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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 20th December, 2024*

\+ W.P.(C) 2848/2013

VIJAY KUMAR AND OTHERS .....Petitioners
Through: Mr. Suresh Sharma, Advocate

versus

DIRECTOR GENERAL BUREAU OF INDIAN STANDARDS (BIS) & ORS .....Respondents
Through: Mr. Vivek Singh and Mr. Ritik Dwivedi, Advocates for R-1 to 3/BIS.
Mr. Ravi Prakash, Senior Advocate with Mr. Farman Ali, SPC with Mr. Anubhav Tyagi, Government Pleader Mr. Taha, Ms. Usha Jamnal, Ms. Lipi Garg, Mr. Chetan, Advocates for R-4 to 6/UOI.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This writ petition is preferred on behalf of the Petitioners to implement Serial No.I of Section II of Part-B of First Schedule of Central Civil Services (Revised Pay) Rules, 2008 ('Pay Rules, 2008') with respect to Section Officers ('SOs') and Private Secretaries ('PSs') of Bureau of Indian Standard ('BIS') w.e.f. 01.01.2006 and grant Non-Functional Selection Grade ('NFSG') of Rs.8000-13500 revised to PB-3 with Grade Pay of Rs.5400/- as granted to their counterparts in Central Secretariat Service ('CSS') and Central Secretariat Stenographers Service ('CSSS') based on historical parity.

2. Petitioners are employees of BIS, a Statutory Body, formerly known as Indian Standards Institution, registered under Societies Registration Act, 1860 on 03.09.1946 and are presently employed as SOs/PSs. It is the case of the Petitioners that employees of BIS were treated at par with other Central Government employees including CSS since inception of BIS (earlier known as Indian Standards Institution) in 1946 in all aspects including pay scales. Pay scales fixed for CSS/CSSS were *mutatis mutandis* applied to employees of ISI as well. As per Rule 79, Chapter XII of ISI Bye-laws, an analogy was brought out in Regulation 12(2) and (3) of Bureau of Indian Standards (Terms and Conditions of Service of Employees) Regulations, 2007 ('2007 Regulations'), which provides that fixation of pay, grant of increment, joining time and connected matters shall be governed by the same provisions as applicable to employees of Central Government.

3. It is averred in the writ petition that there has been a complete historical parity in the pay scales between SOs/PSs of BIS and SOs/PSs of CSS/CSSS inasmuch as under 3rd CPC, pay scale in all the three organisations for SOs/PSs was Rs.650-1200, followed by revised pay scale of Rs.2000-3500 in 4th CPC and Rs.6500-10500 under 5th CPC. As per 5th CPC recommendations, DoPT vide O.M dated 25.05.1998 merged the posts of Steno Grade 'A' and 'B' of CSSS and re-designated these posts as 'Private Secretary' in the pay scale of Rs.6500-10500, following which BIS too merged the posts of Reporter and Personal Assistant with post of PS and re-designated these posts as 'Private Secretary' in the pay scale of Rs.6500-10500. Further, vide the same O.M, DoPT fixed the minimum qualifying criteria of 3 years for becoming eligible to the post of SO/PS from the feeder posts of Assistant/Stenographer, which was equally implemented in BIS as

well as CSS/CSSS cadre. It is further averred that not only was there historical parity in pay scales but even the duties, functions and responsibilities of Petitioners are similar to SOs/PSs in CSS/CSSS, which is evident from the charter of duties mentioned in Office Manual Vol. III, 1st Edition, 2004, published by Bureau of Indian Standards (Establishment Department) and Central Secretariat Manual of Procedure, 13th Edition, 2010, published by DoPT.

4. By an order dated 13.11.2003, DoPT introduced Non-Functional Scale of Rs.8000-13500 for SOs of CSS after acceptance of recommendations of the Committee set up by the Government of India in February, 2001 on Cadre Restructuring of CSS. Committee submitted its report in February, 2002 and one of the recommendations was that all regular SOs of CSS, who had completed 4 years service in the grade, may be placed in the Non-Functional Scale of Rs.8000-13500, subject to vigilance clearance. The order was made effective from 03.10.2003. By a subsequent order dated 25.01.2006, earlier order dated 13.11.2003 was partially modified and it was decided to grant Non-Functional Scale of Rs.8000-13500 retrospectively w.e.f. 01.01.1996 on notional basis, with actual benefits of re-fixation from 03.10.2003.

5. It is averred that since BIS was following the pattern of CSS/CSSS relating to service conditions and pay scales of SOs/PSs, on representation of the Petitioners, BIS vide letter dated 08.12.2006 made a proposal to the Central Government through Ministry of Consumer Affairs, Food and Public Distribution/Respondent No.4, its Nodal Ministry, to extend the Non-Functional Scale of Rs.8000-13500 to SOs/PSs of BIS, who had completed 4 years of service in that grade w.e.f. 03.10.2003. However, Respondent

No.4 vide letter dated 19.12.2006 advised BIS to refer the proposal back for consideration after obtaining approval of its Executive Committee, which being the highest apex body in BIS, later approved the proposal in the meetings held on 05/06.06.2007.

6. It is stated that BIS referred the proposal back to the Government after obtaining approval of the Executive Committee vide its letter dated 22.06.2007 but Respondent No.4 again referred the matter back vide letter dated 22/23.07.2008 asking BIS to review the proposal in light of decision of the Government that may be taken on the recommendations of the 6th Pay Commission, which was constituted in the meantime. After the recommendations were accepted Pay Rules, 2008 were published, providing a pay scale of Rs.7500-12000 corresponding to pay band PB-2 (Rs.9300-34800) with Grade Pay of Rs.4800/- and grant of NFSG of Rs.8000-13500 on completion of 4 years service in the grade corresponding to PB-3 (Rs.15600-39100) with Grade Pay of Rs.5400/- in Serial No.I of Section II of Part-B of First Schedule, for the posts of SOs/PSs, working in the Secretariats. This scale was made available to all those organisations/ services which had historical parity with CSS/CSSS.

7. It is further averred that Department of Expenditure, Ministry of Finance vide O.M dated 30.09.2008 provided guidelines of pay revision of employees of Quasi-Government Organisations, Autonomous Organisations, Statutory Bodies, etc., set up by and funded/controlled by Central Government and as per these guidelines, BIS being a Statutory Body and satisfying the required conditions, again sent a proposal to the Government, after obtaining approval from the Executive Committee, given in its 85th Meeting held on 18.05.2009. However, without assigning any

reason, Respondent No.4 informed BIS vide letter dated 28.12.2009 that the proposal was not agreed to. Executive Committee of BIS in its 98th Meeting held on 17.02.2011 again advised BIS to take up the matter with the Central Government for re-consideration for granting Grade Pay of Rs.4800/- in PB-2 and Rs.5400/- in PB-3, but there was no positive response and Petitioners finally approached this Court.

8. Learned counsel for the Petitioners contends that there has been a complete historical parity of pay scales in the posts of SOs/PSs in BIS with SOs/PSs of CSS/CSSS right from 3rd CPC upto 5th CPC and Regulation 12(2) and (3) of 2007 Regulations clearly provides that pay scales and other service conditions of employees of BIS will be governed by the same provisions as applicable to Central Government employees. Post the recommendations of 5th CPC when DoPT merged the posts in CSS/CSSS vide OM dated 25.05.1998 and re-designated the posts as Private Secretary in pay scale of Rs.6500-10500, BIS also carried out a similar merger and placed its PSs in pay scale of Rs.6500-10500, thus maintaining parity even post 5th CPC. Parity is also maintained with regard to the criteria of 3 years for becoming eligible to be promoted to the post of SOs/PSs from the feeder posts of Assistant/Stenographer.

9. It is contended that there is wholesale identity in all respects in SOs/PSs of BIS with their counterparts in CSS/CSSS even in terms of nature of work, functions and duties and in support, reliance is placed on the Manuals incorporating the charter of duties and responsibilities, in this regard. It is urged that the wholesale identity was disturbed by an Executive Order issued by DoPT on 03.10.2003, whereby SOs/PSs in CSS were granted Non-Functional Scale of Rs.8000-13500 while the same benefit was

denied to the Petitioners in BIS *albeit* they were identically placed. In fact, this disparity was noticed by 6th CPC in paras 3.1.7 to 3.1.9 in Chapter 3 of the report and para 3.1.9 was the basis of NFSG, notified in Serial No.I of Section II of Part-B of First Schedule of Pay Rules, 2008. It is also urged that recruitment pattern in BIS is identical with CSS/CSSS cadres and all other rules pertaining to disciplinary action, retiral benefits, GPF, medical benefits etc. are the same.

10. It is strenuously urged and emphasised that 6th CPC in para 3.1.9 recommended upgradation of entry scale of SOs in all Secretariat Services including CSS and non-participating Ministries/Departments/Organisations to Rs.7500-12000 corresponding to revised Pay Band PB-2 (Rs.8700-34800) with Grade Pay of Rs.4800/- and further provided that at par with the dispensation already available in CSS, SOs in other Secretariat Offices, which have established parity with CSS/CSSS shall be extended the scale of Rs.8000-13500 in Group-B corresponding to PB-2 with Grade Pay of Rs.4800/- on completion of 4 years of service in the lower grade, which would ensure full parity between all Secretariat Offices. It was clarified that this scale shall be available only in such of the organisations which had historical parity with CSS/CSSS and therefore services like AFHQSS/ AFHQSSS/RBSS and Ministerial/Secretarial posts in Ministries/ Departments/Organisations like MEA, Ministry of Parliamentary Affairs, CVC, UPSC, etc. would be covered and in this light, employees of BIS with complete historical parity cannot be deprived of NFSG. Petitioners thus urge that non-functional scale of Rs.8000-13500 on completion of 4 years of service in the grade be granted to them, based on established historical parity.

11. It is argued that emphasis of the Respondents on para 3.1.14 of 6th CPC's report to contend that there was a clear distinction between pay scales of staff working outside the Secretariat and those of CSS/CSSS/other Headquarter Services, is wholly misconceived. Firstly, by virtue of recommendation in para 3.1.9, Petitioners are entitled to NFSG on the basis of historical parity and secondly, a number of non-Secretariat Organisations such as IGNOU, EPFO, DDA, CSIR, ICAR, DERC, ESIC, DGOF, AIIMS, etc. have been given benefit of NFSG. Learned counsel relies on the judgment of the Supreme Court in his support in the case of ***Union of India and Others v. D.G.O.F Employees Association and Another, 2023 SCC OnLine SC 1471,*** as also the judgments of this Court in ***Union of India & Others v. V.K. Sharma & Others, 2010 SCC OnLine Del 1986; Secretary, Indian Council of Agricultural Research (ICAR) and Others v. IARI Stenographers Welfare Association and Others, 2019 SCC OnLine Del 10119;*** against which Special Leave Petition (Civil) Diary No. 12245/2021, was dismissed by the Supreme Court on 01.07.2021 as also judgment of the Central Administrative Tribunal in ***Mr. Sudesh Kumar and Others v. Union of India and Others, 2015 SCC OnLine CAT 4682***, upheld by this Court in W.P. (C) 4537/2016 titled ***Union of India & Ors v. Sudesh Kumar & Ors,*** decided on 09.01.2020 and finally by Supreme Court in SLP(C) 11574/2020, titled ***Union of India & Ors. v. Sudesh Kumar & Ors.,*** decided on 06.01.2021.

12. On behalf of the Respondents, it is contended that BIS is a Statutory Autonomous Organisation and functions under its own Rules and Regulations. Duties, responsibilities, nature of work, functional requirements of Autonomous Organisations such as BIS are distinct from

employees of CSS/CSSS, who work in Ministries/Departments of the Government of India. The organisational structure is also completely different. BIS has different Rules for different cadres viz. Scientific, Laboratory and Administration and Finance with different terms and conditions, pay scales etc. and Petitioners belong to Administrative & Finance Cadres.

13. It is argued that recruitment process of employees of CSS/CSSS is through Combined Graduate Level Examination conducted by Staff Selection Commission whereas BIS employees are recruited through agencies hired for this purpose. The examination process is more rigorous for CSS/CSSS which also underscores the difference in the nature of work in these organisations. No doubt, Regulation 12(2) and (3) of 2007 Regulations provides that pay, increments, joining time etc. of BIS employees will be governed by same provisions as applicable to Central Government employees but this is subject to any modification that may be carried out by Executive Committee of BIS with the approval of Central Government. More importantly, the hierarchal structure in BIS is completely distinct from CSS. In BIS, the structure is ASO→SO(Level-7)→ SO (Level-8) →Assistant Director (Level-10) and NFSG-I in Level-8 in the pay matrix, as per 7th CPC is granted to SO (BIS) with 5 years regular service in the post while in CSS, the hierarchy is ASO→SO(Level-8)→SO(Level-10) →Under Secretary to the Government of India (Level-11). This distinction shows that in BIS post of Assistant Director (Admn. & Finance) also exists in the pre-revised scale of Rs.8000-13500 with a normal replacement of PB-3 with Grade Pay of Rs.5400/- and therefore, if NFSG is granted to the Petitioners in PB-3 with Grade Pay of Rs.5400/-, they will be at par with Assistant

Director, which would create an anomaly.

14. It is further argued that Petitioners are employees of a non-Secretariat organisation and cannot claim parity with their counterparts in Secretariat offices and this position of law is no longer *res integra.* In this context, reliance is placed on the judgment of the Supreme Court in ***Union of India and Others v. Manoj Kumar and Others, (2021) 17 SCC 662***, wherein the Supreme Court held that no parity in pay can be granted to employees of non-Secretariat Offices with those in the Secretariat Offices. Further, in reference to para 3.1.3 of 6th CPC's report, it was held that historical parity, if any, can only be granted upto the level of Assistants and not beyond and thus, Petitioners being one post higher than Assistants cannot claim parity with their counterparts in Secretariat Offices. It is emphasised that Department of Expenditure, Ministry of Finance vide UO Note dated 20.12.2010 did not agree with the proposal submitted by BIS since SOs/PSs in BIS were in pre-revised pay scale of Rs.6500-10500 under the 5th CPC regime and drawing Grade Pay of Rs.4200/- w.e.f. 01.01.2006, whereas 6th CPC, vide para 3.1.9 recommended Grade Pay of Rs.4800/- in PB-2 (pre-revised Rs.7500-12000) to SOs/PSs/ equivalent working in Secretariats and thereafter NFSG in PB-3 with Grade Pay of Rs. 5400/- on completion of 4 years of regular service. The non-functional scale is available to the organisation/services which had historical parity with CSS/CSSS but in case of BIS, which is a Statutory Body under the Department of Consumer Affairs, Respondent No.4, the nodal Ministry, was of the view that the SOs/PSs were not entitled to the scale as the organisation had distinct features in terms of hierarchy and functions etc.

15. Judgment of the Supreme Court in ***D.G.O.F Employees Association***

(supra), is distinguished on the ground that the same pertains to Assistants and Personal Assistants whereas Petitioners are SOs/PSs. It is argued that it is a settled law that equation of pay scales is a function of the expert bodies such as the Pay Commissions and the Executive and it is not for the Writ Court to enter into this domain. The scope of interference in judicial review is extremely limited and only where the Court finds that there is wholesome identity with no difference in two classes, it can interfere and direct payment of the pay scales and in this context, reliance is placed on judgment of the Supreme Court in ***State of Haryana and Others v. Charanjit Singh and Others, (2006) 9 SCC 321***. Reliance is also placed on the judgment of the Supreme Court in ***State of Madhya Pradesh and Others v. Ramesh Chandra Bajpai, (2009) 13 SCC 635***, wherein the Supreme Court held that doctrine of Equal Pay for Equal Work can be invoked only when employees are similarly placed. Similarity in designation or nature or quantum of work is not determinative of equality in the matter of pay scales. Court has to consider factors like source and mode of recruitment/appointment, qualifications, nature of work, responsibilities, experience etc.

16. Heard learned counsels for the parties and examined their rival submissions.

17. Petitioners are SOs/PSs of BIS, a Statutory and Autonomous Organisation under Respondent No. 4 and by this writ petition claim NFSG in pay scale of Rs.8000-13500 corresponding to PB-3 with Grade Pay of Rs.5400/- at par with their counterparts at CSS/CSSS as also other organisations who have been granted this benefit. Case of the Petitioners is primarily predicated on historical parity with SOs/PSs in CSS/CSSS from 3rd CPC upto 5th CPC in respect of pay scales. Emphasis is placed on para

3.1.9 of 6th CPC's report and Part B of First Schedule of Pay Rules, 2008, to underscore that employees of organisations with historical parity with CSS/CSSS are entitled to NFSG of Rs.8000-13500 on completion of 4 years in the grade, subject to vigilance clearance. Respondents, on the other hand, oppose the writ petition on the ground that being employees of BIS which is a non-Secretariat organisation, Petitioners do not fall under para 3.1.9 and have to be placed in the normal replacement scale as per para 3.1.14 of the report and thus their pay scales will be as prescribed in Part A of First Schedule of Pay Rules, 2008 at par with organisations outside the Secretariats.

18. There is no dispute that BIS is an autonomous organisation. But it is equally true it is neither a Field organisation nor an attached office and is governed by 2007 Regulations. Regulation 12(2) and (3) provide that pay scales, increments and other service conditions of employees of BIS will be governed by same provisions as applicable to Central Government employees. On the basis of recommendations of successive Pay Commissions, pay scales of SOs/PSs were revised from time to time and it is an admitted fact that SOs/PSs in BIS and CSS/CSSS were placed in pay scale of Rs.650-1200 under 3rd CPC followed by revised pay scale of Rs.2000-3500 in 4th CPC and Rs.6500-10500 under 5th CPC. There was thus complete historical parity in SOs/PSs of BIS and their counterparts in CSS/CSSS based on reports of successive Pay Commissions. This historical parity was disturbed and dissonance occurred when DoPT issued an O.M dated 13.11.2003 granting NFSG of Rs.8000-13500 to Section Officers of CSS. Government had set up a Committee on Cadre Restructuring of Central Secretariat Service in February, 2001 and based on Committee's

report rendered in February, 2002, this O.M was issued. NFSG was admissible to SOs of CSS on completion of 4 years of approved service in that grade, subject to vigilance clearance. The order was made effective from 03.10.2003. By a subsequent O.M dated 24.06.2005, Private Secretaries of CSSS were also granted NFSG effective from 03.10.2003. O.M dated 13.11.2003 was partially modified by DoPT vide O.M dated 25.01.2006 and benefit of NFSG was granted retrospectively w.e.f. 01.01.1996 on notional basis with actual benefits on re-fixation of pay w.e.f. 03.10.2003. Ministry of Finance, Department of Expenditure vide O.M dated 15.09.2006 took a decision that posts of Assistants and PAs in CSS and CSSS respectively should be upgraded and placed in the pay scale of Rs.6500-10500 w.e.f. 15.09.2006. The decision was apparently taken as Ministry of Finance perceived an anomaly in the pay scale of Assistants/PAs in CSS/CSSS viz-a-viz Inspectors/analogous posts in Central Board of Direct Taxes/Central Board of Excise & Customs.

19. It would be useful at this stage to refer to para 3.1.9 of 6th CPC report, which reflects the backdrop of pay scale Rs.7500-12000 as also makes it clear that NFSG will be available to all those organisations/services having historical parity with CSS/CSSS. Pay scale Rs.7500-12000 was not given to any employee but was introduced as a conversion scale of Rs.6500-10500. Non-functional scale of Rs.8000-13500 was not a part of recommendation of 5th CPC and was introduced by an Executive order i.e. DoPT O.M dated 13.11.2003 for SOs/PSs in CSS. Since there was a gap between this scale and the existing scale of Rs.6500-10500, 6th CPC converted the said scale to Rs.7500-12000, for grant of non-functional scale of Rs.8000-13500. Para 3.1.9 is extracted hereunder, for ease of reference:-

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

Post	*Pre-revised pay scale*	*Corresponding revised pay band and grade pay*
LDC	Rs 3050-4590	PB 1 of Rs 4860-20,200 along with grade pay of Rs 1900
UDC	Rs 4000-6000	PB 1 of Rs 4860-20,200 along with grade pay of Rs 2400
Assistant	Rs 6500-10,500	PB 2 of Rs 8700-34,800 along with grade pay of Rs 4200
Section Officer	Rs 7500-12,000 Rs 8000-13,500* (on completion of four years)	PB 2 of Rs 8700-34,800 along with grade pay of Rs 4800. PB 2 of Rs 8700-34,800 along with grade pay of Rs 5400* (on completion of four years)
Under-Secretary	Rs 10,000-15,200	PB 3 of Rs 15,600-39,100 along with grade pay of Rs 6100
Deputy Secretary	Rs 12,000-16,500	PB 3 of Rs 15,600-39,100 along with grade pay of Rs 6600
Director	Rs 14,300-18,300	PB 3 of Rs 15,600-39,100 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."***

20. Basis this recommendation, pay scales of Office Staff in the Secretariat were formulated in Serial No. I under Section II of Part-B of First Schedule of Pay Rules, 2008, which provides pay scale of Rs.7500-12000 corresponding to PB-2 with Grade Pay of Rs.4800/- and pay scale of Rs.8000-13500 corresponding to PB-3 with Grade Pay of Rs.5400/- on completion of 4 years of service. Relevant part of the First Schedule, Part-B is as follows:-

"Sl. No. (1)	Post (2)	Present scale (3)	Revised scale (4)	Corresponding Pay & Band		Para No of the Report (7)
				Pay Band (5)	Grade Pay (6)	
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/- (On completion of 4 years)	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."*

21. From a reading of Part B of First Schedule it is clear that NFSG on completion of 4 years in the grade, is available to office staff in the 'Secretariat' and the term has been amplified to mean and connote that the scale will be applicable to those organisations or services which have had a historical parity with CSS/CSSS and illustratively few services have been mentioned therein. The Supreme Court in ***D.G.O.F Employees Association (supra)*** has upheld the judgement of the Division Bench of this Court where

it was held that mention of some and not all non-secretariat organisations is illustrative and not exhaustive, which is clear from the qualifying terms such as "like" and "etc." The allusion to historical parity with reference to only a few illustrations was to encompass all those organisations where employees had identical pay scales and not merely those in enumerated departments or organisations. Any other interpretation would negate the prime intention of maintaining historical parity, altogether. Relevant passages from the judgment of the Division Bench of the High Court in ***D.G.O.F. Employees Association and Anr. v. Union of India and Ors., 2014 SCC OnLine Del 1989***, are as follows:-

> *"18. It is evident from the above discussion that the denial of parity is based upon the Central Governments interpretation of the 6th CPC recommendations. As observed earlier, there is doubt that parity had existed as between Assistants working in the OFs falling within the jurisdiction of the OFB and identically situated Assistants working in CSS/CSSS. This parity had also existed as between CSS/CSSS Assistants on the one hand and similar ranking employees in all other non-Secretariat employees working in different departments in the Central Government. This parity existed for 10 years even after the Fifth CPC recommendations and its implementation. The singular event which brought about a change was not the result of the Sixth CPC recommendations; it was the intervening upgradation of the pay scales that had existed for Assistants in all these organizations pending the acceptance of those recommendations. The upgradation given to all others but denied to employees in OFs was the point of departure, and also the turning point of the discrimination practiced against them.*
>
> *19. The Central Government's first explanation for denial is that this is in terms authorized by Para 3.1.14 of the Sixth CPC recommendations. That is plainly incorrect, because that portion of the Sixth CPC merely indicated the replacement scales from the existing Rs. 5000-8000/- to be Rs. 6500-10,500/-. By the time this recommendation was accepted, Assistants in the CSS/CSSS were already enjoying the higher scale of Rs. 6500-10,500/-. Even the CCS (Revised Pay) Rules, 2008 support this inference. Under Rule 3(1) of the said Rules, "existing basic pay" means "pay drawn in the prescribed existing scale of pay, including stagnation increment(s), but does not include any other type of pay like 'special pay', etc. Rule 3(2) on the other hand, prescribed "existing scale"*

in relation to a Government servant as "the present scale applicable to the post held by the Government servant... as 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:-

"XXXXXXXXXXXXXXXXX

"Sl. No. (1)	Post (2)	Present scale (3)	Revised scale (4)	Corresponding Pay & Band		Para No of the Report (7)
				Pay Band (5)	Grade Pay (6)	
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/- (On completion of 4 years)	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 ORGANIZATIONS OUTSIDE THE SECRETARIAT						
1	Head Clerk/Assistants/Steno Grade II/equivalent	4500-7000/ 5000-8000/	6500-10500 8000-13500 (On completion of 4 years)	PB-2	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) 8000-13000/- (On completion of 4 years)	PB-2	4800/- 5400/- (On completion of 4 years	3.1.14

XXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXX"

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."

22. In my view, having an established historical parity with SOs/PSs of CSS/CSSS, Petitioners are entitled to the benefit of scale of PB-2 with Grade Pay of Rs.4800/- and NFSG of Rs.8000-13500 corresponding to PB-3 with Grade Pay of Rs.5400/-, by virtue of para 3.1.9 of 6th CPC report, Part B of First Schedule of Pay Rules, 2008 and the judgement in ***D.G.O.F Employees Association (supra).*** Denial of NFSG to the Petitioners based on para 3.1.14 of 6th CPC report is wholly misconceived and this issue need not detain this Court having been well-settled by the Supreme Court and this Court. In this context, I may first allude to judgment of the Supreme Court in ***D.G.O.F. Employees Association (supra),*** wherein challenge was laid by

D.G.O.F. Employees Association before the Division Bench of this Court to an order of the Tribunal declining to quash the order of Ordnance Factory Board rejecting the plea of the applicants for grant of NFSG on principle of parity with counterparts in CSS/CSSS. No doubt, the case involved pay scales of Assistants/PAs but the judgment is significant as it upholds the applicability of para 3.1.9 in case of employees having historical parity with CSS/CSSS. The Division Bench negated the contention of the Respondents therein that para 3.1.14 of the Commission's report would apply and employees outside the Secretariat would be entitled to normal replacement scales. In the context of historical parity, the Division Bench took note of recommendation of 6th CPC in paragraph 7.10.22 and observed that the recommendation reinforces the construction of the Court that the 6th 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 organisations-the parity was in respect of what was determined to be parity in work. If seen from this view point, whether the cadre structure, especially the hierarchy of posts and promotional chances in the organisation was identical or not, was irrelevant. For ready reference, paragraph 20 is extracted hereunder:-

> *"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. <u>The Commission, accordingly, recommends that parity should be maintained between the posts at the level of Assistant and Section Officer in these services.</u>" 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."

23. Be it noted that several non-Secretariat organisations have granted the benefit of NFSG in PB-3 with Grade Pay of Rs.5400/- to their SOs/PSs, as rightly flagged by the Petitioners and therefore, this objection is no longer open to the Respondents and I may illustratively refer to some organisations such as IGNOU, EPFO, DDA, CSIR, ICAR, DERC, ESIC, DGOF, AIIMS, Central Administrative Tribunal. In ***V.K. Sharma (supra),*** the Respondents were working as SOs/PSs in Headquarter Office of ICAR and had approached the Central Administrative Tribunal (Tribunal) where their claim for NFSG was declined. Parity was sought with SOs/PSs of CSS/CSSS predicating their case *inter alia* on para 3.1.9 of 6th CPC's report. Tribunal directed that benefit of DoPT O.M dated 13.11.2003 shall be extended to the Respondents and they will be entitled to arrears. Aggrieved, Union of India filed a writ petition before this Court, which was dismissed and Division Bench held as follows:-

"8. *Thereafter the analysis of the Tribunal revealed that (i) there had been an 'established parity' of the Section Officers in other Secretariat offices with the SOs of CSS/CSSS; (ii) The pre-revised pay scale for other Secretariat offices had been acknowledged by the 6th CPC and the main pay scale for Section Officers, had been shown as Rs. 7500-12000, and non-functional pay scale of Rs. 8000-13500 (On completion of four years); (iii) The non-functional pay scale of Rs. 8000-13500 shall be available only in such of those organizations/services which have had a* *historical parity with CSS/CSSS'; (iv) The Ministry of Finance in its U.O. No. 7.1/1/2008-IC dated 30.10.2008, while approving the proposal of ICAR for the 6th CPC recommendations has acknowledged Rs. 8000-13500 (on completion of 4 years) as the pre revised non-functional pay scale for SOs/PS and (v) The PB-3 of Rs. 15600-39100 along with-Grade pay of Rs. 5400 (On completion of 4 years) has been accepted as the non-functional pay scale for SOs/PS w.e.f. 01.01.2006 in the 6th CPC.*

***9.** Thus, the Tribunal came to the conclusion that the 6th CPC has accepted the historical and established parity between the ICAR HQ, SO/P.S. with the SO of CSS, so the pre-revised non-functional pay scale with grade pay of Rs. 5400 (on completion of four years) as admissible to SO of CSS would mutatis mutandis would be applicable for the SO/PS of ICAR HQ.*

***10.** Thus the argument of the petitioners made before us that there is no parity between the employees of ICAR with the officers of CSS as there are differences in the mode of recruitment, nature of duties and responsibilities, organizational hierarchy etc. is misconceived in the light of Government order dated 30.10.2008 where it has been approved that the pay structure for Assistants and Section Officers in the CSS may be extended to the Assistants/Personal Assistants and Section Officers/Private Secretaries in ICAR HQ. One more argument advanced before us is that granting of pay scales is purely an executive function and hence the Courts should not interfere with the same as it may have a cascading effect creating all kinds of problems for the Government and the authorities. However, this argument cannot be sustained as it is observed by the Tribunal that though fixation of pay and removal of anomalies is a domain of expert bodies like pay commission and the forum to decide it, is of the executive, yet judicial review is not altogether excluded."*

24. It would be useful to allude to few paragraphs from the judgment of the Tribunal in ***S.R. Dheer v. Union of India and Others, 2009 SCC OnLine CAT 662***, where it was observed that recommendations in para 3.1.9 had been adhered to not only in case of SOs/PSs of CSS/CSSS but also in case of their counterparts in other organisations, who had historical parity and hence, exclusion of employees of Central Administrative Tribunal and not meting out the same treatment to them in respect of NFSG without any intelligible differentia having reasonable nexus with the object sought to be

achieved, was an unreasonable classification and an invidious discrimination which cannot be countenanced in the wake of Article 14 of the Constitution of India. Relevant paragraphs are as follows:-

> *"**55.** A discriminatory and contradictory stand is antithesis to the fairness in law. As the issue of NFSG of RS.8000-13500 to the OSs in case of CBI, a non-secretariat office at par with CSS/CSSS, decision in S.C. Karmakar (supra) was affirmed by the High Court of Delhi. Even the decision of the Tribunal in the case of R&AW Department has been implemented by the Government by grant of pay scale/NFSG to the concerned SOs, by order dated 19.01.2009 and also the SOs/PSs in AFHQ were allowed the pay scale on 25.09.2008. This clearly shows that the 6th CPC recommendations in para 3.1.9 have been adhered to not only in the case of SOs/PSs of the CSS/CSSS but also in the case of SO/PSs in other Organisations, who have had historical parity. As such, exclusion of the CAT employees and not meeting out the same treatment in respect of Grade Pay without any intelligible differentia having reasonable nexus with the object sought to be achieved, is an unreasonable classification and an invidious discrimination, which cannot be countenanced in the wake of Article 14 of the Constitution of India.*
>
> ***56.** In the light of the discussions made above, issue no. (i) framed by us is answered to the extent that as in the matter of grant of pay scale there has been an unreasonableness and accepted recommendations having not been followed and applied to the applicants at par with their counterparts in CSS/CSSS, an exception has been carved out as per the trite law to interfere with the decision of the Government in judicial review by us.*
>
> *As far as the issue No. (ii) is concerned, we have already concluded that the SOs/PSs of CAT have always had historical parity with their counterparts in CSS/CSSS.*
>
> *Accordingly the issue no. (iii) is answered on the basis of the above observations that such an application is misconceived, misplaced and contrary to law.*
>
> ***57.** Resultantly, for the foregoing reasons, we have no hesitation to hold that the decision of the Government to deny Grade Pay of Rs. 4800/- in PB-2 to the PSs and SOs of the CAT initially and Grade Pay of Rs. 5400/- in PB-3 on completion of four years service in the grade is arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India, since they are having established historical parity with their counterparts in CSS/CSSS and, therefore, applicants are entitled to these Pay Bands with Grade Pay. The interim order is made absolute. The difference in arrears of pay shall be disbursed to the applicants within a*

period of one month from the date of receipt of a copy of this order. The OA is accordingly allowed to the aforesaid extent. No costs."

25. Significantly, in the case of AIIMS, the Tribunal in ***Mr. Sudesh Kumar (supra)*** granted NFSG to the SOs/PSs and the relevance of this judgment is that AIIMS is also an autonomous organisation and has Regulation 35 providing that its employees will be governed by same Rules as applicable to Central Government servants with regard to pay allowances and conditions of service, which is similar to Regulation 12(2) of 2007 Regulations in the present case. This judgement has been upheld by the Supreme Court as mentioned above. Therefore, once BIS itself recognizes that there has to be parity in service conditions of its employees with the Central Government employees by virtue of Regulation 12(2) and indisputably right from 3rd CPC, there is parity in pay scales, there is no reason why this parity should not continue with respect to NFSG. In fact, as brought forth by the Petitioners, the Executive Council of BIS which is the highest apex body in BIS had repeatedly resolved in several meetings to send proposal to the Nodal Ministry/Respondent No. 4 for grant of NFSG to its SOs/PSs recognising the historical parity.

26. The argument of the Respondents that there is a difference in the hierarchy of posts cannot inure to their advantage. This argument has been negatived by the Supreme Court in ***D.G.O.F Employees Association (supra),*** as mentioned above. The plea of BIS that the next post in the hierarchy of posts from SO (Level-8) is the post of Assistant Director and carries the pre-revised scale of Rs.8000-13500 and therefore, if NFSG is granted to SOs/PSs, there will be an anomaly, cannot be countenanced. NFSG is a non-functional scale and is granted on completion of 4 years

regular service in the existing grade, subject to vigilance clearance. It is not unprecedented or uncommon that when financial upgradations such as those under Assured Career Progression/Modified Assured Career Progression Schemes are granted, many a times employees in the feeder posts draw higher pay than those in the promotional posts. Pre-revised scale of Rs.8000-13500 is a substantive scale for the post of Assistant Director while what the Petitioners claim is a non-functional scale and this Court does not perceive any anomaly by grant of NFSG to the SOs in Level-8 in BIS.

27. Coming to the argument of the Respondents that fixation of pay scales or equating pay scales is a function of the expert bodies such as the Pay Commissions or the Executive, there cannot be a doubt on this legal proposition. However, as held by the Supreme Court in ***Secretary, Finance Department and Others v. West Bengal Registration Service Association and Others, 1993 Supp (1) SCC 153***, ordinarily Courts will not enter upon the task of job evaluation which is generally left to expert bodies but that is not to say that Court has no jurisdiction and aggrieved employees have no remedy if they are unjustly treated by arbitrary State action or inaction. Relevant part of the judgment is as follows:-

> *"We do not consider it necessary to traverse the case law on which reliance has been placed by counsel for the appellants as it is well settled that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary and, therefore, ordinarily courts will not enter upon the task of job evaluation which is generally left to expert bodies like the pay commissions, etc. But that is not to say that the court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary state action or inaction. Courts must, however, realize that job evaluation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performances of different groups of employees. This would call for a constant study of*

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

28. In light of the aforesaid principle while this Court is cautious of the scope of its jurisdiction under Article 226 of the Constitution of India in so

far as pay scale disputes are concerned, but at the same time it cannot be overlooked that almost four decades old parity of the SOs/PSs in BIS was disturbed on the basis of an event entirely outside Pay Commission's recommendation by granting NFSC to CSS/CSSS and in this context, I may only refer to observations of the Division Bench in paragraphs 24, 25 and 26 in the case of ***D.G.O.F. Employees Association (supra)***:-

> *"24. In the CAT's order, several decisions which have declared that the principle of equal pay for equal work means parity in pay scales only when there is "wholesale identity" of the work and nature of the posts involved, have been relied upon. The principle as stated is correct. However, that itself does not explain why the almost four decades old parity - even one decade after the fifth CPC recommendations (which too continued the parity) was sought to be disturbed on the basis of an event entirely outside Pay Commission recommendations, i.e. upgradation of scale on 25.09.2006, just prior to the Pay Commission recommendations' implementation. The upgradation, initially confined only to CSS/CSSS was given to all others-save OF employees and AFHQ employees, <u>on the basis of historical parity itself.</u> However, ironically, because that parity (in upgradation) was omitted to the OF employees, it became a point of departure. Save and except that point of departure-which is the starting point of discrimination, there is no basis at all for disturbing OF employees who were classified along with non-secretariat employees in the matter of grant of same pay scales. It is not the respondent's case that the Sixth CPC consciously went into the subject matter and recommended a break from the past - Para 3.1.14 and its reference to organizations "like" AFHQ, Ministry of External Affairs, UPSC "etc" specifically are meant to cover OF employees. In the opinion of the Court, the submissions of the respondents to justify the discriminatory implementation of the Sixth CPC recommendations are illogical and artificial; they are not based on any nexus with the objective of scientific pay revision, based on the need to have separate pay scales, differing from others who formed part of the same class (CSS/CSSS, Railway Board employees, Assistants in Railway Ministry, UPSC, AFHQ etc). The anxiety at somehow striving to reach to a basis for classification in this case is in effect a hyper or over-classification, the like of which was warned against by the Supreme Court in Roop Chand Adlakha v. Delhi Development Authority 1988 Supp (3) SCR 253:*
>
> > *"But the process cannot in itself generate or aggravate the inequality. The process cannot merely blow-up or magnify in-substantial or*

microscopic differences on merely meretricious or plausible differences. The over-emphasis on the doctrine of classification or any anxious and sustained attempts to discover some basis for classification may gradually and imperceptibly deprive the article of its precious content and end in replacing Doctrine of equality by the doctrine of classification."

25. In another decision, i.e. T Sham Bhat v. Union of India 1994 Supp (3) SCC 340, the vires of Regulation 2 of the Indian Administrative Service (Appointment by Selection) Second Amendment Regulations. 1989 - the IAS Second Amendment Regulations was challenged before the Supreme Court. Holding the increase in number of years of continuous service of non-State Civil Service Class-I officers, required in the eligibility condition for selection to the Indian Administrative service, which deprived non-State Civil Service Class-I officers of the right to be considered for selection under the IAS Selection Regulations (which held the field for over 33 years), as unjust, arbitrary, unreasonable and contrary to legitimate expectations and Article 14 of the Constitution, the regulation was struck down as unconstitutional:

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

26. The petitioners were treated historically as equals to CSS/CSSS employees and enjoyed equal pay and all benefits flowing from equal pay. This was based on the previous four instances of determinations by successive Pay Commissions that they performed equal work. No other evidence of "complete identity" of work was necessary in the circumstances of the case. The materials on the record do show that the Sixth CPC stated in more than one place specifically that historical parity

> *in pay scales ought not to be disturbed. Such being the case, this Court is of the opinion that the CAT fell into error in holding that differentiation was facially justified, and could not be gone into given the nature of restricted judicial review. Consequently, a direction is issued to the respondents to fix the members of the Petitioner Association and other similarly placed Assistants working in Ordnance Factories and in OFB in the same pay scale as was given to Assistants similarly placed in CSS/CSSS, Army Headquarters, UPSC, CAT, MEA, Ministry of Parliamentary Affairs, etc. with effect from the same date as was first given to them. Consequential pay fixation and fitment orders shall be issued within eight weeks from today. The writ petition is allowed in the above terms without any order as to costs."*

29. The argument that Petitioners cannot claim NFSG on the principle of equal pay for equal work is equally misplaced. Respondents are missing the point that Petitioners claim non-functional scale based on 'historical parity' over 3 decades under three successive Pay Commissions, which principle is recognized in the Pay Rules, 2008 itself by giving NFSG to SOs/PSs of all organisations/services having historical parity with CSS/CSSS. If 'equal work' was the criteria there was no reason to equate SOs and PSs as the two cadres do not have wholesome identity of duties and functions and Courts would not have granted NFSG to SOs/PSs of several organisations, where again there may be differences in the charter of duties.

30. As far as the reliance on the judgment of the Supreme Court in ***Manoj Kumar (supra)*** is concerned, as rightly flagged by the Petitioners, the judgment has been distinguished by the Supreme Court in the case of ***D.G.O.F Employees Association (supra),*** and while doing so the Supreme Court also relied on an order of the Supreme Court in ***All India Naval Clerks Association and Others v. Union of India and Others, 2022 SCC OnLine SC 2124***, where again the issue was of disparity in the pay scales of Assistants in the lower formations in the Indian Navy with that of Assistants

in CSS/CSSS and this was held to be arbitrary and discriminatory and violative of Article 14 of the Constitution of India. Moreover, the judgement is inapplicable to the present case as BIS is not a Field organisation. Relevant passages from the judgment of the Supreme Court in ***D.G.O.F Employees Association (supra)*** are as follows:-

> ***"11.*** *In that view of the matter what is to be taken into consideration is as to whether in the facts and circumstances of the present case the High Court was justified in arriving at the conclusion that the provision contained in para 3.1.9 of the Sixth CPC would apply to the fact situation and in that regard whether it had rightly rejected the contention of the appellant herein that it ought to have been guided by para 3.1.14 of the recommendations. The contention as noted by the High Court is what was urged before us. In that regard, at the outset it is necessary to clarify that the conclusion as reached with regard to the parity in pay scale in the case of the employees who are members of the first respondent is basically due to the fact that they are employees in the headquarters of the Ordnance Factory and therefore they are similarly placed as that of the Assistants in CSS/CSSS Army Headquarters as well as such other similarly placed organisations referred to in the recommendations. If that be the position, the conclusion as reached by the High Court is unexceptionable.*
>
> ***12.*** *However, the learned senior counsel for the appellant in order to buttress his contention that para 3.1.14 of the recommendations would apply has sought to rely on the decision of this Court in Union of India v. Manoj Kumar Civil Appeal Nos. 913-914 of 2021 disposed of on 31.08.2021 wherein this court while examining the very same provision as contained in paras 3.1.9 and 3.1.14 had arrived at the conclusion that the benefit of equal pay in the said case cannot be extended and had held that the Pay Commission, which is a specialised body set up with the objective of resolving anomalies had made its recommendation, which would not call for interference. The decision would indicate that this Court though had referred to the very paragraph as contained in the Sixth CPC recommendations, what had however arisen for consideration therein was with regard to disparity between Secretariat and Field Officers. What was noted in that case was the claim made by Private Secretaries Grade II employed in Eastern Central Railways (Field Office/Zonal Railways) for parity in pay with their counterparts working in the Central Secretariat Stenographers Service/Railway Boards Secretariat Stenographers Service/Central Administrative Tribunal. In that view, this Court was of the view that though there is an observation that the recommendations shall apply mutatis mutandis to Private Secretaries and posts equivalent*

thereto in the service under para 3.1.9; the subsequent para 3.1.14 has specifically dealt with the aspect of parity between the Field and Secretariat Offices which was really the subject matter of the claim therein. The said observation, though emphasised by the learned senior counsel for the appellant would indicate that it is not a consideration akin to the consideration herein. As seen from the highlighted portion of the reproduced paragraphs from the impugned order passed by the High Court hereinabove, it would disclose that in the instant facts the reliance placed by the High Court on para 3.1.9 is based on the fact that there was similarity inasmuch as the pay scale as sought for implementation is the one which was provided to the employees of the headquarters as they were similarly placed as the employees of the headquarters in CSS/CSSS.

***13.** Further, what was also taken into consideration by the High Court is the historical similarity in pay scales which existed prior to the recommendations in the Sixth CPC. Such historical similarity which had existed was taken note and, in that light, the pay scale which was applicable was taken into consideration and had accordingly arrived at the conclusion that the employees in the headquarters of the Ordnance Factories being similarly placed cannot be discriminated. Therefore, such consideration in the instant case would fall within the parameters as permitted by this Court. Also, in the present circumstance, the High Court has adverted to the fact situation and has thereby rectified the pay anomaly. In fact, the question of parity with regard to the pay scale to the Assistants in the lower formations in the Indian Navy with that of the Assistants in CSS was held as discriminatory and violative of Article 14 of the Constitution by this Court in the case of All India Naval Clerks Association v. Union of India in Civil Appeal arising out of Special Leave Petition (Civil) No. 29204 of 2019 dated 27.07.2022.*

***14.** As noted by the High Court, it is evident that parity of pay scales vis-à-vis LDCs, UDCs, Assistants/PAs and Stenographers, was maintained even prior to 01.01.1986 under the Third Central Pay Commission recommendations (for the period of 01.01.1973 to 31.03.1985). This parity was continued in the Fourth Central Pay Commission recommendations (with effect from 01.01.1986 to 31.12.1995) and the Fifth Central Pay Commission recommendations (for the period 01.01.1996 to 14.09.2006). The post of Assistants, PAs and Stenographers is governed by Director General Ordnance Factories Headquarters Civil Service Rules, 1977.*

***15.** Be that as it may, in the present facts the perusal of the judgment passed by the High Court impugned herein would indicate that the High Court having kept in view the legal, as well as the factual aspects, has not proceeded in a manner so as to equate two sets of employees in different organizations. But, keeping in view the recommendation of the Pay Commission and the applicability of the pay scales recommended to*

> *similarly placed employees employed in the headquarters and on noticing discrimination despite historical similarity has merely rectified the error, which does not call for interference."*

31. For all the aforesaid reasons, this writ petition is allowed. It is held that Petitioners are entitled to NFSG of Rs.8000-13500 corresponding to PB-3 with Grade Pay of Rs.5400/- as revised in the pay matrix under 7th CPC, at par with their counterparts in CSS/CSSS and other organisations referred to above, as per Serial No.I of Section II of Part-B of First Schedule. The benefit will be given in terms of O.M. dated 13.11.2003 read with O.Ms. dated 24.06.2005, 25.01.2006 and 30.03.2006. Appropriate orders will be issued in this regard and arrears of pay and allowances will be released within four months from today.

32. Writ petition stands disposed of in the aforesaid terms.

JYOTI SINGH, J

DECEMBER 20, 2024/j/KA/shivam