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

RESERVED ON: 10.09.2013
PRONOUNCED ON: 17.09.2013

+ W.P. (C) 2698/2013

ALL INDIA AUDIT AND ACCOUNTS
OFFICERS ASSOCIATION AND ORS Petitioners
Through: Ms. Haripriya Padmanabhan, Advocate.

versus

UNION OF INDIA AND ORS Respondents
Through: Mr. Joginder Sukhija, CGSC on behalf
of R-1&3 with Mr. Yogesh Yogi, Advocate.
Mr. Gaurang Kanth, Advocate for CAG.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S.RAVINDRA BHAT

1. This writ petition challenges the order of the Central Administrative Tribunal ("CAT") dated 10.12.2012 in O.A. 731/2012, where the CAT held, *inter alia*, that Senior Audit and Senior Accounts Officers of the petitioner association cannot be granted Group A status under the existing legal framework, but rather, that the matter is to be resolved by Cabinet.
2. The cadre of Senior Audit Officers and Senior Accounts Officers was created by the Government of India in 1992 by upgrading 80% of the posts of Audit Officers and Accounts Officers (in the pay scale of Rs. 2375-3500 respectively) to a scale of pay meant for Group A officers of the Government of India, i.e. Rs. 2200-4000. Accordingly, although this cadre – to which the second and third petitioners belong – was placed on par with Group A in terms of the pay scale, their classification remained as Group B officers. Subsequently, on 29.8.2008, the Government of India, in exercise of its powers under proviso to

Article 309 and clause (5) of Article 148 of the Constitution, notified the Central Civil Services (Revised Pay) Rules, 2008 (“2008 Rules”). Under these rules, Senior Audit and Accounts officers were placed in the PB (i.e. Pay Band) 3 band of the pay scale (8000 – 13500) with a monthly grade pay of Rs 5400/- (similar to Group A officers of the various departments of the Government of India) under Section XX entitled “*Organized Account Cadres*” of the 2008 Rules.

3. On 9.4.2009, crucially, the Department of Personnel and Training (“DOPT”), in supersession of its earlier order of 1998, in S.O. 946(E), noted that a central civil post holder carrying grade pay of Rs. 7600/-, Rs. 6600/- and Rs. 5400/- in the scale of pay of Rs. 15600-39-100 in PB-3 was to be classified as a Group A officer. Finally, on 17.4.2009, the DOPT – acting upon the Central Civil Service (Revised Pay) Rules, 2008 and following up on S.O. 946 – through OM No. 11012/7/2008-Estt. (A), noted as follows:

“As per clause (4) of the central civil services (Revised Pay) Rules, 2008 ... the pay band and grade pay or the pay scales, as applicable, of every post/grade specified in column 2 of the First Schedule thereto shall be as specified against it in columns 5 and 6 thereof. Consequent upon the notification of the said rules, it has become necessary to prescribe revised norms for categorization of posts into the abovementioned four categories based on the pay band and grade pay or the pay scales as applicable, as approved by the Government. Accordingly, an Order classifying the various Central Civil Services posts into Group “A”, “B”, “C”, “D”, based on the revised norms of pay has been notified in the Gazette of India Extraordinary vide s.o. 946 (E) dated 09.04.2000.” The OM also noted, in the 4th paragraph, that “*[i]n some Ministries/Departments, posts may exist which are not classified as per the norms laid down by this Department. If, for any specific reason, a Ministry/Department proposes to classify the posts differently it would be necessary for that Department to send a specific proposal to Department of Personnel and Training giving full justification in support of the proposal within three months of this O.M. so that the exceptions to the norms of classification laid down in S.O. 946 (E) dated 09- 04 - 2009 can be notified.*”

Based on the above notifications of the DOPT and the Government of India, the petitioners argued that Senior Audit and Senior Accounts officers are entitled to be classified as Group A officers, along with the necessary service

benefits. Since the Central Government did not agree with their contention, they approached the CAT for relief.

4. The CAT rejected the petitioners' argument on the ground that the creation of these posts by the Cabinet in 1992 – albeit in a higher pay scale – was subject to classification as Group B. CAT held that the subsequent revisions (by way of the 2008 Rules and the DOPT memoranda) had

“not led to any change in the situation prevalent at the time of creation of the posts in question in which the applicants were placed by way of upgradation.”

Secondly, the CAT noted that placement of the petitioners in a higher pay scale was without consultation with the UPSC, a mandatory precondition. Finally, CAT relied on the decision of the Supreme Court in *Indian Rly SAS Staff Association v. Union of India*, (1998) 2 SCC 651, to hold that “

the classification of posts into gazetted or non gazetted cannot be done purely on the basis of grade pay.”

Accordingly, the petitioners' request for classification as Group A officers was rejected, but given the terms of the 4th paragraph of the DOPT OM of 17.4.2009, it was left open to the Office of the Comptroller and Auditor General to approach the UPSC and Cabinet within four months to place the case that the officers in question should be classified under the Group A bracket.

5. The findings of the CAT in its impugned order have been questioned by the petitioners. Learned counsel for the petitioner, Ms. Haripriya Padmanabhan, argued that the classification of officers in question was clear under the 2008 Rules read with the DOPT memoranda, and as such, no question of referring the matter to the Cabinet arose. In her submission, the classification of the officers in question flowed naturally from the rules prescribed, and no further discretionary power was retained by the executive Government to alter such classification under the rules. Thus, in this submission (and contrary to the findings of the CAT), the status of Sr. Audit and Sr. Accounts officers, after classification under the PB-3 pay grade, and read in terms of the DOPT

memoranda of 9.4.2009 and 17.4.2009, was as Group A officers. Accordingly, the exception, provided under the 4th paragraph of the second DOPT memorandum, was to be engaged to remove the officers from Group A classification, rather than to entitle them to such classification in the first place. Moreover, submitted counsel, as several responses elicited from the Respondents through RTI applications demonstrate, no such action had been taken under the 4th paragraph to carve out an exception and exclude the officers in question from such classification.

6. Learned counsel for the Finance Ministry argued that as the posts were created in 1992 as Group B services *despite* a pay scale equivalent to Group A, the interim rearrangement of Classification did not affect these posts. Rather, it was argued, the Cabinet was the proper authority to alter the classification of these posts. Learned Counsel also drew the attention of the Court to an Office Memorandum of the Ministry of Finance, Department of Expenditure, dated 4.9.2013, noting that:

“... the office of the C&AG may look into the issue afresh keeping in view the existing hierarchical structure, the promotional stream, the organizational set up involving the posts of Senior Audit Officers/Accounts Officers vis-à-vis the organized Group “A” Service of I&AD and whether this issue will lead to disturbance of the same ...”

It was therefore argued that, given these instructions, the Court may allow the C&AG to consider the matter afresh and take the necessary action based on its internal deliberations and through the proper channels. Finally, learned counsel relied upon the judgment of the Supreme Court in *Union of India v. PV Hariharan*, (1997) 3 SCC 568, to submit that the Court must not interfere with pay scales, and on the judgment in *Indian Railway SAS Staff Association and Others v. Union of India*, (1998) 2 SCC 651, for the proposition that the “[c]lassification of posts into gazetted or non gazetted cannot be done purely on the basis of scales of pay.”

7. The Central Government’s submissions were supported by the learned counsel appearing for the Comptroller and Auditor General, and in particular, it was emphasized that the C&AG, for its part, had supported the classification of the

officers in question as Group A officers, and given the instructions of the Finance Ministry, a fresh look into the matter by the C&AG would be the best course of action.

8. The preceding discussion would reveal that the limited question that arises for this Court's consideration is whether Senior Audit Officers and Senior Accounts Officers are entitled to classification as Grade A officers under the existing framework of rules applicable to them. Though the posts were originally, and indeed, *specifically*, created as Group B posts, significant subsequent developments have taken place since that classification. It is incontrovertible that the Revised Pay Rules of 2008 bracket the officers in question in the PB 3 band of pay scale (8000 – 13500) with grade pay of Rs 5400/-. The relevant portions of the Rules are extracted below. Rule 3, the definition clause, *inter alia*, provides that:

“(4) "present scale" in relation to any post/grade specified in column 2 of the First Schedule means the scale of pay specified against that post in column 3 thereof;

(5) "pay in the pay band" means pay drawn in the running pay bands specified in Column 5 of the First Schedule.

(6) "grade pay" is the fixed amount corresponding to the pre-revised pay scales/ posts.

(7) "revised pay structure" in relation to any post specified in column 2 of the First Schedule means 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.”

The relevant provisions of the first schedule are as follows:

“THE FIRST SCHEDULE

(SEE RULES 3 & 4)

PART - A

Section I

Revised Pay Bands and Grade Pays for posts carrying present scales in Group 'A', 'B', 'C' & 'D' except posts for which different revised scales are notified separately.

<i>Present scale</i>			<i>Revised Pay scale</i>		
<i>Sl. No.</i>	<i>Post/Grade</i>	<i>Present Grade</i>	<i>Name of Pay Band/Scale</i>	<i>Corresponding Pay Bands/Scales</i>	<i>Corresponding Grade Pay</i>
17.	<i>New Scale</i>	8000-275-13500/- (Group-A Entry)	<i>PB-3</i>	15600-39100	5400

9. Part B, to the extent it is relevant, is reproduced below:

“PART - B

REVISED PAY SCALES FOR CERTAIN COMMON CATEGORIES OF STAFF

Section I

(i) *The revised pay structure mentioned in Column (5) and (6) of this part of the Notification for the posts mentioned in Column (2) have been approved by the Government. The initial fixation as on 1.1.2006 will be done in accordance with Note 2 below Rule 7 of this Notification.*

(ii) *On account of merger of pre-revised pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500, some posts which presently constitute feeder and promotion grades will come to lie in an identical grade. The specific recommendations about some categories of these posts made by the Pay Commission are included Section II of Part B. As regards other posts, the posts in these three scales should be merged. In case it is not feasible to merge the posts in these pay scales on functional considerations, the posts in the scale of Rs.5000-8000 and Rs.5500-9000 should be merged, with the post in the scale of Rs.6500-10500 being upgraded to the next higher grade in pay band PB-2 i.e. to the grade pay of Rs.4600 corresponding to the pre-revised pay scale of Rs.7450-11500. In case a post already exists in the scale of Rs.7450-11500, the post being upgraded from the scale of Rs.6500-10500 should be merged with the post in the scale of Rs.7450-11500.*

(iii) *Posts in the scale of Rs.6500-10500 carrying minimum qualification of either Degree in Engineering or a Degree in Law should also be upgraded and placed in the scale of Rs.7450-11500 corresponding to the revised pay band PB-2 of Rs.9300-34800 along with grade pay of Rs.4600.*

(iv) *Posts of scientific staff in the scale of Rs.6500-10500 carrying minimum qualification of engineering degree or a post-graduate degree should also be upgraded and placed in the scale of Rs.7450-11500 corresponding to the revised pay band PB-2 of Rs.9300-34800 along with grade pay of Rs.4600*

(v) Upgradation as in (ii) above may be done in consultation with Department of Expenditure, Ministry of Finance. Regarding (iii) and (iv) above, upgradation may be done by the Ministries concerned in consultation with their Integrated Finance.

Section II

<i>XX ORGANISED ACCOUNTS CADRES*</i>						
				<i>Corresponding Pay Band & Grade Pay</i>		
<i>Sl. No (1)</i>	<i>Post (2)</i>	<i>Present scale (3)</i>	<i>Revised Pay Scale (4)</i>	<i>Pay Band (5)</i>	<i>Grade Pay(6)</i>	<i>Para No. Of the Report (7)</i>
1.	<i>Section Officer</i>	6500-10500	7500-12000	PB-2	4800	7.56.9
2.	<i>Assistant Accounts/Audit Officer</i>	7450-11500	7500-12000	PB-2	4800	7.56.9
3.	<i>Audit/Accounts Officer</i>	7500-12000	8000-13500	PB-2	5400	7.56.9
4.	<i>Sr.Audit/Accounts Officer</i>	7500-12000	8000-13500	PB-3	5400	7.56.9

**Also applicable to employees of Indian Audit & Accounts Department*

10. It is evident that Part A (of the 2008 Rules) classified the posts of Sr. Audit and Accounts Officers as “Entry Group A”. The revised pay scale prescribed is Rs. 8000-13,500/- in PB 3. This pay scale and pay band is reflected in Part B. More importantly, Part B provided, by clauses (ii), (iii) and (iv), of specific posts, (by virtue of clause (v)) that “Upgradation as in (ii) above may be done in consultation with Department of Expenditure, Ministry of Finance. Regarding

(iii) and (iv) above, up-gradation may be done by the Ministries concerned in consultation with their Integrated Finance.” Importantly, there was no mention of any need to consult any department or institution for classification of the posts of Sr. Accounts Officer, or Sr. Audit Officer (which did not find mention in clauses (ii) (iii) and (iv)) as Group A posts.

11. SO 946 (E) issued on 9th April, 2009 reads as follows:

“ORDER

New Delhi, 9th April, 2009

SO 946 (E)- In exercise of the powers conferred by the proviso to article 309 and clause 5 of article 148 of the Constitution read with rule 6 of the Central Services (Classification, Control and Appeal) Rules, 1965 and in supersession of the notification of the Government of India in the Department of Personnel and Training number SO 332 (E) dated the 20th day of April, 198, and after consultation with the Comptroller and Auditor General of India in relation to persons serving the Indian Audit and Accounts Department, except as respects things done or omitted to be done before such supersession, the President hereby directs that with effect from the date of publication of this order in the Official Gazette, all civil posts under the Union, shall be classified as follows:-

<i>Sl. No.</i>	<i>Description of Posts</i>	<i>Classification of posts</i>
(1)	(2)	(3)

1. (a). *****

(b) A Central Civil post carrying the

Following grade pays:-

Rs. 12000, Rs. 10000, Rs. 8900 and Rs. 8700 Group A
In the scale of pay of Rs. 37400-67000 in
Pay Band-4 and Rs. 7600, Rs. 6600 and Rs. 5400
In the scale of pay of Rs. 15600-39100 in Pay Band 3”

12. The DOPT Memorandum S.O. 946(E) (dated 17.4.2009) noted that civil posts (carrying the grade pay of Rs. 7600/-, 6600/- and 5400/- in the scale of pay of Rs. 15600-39-100 in PB 3) are to be classified as a Group A officers. In fact, the recognition that *all* classification must be in accordance with the Revised

Pay Rules comes from the DOPT memorandum of 17.4.2009 *itself*, which notes that:

“the pay band and grade pay or the pay scales, as applicable, of every post/grade specified in column 2 of the First Schedule thereto shall be as specified against it in columns 5 and 6 thereof. Consequent upon the notification of the said rules, it has become necessary to prescribe revised norms for categorization of posts into the abovementioned four categories based on the pay band and grade pay or the pay scales as applicable, as approved by the Government. Accordingly, an Order classifying the various Central Civil Services posts into Group “A”, “B”, “C”, “D”, based on the revised norms of pay has been notified in the Gazette of India Extraordinary vide s.o. 946 (E) dated 09.04.2000.” (emphasis supplied).

13. Thus, under this revised classification, which – in terms of the DOPT memoranda and the 2008 Rules is mandatory – the officers in question are classified as, and indeed, are entitled to being classified as, Group A officers. While the memoranda itself provides the necessary flexibility, by permitting exceptions to be carved out on the request of a particular department, no such exception has been carved out with respect to the officers in question in the present case, and thus, this question does not arise.

14. The Respondents’ reliance on the decision in *Hariharan* (supra) is unhelpful here, and if anything, supports the contrary proposition in this case. There, the Court noted:

“Before parting with this appeal, we feel impelled to make a few observations. Over the past few weeks, we have come across several matters decided by Administrative Tribunals on the question of pay scales. We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay .scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue.”

15. In this case, the conclusion that the officers in question are entitled to classification as Group A officers flows from the text of the 2008 Rules and the DOPT memoranda *themselves*, rather than the Court's interference in creating equivalence of status or of pay. The CAT's order – requiring that the matter be referred to Cabinet – bypasses the clear text of these documents which admit of only one interpretation, and thus infuses uncertainty into an otherwise unambiguous text. Undoubtedly, the matter may be referred to the cabinet for its consideration and that action may lead to a modification of the service rules themselves prospectively, through the relevant procedure for such amendment. However, insofar as the classification of the officers under the 2008 Rules and the DOPT memoranda stands *as of today*, their claim to Group A status is clear and undeniable.

16. In so far as the Respondents rely on the judgment in *Indian Rly SAS Staff Association* (supra), the case there concerned the plea that certain officers be entitled to Group B status “*like their counterparts*” in other offices solely on the basis that they were in the same pay scale. In rejecting this contention, the Supreme Court noted that the mere fact that two sets of officers were entitled to the same pay did not entitle them, *ipso facto*, to the same service benefits/same classification. It was in *that* context that the Court noted that

“*[c]lassification of posts into gazetted or non gazetted cannot be done purely on the basis of scales of pay*”,

but rather,

“*[t]here can be many criteria; administrative, procedural and others which have to be taken into consideration by the authorities concerned before deciding on the classification.*”

17. In this case, the petitioner's argument for status is not based on equal pay vis-à-vis another set of officers, but on an independent classification conducted under the Revised Rules of 2008 and the DOPT memoranda *themselves*, that took into account all relevant factors in deciding the classification of various officers. Here, the text of the Rules and the Office Memoranda supports the Petitioners. One aspect which has to be highlighted here is that even under the

pre 2008 dispensation, the cadre to which the second and third petitioners belong *had been placed on par with Group A* in terms of the pay scale; significantly, their classification was as Group B officers. The 2008 Rules brought about a radical change in that they, as well as the Memoranda in question, unambiguously placed the Petitioners' posts in PB-3 and *clearly spelt out their classification as Group A officers*.

18. Finally, on the question of the mandatory consultation with the UPSC for the upgradation of the officers in question from Group B to Group B, the CAT order does not mention the particulars of any rule that requires such consultation. Neither has the learned counsel for the Central Government – despite an opportunity granted by this Court through its order dated 10.9.2013 – placed on record any circular/memorandum that such requires such consultation.
19. Accordingly, the impugned order of the CAT dated 10.12.2012, as also the Office Memoranda of the Central Government dated 11.4.2011, 17.6.2011 and 7.7.2011, which deny the petitioners classification as Group A officers along-with the attendant benefits, are liable to be set aside as unreasonable and arbitrary given the clear textual mandate of the relevant rules. Thus, the classification of Senior Audit and Senior Accounts officers as Group A officers is mandated under the applicable rules. A direction in terms of the claims made by the petitioners is given; effect shall be given by the respondents, to these directions within six weeks. The writ petition is allowed in these terms, without any order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

**NAJMI WAZIRI
(JUDGE)**

SEPTEMBER 17, 2013

IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION
REVIEW PETITION (CIVIL) NO.2512 OF 2018
IN
CIVIL APPEAL NO.8883 OF 2011

UNION OF INDIA AND ORS. . .PETITIONER(S)

VERSUS

M.SUBRAMANIAM . .RESPONDENT(S)

WITH

REVIEW PETITION (C) NO.2519 OF 2018
IN
SPECIAL LEAVE PETITION (C) NO.17576/2017

O R D E R

There is a delay of 357 days in filing Review Petition (C) No.2512 of 2018 and 264 days in filing Review Petition (C) No.2519 of 2018.

The challenge to the clarification issued by the Ministry of Finance clarifying that non-functional Grade Pay of Rs.5,400/- would not be granted to such of those officers who had got the Grade pay of Rs.4,800/- on upgradation under ACP Scheme, was accepted by the High Court and the writ petition preferred by the respondent was allowed. While dismissing the special leave petitions

filed at the instance of the present review petitioners this court did not find any ground to interfere.

We have gone through the review petitions and do not find any error apparent on the face of record.

These review petitions are, therefore, dismissed both on the ground of delay as well as merits.

.....J.
[UDAY UMESH LALIT]

.....J.
[ASHOK BHUSHAN]

NEW DELHI
AUGUST 23, 2018

ITEM NO.1004

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

R.P.(C) No.2512/2018 in C.A.No.8883/2011

UNION OF INDIA AND ORS.

PETITIONER(S)

VERSUS

M.SUBRAMANIAM

RESPONDENT(S)

(FOR ADMISSION and IA No.107271/2018-STAY APPLICATION and IA No.107270/2018-CONDONATION OF DELAY IN FILING REVIEW PETITION)

WITH

R.P.(C) No.2519/2018 in SLP(C) No.17576/2017 (XI-A)
(FOR ADMISSION and IA No.107213/2018-STAY APPLICATION and IA No.107219/2018-CONDONATION OF DELAY IN FILING REVIEW PETITION)

Date : 23-08-2018 These petitions were circulated today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE ASHOK BHUSHAN

By Circulation

UPON perusing papers the Court made the following
O R D E R

The review petitions are dismissed both on the ground of delay as well as on merits in terms of the signed order.

Pending applications, if any, stand disposed of.

(Ashok Raj Singh)
Court Master

(Chander Bala)
Court Master

(Signed Order is placed in the file)