench. Further, the pay scale of Assistants CSS was upgraded to Rs.6500-10500 vide this department OM No. 5/2/2004-IC dated 15.09.2006 on the basis of their traditional parity with Inspectors CBEC/CBDT. This dispensation was extended exclusively to Assistants/PAs of CSS/CSSS with a decision that all the possible ramifications of this upgradation is referred to 6th CPC for taking a holistic view.

8. The contention of the respondents is that the decision taken by them not to allow the benefit of this upgraded pay scale of Rs.6500-10500 with Grade Pay of Rs.4600/- to DRTs/DRATs employees is based on the recommendations of the 6th CPC does not appear to be correct. The 6th CPC had, in this regard, made certain recommendations, which are in Para-3.1.9 and 3.1.14 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 161 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:-

Post

Pre-revised pay scale

Corresponding revised pay band and grade pay

LDC

Rs.3050-4590

PB 1 of Rs.4860-20200 along with grade pay of Rs.1900

UDC

Rs.4000-6000

PB 1 of Rs.4860-20200 along with grade pay of Rs.2400

Assistant

Rs.6500-10500

PB 2 of Rs.8700-34800 along with grade pay of Rs.4200

Section Officer

Rs.7500-12000

Rs.8000-13500*

(on completion of 4 years)

PB 2 of Rs.8700-34800 along with grade pay of Rs.4800

PB 2 of Rs.8700-34800 along with grade pay of Rs.5400*

(On completion of 4 years)

Under Secretary

Rs.10000-15200

PB 3 of Rs.15600-39100 along with grade pay of Rs.6100

Deputy Secretary

Rs.12000-16500

PB 3 of Rs.15600-29100 along with grade pay of Rs.6600

Director

Rs.14300-18300

PB 3 of Rs.15600-39100 along with grade pay of Rs.7600

*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."

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Recommendations for non-Secretariat Organization

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:-

Designation

Present pay scale

Recommended pay scale

Corresponding Pay Band & Grade Pay

Pay band

Grade Pay

LDC

3050-4590

3050-4590

PB-1

1900

UDC

4000-6000

4000-6000

PB-1

2400

Head Clerk/Assistants/ Steno Grade II/equivalent

4500- 7000/ 5000-8000

Office Superintendent/ Steno Grade I/equivalent

5500-9000

6500-10500

PB-2

4200

Superintendent/ Asst. Admn. Officer/ Private Secretary/ equivalent

6500- 10500

Administrative Officer Grade II /Sr. Private Secretary/equ.

7500- 12000

7500-12000 entry grade for fresh recruits) 8000-13500 (on completion of four years)

PB-2

4800 (5400 after 4 years)

Administrative Officer Grade I

10000- 15200

10000-15200

PB-2

6100

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."

The reading of Para 3.1.9 clearly indicates that the 6th CPC had not proposed a differentiation between the offices in the Secretariat and those outside the Secretariat but had, in fact, specifically recognised the need to continue to maintain parity between CSS/CSSS and other organizations where such historical parity existed. Certain organizations like AFHQ, IFS (B) and RBSS etc. have been mentioned to illustrate this point. It cannot be interpreted that just because other organizations have not been mentioned, they have to be necessarily kept out of the proposed dispensation. The list is merely illustrative and not exhaustive.

9. The fact that maintaining historical parity is important is acknowledged in the order itself where in Para 3 (ii) it has been mentioned that "the pay scale of Assistants CSS was upgraded to Rs.6500-10500 vide this department OM No. 5/2/2004-IC dated 15.09.2006 on the basis of their traditional parity with Inspectors CBEC/CBDT."

10. The other points that have been mentioned to decide the matter are such as difference in mode of recruitment as also in duties and responsibilities etc. To our mind, this argument is grossly defective. Firstly, the mode of recruitment as also the duties and responsibilities of the applicants belonging to DRTs/DRATs etc. as also the officials of CBDT/CBEC have not suddenly changed after 21.04.2004 when the scale of Inspectors in CBDT/CBEC was revised from Rs. 5500-9000 to Rs.6500-10500. They were what they were and continued to remain the same. All these factors have remained unchanged both for members of DRT as also regarding other officials of CBDT/CBEC. Hence since none of these factors have changed, there is no justification to disturb the parity and grant a higher scale of pay to one set of officials. Secondly, it is extremely difficult to determine on the basis of duties and responsibilities and mode of recruitment what scale of pay should be given to different group of officials. It is also obvious that no such exercise has been carried out by the respondents nor has it been claimed that their decision with regard to disparity was a consequence of any such exercise. In the circumstances, any attempted justification of this nature has no value and cannot be accepted. It is further relevant to point out that the Service conditions of DRT/DRATs are governed by the Rules given in OM dated 04.02.1994 as per which "The conditions of service of the Recovery Officer and other officers and employees of the Tribunal in the matter of pay, allowance, leave, joining time, joining time pay, provident fund, age of superannuation, pension and retirement benefits, medical facilities, conduct, disciplinary matters and other conditions of service, shall be regulated in accordance with such other rules and regulations as are, from time to time, applicable to officers and employees of Central Government belonging to Group "A" Group "B", Group "C" and Group "D" as the case may be and drawing the corresponding scales of pay." It is surprising that this factor has not even been considered nor even mentioned while examining the present case in the order of the respondents dated 21.12.2012.

11. To say that the present situation of introduction of disparity between the two sets of scales given to two sets of officials of DRTs/DRATs and other is a consequence of recommendation of the 6th CPC is incorrect. The 6th CPC had specifically proposed that historical parity be preserved and specifically mentioned certain organizations like AFHQ, IFS (B) & RBSS for illustration. Therefore, the contention that the Pay Commission is an expert body which makes recommendations on pay and allowances is extraneous to the present case as the situation is not a result of any recommendation of 6th CPC.

12. As regards recommendation 3.1.14 of 6th CPC, a reading of this with 3.1.9 clearly suggests that it is for such cases as are not covered by the recommendation 3.1.9 meaning thereby where issue of historical parity is not there.

13. From documents supplied by the applicants, it can be seen that the Department of Financial Services had, at least, on two occasions recommended the case of the applicants for favourable consideration. However, it was rejected

by the Department of Expenditure with the observation that "the proposal has been considered in this department and the same has not been agreed to." It does not appear that the rejection was based on any detailed examination of the matter considering all aspects including that of maintenance of traditional parity.

14. A number of decisions have also been cited in which almost identical issues have been decided:

i) Decision of the Hon"ble Apex Court on similar issue in the case of Yogeshwar Prasad & Ors. v. National Inst., Edu. Planning & Admn. & Ors., [2010 (11) SCALE 379], wherein it has been held as under:

"12. The short question which arises for consideration in these appeals is why the appellants should not be given the pay scale of Rs.1640-2900 from the date when their counterparts have been given that pay scale in the Central Government? Although the stand of the Institute has also been that the appellants are entitled for the pay scale of Rs.1640-2900 which is quite evident from the aforementioned letters sent by the respondent institute to the Central Government. The Union of India has now in the Vth and VIth Pay Commissions has given that scale to the appellants.

13. In our considered view, the Division Bench was not justified in setting aside the judgment of the learned Single Judge. It may be pertinent to mention that the Division Bench did not consider the service regulations of the National Institute of Educational Planning and Administration. The case of the appellant no.1 herein was not even discussed or considered in the impugned judgment.

14. Mr. Amitesh Kumar, learned counsel appearing for the Institute-respondent no.1 tried to make out the case that duties, responsibilities and obligations of the appellants were different to their counterparts functioning in the Central Secretariat and they were justified in not giving the same pay scale. But we do not find any merit in the submission because the respondent Institute's stand all through was that the appellants be given the pay scale of Rs.1640-2900. At this stage, respondent no.1 cannot be permitted to take a somersault in this manner. The Union of India accepted the recommendations of the Vth and VIth Pay Commissions and are giving the appellants the same pay scale which their counterparts in the Central Government are getting. It may be pertinent to observe that these appellants were getting the same pay scale as was given to the employees of their categories in the Central Government up to 1.1.1986. The Union of India accepted the recommendation of the Vth and VIth Pay Commissions and are giving them same pay scale then how only during the IIIrd Pay Commission their pay scale could be different? and how their duties, obligations and responsibilities became different only for a brief period?

15. In our considered view, the appellants are entitled to get the benefit of pay scale of Rs.1640-2900 which their counterparts were getting in the Central Government during the relevant period. In case this amount has not been paid, the same may be paid to the appellants by the Institute within three months

from today."

ii) Decision of the Hon"ble High Court of Delhi in Writ Petition (C) No.4606/2013 - D.G.O.F. Employees Association & Anr. v. Union of India & Ors., decided on 14.10.2014. The relevant portion of the judgment reads as under:

"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 CBC (by orders dated 12.02.2007 and 13.7.2007) 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 upgradation 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., Para 3.1.9 and 3.1.14, which read 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 161 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:-

Post

Pre-revised pay scale

Corresponding revised pay band and grade pay

LDC

Rs.3050-4590

PB 1 of Rs.4860-20200 along with grade pay of Rs.1900

UDC

Rs.4000-6000

PB 1 of Rs.4860-20200 along with grade pay of Rs.2400

Assistant

Rs.6500-10500

PB 2 of Rs.8700-34800 along with grade pay of Rs.4200

Section Officer

Rs.7500-12000

Rs.8000-13500*

(on completion of 4 years)

PB 2 of Rs.8700-34800 along with grade pay of Rs.4800

PB 2 of Rs.8700-34800 along with grade pay of Rs.5400*

(On completion of 4 years)

Under Secretary

Rs.10000-15200

PB 3 of Rs.15600-39100 along with grade pay of Rs.6100

Deputy Secretary

Rs.12000-16500

PB 3 of Rs.15600-29100 along with grade pay of Rs.6600

Director

Rs.14300-18300

PB 3 of Rs.15600-39100 along with grade pay of Rs.7600

*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."

xxxxxxxxxxxxxxxxxxxxxxxxxxxx

Recommendations for non-Secretariat Organization

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:-

Designation

Present pay scale

Recommended pay scale

Corresponding Pay Band & Grade Pay

Pay band

Grade Pay

LDC

3050-4590

3050-4590

PB-1

1900

UDC

4000-6000

4000-6000

PB-1

2400

Head Clerk/Assistants/ Steno Grade II/equivalent

4500- 7000/ 5000-8000

Office Superintendent/ Steno Grade I/equivalent

5500-9000

6500-10500

PB-2

4200

Superintendent/ Asst. Admn. Officer/ Private Secretary/ equivalent

6500- 10500

Administrative Officer Grade II /Sr. Private Secretary/equ.

7500- 12000

7500-12000 entry grade for fresh recruits) 8000-13500 (on completion of four years)

PB-2

4800 (5400 after 4 years)

Administrative Officer Grade I

10000- 15200

10000-15200

PB-2

6100

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 Governments 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:

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Sl. No.

Post

Present scale

Revised scale

Corresponding Pay & Band

Para No. of the Report

Pay band

Grade Pay

(1)

(2)

(3)

(4)

(5)

(6)

(7)

OFFICE STAFF IN THE SECRETARIAT*

1

Section Officer/PS/Equivalent

6500- 10500

7500- 12000

8000- 13500 (on completion of 4 years)

PB-2

PB-3

4800

5400

3.1.9

* 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.

OFFICE STAFF WORKING IN OPRGANIZATIONS OUTSIDE THE SECRETARIAT*

1

Head Clerk/Assistants/Steno Grade II/ Equivalen

4500- 7000

5000- 8000

6500- 10500

8000- 13500

PB2

PB3

4200/-

5400 (on completion of 4 years)

3.1.14

2.

Administrative Officer Grade II/Senior Private Secretary/equivalent

7500- 12000

7500- 12000 (entry grade for fresh recruits)

8000- 13500 (on completion of 4 years)

PB2

4800/-

5400/-

3.1.14

XXXXXXXXXXXXXXXXXX

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."

iii) Decision of the Tribunal in OA No.3335/2011 - Mr. Sudesh Kumar & Ors. vs. Union of India & Ors., decided on 15.07.2015, wherein the following observations have been made:-

"11. From a perusal of the records, we find that the AIIMS is a body corporate/autonomous organization. Under the statutory provisions, AIIMS is conferred with the power to appoint its officers and employees, and the salaries and other conditions of service of such officers and employees of AIIMS are prescribed by regulations made in this behalf. Under Regulation 35 of the Regulations 1999, the rules as applicable to the Central Government servants regarding the general conditions of service, pay, allowances, etc., issued in this regard by the Central Government from time to time are applicable, to the officers and employees of AIIMS. On the basis of recommendations of successive Pay Commissions, the pay scales of Private Secretaries and Personal Assistants/Stenographers Grade C in the Central Secretariat were revised from time to time. With the , it is clear that there was historical parity in the pay scales of the Private Secretaries and Personal Assistants working in the AIIMS with the Private Secretaries and Personal Assistants in the Central Secretariat on the basis of recommendations of the successive Pay Commissions.

12. However, on the basis of the recommendation of the Group of Officers on Cadre Structure of CSSS, the Department of Personnel & Training, vide order dated 24.6.2005, granted non-functional scale of Rs.8000-275-13500/- to the Private Secretaries (Rs.6500-10500) of CSSS on completion of 4 years of approved service in the grade from 3.10.2003. The Ministry of Finance, Department of Expenditure (respondent no.2), vide O.M. dated 15.9.2006, took a decision that the posts of Assistants and Personal Assistants in CSS and CSSS respectively should be upgraded and placed in the 5th CPC pay scale of Rs.6500-10500 with effect from 15.9.2006. As would appear from the O.M. dated 15.9.2006 *ibid*, this decision was taken by respondent no.2 owing to its having perceived an anomaly in the pay scale of Assistants/PAs in CSS/CSSS vis-à-vis Inspectors/analogous posts in Central Board of Direct Taxes/Central Board of Excise & Customs.

13. In the present case, the applicants, who are working as Private Secretaries and Personal Assistants in AIIMS, are claiming the aforesaid non-functional scale of Rs.8000-13500/- with effect from 3.10.2003 and upgraded pay scale of Rs.6500-10500/- with effect from 15.9.2006 as have been granted to the Private Secretaries and Personal Assistants in the Central Secretariat. The applicants are also claiming the 6th CPC Pay Band and Grade Pay as granted to the Private Secretaries and Personal Assistants in the Central Secretariat corresponding to the said non-functional pay scale and upgraded pay scale. The Standing Finance Committee of AIIMS and the Governing Body of AIIMS have decided to grant the aforesaid benefits to the applicants subject to the approval of the Ministry of Finance, Department of Expenditure (respondent no.2).

14. It is worth mentioning here that the aforesaid grant of non-functional scale

and upgraded pay scale to the Section Officers/Private Secretaries and Assistants/Personal Assistants in CSS/CSSS gave rise to a number of litigations being initiated by Section Officers/Private Secretaries and Assistants/Personal Assistants working in Non-Secretariat offices/autonomous organizations, when their claims, similar to the present ones, were turned down by the Central Government.

15. As discussed in paragraphs 7(v), (vi) and (vii) of this order, in *Union of India and others v. V.K. Sharma and others* (supra), *Manoj Kumar and others, etc. v. High Court of Delhi represented by its Registrar General & others* (supra), and *D.G.O.F. Employees Association & anr. V. Union of India and ors* (supra), the Honble High Court of Delhi has examined identical issues and upheld the claims of the applicants/petitioners therein. The decision of the coordinate Bench of the Tribunal in *V.K. Sharma v. Union of India and others*, O.A.No.1499 of 2009, decided on 22.12.2009, where the claims of the Private Secretaries and Personal Assistants working in Indian Council of Agriculture Research, an autonomous organization, for non-functional scale of pay (5th CPC) and upgradaed pay scale (5th CPC) as have been granted to the Private Secretaries and Personal Assistants working in Central Secretariat were allowed, was upheld by the Hon"ble High Court of Delhi, vide its judgment passed in W.P. (C) No.3349 of 2010, decided on 17.5.2010. The SLP filed by the Union of India was also dismissed by the Hon"ble Supreme Court, vide order dated 10.12.2010 passed in CC No.17537 of 2010.

16. Similarly, in *S.R. Dheer & others v. Union of India and others* (supra), the coordinate Bench of the Tribunal, after examining the issues in great detail, has upheld the claims of the Section Officers/Private Secretaries working in the Central Administrative Tribunal which is a Non-Secretariat office. The decision in *S.R.Dheer & others v. UOI & others* (supra) was also followed by the coordinate Bench of the Tribunal in *Mrs.Sunita Devi v. The Secretary, DOPT* (supra) where the Tribunal upheld the claim of the applicants for pay scale/Pay Band & Grade Pay as granted to the Personal Assistants/Stenographers Grade C in the Central Secretariat.

17. In view of the decisions in *Union of India and others v. V.K.Sharma and others* (supra), *Manoj Kumar and others, etc. v. High Court of Delhi represented by its Registrar General & others* (supra), and *D.G.O.F. Employees Association & anr. V. Union of India and ors* (supra), wherein the issues identical to the ones arising in the present O.A. have been specifically examined and decided by the Hon"ble High Court of Delhi after taking note of the order dated 24.6.2005 *ibid* issued by the Department of Personnel & Training, the O.M. dated 15.9.2006 *ibid* issued by the Department of Expenditure (respondent no.2), the recommendations of the 6th CPC, vide paragraphs 3.1.9 and 3.1.14 of its report, and the CCS(RP)Rules, 2008, we find no substance in any of the contentions of Shri H.K.Gangwani, learned counsel appearing for respondent nos. 1 and 2. In none of the cases cited by Shri Gangwani, the order dated 24.6.2005 *ibid*, O.M.

dated 15.9.2006 *ibid*, paragraphs 3.1.9 and 3.1.14 of the 6th CPC's report, and CCS (RP)Rules, 2008 have been examined by the Hon"ble Apex Court. Therefore, the decisions cited by Shri Gangwani are of no help to the case of respondent nos. 1 and 2.

18. In the light of the above discussions, we find that the grounds mentioned in the order dated 16.11.2010 (Annexure 1 to the O.A.), on which the claims of the applicants have been rejected by respondent nos. 1 and 2, are unsustainable. Accordingly, the order dated 16.11.2010 (Annexure 1) is quashed, and we hold and declare that the Private Secretaries and Personal Assistants working in the AIIMS are entitled to same non-functional pay scale (5th CPC) and upgraded pay scale (5th CPC) and corresponding 6th CPC Pay Bands & Grade Pays as have been granted to the Private Secretaries and Personal Assistants working in the Central Secretariat. The respondents are directed to issue appropriate orders and pay them arrears of pay and allowances within two months from today. However, on the facts and in the circumstances of the case, we disallow the claim of the applicants for payment of interest on arrears of pay and allowances payable to them on account of grant of pay scales/Pay Bands with Grade Pay with retrospective effect.

19. In the result, the O.A. is allowed to the extent indicated above. No costs."

15. We find the points of determination in the present case are squarely covered by the judgments cited above.

16. In view of the above discussions, the OA is allowed and the order dated 27.02.2012 is quashed and set aside. Respondents are directed to extend the benefit of OM dated 25.09.2006 and 13.11.2009 to the Assistants of DRTs/DRATs by placing them in revised pay structure of Grade Pay of Rs.4600/- in PB-2 corresponding to the pre-revised scale of Rs.7450-11500 with effect from the same date when their counterparts working in CSS/CSSS were granted with all consequential benefits, however, except back wages, in the circumstances. This shall be done within a period of three months from the date of receipt of a certified copy of this order. There shall be no order as to costs.