

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

Wednesday, the Twenty Ninth day of December, Two
Thousand Ten

P R E S E N T

**THE HON'BLE MR. K. ELANGO, JUDICIAL MEMBER
AND
THE HON'BLE MR. R. SATAPATHY, ADMINISTRATIVE
MEMBER**

ORIGINAL APPLICATION Nos.966 AND 967 OF 2009

O.A.966 of 2009

1. S. Prabhu-II,
 2. K. Sankaranarayanan,
 3. A. Muneer Ahmed
 4. S. Rangarajan-III,
 5. V. S. Jayaraman
 6. S. Chandramouli
 7. G. Rajan
 8. Saraswathi Naryanan
 9. K. Jayasree
 10. T. L. Sharada
 11. S. Manickam
 12. R. Shanthi-III
 13. G. Thilakavathy
 14. Geetha Kannan
 15. S. Rajasekar
 16. M. Vairamuthu
- All are working as
Assistant Accounts Officer(A&E),
361-Anna Salai, Teynampet,
Chennai. .. Applicants

Vs.

1. Union of India
rep by Secretary to
Government,
Ministry of Personnel,
Public Grievances & Pension
(Deptt. of Personnel & Training),
North Block, New Delhi.
2. The Comptroller & Auditor
General of India,
Pocket 9, Deen Dayal Upadhyay Marg,
New Delhi.

3. The Deputy Accountant General(Admin.),
O/o The Accountant General(A&E),Tamil Nadu,
361, Anna Salai, Teynampet, Chennai.

4. Hemalatha Rajagobalan
5. G. Ramanathan
6. Shabbir Hassan Mota
7. S. Sundaram-I
8. K.S.Sukumar
9. Vijayalakshmi Srinivasan
10. C.Chitra
11. G. Sakthivel
12. K.R. Prakash
13. P. Balanethran
14. R. Janarthanan
15. P.K. Parvathy
16. R. Savithri-I
17. P.N. Bhavani Sankar
18. O. Sulochana
19. S.K. Premkumar
20. S. Jagadeesan
21. Lalitha Sivakumar
22. E.Ramu
23. Joy Louis
24. Gomathi Sathyanarayanan
25. S.Rajeswari Jayakumar
26. Mythili Varadarajan
27. B.R.Seethalakshmi
28. R. Mala-I
29. P. Kanagavalli
30. S.Daniel Jesuraja
31. M.Thangaraj
32. M.Sathiavani
33. N. Kaliammal
34. Jayanthi Vijayaraghavan
35. Josephine Regina Raj
36. S.H. Subbulakshmi
37. S. Venkata Rao
38. R. Srikantan-II
39. V. Radha
40. ~~40~~ T.S. Hariharan
41. Indirani Krishnamurthy
42. S.Satish Chandran
43. A. Vidyasagar
44. N.Parasurm-III
45. Rama Prakash
46. B. Prabhavathy
47. Pankajam Madhavan Nair
48. Rajeswari Viswanathan
49. J.K. Mahendiran
50. Revathi Raishankar
51. Pramila Chidambaram

- 52.N. Narasimhan-II
- 53.S. Nagarajan-III
- 54.Rukmani Jayaraman
- 55.R.Sangilimuthu
- 56.Malini Varadharajan
- 57.Mridula Kannan
- 58.Vasantha Murali
- 59.Ezhilarasi
- 60.P. Muniammal
- 61.T.Padmini Devi
- 62.J. Inbarajan
- 63.D. Prabhakaran
- 64.V.Raja
- 65.J. Jayalakshmi
- 66.Sushila Ravindran
- 67.S. Prasad Rao

-All are working as Senior Accountants
O/o Accountant General (A&E),
361, Anna Salai, Teynampet,
Chennai.

.. Respondents

Mr. Muthukumarasamy, Sr. Counsel for
M/s Jenasenani

.. Counsel for the
applicants

Mr. T.Ravikumar

.. Counsel for R.2 & 3

Mr. S. Sadasharam

.. Counsel for R.4,10,
12,16,21,22,24,27,34,
40,43-45,48,50,52,54,
58, 61& 65

M/s Paul & Paul

.. Counsel for R.56

M/s P. Rajendran

.. Counsel for R.5-9,11,
13,14,18,20,23,26,
28,30,32,33,35,36,38,
39,41,42,47,51,53,55,
57,59,60,63, 66 & 67

Q.A.967 of 2009

- 1.S. Rangarajan-III
- 2.A. Muneer Ahmed
- 3.K. Sankaranarayanan
- 4.S. Prabhu
- 5.M.Sudhakaran
- 6.R. Viswanathan
- 7.V.Gajendran
- 8.K. Balachandar
- 9.T.K.Ganesan
- 10.S.Uma Devi
- 11.N.Shajahan

- 12.K. Kumaresan
- 13.K. Vetrivel
- 14.C.Babu Prakash
- 15.A. Prabhu
- 16.K. Sankarasubramanian
- 17.S. Hemalakshmi
- 18.C.K. Damodaran
- 19.Saroja Kalyanasundaram
- 20.D.Shyamala
- 21.S. Chella
- 22.Lakshmi Moni
- 23.P.Revathi
- 24.J. Chlithra
- 25.N.C. Vaijayanthimala
- 26.B. Revathi
- 27.S. Mohana
- 28.N. Thilagam
- 29.K. Ramadoss
- 30.S. Baktavatchalam
- 31.S. Ramgopal
- 32.C. Mukundan
- 33.P. Gvolndasamy
- 34.S. Manoharan
- 35.R.Sriram
- 36.S. Kirubanithi

--All are working as
Assistant Accounts Officer
O/o Accountant General(A&E),
361-Anna Salai, Teynampet,
Chennai.

.. Applicants

Vs.

- 1.Union of India
rep by Secretary to Government,
Ministry of Personnel, Public
Grievances & Pension,
(Deptt of Personnel & Training),
North Block, New Delhi.
- 2.The Comptroller & Auditor General
of India,
Deen Dayal Upadhyay Marg,
New Delhi.
- 3.The Accountant General(A&E),
361, Anna Salai,
Teynampet, Tamil Nadu,
Chennai.
- 4.S. Ravishankar
- 5.S. Muralidharan-I

- 6.Smt. P. Gomathi-I
 - 7.Smt. Latha Sundar
 - 8.D.Mohanraj
 - 9.S. Kuppaswamy
 - 10.M.R. Madhubalan
 - 11.Smt. Ranjani Sivakumar
 - 12.Smt. P. Ramamani
 - 13.Smt. V. Revathi-IV
 - 14.Smt. Annammal Clement
 - 15.Mohana Raghunathan
 - 16.Kanthi Byravan
 - 17.G. Uma
 - 18.Sumathra Kannan
 - 19.Smt.Geetha Jagadeeswaran
 - 20.Smt. Maheswari Suresh
 - 21.Smt. A.S.Geethakumary
 - 22.Smt. M.Vijayalakshmi
 - 23.Smt. A. Marakathavalli
 - 24.Shri/Smt.A.Rajamani
 - 25.M.Duraipandian
 - 26.P. Pandian
- All are working as Section Officer(Ad hoc) now AAO (Regular Temporary), O/o Accountant General(A&E), 361, Anna Salal, Teynampet, Chennai.

M/s A. Jenasenar

.. Respondents

Mr. T. Ravikumar

.. Counsel for the applicants

M/s Row & Reddy

.. Counsel for R.2 & 3

M/s Paul & Paul

.. Counsel for 5,8-11,13, 23-26

M/s S. Sadasharam

.. Counsel for R.18

.. Counsel for R.7, 12, 15-17, 19 -22

ORDER

(Pronounced by The Hon'ble Mr. K. Elango, Judicial Member)

Since the relief sought for in these applications is common which is founded on similar facts, both these applications were heard together and are being disposed of by this common order.

2. The brief facts leading to the filing of the above applications are as set out hereunder. The applicants are employed in the office of the third respondent and holding the post of Assistant Accounts Officers (hereinafter referred as AAO). The applicants entered into the service as Clerks, which is the lowest entry level post. After having served in that capacity they came to be promoted as Accountants and later on as Sr. Accountants. The next higher post in the hierarchy was the post of Section Officer (S.O.) to which promotions were made from the persons who have passed Section Officer Grade Examinations [hereinafter referred as (SOG)]. The applicants had passed SOGE and thereafter came to be promoted as S.O. post on their batch seniority as and when vacancies arose. The candidates who did not possess SOGE were not entitled for promotion to the posts of S.O. and the higher posts and they could reach the post of Supervisor based on their seniority on promotion from the category of Sr. Accountant. The next higher post to the post of S.O. is 'AAO' which carries higher scale of pay which formed part

of Group 'B' gazetted status. All the benefits and promotions to the posts of 'AAOs' and 'S.Cs' are governed by Recruitment Rules and the applicants were promoted to the said posts in conformity with the above Rules.

3. While so, in the year 1999 a scheme known as 'Assured Career Progression' scheme was introduced by the central Government pursuant to the recommendation of the V Pay Commission. The said scheme is evolved to deal with the problem of stagnation faced by the employees due to lack of adequate promotional avenues. The scheme contemplated two financial upgradations - one on completion of 12 years and another one on completion of 24 years of regular service from the date of entry. Such financial upgradation is prescribed only if no regular promotion during the period of 12 and 24 years have been availed by the personnel. The grant of financial upgradation is subject to the fulfilment of the normal promotion norms. Till 2009 there was no problem in the implementation of the above scheme. However, during 2009, the Government of India has introduced a Modified Assured Career Progression Scheme, which is known as MACPS as per the recommendation of the VI Central Pay Commission w.e.f. 01.09.2008. As per the said scheme, three financial upgradations on completion of 10, 20 and 30 years of service were contemplated. It is applicable whenever a person

completes 10 years of continuous service in the same grade. The financial upgradation has to be done strictly in accordance with the hierarchy of grade pay as provided in the C.C.S. Revised Pay Rules 2008. While implementing the VI Central Pay Commission's recommendations, a new concept of grade pay and Pay Band was introduced which provided grade pay to the post of Sr. Accountant as Rs.4200/- and the said post was included in the Pay Band 2. While implementing the said scheme, the second and third respondents have re-fixed the grade pay of party respondents at Rs.5400/- at Pay Band 2. The action of the respondents in not conferring the benefits of the said scheme in favour of the applicants is arbitrary and illegal even though the applicants are holding supervisory posts and are functional AAOs supervising the party respondents. The above pay fixation came to be passed by virtue of the impugned office order dt.03.08.2009 issued by the third respondent. Hence, the applications are filed seeking to quash the said order and for consequential relief as stated therein.

4. The official respondents 2 and 3 have filed reply affidavits wherein it is contended that under MACP scheme and based on the recommendations of the VI Central Pay Commission, the private respondents were granted the grade pay of Rs.5400/- Since the applicants are not eligible for the benefits of MACP they were granted the grade pay of Rs.4200/- applicable to their pay band. The

applicants were not eligible to the benefits of the above scheme for the reasons that they are serving as Assistant Accounts Officers in the office of the third respondent by attaining the said post during the normal course of promotion and seniority. Since the benefit of the scheme to be extended on completion of 10 years of continuous service, those Sr. Accountants who are appointed as Accountants by direct recruitment are eligible for three financial upgradation only after fulfilment of the norms prescribed under MACP Scheme. The financial upgradation shall be purely personal to the employees and has no relevance to the seniority position. Since the private respondents were stagnating in the lower post, the scheme was introduced on the recommendation of the VI Pay Commission and hence, extending the benefit to them cannot be held to be illegal and accordingly prayed for the dismissal of the applications. The private respondents have also filed reply affidavits raising similar contentions as contended by the official respondents and prayed for the dismissal of the applications.

5. We have heard Mr. R. Muthukumarasamy, Sr. Counsel for the applicants and Mr. T. Ravikumar, learned counsel for R.2 and 3, Mr. N.G.R. Prasad, Mr. S.Sadasharam, M/s Paul & Paul and Mr. P. Rajendran, the learned counsel appearing for the private respondents and perused the relevant materials available on record.

6. From the records, it is seen that the applicants who were initially appointed as clerks and having been qualified in the departmental examinations at various stages have been promoted to the post of Accountants and Section Officers. Subsequently, the applicants were promoted as Sr. Accountants and Assistant Accounts Officers based on the seniority and all the applicants are holding the post of AAOs. The above facts are admitted by the official respondents in their reply. In the reply it is also admitted that the private respondents have not acquired the qualifying examinations for promotion as Section Officers and accordingly they were stagnated at the level of Sr. Accountants. When the facts are like this, it appears that on introduction of MACP Scheme while implementing the recommendation of the VI Pay Commission's recommendations, three financial upgradations were extended to the private respondents. According to the respondents, they are rightly granted the third financial upgradation and the grade pay of Rs.5400/- was given to them based on the eligibility criteria of the above scheme. We are not in agreement that the above reasoning as contended by the official respondents as well as by the private respondents. When the fact remains that the applicants having qualified in the departmental examinations and able to gain further promotions as per the Recruitment Rules and also exercising supervisory role

as against the private respondents, we are at loss to note as to how they could be given lesser pay, whereas, the private respondents were given higher pay. We do not find fault with the official respondents by devising the scheme to extend the benefits of such of those employees who are stagnating in service for number of years but that does not mean that in the guise of implementation of the said scheme, persons like the applicants who acquired the necessary qualifications viz., completion of the departmental examinations and gained regular promotions as per Recruitment Rules could be given lesser scale of pay. The private respondents who are holding the position of Sr. Accountants functioning under the control of the applicants cannot be fixed in a grade pay higher than the applicants. Infact, F.R.22 provides for the removal of anomalies by stepping up the pay of seniors when their juniors happened to draw more pay. In the instant case, the private respondents who are functioning inferior than the applicants and who are not even qualified to be promoted to the post held by the applicants are given higher pay scale in the guise of implementation of the scheme which is unsustainable in law.

7. Eventhough the Apex Court In its decision rendered in Secretary, Finance Department and others v. West Bengal Registration Service Association and others - 1993 SUPP (1) SCC 153 held to the effect that determination of

pay scales is the primary function of the executives and not the judiciary, in the very same decision, the Supreme Court has emphasised that the Courts have jurisdiction to grant relief to the aggrieved employees when they are unjustly treated and when the state action is arbitrary. In the instant case, we are of the opinion that the applicants are unjustly treated in as much as higher pay scale is given to the private respondents who are functioning inferior than the applicants and who have not even qualified themselves to be promoted to the posts which are held by the applicants.

8. Eventhough, we are of the opinion that in the guise of implementation of the scheme, the private respondents are given the higher pay scales than the applicants and one of the relief claimed in the applications is to quash the office memorandum wherein such benefit is extended to the private respondents, in the interest of justice, we do not propose to take away such benefits which are being extended to the private respondents. However, we are inclined to give relief to the applicants by directing the respondents to extend the benefit of the MACP scheme in favour of the applicants by fixing their grade pay at Rs.5400/- w.e.f. the date on which such benefit was extended to the private respondents.

9. For the reasons stated above, both the applications are disposed of in the following terms :

"There will be a direction to the respondents to grant the revised pay to the applicants by extending the benefit of MACP Scheme in favour of the applicants by fixing their grade pay at Rs.5400/- from the date on which the said benefit was extended to the private respondents and to disburse the accrued arrears, if any, to the applicants within a period of four weeks from the date of receipt of copy of this order. However, there will be no order as to costs. "

Three Copy UR 22 of
CAT (Procedure) Rules"

TRUE COPY

[Signature]
12/1/11
DEPUTY REGISTRAR