

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

OP (CAT) .No. 446 of 2012 (Z)

**AGAINST THE ORDER IN OA 954/2010 of CENTRAL ADMINISTRATIVE
TRIBUNAL,ERNAKULAM BENCH DATED**

PETITIONERS:

1. UNION OF INDIA
REPRESENTED BY THE SECRETARY
MINISTRY OF DEFENCE (FINANCE), SOUTH BLOCK
NEW DELHI-11.
 2. THE PRINCIPAL FINANCE & CONTROLLER OF ACCOUNTS
(FACTORIES),IOA, SHAHID KHUDIRAM BOSE ROAD, KOLKATTA-1.
 3. CONTROLLER OF DEFENCE ACCOUNTS (R&D)
ADMINISTRATIVE SECTION, HYDERABAD.
 4. PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS
AGRAMPOST, BANGALORE.
 5. PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (NAVY) NO. 1
COOPERAGE ROAD, MUMBAI-39.
 6. CONTROLLER OF DEFENCE ACCOUNTS
TEYNAMPET, CHENNAI-18.
 7. CONTROLLER GENERAL OF DEFENCE ACCOUNTS
ULAN BATAR ROAD, PALAM, DELHI CANTT-110010.
 8. PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (AF)
107, TAJPUR ROAD, DEHRADUN.
- BY ADVS.SRI.P.PARAMESWARAN NAIR,ASG OF INDIA
SRI.N.NAGARESH,ASG OF INDIA (NO MEMO)
SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

RESPONDENTS/APPLICANTS 1 TO 34 :

1. M.S.GOPALAKRISHNAN
S/O. M.K.SUBRAMANIAN, A/C NO. 8303804, MANISREE
KISHAKKE ARALI, MALA, THRISSUR-32.

2. A.R. RAJALAKSHMY NAIR
D/O.P.R.PANIKAR, A/C.NO. 8310779, RESIDING AT ACKLAMON
PUTHANPURACKAL, PERINGARA (P.O), THIRUVALLA, PIN -689108.

3. S.VASUDEVAN NAMPOORI
S/O. E.M.SANKARAN NAMBOORTHIRI, A/C.NO. 8308382
RESIDING AT POURNAMI, ELAPPILLY MANA
U.C.COLLEGE (P.O.), ALUVA, ERNAKULAM DISTRICT-683102.

4. T.P.SHAYAMALAN
S/O. LATE K.NARAYANAN NAMBIAR, A/C.NO. 8306823
RESIDING AT AASHIRWAD, PANNIYANOOR (P.O.), CHOKLI-VIA
THALASSERY-670679.

5. K.V.RAJAN
S/O. LATE K.VELU, A/C.NO. 8270261, KUNDIL HOUSE
EZHAKKAD (P.O.), PALAKKAD-678631.

6. P.RAVINDRANATHAN
S/O. LATE PARAMESWARAN THAMPI
RESIDING AT VRINDAVANAM, A/C NO. 8305977, VP XI-1062
PULARI NAGAR, KODUNGALLOOR P.O.
THIRUVANANTHAPURAM-695013.

7. PURUSHOTHAMAN NAIR K.N.
S/O. LATE NARAYANA PILLAI, A/C.NO. 8304777
KAVUNKAL HOUSE, EDAYARANMULA P.O.
PATHANANTHITT DISTRICT-689532.

8. K.K.JACOB
S/O. K.P.KURIAKOSE, A/C.NO. 8308185, KARIPRA
AIMURY P.O., VIA-KOOVAPPADY, PERUMBAVOOR
ERNAKULAM DISTRICT-683544.

9. P.K.SASIDHARAN PILLAI
S/O. LATE E.K.PANICKER
A/C.NO. 8308710 RESIDING AT SANGHAMITHRA
KODANAPPARAMPU ROAD, AIMS-PONEKKARA P.O.
KOCHI-682041.

10. M.M.SHOUKATH ALI
S/O. P.MOHAMMED HANEEFA, A/C.NO. 8310654, THOUFEEQ
PAYIKUZH I WARD, OCHIRA P.O., KOLLAM DISTRICT-690526.

11. M.VASUDEVAN
S/O. K.MADAVAN, A/C.NO.8308323, 26/750. JITHU VILLA
KONTHURUHY, THEVARA P.O., KOCHI-682013.

12. BABU SURESH
S/O.BHASKARAN NAIR, A/C.NO.8308708, PONGAPPALLIL
KUMARAKOM P.O., KOTTAYAM DISTRICT-686563.

13. C.RADHAKRISHNAN
S/O. LATE A.K.CHINNAN MENON, A/C.NO.8297360
RESIDING AT MEENAKSHI, AMRITHA NAGAR, PUTHUR
PALAKKAD DISTRICT-678001.

14. M.VIJAYAKUMARAN NAIR
S/O. P.G.VELAPPAN NAIR, A/C.NO.8318357, AO GE E/M
KATARIBAGH, NAVAL BASE, KOCHI
PIN-682004.

15. N.J.THOMAS
S/O. LATE N.T.JOSEPH, A/C.NO. 8306367
RESIDING AT NADUVILEPARAMBIL HOUSE
KOOTHRAPPALLY P.O., KARUKACHAL, KOTTAYAM
KERALA-686540.

16. SMT. M.O.VAIDIAN
D/O. K.GEORGE KOCHUKUNJU, A/C.NO.8305631
RESIDING AT THOPPIL GRACE BHAVAN, KAIPUZHA
KULANAD P.O., PATHANAMTHITA DISTRICT, PIN -689503.

17. V.S.PILLAI
S/O. LATE S.VELAYUDHAN PILLAI, A/C.NO.8318007
MARANGATTU HOUSE, VARAVILA P.O.
KOLLAM DISTRICT-690528.

18. N.V.PILLAI
S/O. LATE K.NARAYAN PILLAI, A/C.NO. 8303377, KARTHIKA
CHERUVARANAM, VARANAM P.O., CHERTHALA
ALAPPUZHA DISTRICT-688555.

19. P.T.THOMAS
S/O.LATE P.THOMAS, A/C.NO.8319432
RESIDING AT VALIYAVILAMEKE PUTHENVEEDU, PULAMON P.O.
KOTTARAKARA, KOLLAM DISTRICT-691531.

20. A.RAVINDRAN NAIR
S/O. LATE ACHUTHAN NAIR, A/C.NO.8303866
RESIDING AT KOTTARAM, ARAYALLOOR, THIRUMALA
THIRUVANANTHAPURAM-695006.

21. G.SIVADASAN PILLAI
S/O. GOPALA PILLAI, A/C.NO. 8305766
RESIDING AT SREE SAILAM, ABRA 265-A
TC 19/2109(1) ANNOOR, THIRUMALA P.O.
THIRUVANANTHAPURAM - 695006.

22. T.N.CHANDRAN PILLAI
S/O. LATE NARAYAN KURUP, A/C.NO. 8312758, AER-400
ARAYALLOOR, THIRUMALA P.O., THIRUVANANTHAPURAM-695006.

23. S.MOHANAKUMAR
S/O. LATE N.SANKARA PILLAI, SAO, OFFICE OF THE DPDO
A/C.NO. 8317663, DAD OFFICE COMPLEX, THIRUMAL
THIRUVANANTHAPURAM-695006.

24. S.KARTHIKEYAN
S/O. LATE G.SANKU, A/C.NO.8307223
ASSISTANT CONTROLLER OF DEFENCE ACCOUNTS,
PAO (ORs) DSC, MILL ROAD, KANNUR-13.

25. P.R.CHANDRA SEKHARAN NAIR
S/O. P.R.RAMAKRISHNA PILLAI, A/C.NO.8303407, VAISHAK
PANDANAD P.O., CHENGANNUR-689506.

26. A.NARAYANAN
S/O. LATE A.KUNKER, A/C.NO.8317059
RESIDING AT NARAYANA NIVAS, CHILLIVAYAL, MEMUNDA P.O.
VATAKARA, KOZHIKODE DISTRICT-673104.

27. N.R.K.PILLAI
S/O. NARAYAN PILLAI, A/C.NO.8309731, SHANTHI NIVAS
MURANTHAL (B), ANCHALAMOD, KOLLAM-691601.

28. T.C.JACOB
S/O. LATE T.V.CHACKO, A/C.NO.8304425, DILKUSH BHAVAN
PUTHIYA ROAD, ERROR SOUTH P.O., TRIPUNITHURA-682306.

29. N.S.PILLAI
IDAS (RTD), S/O.LATE N.NARAYANA PILLAI
A/C.NO. 8304537, 41, KAIRALI NAGAR
KOLLAM-12.

30. V.R.GOPINATHAN NAIR
S/O. V.N.RAMAN PILLAI, A/C.NO.8303248
KURIYAKKAL PUTHEN PARAMBIL, THAHALAVADY
ALAPPUZHA-689572.

31. S.RAJENDRA BABU
S/O. N.VASUDEVAN, A/C.NO. 8315053, MIG 199
GARDEN STREET, GANDHI NAGAR, KADAVANTHRA P.O.
KOCHI-682020.

32. P.GEEVARGHESE
S/O. PAPPY, A/C.NO.8300955, MEDAYIL PUTHENPURAYIL
SUJA BHAVAN, NEDUMON P.O., ADOOR
PATHANAMTHITTA-691556.

33. SUKUMARAN NAIR
S/O. K.KESAVA PILLAI, A/C.NO. 8303792
ARAPPURAYAM VEEDU, THIRUVARAMBU P.O.
KANYAKUMARI DISTRICT-629183.

34. R.K.SASIKUMAR
S/O. V.RAMAN UNNITHAN, A/C.NO.8308186, MALATHI SADANAM
KARIMPALLOOR, PUTHANKULAM P.O., SOUTH PARAVUR
KOLLAM-691302.

35. L.NARAHARI
S/O. LATE LAXMI JARAIN JOIS, NO. 26 II MAIN
BSK III STAGE, III PHASE, I BLOCK
BANGALORE-560085.

*36. M.A. ISHA, AGED 63 YEARS, W/O LATE M. VASUDEVAN,
RESIDING AT CC NO. 26/750, JITHUVILLA, KONTHURUHY,
THEVARA PO, KOCHI 682013
(impleaded as 36th addl. Respondent as per order dated 19.06.14
in I.A. No. 7783/2014)

*37. P.K.U. THANKACHI, AGED 58 YEARS,
W/O LATE P.K. SASIDHARAN PILLAI,
RESIDING AT SANGAMITHRA, KODANAPPARAMPU ROAD,
AIMS, PONEKKARA, KOCHI 682041
(impleaded as the addl. Respondent No.37 as per the order dated
9/7/2014 in I.A. No. 7784 of 2014)

*38. SANTHAKUMARIYAMMA, AGED 60 YEARS,
W/O LATE N.R.K. PILLAI
RESIDING AT SANTHI NIVAS, MURANTHAL,
ANCHALMOOD, KOLLAM
(impleaded as additional 38th respondent as per order dated
9/7/2014 in I.A. No. 7785 of 2014)

*39. MAHESWARI AMMA, AGED 60 YEARS,
W/O N.S. PILLAI, RESIDING AT 41,
KAIRALI NAGAR, KOLLAM PIN 691612

(impleaded as additional 38th respondent as per order dated
9/7/2014 in I.A. No. 7786 of 2014)

*40. KRISHNAKUMAR, AGED 34 YEARS,
S/O LATE SASIDHARAN PILLAI, RESIDING
AT SANGAMITRA, KOOVAPARAMBU ROAD,
AIMS, PONEKKARA, KOCHI 41

*41. KAMAL KISHORE, AGED 27 YEARS,
S/O LATE SAIDHARAN PILLAI
(impleaded as additional respondents 40 and 41 as per
order dated 13/10/2014 in I.A. No. 13478/2014)

*42. DHANYA VASUDEVAN, AGED 35 YEARS,
D/O LATE M. VASUDEVAN, RESIDING AT C.C. NO. 26/750,
JITHUVILLA, KONTHURUTHY, THEVARA PO, KOCHI 682013

*43. JITHU VASUDEVAN, AGED 32 YEARS,
S/O LATE M. VASUDEVAN - DO -
(* impleaded as additional respondents 42 and 43 as per
order dated 13/10/2014 in I.A. No. 13479/2014)

*44. MAHENDRA R. AGED 35 YEARS,
S/O LATE W.R.K. PILLAI, RESIDING AT SANTHI NIVAS,
MURANTHAL, ANCHALAMOD, KOLLAM DISTRICT.

*45. MAHESH R.S., AGED 33 YEARS, S/O LATE N.R.K.PILLAI
-DO-

*46. MANOJ R.S, AGED 31 YEARS, S/O LATE N.R.K. PILLAI
-DO.

R1-R10,R12-R26,R28,R31-R34,
ADDL 36,R37,R38,R39,R40,
R41,R42,R43,R44,R45,R46 BY ADV. SRI.BABU CHERUKARA
R1-R10,R12-R26,R28,R31-R34 BY ADV. SMT. ROSAMMA MATHEW
R1-R10,R12-R26,R28,R31-R34 BY ADV. SRI.P.A. SALIM
R1-R10,R12-R26,R28,R31-R34 BY ADV. SRI. ANZAR BASHEER

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R1-R10,R12-R26,R28,R31-R34 BY ADV. SRI.R. THULASEEDHARAN PILLAI
R1-R10,R12-R26,R28,R31-R34 BY ADV. SRI.P. ANTO THOMAS
R35 BY ADV. SRI.K.HANEEFA
R BY SMT.SADHANA KUMARI ESWARI

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 09-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

- EXT. P1 : TRUECOPY OF O.A. NO. 954 OF 2010 DATED 26.08.2010
- EXT. P2 : TRUE COPY OF THE REPLY STATEMENT DATED 4/2011
- EXT. P3` : TRUE COPY OF THE ORDER PASSED BY THE CENTRAL
ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH IN O.A. NO.
954 OF 2010 DATED 12.10.2011
- EXT. P4 : TRUE COPY OF THE OFFICE MEMORANDUM ISSUED BY THE
GOVERNMENT OF INDIA, DEPARTMENT OF PERSONNEL &
TRAINING DATED 04.11.1993

RESPONDENTS EXHIBITS :

- EXT. R18 (a) : TRUE COPY OF THE LETTER NO.
LC/AN/XIV/1442/O.A. 198/2011 K.RAJAGOPLAN
& OTHERS DATED 08.09.2014
- EXT. R18 (b) : TRUE COPY OF THE ORDER IN W.P.(C) NOS.
27253-65 OF 2012 (S-CAT) DATED 4-4-14 OF
THE HON'BLE HIGH COURT OF KARNATAKA
- EXT. R18 (c0 : TRUE COPY OF THE ORDER IN W.P.(C) NO.
40670 OF 2011 (S-CAT) DATED 26.03.2014 OF
THE HON'BLE HIGH COURT OF KARNATAKA.

/TRUE COPY/

P.A. TO JUDGE

[CR.]

P.R. RAMACHANDRA MENON

&

ANU SIVARAMAN, JJ.

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O.P. (CAT) No. 446 of 2012

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Dated, this the 9th day of July, 2015

JUDGMENT

Ramachandra Menon, J.

Whether stepping up of pay of the seniors is to be effected as a matter of course, merely for the reason that some of them were fortunate enough in obtaining reliefs from different Tribunals to have it stepped up to be on par with the salary of the so called junior, who actually was already receiving a higher pay in the lower scale by virtue of having obtained promotion to the post of Selection Grade Auditor and also by virtue of his longer tenure in service, is the point to be considered in this Original Petition. It is also a matter for consideration, as to whether the specific points/pleadings raised from the part of the petitioners in their reply statement in this regard, with reference to the mandate of stepping up envisaged under Rule 22 - C of the Fundamental Rules, were considered by the Tribunal while passing the order under challenge, but for making a reference to similar benefits extended by the Bangalore and Chennai Benches of the Tribunal.

2. The respondents herein approached the CAT - Ernakulam, by filing O.A. No. 954 of 2010 with the following prayers:

- (i) To direct the respondents to fix the pay of the applicants on par with that of respondent No.8 at the stage of AAO, with effect from 03.07.1995 or an anterior date corresponding to the respective dates of promotion of the applicants as AAO.
- (ii) Direct the respondents to grant all consequential benefits arising out of such pay fixation including arrears of pay/pension.
- (iii) Direct the respondents to grant the benefits within a time to be fixed by this Hon'ble Tribunal
- (iv) Pass such other order/orders as this Hon'ble Tribunal deems fit and proper under the facts and circumstances of the case.

3. It was pointed out by the respondents that one Mr.Narahari (who has been shown as the 35th respondent and was working in Bangalore), was much junior in the lower cadre, despite which he was granted a higher pay, when promoted to the post of Assistant Accounts Officer. The case projected by the party respondents was that, under similar circumstances, some of the seniors in the State of Karnataka had approached the CAT, Bangalore by filing O.A. No. 670 of 1999 projecting their

grievance as to the anomaly resulted and seeking to step up their salary. After hearing both the sides , the Tribunal allowed the said O.A. Though the Government/Department approached the High Court of Karnataka by filing W.P.(C) No. 5523 of 2001 and 6240 of 2001, interference was declined and the writ petition was dismissed as per Annexure A6 Order dated 02.12.2004. The matter was taken up before the Apex Court by way of SLP Nos. 24157 to 24159 of 2005. The delay involved in filing the SLP was condoned, but the SLP was dismissed, observing that the parties concerned had already retired from service; however, leaving the question of law open, as borne out by Annexure R2 order dated 12.03.2008.

4. The party respondents contend that some other similarly situated persons working in the State of Tamilnadu had approached the CAT, Chennai by filing O.A. No. 260 of 2000 seeking for similar reliefs. After considering the matter, the CAT - Chennai allowed the O.A. as per Annexure A1 order dated.13.11.2002, referring to the factual position with regard to Narahari's case (cited supra) and the verdict passed by the concerned Tribunal/High Court of Karnataka in this regard. This was sought to be challenged by filing

W.P.(C) No. 20774 of 2003 by the Government/Department before the High Court of Chennai. Observing that there was no merit to call for interference, it was dismissed as per Annexure A2 judgment dated 27.11.2008. Though the Department had approached the Apex Court by filing SLP, it also ended up in dismissal, as per Annexure A3 dated 01.10.2009. It was in the said background, that the party respondents sought for similar benefits, by filing O.A. No. 954 of 2010 before the CAT, Ernakulam.

5. The petitioners herein filed a detailed reply statement as to the actual facts and figures and opposed the reliefs sought for, pointing out that, granting of higher pay to Mr.Narahari (35th respondent herein) was because of the particular facts and circumstances, in so far as he was promoted to the cadre of Selection Grade Auditor (SGA). As a matter of fact, Mr. Narahari joined the service and became a UDC way back on 24.01.1963, whereas the first respondent herein had become a UDC only on 06.07.1970. Mr. Narahari was promoted as SGA, as mentioned above, which is an intermediary cadre; whereas no other respondents herein or any other so called seniors, who were the applicants before the Bangalore or Tamilnadu Bench, were given

any such promotion. It is also pointed out that Mr. Narahari, by virtue of his promotion to the said cadre and also by virtue of total service was drawing a higher pay. Further, a special pay was granted to him because of the complex nature of the work involved, by virtue of the enabling orders issued in this regard, and as such, the applicants before the Tribunal were not entitled to have it as a matter of right. It was also pointed out that none of the circumstances contemplated under the relevant O.Ms issued for granting the benefit of stepping up was available, and as such the applicants were not entitled to have the benefit. However, without any regard to the specific pleadings and points raised, the matter was finalised by the Tribunal by passing order dated 12.10.2011, merely for the reason that similar benefits were extended to the applicants before the Bangalore and Chennai Benches, however limiting the monetary benefits only for a period of 'three years' prior to the date of filing of O.A. on 29.10.2010.

6. The O.P. was admitted by this Court, also granting interim stay of operation of Ext.P3, on condition that the respondents will be entitled to have interest at the rate of 12 % per annum on the amount covered by the order under challenge,

in the event they succeeded in this O.P. The concerned respondents have filed statement, counter affidavit, additional counter affidavits etc. seeking to reiterate their stand as to the eligibility and to defend the order passed by the Tribunal, apart from producing some additional documents, as Exts. R18(a) to R18(c) produced along with the additional counter affidavits preferred by the Addl.18th respondent on behalf of himself and others as mentioned therein.

7. Heard both the sides in detail.

8. The particulars of comparative service of the 18th applicant in the O.A. and Mr. Narahari (35th respondent) have been given by the applicants themselves as part of Annexure A4, which is extracted below:

COMPARITIVE STATEMENT OF PAY DRAWN

PAY DRAWN BY L. NARAHARI, AAO

4/90 2300 [on promotion as SO(A)]

PAY DRAWN BY N.V. PILLAI, AAO

3/90 2060 (on promotion as
AAO)

3/91 2120

3/92 2180

3/93 2240

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		3/94	2300
7/95	2750 (on promotion as AAO)	3/95	2375
1/96	8300	3/96	7300 (fixation vth Pay Com)
7/96	8500	3/96	7500
7/97	8700	3/97	7700
3/98	Retired from service	3/98	7900
		3/99	8100
		3/00	8300
		3/01	8500
		3/02	8700
		10/02	8750 (promoted as AO)
		3/03	9250 (fixation)

From the above, it can be seen that Mr. Narahari the 35th respondent herein (8th respondent in O.A) was drawing a salary of Rs.2300/- on promotion as SO(A) in April, 1990, whereas the 18th applicant in O.A. was drawing a salary of only Rs.2060 in March, 1990, on promotion as AAO. The figures mentioned in the subsequent column also reveals that Mr. Narahari was promoted as AAO and was drawing Rs.2750/- in July 1995; whereas the salary of the 18th applicant in March 1995 was only Rs.2375/-. It is seen that Mr. Narahari retired from service in March 1998 and

at that point of time also, Mr. Narahari was on a higher pedestal in terms of the pay packet.

9. As mentioned already, the first applicant became UDC on 06.07.1970; whereas Mr. Narahari (35th respondent) had joined the service on 24.01.1963. So as to have promotion to the post of SO(A), it was mandatory to have passed the Subordinate Accounts Test. First applicant passed the said test on 24.11.1980, whereas Mr. Narahari passed the test only much later and hence he was given promotion to the said cadre only on 01.04.1990. Almost similar is the situation with regard to the other applicants as well, who had cleared Subordinate Accounts Test much prior to Mr. Narahari and as such, they got promotion to the SO (A) cadre earlier than the promotion given to Mr. Narahari. Next promotion post is that of Assistant Accounts Officer. First applicant got promoted to the said post in the year 1990, whereas Mr. Narahari got promotion to the said cadre only on 03.07.1995. In spite of the fact that Mr. Narahari came to be promoted to the cadre of AAO much later, than the promotion obtained by the applicants in the O.A., the pay of Mr. Narahari came to be fixed on much higher level than the others, because of the earlier promotion given to

him as 'Senior Grade Auditor' and also by virtue of 'special pay' given to him in view of the complex nature of the work, as per the enabling orders and also by virtue of the total seniority from 1963.

10. Coming to the norms for granting the benefit of stepping up of pay, reference is necessary to the O.M. bearing No.4/7/92 – Estt. (Pay I) dated 04.11.1993, which is extracted below :

(23) Instances which do not constitute an anomaly for stepping up of pay with reference to juniors –

Cases for stepping up of the pay of seniors in a pay scale to that of juniors are generally considered if the following conditions are satisfied : -

(a) both the junior and senior officer should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre.

(b) the scales of pay of the lower and higher posts in which the junior and senior officer are entitled to draw pay should be identical;

(c) the anomaly should be directly as a result of the application of FR 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments or on any other account, the above provisions

will not be invoked to step up the pay of senior officer.

2. Instances have come to the notice of this Department requesting for stepping up of pay due to the following reasons :-

(a) Where a senior proceeds on Extraordinary Leave which results in postponement of Date of Next Increment in the lower post , consequently he starts drawing less pay than his junior in the lower grade itself. He therefore, cannot claim pay parity on promotion even though he may be promoted earlier to the higher grade.

(b) If a senior forgoes / refuses promotion leading to his junior being promoted / appointed to the higher post earlier, junior draws higher pay than the senior. The senior may be on deputation while junior avails of the ad hoc promotion in the cadre. The increased pay drawn by a junior either due to ad hoc officiating / regular service rendered in the higher posts for periods earlier than the senior, cannot, therefore, be an anomaly in strict sense of the term;

(c) if a senior joins the higher post later than

the junior, for whatsoever reasons, whereby he draws less pay than the junior in such cases, senior cannot claim stepping up of pay at par with the junior.

(d) if a senior is appointed later than the junior in the lower post itself whereby he is in receipt of lesser pay than the junior, in such cases also the senior cannot claim pay parity in the higher post though he may have been promoted earlier to the higher post.

(e) Where a person is promoted from lower to a higher post , his pay is fixed with reference to the pay drawn by him in the lower post under FR 22 - C and he is likely to get more pay than a direct appointee whose pay is fixed under different set of rules. For example, an UDC on promotion to the post of Assistant gets his pay fixed under a FR 22 C with reference to the pay drawn in the post of UDC, whereas the pay of Assistant (DR) is fixed normally at the minimum, under FR 22 - B (2). In such cases, the senior direct recruit cannot claim pay parity with the junior promoted from a lower post to higher post as seniority alone is not a criteria for allowing stepping up.

(f) where a junior gets more pay due to additional increments earned on acquiring higher qualifications.

3. In the instances referred to in Para 2 above, a junior drawing more pay than the senior will not constitute an anomaly. In such cases, stepping up of pay will not, therefore, be admissible.

By virtue of the above, particularly the stipulation under 'C', it has to be ensured that the difference in the pay has been resulted as a natural consequence because of the pay fixation under Rule 22-C of the Fundamental Rules. No case has been brought out by the applicants before the Tribunal that they are entitled to have stepping up of pay by virtue of satisfaction of the requirements as stipulated in the aforesaid O.M. The only case projected by them before the Tribunal was that they were entitled to have the benefit by virtue of the fact that Mr. Narahari (35th respondent herein) happened to be their junior and further that similar benefits have been given to others, as per the different verdicts passed by the CAT Bangalore and the CAT Chennai.

11. The question to be considered is whether any claim was raised in the O.A. as to the 'eligibility' with reference to the

conditions specified regarding the stepping up of pay. A perusal of Ext. P2 reply, particularly the last paragraphs (at page Nos. 2 and 3) gives the answer, which are extracted below :

"In this context, it is appropriate to state that Shri.L. Narahari was promoted to Selection Grade Auditor (SGA) and placed in a higher scale of Rs. 425-700 before being promoted to SO(A) and by virtue of drawing higher scale of pay and also drawing pay higher on account of having put in more number of years of service vis-a-vis the other promotees before the promotion to SO(A). The pay of Shri. L. Narahari on his promotion to SO(A) was fixed at a stage higher than other juniors who are applicants to OA. Therefore, the juniors are not entitled to a stepping up of a pay as per (c) above.

The pay of Shri. L. Narahari was fixed at a higher stage on account of special pay granted for complex nature of work assigned to or performed by him prior to the promotion to the grade of SO(A). The applicants to this O.A never performed such complex nature of work and never granted any additional benefits."

After considering the materials on record, this Court finds that the above vital aspect as to the 'eligibility' was omitted to be

considered by the Tribunal while passing Ext. P3. Even when there was no plea, it was very much necessary for the Tribunal to have ascertained whether the applicants before the Tribunal were actually entitled for the benefit claimed, by virtue of the legal requirements.

12. Coming to the case law/precedents on the question of “stepping up” of salary, in the decision reported in **D.G., ESI Vs. B.Raghava Shetty (1995 Supp (2) SCC 681)**, the Apex Court held that seniors who had declined promotion as UDC- in-charge at local offices could not seek pay parity with juniors who had availed the said posting on their being posted as head clerks. It was stated that the seniors had no grievance when their junior was posted as UDC-in-charge. On the other hand they have expressed their unwillingness to work in the said posts. In the above circumstances, it was held that the higher pay drawn by the junior by virtue of the junior having officiated as UDC-in-charge could not be claimed by seniors.

13. In the decision reported in **Union of India Vs. O.P. Saxena [(1997) 6 SCC 360]**; it was held that where the scales of pay of the posts from which the senior and junior stood appointed

to the higher posts were not identical, 'stepping up' could not be granted. The same view is reiterated in **ESI Corporation Vs. P.K. Srinivasmurthy and another [(1997) 11 SCC 533]**

14. In **Calcutta Municipal Corporation Vs. Sujit Baran Mukerjee [(1997) 11 SCC 463]**; it was held that senior is entitled to stepping up of pay, if both the senior as well as the junior discharged the same duties under the same responsibility and not in different circumstances. Where a junior was granted special pay for his nature of work, the senior was held not entitled to stepping up.

15. In the decision reported in **Union of India Vs. Sushil Kumar Paul and others [(1998) 5 SCC 268]**, where the junior was getting more pay by virtue of his 'ad hoc' officiation before regular promotion, seniors were held not entitled to stepping up. The same view was reiterated in **Union of India Vs. M.Suryanarayana Rao [(1998) 6 SCC 400]**.

16. In State of **West Bengal Vs. Debasish Mukerjee and others [(2011) 14 SCC 187]**, it has been specifically held that even in cases where senior-junior anomaly in pay arose due to undue benefits wrongly conferred on a junior, seniors were not held

entitled to higher pay since the mistake committed in the junior's case ought not to be perpetuated in the senior's cases as well.

17. The law is well settled that, question of law need not be pleaded and as such, there cannot be any estoppel with regard to question of law. If the parties concerned have not satisfied the requirements for getting 'stepping up of pay', in terms of the enabling Office Memorandum and also by virtue of the position clarified by the Apex Court on many an occasion, this Court finds that unless and until, it is established that the parties concerned are legally entitled to have the benefit of stepping up of pay, subject to satisfaction of the requirements specified in this regard, they cannot be granted the benefit; merely for the reason that somebody else has been given the same without satisfying the above norms. Issuance of writ of mandamus has necessarily to be a positive concept and even if there is an instance of granting the benefit by way of mistake, the same cannot be perpetuated by issuing another direction. Viewed in the above perspective, this Court finds that the applicants before the Tribunal have not established their eligibility to get the benefit of 'stepping up of pay', with reference to the conditions/requirements in the relevant O.M.

The point stands answered against them.

18. During the course of hearing, it is brought to the notice of this Court that the matter has attained finality, in view of the fact that Ext. P3 order passed by the Tribunal has already been considered by another Division Bench of this Court in OP (CAT) No. 1821 of 2012 and it has been held that the verdict passed by the Tribunal did not warrant any interference. The said case filed by the applicants before the Tribunal, challenging the course pursued by the Tribunal limiting the benefit of arrears for 'three years', prior to the date of filing of the OA, they sought for a direction to grant the entire arrears without any regard to the period of limitation by three years. This was considered by the Bench and it was observed in the 'last paragraph', that there was no reason to warrant interference. The said paragraph is extracted below for clarity and better appreciation:

"Having regard to the details brought in before the Tribunal with regard to the benefit extended both at Bangalore and Chennai Benches, one cannot accept the statement of the petitioners that they were not at all aware of such judgment in the year 2002. The Tribunal was justified in saying, there has to be re-

fixation of pay of the petitioners on par with that of 8th respondent who was also the respondent at Annexure A1. Having regard to the fact that petitioners never raised their little finger in spite of having the knowledge that their junior was paid higher salary than that of the petitioners till 2009, we are of the opinion, Tribunal was justified in restricting the arrears for a period of 3 years prior to the date of filing Original Application. We do not find any good ground to interfere with the orders of the Tribuna. Accordingly, the petition is dismissed.

It is true that the Bench made an observation that the Tribunal was perfectly justified in passing the order, which did not call for any interference. But it has to be borne in mind that, such an observation was made with reference to the challenge raised before the Bench as to the claim for granting entire arrears without limiting the same to a period of three years. This being the position, this cannot be considered as a binding precedent in respect of the 'eligibility' to have the benefits granted, if the actual position of law is something else. As such, the issue now projected before this Court in this original petition was never the subject matter of consideration in O.P. 1821 of 2012 and hence the same

cannot be a Bar for considering the issue on merit; more so when the question of law was left open as observed by the Supreme Court in Annexure R2 judgment dated 12.03.2008, when similar verdict passed by the High Court of Bangalore was sought to be challenged by way of SLP, wherein interference was declined, leaving the question open.

19. Yet another important aspect to be considered is whether the party respondents are justified in contending that the issue has become final by virtue of the verdict passed by this Court in O.P (CAT) No. 1821 of 2012. The present original petition was filed before this Court as early as on 06.02.2012 and the same was admitted on 01.03.2012, also granting interim order as mentioned already. Pursuant to the steps taken, the party respondents appeared on different dates and the matter was pending as above. It is seen that the judgment referred to by the learned counsel for the respondents in O.P. (CAT) No. 1821 of 2012 was against the very same O.A. (i.e. O.A. No. 954 of 2010) and the same was disposed of as per the judgment dated 01.11.2012 at the stage of admission itself. The matter was not admitted and as such, no opportunity was there for the concerned

respondents/Union of India/Department to have pointed out the actual facts and figures, particularly with regard to O.P (CAT) No. 446 of 2012 and the interim stay granted by this Court. It is to be noted that, the party respondents before this Court, who were the applicants before the Tribunal, were represented through the very same learned lawyer, who had moved the matter on 01.11.2012. It is seen from the endorsement made by the Registry in O.P(CAT) No. 446 of 2012, that many party respondents had already appeared by that time and the learned lawyer had filed vakalath on their behalf as endorsed on 14.12.2012 (on behalf of the respondents 1 to 10, 12 to 26, 28, 31 to 34). The service was made complete subsequently, in respect of the other respondents as well. This means when the matter was moved by the petitioners in O.P. (CAT) No. 1821 of 2012, they were aware of the pendency of O.P.(CAT) 446 of 2012. If the said fact was brought to the notice of the Bench, the case might have been clubbed along with the pending matter and considered together. Since it was not brought to the notice of the Bench, OP (CAT) was dismissed on the very same day, when it came up on 01.11.2012. This being the position, dismissal of the said case cannot be taken to the

advantage of the respondents to hold that issue has become final; more so when the point involved in this original petition was not the subject matter of consideration in the other O.P, as mentioned above.

20. The learned counsel for the party respondents however submits that there was no wilful lapse on the part of the counsel. It is pointed out that, in so far as the matter was posted for 'admission' and was adjourned on different dates, the factual position was very much known to the concerned respondents therein, who were being represented through the then Asst. Solicitor General. This Court does not propose to probe into the factual particulars as to who was at fault. The fact remains that the original petition (CAT) No. 446 of 2012 was pending and an interim order was granted on 01.03.2012, when O.P(CAT) No.1821 of 2012 was dismissed at the admission stage, without getting the same tagged along with O.P.(CAT) No. 446 of 2012. In short, dismissal of the OP filed by concerned respondents herein cannot place any hurdle with regard to the examination of the merit, especially with regard to the question of law by this Court, more so in view of the leave granted by the Apex Court, leaving it open.

21. There is yet another contention for the party respondents that, pursuant to the verdicts passed by the Bangalore Bench and the Madras Bench (as finalized by the concerned High Courts and also by the Supreme Court), the Ministry had taken a decision to extend the benefit to the persons concerned. A copy of the said order has been produced as Ext.R18(a), along with the additional counter affidavit filed by the 18th respondent (on behalf of him and also on behalf of respondents 1 to 8, 10, 12 to 26, 28,36 to 40). The said order i.e. Ext. R18(a) is not an order issued by the Ministry, but an order issued by the Controller of Defence, New Delhi. Reference made therein is to the verdict passed by the CAT Bench, Bangalore on 13.02.2012 in O.A. No. 198 of 2014, filed by one Rajagopalan & Ors., against the Union of India and Others and as to the steps taken to implement the verdict as aforesaid. The persons mentioned therein (Rajagopal and Narayana Swami) figure out as respondent Nos. 1 and 3 in Ext. R18(b) verdict passed by the High Court of Karnataka, Bangalore. As per the said decision, the writ petition filed by the Department against the order passed by the CAT, Bangalore was dismissed, placing reliance on the judgment already rendered in W.P.(C) No.

4670 of 2011 [presumably W.P.(C) 40670 of 2011; a copy of the said verdict has been produced as R18 (c)]. After going through the verdicts passed by the Bangalore Bench and Chennai Bench of the CAT and also on going through the verdicts passed by the concerned High Courts, this Court finds that the 'eligibility' to have the benefit of 'stepping up' as envisaged under the relevant provisions of law, with reference to the relevant O.M. and the binding precedents has not been considered in all these cases. Verdicts were being passed by the concerned CATs., merely with reference to the earlier instance of granting benefit to others. It is in the said circumstances that, the matter necessitated consideration on merits, by virtue of the liberty granted by the Apex Court.

22. The learned Asst. Solicitor General submits that, for stepping up the pay, discrepancy has to be with reference to the two ingredients/circumstances, as mentioned in Clause (c) of FR 22 -C and that the said requirement has not been satisfied by the applicants in the O.A. The fact remains that the 35th respondent by name Narahari was promoted to the post of S.G.A which is stated as an intermediary cadre, carrying a different scale of pay,

at earlier point of time and he was drawing higher salary, as conceded by the party respondents. This is discernible from the materials produced along with Annexure A4; which has been extracted already. It is also relevant to note that, granting of promotion to Mr. Narahari in the intermediary scale as mentioned above and granting of 'special pay' by virtue of the complexity/nature of work and fixation given at a higher level, also by virtue of the longer tenure considering the total service, was never subjected to challenge by the applicants in the O.A. or any of the seniors who approached the CAT Bangalore or CAT Chennai. This being the position, we need not go into the eligibility of the 35th respondent (Mr. Narahari) to have obtained the promotion and higher pay in the post, in so far there is no dispute with regard to the fact that he was given such promotion and higher pay both in the 'junior level' as well as in the 'senior level'. This Court finds that the same cannot be cited as an instance to extend similar benefit to the applicants in the O.A.

23. As observed already, Ext. R18(a) is not an order issued by the 'Ministry' as of general importance, taking any decision to extend the benefit of 'stepping up of pay' to the seniors. It is with

regard to implementation of the concerned verdict, extending benefit to the particular case, as referred to in Annexure R18(a), that too, taken by the Controller of Defence Accounts. The learned Assistant Solicitor General submits that the matter is having far reaching consequence all over India and there is chance for everybody else who happens to be senior to Mr. Narahari in the all India seniority level, to approach Tribunals/Courts and claim similar benefits, in spite of the fact that no 'eligibility' is established, in accordance with law. This will result in drainage of public money, badly affecting the economic base of the Nation/Department.

24. It is to be noted that the applicants in the O.A. had approached the C.A.T. Ernakulam, admittedly about 10 years after passing the verdicts by the concerned Tribunal/High Court in Bangalore/Chennai. The O.A was liable to be dismissed on this score alone, more so, in the light of the law declared by the Apex Court in **Rabindranath Bose Vs. Union of India and Ors. [AIR 1970 SC 470]** holding that no interference shall be made in cases involving stale cause of action. It is also settled law that mistake cannot be perpetuated merely for the reason that somebody else is

given the benefit, unless the right is established, as held by the Apex Court **Chandigarh Administration and Another Vs. Jagjit Singh and another [AIR 1995 SC 705]** and in **Gurusharan Singh and Ors. Vs. New Delhi Municipal committee and Ors. [(1996) 2 SCC 459]**.

25. After hearing both the sides and after considering the relevant provisions of law, this Court finds that the Tribunal was not justified in having extended the benefit without any regard to the legal provision. The applicants in the O.A are not entitled to have the benefit. Accordingly the order passed by the Tribunal by way of Ext. P3 is set aside and O.A. No. 954 of 2010 filed before the CAT, Ernakulam stands dismissed. The Original petition filed by the petitioners is allowed. No cost.

sd/-

**P. R. RAMACHANDRA MENON,
JUDGE**

sd/-

**ANU SIVARAMAN,
JUDGE**

kmd