IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6969 of 2015

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1. The Union of India through Secretary, Ministry of Finance, Department of Expenditure (Implementation Cell), North Block, New Delhi
2. The Ministry of Defence (Finance), through its Secretary, Establishment - 1 Sector, New Delhi
3. The Controller General of Defence Accounts, Ulan Batar Road, Palam, Delhi, Cantt 110010
4. THe Controller of Defence Accounts, Rajendra Path, Patna
5. The Account officer (ANIII), Rajendra Path, Patna

.... Petitioner/s

Versus

1. Sidhartha Shanker Roy Son of Shri Surendra Prasad resident of Marwari Colony, New Bahadurpur, P.O. Rajendra Nagar, Police Station - Bahadurpur, District - Patna
2. Mrinal Shandilya resident of Anand Mangal, Baghbhup Singh Lane, Opposite O.G. Alamganj Chowki, Patna - 7
3. Rajnandan Prasad resident of C - 24, Vijay Nagar Hanuman Nagar, Patna - 20
4. Rajesh Kumar resident of Srt - 26, Road No. 13A, Rajendra Nagar, Patna 16
5. Ramesh Kumar Resident of C/o Raj Kumar Singh, Sector K - 160, P.C. Colony, Hanuman Nagar, Patna - 20
6. Ravi Shankar Prasad Resident of Akhara Ghat Road, Shabji Mandi Road, Head P.O. Town - Muzaffarpur 522001
7. Smt. Kumari Rajni Resident of C/o Shared Kumar V - 43, Near Jaleshwar Mahadev Mandir, Kankarbagh, Patna - 20
8. Rajesh Rishikesh resident of Nawabganj, Police Station - Sadar, District - Hazaribagh
9. Vijoy Kumar Roy Resident of C/o R.P. Lal, Lekhanagar, South of DAV, Cantt Road, Danapur
10. Bhagwan Riad Resident of H/o Vinod Kumar Sinha, Karbighahia, Near Vaishali Community Hall, Mithapur, Bus Stand Road, Jakkanpur, Patna
11. D.K. Roy Resident of Mangrodih, P.O. Dooridih, District - Giridih
12. B.N. Verma resident of Daroga Kuan, Hilsa, District - Nalanda
13. Sujit Kumar Singh resident of Bhishunpur Road, Jhumritelaiya, Koderma
14. D.K. Pandey resident of C/o Sh Rewati Raman Pd At J.P. Nagar, Patna
15. Amit Kr. Sinha Resident of F. No. 101, Maurya Vihar Apartment Maurya Path Khajepura, Patna 19
16. Sanjeev Kumar Resident of Ashok Nagar, Road No.1/B, Kankarbagh Colony, Patna - 20
17. Pankaj Kumar Singh Resident of 55 Dwarikapuri, Road No. 3, Hanumannagar, Kankerbagh 20
18. Swagat Bose resident of Ward No. 4, P.S. Baripada, District - Mayurbhanj
19. Amrendra Kumar resident of village - Jamasari, Police Station Bind, District - Nalanda
20. Vishal Krishna resident of Rajnath Bhawan, Kunkun Singh Lane, Patna
21. Rajiv Ranjan resident of SBI Road, Makatpur, Giridih - 815301
22. Subodh Kumar resident of Chhatiani, P.O. Lohan, Via - Chewara, Police Station - Chandradeep, District - Jamui - 811301
23. Manish Narayan resident of Kalli Chowk, Garh Par, Nawada 805110

24. Pranab Pal resident of Benegram, P.O. Satgachia, Police Station - Memari, District - Burdwan - 713422
25. Rajeev Ranjan resident of 103, 103 BBD Sarani Shivram Palli, Haider Para, P.O. Ravinder Sarni, Silliguri - 734006
26. Kaushalendra Kumar resident of New Area Rafiganj, Aurangabad, Bihar
27. Arun Kumar resident of S/o Sh A.N. Jha, Hanumananagar, East of Kendriya Vidyalaya, Aghoria Chowk, Muzaffarpur 842002
28. Ashok Lal Das resident of C - 30, Indirapuri Colony Post VC, Patna 14
29. Monika Sinha resident of Mainpura, Near Dev Lok Nursing Home, Danapur Cantt, Patna
30. Babloo Yadav resident of Hathidah, Police Station - Hathidah, Patna
31. Surendra Prasad resident of Q. No. 2080, Sec - 12/C, Police Station - Bokaro Steel City, District - Bokaro
32. Jay Prakash Upadhaya resident of Mubarkpur, Police Station - Gundi, Sarayya Bazar, District - Ara
33. Ritesh Kumar resident of village - P.O. Neora, Police Station - Paraya Factory, District - Muzaffarpur 843126
34. Shailesh Kumar resident of Mini LIC Colony, Kankerbagh, Patna - 20
35. Brajesh resident of At + P.O. Jithuli, Police Station - Tatahi, District - Jithuli, Police Station - Tatahi, District - East Champaran
36. V.K. Roy resident of Telecom Mangal Chowk, Khemnichak, Patna
37. Nand Kishore Sahoo resident of Hatisala, VIP Colony, Lakanath Road, Puri - 752001
38. Rajesh resident of Sarmera, Post - Sarmera, Police Station Sarmera, District - Nalanda
39. Md. Sahin resident of A - 86, P.C. Colony, Kankerbagh, Patna - 20

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Sanjay Kumar(ASG)
For the Respondent/s : M/ S Pushkar Narayan Shahi,Sr.Adv., S.K. Bariar & R.K. Bariar,Advocates.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)
Date: 01-10-2015

Having heard learned counsel for both sides at length for over two days, with consent, the writ petition is disposed of at this stage itself.

2. The Union of India has filed this writ petition against

the order of the Central Administrative Tribunal, Patna Bench. The dispute is with regard to entitlement of pay, pursuant to Sixth Central Pay Commission Report, and the effect of the Central Civil Services(Revised Pay) Rules, 2008, both of which became effective from 1-1-2006. The applicants before the Tribunal, who are the contesting respondents herein, are hereinafter referred to as “the applicants”. The applicants are employed in the Office of the Controller of Defence Accounts under jurisdiction of Patna. Their grievance was that though their counterparts and more than ninety percent of the Central Government employees all over country , who are similarly situated, were being paid remuneration, much more than them, they were being denied the due remuneration without reason. The basic facts do not appear to be in dispute.

3. The applicants worked initially as Auditors and Clerks in between 1-1-2006 and 30-8-2008. They were promoted after passing the Departmental Examination to the post of Section Officer. At the time of their promotion, they were in the pay-scale of Rs. 6500-10500/-. On 29th August, 2008, the recommendations of the Sixth Central Pay Commission were accepted, and notified by the Central Government. One of the recommendations was that the post of Section Officer and Assistant Accounts Officer be merged and upgraded. Let it be noted that the Section Officers were in the pay-

scale of Rs. 6500-10500/-, whereas as the Assistant Accounts Officers were in the pay-scale of Rs. 7450-11500/- These were to be merged, and the post was to denote as Assistant Accounts Officer with upgraded pay-scale of Rs. 7500-12000/-. The applicants' claim is simple. They claim that by virtue of this recommendation of the Sixth Central Pay Commission, they ,being the Section Officers, having been promoted thereto after 1-1-2006, would be deemed to be Assistant Accounts Officers in the upgraded pay-scale the day they got their promotion. In other words, by virtue of the retrospectivity of the recommendation of the Sixth Central Pay Commission, the day they were promoted from Auditors/Clerks to Section Officers, they would be deemed to be Assistant Accounts Officers in the pay-scale of Rs.7500-12000/-. Next came the Central Civil Services(Revised Pay) Rules 2008. To give effect to the recommendation of the Sixth Central Pay Commission, this was also made applicable retrospectively with effect from 1-1-2006, and these Rules were notified on 29-8-2008. The applicants claim that once, by fiction, they are deemed to be on the promotional post of Assistant Accounts Officer in the pay-scale of Rs.7500-12000/-, their revised pay would, accordingly, be as per the Fitment Table given in the said Rules, which clearly provide that they would be in Pay-Band- II with corresponding pay-scale of Rs. 9300-34800/- and Grade Pay of Rs.

4800/- This is what almost every contemporary in India is getting, except a small section in Bihar.

4. On the other hand, learned counsel appearing for the Union of India submits that it is not in dispute that the applicants were promoted in between 2006 and 2008, after passing Departmental Examination, to the post of Section Officers, where they were there when the Sixth Central Pay Commission and the Central Services (Revised Pay) Rules, came into being. It is by virtue of the recommendation of the Sixth Central Pay Commission that their posts got merged and upgraded. If that be the situation, it is not rule 11, but rule 7 of the Central Services(Revised Pay) Rules, 2008 that would apply, and, therefore, their equivalence in the revised pay structure would be based on their basic grade as Section Officer i.e., Rs. 6500/- and the pay-scale being Rs.6500-10500/-. Thus the basic issue would be what would be taken to be the basic pay of the applicants when the recommendations of the Sixth Central Pay Commission were accepted: whether it would be Rs. 7500/- or Rs.6500/-. At this stage, we may notice the fair stand taken on behalf of the Union of India. They frankly conceded that the Grade Pay of the applicants would be Rs.4800/- within the Pay Band-2. This is important, for this, in our view, would be a sort of settler in the matter.

5. In our opinion, once the recommendations of the Sixth

Central Pay Commission were accepted retrospectively, it became active retroactively, meaning thereby, a fiction was created, whereby all persons, who are either Section Officers on 1-1-2006 or who became Section Officers upto 30-8-2008, would be deemed to be Assistant Accounts Officers, whose pay scale was upgraded to Rs.7500-12000/- . Thus a fiction by virtue of retrospectivity is created, and it is well-settled Rule of Interpretation that a fiction, once created, has to be carried to its logical conclusion without mind boggling at any point. If that be so, the applicants would be deemed to be Assistant Accounts Officer when they were so first promoted and would be in the pay scale of Rs.7500-12000/-. Once this is not disputed, then we may straightway refer to the Fitment Table, appended to OFFICE MEMORANDUM dated 30th August, 2008, as circulated by the Ministry of Finance, Department of Expenditure(Implementation Cell), which is Annexure-R/10 to the supplementary Counter Affidavit of the applicants. Here, the entire calculation is given, which is quoted hereinunder:-

Pre-revised scale (S-14)	Revised Pay Band + Grade Pay
Rs.7500-250-12000	PB-2 Rs.9300-34800+ Rs.4800

Pre-revised Basic Pay	Pay in the Pay Band	Grade Pay	Revised Basic Pay
7,500	13,950	4,800	18,750
7,750	14,420	4,800	19,220

8,000	14,880	4,800	19,680
8,250	15,350	4,800	20,150
8,500	15,810	4,800	20,610
8,750	16,280	4,800	21,080
9,000	16,740	4,800	21,540
9,250	17,210	4,800	22,010
9,500	17,670	4,800	22,470
9,750	18,140	4,800	22,940
10,000	18,600	4,800	23,400
10,250	19,070	4,800	23,870
10,500	19,530	4,800	24,330
10,750	20,000	4,800	24,800
11,000	20,460	4,800	25,260
11,250	20,930	4,800	25,730
11,500	21,390	4,800	26,190
11,750	21,860	4,800	26,660
12,000	22,320	4,800	27,120
12,250	22,790	4,800	27,590
12,500	23,250	4,800	28,050
12,750	23,720	4,800	28,520

6. We may also note that in this very OFFICE MEMORANDUM there are different Tables for different pre-revised scales, including that of Rs.6500-10500/-, but if we refer to that Table, though the Pay Band is the same i.e.,PB-2, Grade Pay is Rs.4,200/-. But, as noticed above, the Union of India does not contest that the applicants would be entitled to Grade Pay of Rs. 4,800/-. This is only possible if the Table is of pay scale Rs.7500-12000/-. To us, it appears that the applicants are correct. Once, by fiction, it is deemed that on the day when the Sixth Central Pay Commission's recommendations were accepted, and the revised pay structure were worked out, if the applicants be deemed to be Assistant Accounts Officer of the

upgraded pay scale of Rs.7500-12000/-, the equivalence thereof having been prescribed, there is no gainsaying that their revised pay structure would be calculated taking into account their original pay as Section Officer instead of the upgraded pay on the post they were put by the retroactivity of the Commission's report and upgraded grade pay of Rs.4800/-. Taking any other view that is canvassed by the Union of India, would be forgetting the retroactivitiy of the recommendations. We cannot say that one part of the recommendation i.e.,merger and upgradation be accepted, but the other part, they be split-up and equivalence calculated without giving effect to the merger and upgradation. We, thus, cannot accept the position of this split-up personality as argued. If the merger and upgradation are contemplated, then it would be contemplated and implemented for all intents and purposes on the day when equivalence of the revised pay structure is to be calculated. There would be the equivalence of the upgraded pay scale as a composite whole, and not what they actually received without this merger and upgradation.

7. Thus, we find no fault in the order of the Tribunal. This writ petition is, accordingly, dismissed.

(Navaniti Prasad Singh, J)

B.K.Roy/-

(Nilu Agrawal, J)

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