

-Vs.-

1. Union of India
Rep. by Secretary to Government
Ministry of Communications and Information Technology
(Department of Posts)
Sansad Marg, New Delhi 110 001.
2. Union of India,
Rep. by Member (Finance),
Ministry of Communications and Information Technology,
(Department of Telecommunications)
Ashoka Road, New Delhi 110 001.
3. The Deputy Director General (Postal Accounts Wing)
O/o the Director General, Department of Posts,
Sansad Marg, New Delhi 110 001.
4. The General Manager (Postal Accounts & Finance)
Tamil Nadu Circle, # 5 & 7 Ethiraj Salai
Egmore, Chennai 600 008.
5. The Controller of Communication Accounts ,
Department of Telecommunications,
7th Floor, R.k.Nagar Telephone Exchange,
R.A. Puram, Chennai 600 028. ... Respondents

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE:

The Application is filed praying for a direction to be issued to the 4th and 5th Respondents to step up the Grade Pay of the applicants from Rs.4,800/- to Rs.5,400/- on par with their subordinates from the date their subordinates in Senior Accountants cadre are getting Rs.5,400/- with all consequential arrears of monetary benefits.

2. JURISDICTION OF THE TRIBUNAL:

The applicants declare that the subject matter of the order against which they want redressal is within the jurisdiction of the Tribunal.

3. LIMITATION:

The Applicants declare that the above application is within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE:

a) The applicants are working as Assistant Accounts Officers (Group B Gazetted) (AAO), combined cadre in the Postal Department and Department of Telecommunications and whose dates of joining service and other details are given in the **Ann.A-1**.

b) The applicants were recruited to the cadre of T/S Postal Assistants/ Sorting Assistants, in the 1st Respondent Postal Department on various dates as mentioned in Ann.A-1.

c) The applicants submit that while working as such, they have attended Departmental Promotion Examination, called as Junior Accounts Officer's Exam (Postal), which consists of Part I and Part II. An official having a minimum 3 (three) years of Departmental Service can appear for JAO-Part I Exam. Such of those officials, who come out successful in Part I of JAO (Postal) Exam, will be allowed to sit for Part II of JAO (Postal) Exam. Only those officials who come out successful in Part I and Part II of JAO (Postal), will be considered for being promoted to JAO (Postal) Cadre subject to availability of vacancies in the department. The Department of Posts, Government of India notified Recruitment Rules to the cadre of JAO (Postal) by notification dated 15.04.1977 **(Ann.A-2)**.

d) The applicants submit that as per Vth CPC the scale of pay of JAO and AAO are as follows:-

Jr. Accounts Officer (P)	Rs.6500-200-10500 Non-Gazetted
Asst. Accounts Officer (P)	Rs.7450-225-11500 Gazetted

However, the VI CPC has recommended for merger of both JAO and AAO into one common cadre as AAO with PB II 9300-34800+ GP 4800 with Gazetted status. This was also accepted by Government of India, vide memo no.18-4/2009/SEA-II dated 12.6.2009 **(Ann.A-3)**.

e) The applicants submit that those who were working as Postal Assistants/Sorting Assistants, elsewhere in Tamilnadu Circle, under the administrative jurisdiction of the 1st Respondent, have qualified in JAO (Postal) Part I Exam and then come out successful in JAO (Postal) Part II exam conducted on various periods as detailed in the Ann. A-I. They were promoted to AAO cadre on various dates as mentioned in Ann.A-1.

f) The applicants submit that on promotion to AAO cadre, applicants' main work in Postal Accounts (DOP) and in the Controller of Communications Accounts (CCA) (DOT) offices is to supervise the work performed by Senior Accountants, Junior Accountants, LDCs attached to the section. Normally a section, under the supervisory control of an AAO, will be having 10 to 15 SAs/ JAs/ LDCs. The work of an AAO is supervising these subordinate staff of SAs/JAs/LDCs, and also sanctioning leaves, writing up of their Annual Performance Assessment Report etc.

g) The applicants submit that considering the arduous nature of duties involving higher responsibilities, control and supervision over subordinate staff of SAs/JAs/LDCs cadre, and reporting higher authorities on various inputs they were subjected to an all India transfer liability, the successive Central Pay Commissions have then and there recommended higher Pay Scales to AAO (Gazetted) cadre, than that of SAs who are classified as Non-gazette and also subordinates, in their reports, which were duly accepted and orders issued by the Government of India, from time to time. A comparative table as submitted **Ann.A-4**, is highlighting this point, by summarizing pay scales of JAOs/AAOs/ SAs/JAs by various Central Pay Commission.

h) The applicants submit that even in VI CPC recommendations and consequent orders of Government of India's orders there under, the AAOs/SAs/Jas cadres are having this distinctive scales of pay (Pay Band plus Grade Pay) maintaining the vertical parity which is elicit from the table.

Name of Cadre	Pay Band	Grade Pay
AAO	9300-34800	4800
SA	9300-34800	4600
JA	5200-20200	2800

i) The applicants further submit that as per VI CPC recommendations, and GOI orders thereon Grade Pay is the determining factor for various facilities available to staff viz. Travelling Allowance / Daily Allowance / Lodging charges / LTC / Staff quarters etc, including the status in the official hierarchy the Grade Pay is the unique determining factor. Based upon the Grade Pay the Systematic facilities available to the staff vary as detailed below:

Grade Pay (Rs)	Lodging Charges per day	Food Bill per day	Travel Entitlement	Transport Allowance.	Quarters Allotment Type
7600 to 8900	4500	450	AC 1st class/ Air Travel	3200/1600	V-A-D-II Up to 106 Sq.mt
5400 to 6600	2250	300	AC II Tier/ Air Travel	3200/1600	IV 59-75 Sq.mt
4200 to 4800	750	225	AC II Tier/ No Air Travel	1600/800	III 34.5 to55 Sq.mt
Below 4200	450	150	AC III Tier/ No Air Travel	600/400	I & II Up to 50 Sq.mt.
7600 to 8900	4500	450	AC 1st class/ Air Travel	3200/1600	V-A-D-II Up to 106 Sq.mt
5400 to 6600	2250	300	AC II Tier/ Air Travel	3200/1600	IV 59-75 Sq.mt
4200 to 4800	750	225	AC II Tier/ No Air Travel	1600/800	III 34.5 to55 Sq.mt
Below 4200	450	150	AC III Tier/ No Air Travel	600/400	I & II Up to 50 Sq.mt.

j) As per the recommendations of various CPCs up to VI CPC, the pay scales of JAO/AAO were higher than the one prescribed for SAs/JAs. All the facilities such TA/ Travelling Allowance available to JAO/AAOs are higher than SAs/JAs till 31.08.2008. The graded difference in various financial benefits between various cadres has been logically maintained in commensurate with their respective status in the official hierarchy.

k) While this stood so, the DOPT, Government of India, had introduced a financial up-gradation scheme to its staff vide GOI Memo.no.35034/3/2008-Estt.(D) dated 19-5-2009,

(Ann.A-5), whereby the staff will get their financial up-gradations to the next grade pay in the grade pay hierarchy after completion of 10 years of service in one particular grade pay subject to certain conditions.

l) While implementing the said MACP Scheme, the 4th Respondent (GM, Postal Accounts and Finance, Chennai) had issued orders sanctioning financial up gradation to the officials of SA cadre, vide Office Orders dated 28.05.2010, 03.09.2010, 01.06.2011, 01.07.2011, 04.10.2011, 30.03.2012, 13.12.2012, 04.02.2013, 20.05.2013, 17.01.2014, 16.04.2014, 01.09.2014 and 02.12.2014 (Ann.A-6 to A-18). As a result of these orders, some of the officials working as SAs, are given financial up gradation under MACP III to the Grade Pay of Rs.5400/-. By this, the officials in SA cadre who have been subordinate and lower to AAO (Gazetted) cadre and continue to be subordinates even now in the hierarchical structure have suddenly started to get higher Grade Pay of Rs.5400/- than the AAO (Gazetted), who are their immediate superiors, who still continue to be in the Grade Pay of Rs. 4800/-. This is lacking in merit and substance to the reason that any action of the State has to pass the test of reasonableness and shall not offend Article 14 of the Constitution of India.

m) As stated in Para 4 (c) above, only those officials who passed both JAO(P) Part I and Part II can be promoted to AAO cadre, their pay fixed, as per VI CPC will be fixed in PB-29300-34800 + GP 4800. Only on subsequent promotion to Accounts Officer cadre their Grade Pay will be up graded to Rs.5400/-.

n) In the instant case, the Senior Accountants who have been subordinate and lower to AAO (Gazetted) and still continue to be so, having lesser responsibilities and duties, than that of AAO (Gazetted) cadre having no all India transfer liabilities, and who have not at all qualified in JAO Part I/Part II Exam and thereby did not have the chances of being promoted to AAO (Gazetted) cadre, in normal course, were conferred with Grade Pay of Rs. 5400/- whereas the applicants, who are the supervisors of the SAs and who reached the position of AAO (Gazetted) by passing the JAO Part I /II exams, after putting in much hard work, and when posted as AAOs, holding higher responsibilities than the SAs with all India transfer liabilities are forced to languish with the Grade Pay of Rs. 4800/- by the action of 4th Respondent. The action of the 4th Respondent in giving grade pay of Rs. 5400/- to the SAs under the guise of MACP III vide Annexures A-6 to A-18 referred to above and denying the request of the applicants' to pay the grade pay of Rs.5400/- is not sustainable in law and amounts to disparity due to the introduction of MACP Scheme and the concept of introduction of Grade Pay by VIth CPC.

o) The VIth CPC, in its report, had introduced a new concept of common Pay Bands for various cadres put together under one PB but prescribed various Grade Pay for determining the status of each cadre. In para no. 2.2.11/and no: 2.2.13 chapter 2 of its report the VI CPC stated that "Grade Pay will determine the status of a post with (apart from the two apex scales of Secretary/equivalent and Cabinet Secretary /equivalent that do not carry any grade pay) a senior post being given higher grade pay" and "Seniority of a post will depend on the grade pay drawn. This will invariably be more for a higher level post. Pay scales will largely become irrelevant for purpose of computing seniority. Thus, the present situation where frequently a junior draws higher salary (albeit in lower pay scale) vis –a-vis his senior because of longer years of service, will no longer be of any essence for purpose of computing seniority (Ann.A-19).

p) Moreover, as stated in paragraph 4 (i) above the various entitlements of an official is determined with reference to the rates of Grade Pay. For example, an AAO (Gazetted) with grade pay of Rs.4800/- is eligible to travel by AC II Tier only, whereas his subordinate in SA who is lower in cadre with the grade pay of Rs.5400/- can travel by Air. Likewise an AAO (Gazetted) can claim lodging charges of Rs. 750/- and Food bill Rs.225/- per day. Whereas his subordinate in SA with grade pay of Rs.5,400/- is entitled to Rs. 2250/- and Rs.300/- respectively.

q) While the AAO (Gazetted) can get Rs.1600/800 as Transport allowance, his subordinate in SA cadre can get Rs. 3200/1600, and the same is also the case on allotment of Staff Quarters, reimbursement of Food/Conveyance expenses etc. Besides the subordinates SAs who are drawing a grade pay of Rs.5,400/- are also eligible for drawal of Bonus since they are classified as Non-Gazetted.

r) Government of India vide its O.M.11012/7/2008-Estt (A) dated 17.04.2009, (Ann.A-20) had classified various posts, in whole Central Government establishment for differentiating them as Gazetted or non-Gazetted employees. Moreover even though the Senior Accountants with MACP III and drawing a Grade pay of Rs.5,400/-, they are termed as Group B Non-Gazetted only. Whereas AAOs, who are supervising these Senior Accountants though getting a Grade pay of Rs.4,800 (lesser than the Senior Accountants) are differentiated and designated as Group B Gazetted officers.

s) As such the status of Government servant is fixed with reference to the rate of Grade Pay the official is drawing. By not considering the request of the applicants for the grant of Grade Pay of Rs.5400/- instead of Rs.4800/- at least on par with their subordinate, to maintain their legitimate hierarchical status and to get various financial/non- financial benefits, on par with their subordinates, the 4th respondent had erred in the eyes of law, and defeated the very purpose of the concept of Grade Pay & MACP Schemes.

t) The applicant submit that this Hon'ble Tribunal by order dated 29.12.2010 in OA Nos.966 & 967 of 2009 (Ann.A-21) in a similar case, had correctly pointed out, this, as a serious anomaly stating "that in the instant case we are of the opinion that the applicants are unjustly treated inasmuch as higher pay scale is given to the private respondent who are functioning inferior than the applicants and who have not even qualified themselves to be promoted to the post which are held by applicants" and concluded saying that, "there will be a direction to the respondent to grant the revised pay to the applicants by extending the benefit of MACP Scheme grade pay at Rs. 5400/- from the date on which the said benefit was extended to the private respondents".

u) The applicants submit that the order passed by this Hon'ble Tribunal in O.A.Nos.966 & 967/2009 has been confirmed by the Hon'ble High Court of Madras, by order dated 19.03.2014 in W.P.Nos.18611 & 18612 of 2011 (Ann.A-22). The Hon' High court had observed that, "there is no error apparent or infirmity in the reasons assigned by the Tribunal for allowing the original applications and find no merit in the writ petition".

v) The applicants submit that SLP filed before the Hon'ble Supreme Court of India has also been dismissed vide order dated 19.08.2014 in S.L.P.(C) No.11103 of 2014 (Ann.A-23). Therefore, it has now been clearly established that there exist

anomaly since supervised officials are getting higher pay than the supervisors and the same should not be allowed and the same should be rectified by granting the supervisors (AAOs) the Grade pay of Rs.5,400/- on par with their subordinate Senior Accountants.

w) The applicants submit that in view of the orders passed by this Hon'ble Tribunal referred to above, which is directly applicable to the applicants, the applicants are also entitled to draw a Grade pay of Rs.5,400/- on par with their subordinates.

x) The applicants submit that up to 31.03.1976, the work of compilation of Accounts of and Auditing of the same in respect of all Government of India transactions were under the control of the Comptroller and Auditor General of India. With effect from 01.04.1976 under Departmentalization of Accounts Scheme, the work of compilation of Accounts was separated from the CAG and entrusted to the respective Departments and the personnel allotted to the Departments who are commonly called as belong "Organized Accounts Cadre". Even though the Accounts Cadre were segregated Department-wise, the common issues affecting the cadre, such as pay scales, Grade Pay, allowances, promotion scheme such as MACP were still governed by a common order being issued by Government of India with concurrence of CAG.

y) As a result of the order of the Hon'ble Apex Court dismissing the SLP filed by the Union of India, CAG has issued orders granting the grade pay of Rs.5400/- to AAOs/Section Officers on par with their subordinates vide Office Order No.Pr.AG(A&E)/Estt.I/Gl.VI/2014-15/194 dated 28.08.2014 (**Ann.A-24**). Based on this order representation was made by the 2nd applicant on 28.10.2014 (**Ann.A-25**) and the other applicants also submitted similar representations. The General Secretary of the All India Postal and Telecommunications Accounts and Finance Services (Group-B-Gaz.) Association also submitted a representation dated 19.11.2014 (**Ann.A-26**). But the authorities, viz., on behalf of the 3rd Respondent, Asst. Director General (PA-Admn), Postal Wing, Dept. of Posts, Ministry of Communications & IT, Govt. of India had given evasive reply dated 04.03.2015 (**Ann.A-27**) stating that the matter has been referred to Nodal Ministry and CAG for their views.

z) In view of the above, the applicants are left with no option but to approach this Hon'ble Tribunal for issuing appropriate direction to the respondents to pay the Grade of Rs.5,400/- from Rs.4800/- on par with their subordinates lower in cadre, from the date their subordinate SAs are getting the Grade pay of Rs.5400/-.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS:

The impugned action of the Respondents in implementing CCS (Revised Pay) Rules by extending MACP Scheme to Accountants who are subordinates to the applicants thereby making their Grade Pay higher than that of the applicants is illegal.

The fitment granted to the applicants the grade pay of Rs.4800 which is the grade pay of the integrated post of A.A.O & S.Os held by the applicants itself is illegal. Admittedly the Accountants are in the lower cadre and still performs the functions of their substantive posts of Accountants and Senior Accountants but carrying the higher scales of pay in the pre-revised pay structure. The Applicants who are either promoted as AAO prior to the VI Pay Commission's recommendation or who continued as S.Os have come to be integrated into the elevated category of A.A.Os and whose

grade pay has been fixed as Rs.4800. The action of the respondents in fixing the grade pay to lower post of Accountants who are performing the duties of the lower post as Rs.5400 would amount to treating un-equals as equals and therefore discriminatory.

Even otherwise the impugned action by which the Accountants whose work is being supervised by the applicants have been placed in the grade pay of Rs.5400 on personal basis under the MACP scheme is absolutely illegal and contrary to the very scheme.

The principles of financial upgradation contemplated by the MACP scheme cannot take into account the adhoc status which is not a grade in the hierarchy. In other words, the upgradation whether it be the second or third will have to be reckoned with reference to the regular grades in the hierarchy. It is in that context that the scheme contemplates the benefits of the financial upgradation from the substantive posts held by are to be fixed at the level drawn by them on ad hoc basis if it is beneficial. The action of the respondents in reckoning the ad hoc position in applying the upgradation from that level is grossly illegal.

By virtue of higher grade pay, the Sr. Accountants whose work is being supervised by the applicants are enjoying higher benefits both monetarily and otherwise, which creates not only financial loss but also embarrassment to the applicants. The above action cannot be but characterized as wholly arbitrary and irrational and therefore liable to be interfered with by this Honble Tribunal.

The applicants who are seniors and superior officers have been regularly promoted to the post in the hierarchy after passing the requisite JAO Part I and Part II examinations. Whereas, the Sr. Accountants have not passed any examination but got promoted to the post of Accountant by virtue of seniority. While the applicants who are holding supervisory position still continue under the grade pay of Rs.4800, whereas the Accountants by virtue of implementation of MACP Scheme have been granted higher grade pay of Rs.5400/- thereby causing inequality both in terms of pay and other benefits. This nothing but a rank irregularity.

The applicants who are senior superior officers have been regularly promoted to the post in the hierarchy after coming out successful in the examination. Whereas, the Sr. Accountants who are subordinates to the applicant have not been promoted in the position held by the applicants, had been extended with financial upgradation under MACP Scheme so as to get higher grade pay than the applicants, which is not only irregular, but also highly discriminatory offending Article 14 and 16 of the Constitution of India.

6. DETAILS OF REMEDIES EXHAUSTED:

The applicants declare that they have availed of all the remedies available to them under the relevant Service Rules, etc.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT:

The applicants further declare that they had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made before any Court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEF'S SOUGHT:

In view of the facts mentioned in Para 6 above, the Applicants pray for the following relief(s):

The Applicants humbly pray that this Hon'ble Tribunal may be pleased issue appropriate direction directing Respondents 4 and 5 to pay the Grade Pay of the applicants of Rs.5400/- instead of Rs.4800/- on par with their subordinates, from the date their subordinates in Senior Accountants cadre are getting Rs.5,400/- with all consequential arrears of monetary benefits and to pass such other order or direction as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and thus render justice.

9. INTERIM ORDER, IF ANY, PRAYED FOR:

NIL