Eastern Railway
(Personnel Department)
17 N. S. Road, Kolkata - 700 001

Serial Circular No. 78/2018

No. E/SPC/2008/Policy/Pt.III

Kolkata, Dated: 02/05/2018

All Concerned

(as per standard list)

Sub: Pay fixation methodology to those posts which have been granted revised GP Rs.4600/- in the PB-2 and that existed in the pre-revised scale of Rs.6500-10,500 as on 01/01/2006 and which were earlier granted normal replacement pay structure of GP Rs. 4200/- in PB-2.

******

The clarification issued by the Ministry of Railways. (Railway Board) vide their letter No. PC VI/2013/ Z/7 dated 18/04/2018 on the issue of pay fixation methodology to those posts which have been initially given normal replacement pay structure in the 6th CPC and afterwards the post has been upgraded and has been granted the higher Grade Pay in the revised pay structure, is communicated herewith together with its enclosures for guidance and strict compliance. Board's earlier instructions contained in their letter No. PCVI/2014/Misc0/4 dated 22/03/2018 are available in the official website if the Ministry under URL: *http://www.indianrailways.gov.in/railwayboard/uploads/directorate/pay_comm/PC6/2018/SHARING%20OF%20JUDGMENT.pdf*

DA: As above.

02/5/18
(U. Lahiri)
Dy. Chief Personnel Officer/R
For Pr. Chief Personnel Officer
Phone no.: 24103

02/5/18

Index No. 1057: The fixation of pay on the issue has to be done with respect to existing basic pay as defined in RS(RP) Rules, 2008 and not according to the corresponding upgraded pre-revised scale of pay.

03
23/4/18

GOVERNMENT OF INDIA (भारत सरकार)

MINISTRY OF RAILWAYS (रेल मंत्रालय)

RAILWAY BOARD (रेलवे बोर्ड)

No. PCVI/2013/Z/7 New Delhi, dated: 18/04/2018

General Manager,
Northeast Frontier Railway,
Maligaon, Guwahati.

[Kind attention: Sri. A.K.Sonik, PCPO]

Sub: **Pay fixation methodology to those posts which have been granted revised GP Rs. 4600/- in the PB-2 and that existed in the pre-revised scale of Rs. 6500-10,500 as on 01/01/2006 and which were earlier granted normal replacement pay structure of GP Rs. 4200/- in PB-2.**

Ref: **North East Frontier Railway letter No. E/205/0(C) Pt.XII dated 07/03/2018.**

Kindly refer to your letter dated 07/03/2018 wherein Railway Board was requested to communicate its decision on the issue of pay fixation methodology to those posts which have been initially given normal replacement pay structure in the 6th CPC and afterwards the post has been upgraded and has been granted the higher Grade Pay in the revised pay structure.

2. The detailed methodology regarding manner of pay fixation in upgraded pay scales in 6th CPC has already been explained in Board's letter of even no. dated 31/12/2013 (as Annex. A). In this letter it is indicated that in cases where there has been up-gradation/merger of posts post implementation of 6th CPC, the pay in such cases is to be fixed in the revised pay structure of 6th CPC as per the existing basic pay actually drawn on the fixation date and not according to the corresponding up-graded pre-revised pay scale. Further, Hon'ble CAT Madras Bench in OA No. 310/00173/2014 vide its order dated 07/07/2015 (as Annex. B) and Hon'ble Supreme Court in Civil Appeal No. 1350 of 2018 vide its order dated 30/01/2018 (already circulated vide Board's letter no. PCVI/2014/Misc0/4 dated 22/03/2018) have upheld this methodology of fixation of pay.

3. Accordingly, in reference to the sought for clarification, the North East Frontier Railway is advised that fixation of pay has to be done with respect to "existing basic pay" viz the pay actually drawn in pre-revised present scale as defined in RS(RP) Rules, 2008 and not according to the corresponding up-graded pre-revised scale of pay.

Encl: As Above

To advise all
+ For n. a pl.

22 APR 2018

SPO (HQ) & (PC)
By CPO/R

OS/R.
24/4

(U.K.Tiwari)
Deputy Director/Pay Commission-VI
Railway Board

Copy to: All PCPOs for information
[NR, WR, CR, ER, SR, NWR, SCR, SER, WCR, ECOR, NCR, NER, SECR, SWR, ECR, RCF, DLW, CLW, DMW, RDSO, ICF, RWF, METRORIY.]

23/4/18
मु. का.धि
C.P.C

Annexure A)

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
RAILWAY BOARD

PC-VI/2013/Z/7 **New Delhi, Dated 31.12.2013**

The FA&CAO **North Central Railway,** **Allahabad.**	**The General Manager (Accts)** **Northern Railway,** **Baroda House, New Delhi.**	**The FA&CAO (G)** **East Coast Railway,** **Bhubaneswar.**

Sub: Clarification regarding manner of pay fixation in upgraded and merged pay scales in VI CPC.

Ref: North Central Railway's letter No. NCR/A/Cs/Admn/VIth CPC dated 08.10.2013.

Fixation of pay of Railway employees is governed by the provisions of Railway Services (Revised Pay) Rules, 2008 and subsequent clarifications which are based on Central Civil Services (Revised Pay) Rules, 2008 and subsequent clarifications issued by the nodal Ministry i.e. Ministry of Finance.

2. The principle of fixation of pay consequent upon the recommendations of 6th CPC as accepted by the Govt. of India envisages switch-over from a pre-revised scale to a revised pay scale under revised structure. As per the recommendations of the 6th CPC, the revised pay structure was given effect to from 01.01.2006 but an employee was given an option to elect to come over to the revised structure from a date later than 01.01.2006. Thus the principle for fixation of pay on switch-over to the revised scales is that it is the pre-revised pay/existing pay as actually drawn in the actual pre-revised pay scale as on the cut-off date, either 01.01.2006 or the later date elected by an employee is to be applicable for determining the revised pay in the applicable Pay Band. To the pay in the pay band so arrived at is to be added the grade pay as allowed with reference to the scale allowed.

3. This principle of fixation of pay contained in the RS(RP) Rules, 2008 is elucidated below:

i) As per RS(RP) Rules, 2008 (**Rule5**), a Railway servant can elect the revised pay scale either from 01.01.2006 or date of next increment or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale. In case an employee has been placed in a higher pay scale between 01.01.2006 and the date of notification of RS(RP) Rules, 2008 (i.e. 04.09.2008) on account of promotion, upgradation of pay scale etc., he may elect to switch over to the revised pay structure from the date of such promotion, upgradation etc. The time limit for exercising option had been prescribed in above rules and subsequent orders issued specifically permitting revision of option after above period by this Ministry.

ii) In case of those electing to be governed by the revised structure on and from 01.01.2006, Pay in the pay band (revised structure) will be 1.86 times of the

"existing basic pay" as on 01.01.2006. The "existing basic pay" means pay drawn in the prescribed "existing scale of pay" which, in turn, means present scale applicable as on 01.01.2006. **In addition to the pay in the pay band, grade pay corresponding to existing scale will be applicable.** (**Rule 7** read with definitions in **Rule 3**).

iii) In case where an employee continues to draw his pay in the existing scale and is brought over to the revised pay structure from a date later than 01.01.2006, his pay from the later date in the revised pay structure will be fixed by adding the basic pay applicable on the later date, dearness pay on that date and the pre-revised DA based on rates applicable as on 01.01.2006. This figure will be rounded off to the next multiple of 10 and will then become the pay in the applicable pay band. **In addition, the grade pay corresponding to the pre-revised pay scale will be payable. (Rule 11)**

iv) Based on the above formulae for fixation of pay, fitment tables in various Pay Bands and Grade Pays with reference to the pre-revised scales have been given in Annexure 'E' of Board's letter dated 11.09.2008. This letter clearly provides that the fitment tables will be applicable where normal replacement pay scales have been given and in cases of upgradation/ merger of posts, the same will be done as per Note 2A/2B below Rule 7 as per the illustration 4A/4B of the Explanatory Memo of the RS(RP) Rules, 2008. This illustration makes it abundantly clear that pay in the Pay Band is to be fixed with reference to the existing pay as on 01.01.2006 (old pay) and then adding the applicable GP. This has again been reiterated in the Board's clarificatory letter No. PC-VI/2008/I/RSRP/1 dated 25.09.2008. (Clarification no. 6).

v) If a Railway employee elects to draw pay in the pre-revised scale and opts to come over to the revised structure from the date of promotion, which is later than 01.01.2006, the method of fixation of pay has been clearly provided for in Board's letter No. PC-VI/2008/I/RSRP/1 dated 25.09.2008 (Clarification Nos. 2 & 3). It clearly provides that when the pay of a Railway servant is fixed as per Rule 11 on a date subsequent to 01.01.2006, fitment tables annexed with the Board's letter dated 11.09.2008 will be used as prescribed in the relevant provisions contained in Para 3 of the letter. The pre-revised pay to be reckoned in such cases will be the pay of the Railway servant on the date of such fixation.

vi) If the Grade pay is such as is corresponding to a higher pre-revised scale, it does not mean that the pay is to be fixed based on the deemed pay in such higher pre-revised scale, the GP appropriate to which has been given from 01.01.2006. For, such higher pre-revised scale was never an actual scale as on the cut-off date nor was pay at any stage therein ever actually drawn on the cut-off date. Grade pay is a concept introduced in the revised structure and its reference to a particular pre-revised scale is merely for gauging the equation between the pre-revised and revised structure as to whether a post has been given a normal replacement scale as reflected in a grade pay or placed on an upgraded scale again reflected by a grade pay. Thus, it does not mean that the higher scale becomes applicable even in the pre-revised scale too, as the upgraded structure, based as it is on the 6th CPC, comes into effect only from 01.01.2006. Any contrary fixation, would

amount to giving effect to the benefit of the 6th CPC even prior to the date of its effect and this will be absurd.

4. As regards the case of Assistants/ PAs of Secretariat Services, the same involved entirely different facts & circumstances. Further, the case of IAAD (Office of C & AG), the same has been decided by the Office of C & AG themselves without consulting Ministry of Finance, i.e., the nodal Ministry. However, the principle adopted by them is not correct and may not be basis for similar incorrect fixation in other cases. Further, various Railway Services posts are governed by the provisions of Railway Services (Revised Pay) Rules, 2008 and subsequent clarifications issued by the Ministry of Railways. Zonal Railways are not authorized to make unilateral decisions/interpretations/relaxations/contrary to the Rules/clarifications issued by the Ministry of Railways (Railway Board).

31/12/13

(Vikram Gulati)
Director, Pay Commission – II
Railway Board

O/C

Annexure B

1

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

DATED THIS THE 7th DAY OF JULY TWO THOUSAND FIFTEEN 7/7/2015

PRESENT:

THE HONBLE MR. JUSTICE B. SESHASAYANA REDDY, MEMBER (J)

THE HON'BLE MR. U. SARATH CHANDRAN, MEMBER (J)

THE HON'BLE MR. RUDHRA GANGADHARAN, MEMBER (A)

OA/310/00173/2014

1. R. Karthikeyan,
S/o L.T.Radhakrishnan,
D-4; DAD Residential Quarters,
Nandambakkam, Chennai 600 089.

2. G. Rama Narayana,
S/o G. Adinarayana,
C-19, DAD Residential Quarters,
Nandambakkam, Chennai 600 089.

3. R. Karthie,
S/o Late M. Rajappa,
New No.11, Old No.5,
First Cross Street, Senthil Nagar,
Kolathur, Chennai-99.

4. P. Rajkumar,
S/o P.R. Paramasivam,
B2/1, DAD Qtrs, Phase I,
Wellington, Nilgiris 643 231.

5. S. Anbukumaran,
S/o Late N. Subramanian,
C3/2, DAD Qtrs, Singarathoppu,
Wellington, Nilgiris 643 231.

6. N.S. Sumesh Kumar, S/o N. Subash,
C1/1, DAD Qtrs, Singarathoppu,
Wellington, Nilgiris 643 231.

7. Jagadeesh R., S/o R. Rajendran,
C3/1, DAD Qtrs, Singarathoppu,
Wellington, Nilgiris 643 231.

8. Ms. S. Babu, D/o Late A.S. Hameed,
G-3, Old No.136, N.No.107,
(Gaun Eden Gardens),
Chithamanar Street,
Canumpet, Chennai 600 006.

9. S. Ponmariappan, S/o Shenbaga Moorthy,
403, Bhavya Avenue, Srinivasa Nagar,
Surapet, Chennai-66.

10. V. Ramprasad, S/o V. Ganeswara Rao,
No.22, Old No.10, 97th Street,
15th Sector, K.K.Nagar, Chennai 600 078.

11. S. Rahiman, S/o S. Babaji,
C-4, DAD Residential Quarters,
Nandambakkam, Chennai 600 089.

12. Smt K. Suguna Kumari,
D/o K. Adinarayana Rao,
No.22, Old No.10, 97th Street,
15th Sector, KK Nagar,
Chennai 600 078.

13. R. Manjula Devi, D/o R. Ragupathy,
No.53, 4th Cross Street, AGS Colony,
Chrompet, Chennai 600 044.

14. P. Ravikumar, S/o P. Appa Rao,
C-10, DAD Residential Quarters,
Nandambakkam, Chennai 600 089.

15. K. Jayanthi D/o S. Muthuswamy,
C-24, DAD Residential Quarters,
Nandambakkam, Chennai 600 089.

16. B. Kamalakannan S/o M. Balakrishnan,
163/4, Mangalam Colony,
Anna Nagar West, Chennai 600 040.

17. G.S. Raghavan, S/o S. Gopalakrishnan,
D-5, DAD Residential Quarters,
Nandambakkam, Chennai 600 089.

18. P. Madhusudhana Rao, S/o P. Rangaiah,
T-4, Sivakami Apartment,
Tambaram, Chennai.

19. G. Praveen Kumar, S/o Yadagiri,
Old No.56, New No.7,
Vasugi Nagar, II Street,
M.R.Nagar, Kodungaiur,
Chennai 600 118.

..Applicants

All are working as Assistant Accounts Officers under the administrative control of O/o Controller of Defence Accounts (Chennai, Controller of Defence Accounts (Canteen Stores Department) Mumbai & Principal Controller of Defence Accounts (Navy) Mumbai, in Chennai and Wellington.

versus-

1. Union of India through
the Secretary to Government of India,
Ministry of Finance, Department of Expenditure
(Implementation Cell), North Block, New Delhi.

2. Secretary to Government of India,
Ministry of Defence (Finance),
Establishment-I Section,
New Delhi.

3. The Controller General of Defence Accounts,
Ulan Batar Road, Palam, Delhi Cantt 110 010.

4. The Controller of Defence Accounts,
618, Anna Salai, Teynampet, Chennai.

5. The Controller of Defence Accounts
(Canteen Stores Department),
ADELPHI, 119, M.K. Road, Mumbai 400 020

6. The Principal Controller of Defence Accounts (Navy),
No.1, Cooperage Road, Mumbai 600 049.

...Respondents

By Advocates:

M/s A. Jenasenan, for the applicants.

Mr. K. Ramanatha Reddy, for the Respondents.

Central Administrative Tribunal

O R D E R

(Pronounced by Hon'ble Mr. Justice B. Seshasayana Reddy, Member (J)

The applicants joined in the Defence Accounts Department as Clerks/Auditors. They are presently working under the Administrative Control of the Controller of Defence Accounts, Chennai (Respondent No.4), Controller of Defence Accounts (Canteen Stores Department, Mumbai (Respondent No.5) and Principal Controller of Defence Accounts (Navy), Mumbai (Respondent No.6). They were promoted as Section Officer (Accounts) on various dates between 1.1.2006 and 29.8.2008 in the pre-revised pay scale of Rs.6500-10500 on qualifying SAS (Subordinate Accounts Service) Part-I and Part-II Examinations. On implementation of the recommendations of VI CPC, the post of Section Officer (Accounts) (*S.O.(A) in short*) in the pre-revised scale of Rs.6500-10500 and the post of Assistant Accounts Officer (*AAO- in short*) in the pre-revised scale of Rs.7450-11500 were merged and upgraded to the next grade of pay ie.7500-12000. The two posts after merger and upgradation placed in the P.B.2 carrying the pay scale of Rs.9300-34800 with Grade Pay of Rs.4800. The applicants opted to switch over to the revised pay scale with effect from the date of their promotion. The department fixed their pay on the basis of pay of Rs.6500 by applying the multiplier of 1.86 without granting the benefit of merger and upgradation which took place w.e.f. 1.1.2006. The applicants claim that they stand on the same footing as that of Assistants and PAs of CSS. On reference from the Ministry of Petroleum and Natural Gas, the Ministry of Finance, Department of Expenditure (Implementation Cell) clarified that the

pay of Assistants/PAs who were promoted after 1.1.2006 and who have opted to switch over to the revised pay structure with effect from the date of their promotion will be fixed with reference to the fitment table corresponding to the pre-revised scale of Rs.7450-11500. It is further clarified that Assistants/PAs are not entitled to any arrears of pay w.e.f. 1.1.2006 till the date of their option. In similar circumstances, the Ministry of Defence (Finance), Defence Accounts Department made a reference to the Ministry of Finance, Department of Expenditure relating to pay fixation of S.O.(A)/AAO in Defence Accounts Department consequent to their merger in the pre-revised upgraded pay scale of Rs.7500-12000. There upon the Ministry of Finance clarified that para 3 of IC's UO dated 27.1.2010 is applicable in respect of Assistants/PAs of CSS only and the proper rule applicable is Rule 11 of CSS (RP) Rules, 2008. Aggrieved by the clarification given by the Ministry of Finance, some of the employees who are similarly situated as that of the applicants approached the Allahabad Bench of the Central Administrative Tribunal by way of OA.293/2011 wherein the Allahabad Bench quashed the order of the respondents in rejecting the representation of the applicants therein and directed the respondents to consider the claim of the employees regarding fixation of their pay in the revised pay structure from the date of their promotion as S.O.(A). The respondents implemented the order of the Allahabad Bench of the Central Administrative Tribunal subject to the outcome of the Writ Petition in the High Court of Allahabad. Since the claim of the counter parts of the applicants has been allowed pursuant to the Judgement of Allahabad Bench

of the Central Administrative Tribunal, the applicants deserve the same benefit and necessary direction needs to be given to the respondents to fix the pay of the applicants treating the pre-revised pay as 7500.

2. The respondents filed reply statement on 26.6.2014. Dr. (Mrs) Jane Prasad has sworn to the reply statement. It is stated in the reply statement that the principle of the formula for fixation of pay on switch over to the revised scale from the pre-revised scale is that it is the pay actually drawn in the pre revised pay scale as on the cut off date ie. 1.1.2006 or a later date as elected by an employee. The concept of Pay Band and Grade Pay was introduced based on the recommendations of the VI CPC. In the V CPC, there were 34 Pay Scales which were condensed to only 4 Pay Bands under the VI CPC and thereby restructured/consolidated the entire Pay Structure to only 4 Pay Bands. However, to maintain the functional hierarchy, the concept of Grade Pay was introduced to each Pay Band, thereby rationalizing the whole Pay Structure. Though the revised Pay Structure based on the recommendations of the VI Pay Commission was given effect to from 1.1.2006, the employees were given option to elect to come over to the revised structure from the date later than 1.1.2006 which should be their date of increment. The existing pay as actually drawn in the pay scale as on the cut-off date, either on 1.1.2006 or the later date elected by an employee is to be applied for determining the revised pay in the applicable Pay Band. The principles of fixation of pay are contained in the CCS (RP) Rules, 2008. The Department fixed the pay of the applicants in accordance with the CCS (RP) Rules, 2008. The department clarified in U.O.No 18/2/2010-Legal dated

25.10.2010 that it was applicable in respect of Assistants/PAs of CSS cadre only and the proper rule applicable to the applicants is Rule 11 of CSS (RP) Rules, 2008. Stepping up of pay in respect of the Assistants/PAs of CSS cadre who were promoted prior to 1.1.2006 was extended by invoking Note 10 under Rule 7 of CCS (RP) Rules, 2008 vide DOP&T OM No.7//08-CS.I (A) dated 22.12.2010. If the pay of the applicants is fixed treating their pay in the lower post as 7500/ , then stepping up of pay needs to be allowed to all the AAOs/SOs(A) in Defence Accounts Department who were senior to the applicants and were drawing less pay which ultimately may lead to huge financial implication as arrears to be paid to each individual will be running in lakhs. The department has filed Writ Petition in the High Court of Allahabad against the order dated 9.8.2012 of the Allahabad Bench of the Central Administrative Tribunal passed in OA.293/2011 and the Writ Petition is pending adjudication in the High Court of Allahabad. The Department implemented the order passed in OA.293/2011 subject to outcome of the Writ Petition. The Defence Accounts Department being a separate body and not functioning within the ambit of C & AG, it not obligated to implement any order issued by the C & AG. The applicants cannot equate themselves with the applicants in OA.293/2011. The orders passed by the Allahabad Bench, Chandigarh Bench and Secunderabad Bench of the Central Administrative Tribunal are being challenged by the Department in the respective High Courts. Therefore, the orders passed by the above referred Benches of the Central Administrative Tribunal is neither the binding precedence nor a matter of right for implementation of pay fixation

Central Administrative Tribunal

3. The respondents placed on record additional reply statement on 9.4.2015. What is stated in the additional reply statement is the pendency of SLP before the Supreme Court assailing the order passed in WP.16002/2014 where under, the order passed in OA.1402/2013 by the Secunderabad Bench of the Central Administrative Tribunal came to be confirmed by the Andhra Pradesh High Court and also SLP assailing the order passed in WP.5989/2014 whereby, the order of the Chandigarh Bench of the Central Administrative Tribunal came to be confirmed.

4. The applicants placed on record their additional pleadings on 17.4.2015. We deem it appropriate to extract the relevant portion of the additional pleadings and it is thus:-

> "Reply to Illustration 1:
>
> This OA filed for the individuals who promoted between 1.1.2006 and 29.09.2008 and opted to switch over to sixth pay commission from the date of their promotion only by forgoing all arrears of pay under sixth pay commission from 1.1.2006 to date of promotion. Hence this illustration 1 explains the pay fixation for SO (A) promoted on 30.4.2004 (before implementation of 6 CPC) and is not relevant to this case.
>
> Reply to Illustration 2:
>
> The pay has been fixed in accordance with Rule 11 of CCS (RP) Rules 2008. If the said Rule 11 applies to SOs (A) of DAD then the same should be applied to Asst/PAs of CCS too. Whereas the pay of Assts/PAs of CSS has been fixed w.r.t the fitment table pertaining to the upgraded pre-revised pay scale (7450-11500 pertaining to GP 4600). The pay of SO(A)/AAOs of IA&AD also has been fixed w.r.t. the upgraded pre-revised pay scale (75000-12000 pertaining to GP 4800). That is 2 different manners of fixation were applied in similar situations. Further, Pay of Directly recruited SO(A) after 1.1.2006 has also been fixed at Rs.13150 with grade pay Rs.4800 from date of their recruitment.

The following illustration would further depict the discrimination:

Sl. No	POST	DEPT	UPGRADED GRADE PAY	PRE-REVISED PAY SCALE	UPGRADED TO	PAY FIXED WRT TO FITMENT TABLE	PAY FIXED @
1	ASSTS/PA	CSS	4600	6500-10500	7450-11500	7450-11500	7450x1.86 (13860)
2	SO(A) /AAO	IA&AD	4800	6500-10500	7500-12000	7500-12000	7500x1.86 (13950)
3		Defence Accounts Department (DAD) (OWING TO IMPLEMEN-TATION OF JUDGEMENTS	4800	6500-10500	7500-12000	7500-12000	7500x1.86 (13950)
4	SO(A)	DAD REMAINING AAOs)	4800	6500-10500	7500-12000	6500-10600	6500x1.86 (12090)

Hence in order to avoid discrimination, the pay of the SO(A)/AAOs of DAD should be fixed as per 3 above in the illustration by fixing their pay wrt upgraded pre-revised pay scale of 7500-12000 as follows:

GRADE PAY ---Rs.4800/-

FITMENT TABLE TO BE RECKONED ---7500 12000 (Pre-revised upgraded pay scale as applied in case of ASST/PAs of CSS)

PAY FROM THE DATE OF PROMOTION (WHICH FALLS BETWEEN 01.01.06 and 29.08.08) to be fixed ----@7500x1.86=Rs.13950

TOTAL PAY ---13950+4800

Promotion of an Auditor to the post of Section Officer (Accounts)

(A) Under 5th CPC

Date of promotion as SO(A)	29.12.2007
Pay Scale of Auditor	4500-125-7000
Existing Pay as Auditor	: Rs.5750
Pay fixed on promotion as SO(A) after passing SAS part I and Part II in pre-revised scale	Rs.6500)on 29.12.2007) as SO(A) in the scale of Pay of Rs.6500-200-10500

(B) Under 6th CPC

Basic pay drawn in the (pre-revised Scale (6500-200-10500)	Rs.6500/-
Pay fixed by department on 29.12.2007	6500 * 1.86 = Rs.12090/-
Pay fixed based on court judgment	Scale 6500-200-10500 and 7450-225-11500 both merged and upgraded to Scale 7500-12000 w.e.f. 1.1.2006 ie., 7500 * 1.86 = 13950. Since pre-revised scale of 6500-10500 pertaining to SO(A) has been upgraded to 7500-12000 w.e.f. 1.1.2006, the

	fixation of pay in 6500-200-10500 after 1.1.2006 is not correct. Similarly the pay of ASST/PAs of CSS has been fixed in upgraded scale of 6450-11500 only.

5. Initially this matter was heard by the Division Bench of this Tribunal comprising Hon'ble Mr. K. Elango, Judicial Member and Hon'ble Mr. Naresh Gupta, Administrative Member. The decision of the Allahabad Bench of Central Administrative Tribunal has been cited before the Division Bench of this Tribunal. The Division Bench expressed its inability to agree with the view taken by the Allahabad Bench of the Central Administrative Tribunal in OA.293/2011 and, therefore, referred the matter to the Hon'ble Chairman of the Central Administrative Tribunal for placing the same before the Larger/ Full Bench by an order dated 3.12.2014. For better appreciation, we may refer the relevant portion of the order of the Division Bench and it is thus:

> 13. A reading of the above provisions/Notes/Clarifications makes it clear that it is only the pre-revised pay that has to be taken as the pay of the Government servant on the day of fixation in the revised pay structure, regardless of whether it is done w.e.f. 01.01.2006 or, at the option of the Government servant, on the date of promotion given to him after 01.01.2006. The upgraded structure based on the VI CPC comes into effect only from the date of implementation of the recommendations. It is not that the merger/upgradation has effect from 01.01.2006 when a Government servant opts for the revised scales of pay w.e.f. date of his promotion after 01.01.2006. Any argument to the contrary is fallacious. With great respect it has to be said that it appears that the above Notes under Rule 7 of CCS (RP) Rules 2008, the Explanatory Memoranda to the CCS (RP) Rules, 2008 and the clarifications issued in OM dated 13.09.2008 were not brought to the notice of the Allahabad Bench of CAT in the case of Neeraj Kumar Srivastava & Ors. Vs. UOI & Ors. (supra). The other Coordinate Benches have replied upon the decision of the Allahabad Bench of CAT to extend the same benefit and did not examine independently the issue with reference to the Rules. The Hon'ble High Courts of Allahabad, Andhra Pradesh and Delhi have upheld the decision of the Tribunal without going into the question of law, that is the above Rules. In this regard, it may be worthwhile to quote the observations of the Hon'ble Supreme Court in the case of State of U.P. & Anr. Vs. Synthetics and Chemicals Ltd. And Anr., in para 41 of the order:

"41. .....the English Courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. A decision passed sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind (Salmond 12th Edition). In Lancaster Motor Company (London) Ltd. V. Bremith Ltd. 1941 IKB 675, the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in Municipal Corporation of Delh v. Gurnam Kaur AIR 1989 SC 38. The Bench held that, 'precedents sub-silentio and without argument are of no moment'.....Uniformity and consistency are core of judicial discipline. But that which escapes in the judgement without any occasion is not ratio decedendi. In Sharma Rao v. State of Pondicherry AIR 1967 SC 1680 it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles laid down there-in'. .....but rigidity beyond reasonable limits is inimical to the growth of law."

6. The Hon'ble Chairman has been pleased to constitute this Full Bench to hear the matter.

7. Heard Shri R. Muthukumaraswamy, Learned Senior Counsel appearing for the applicants and Shri K. Ramanatha Reddy, Learned Central Government Standing Counsel appearing for the respondents.

8. It is contended by the learned counsel appearing for the applicants that the Comptroller and Auditor General of India which is the higher authority in the Accounts extended the benefit of fixation of pay basing on the upgraded pay scale and, therefore, there is no reason for the respondents to withdraw the said benefit to the applicants. The case of the applicants stands on the same footing as that of the applicants in OA.293/2011 on the file of Allahabad Bench of the Central Administrative Tribunal and the said OA came to be allowed thereby fixing the pay of the applicants therein in the upgraded pay scale. While fixing the pay in implementation of VI CPC, non extension of the benefit of the Judgment

passed in OA.293/2011 to the applicants herein who are similarly situated amounts to violation of Articles 14 & 16 of the Constitution. Indeed, Ministry of Finance, Department of Expenditure has allowed the similar benefit in the case of Assistants/PAs who were recruited/promoted after 1.1.2006 and as such, the action of the respondents in not extending the same benefits to the applicants is discriminatory and arbitrary.

9. Per contra, the learned counsel appearing for the respondents submits that the Judgement of Allahabad Bench of the Central Administrative Tribunal has not reached finality since the Writ Petition filed questioning the said Judgement is pending disposal on the file of the High Court of Allahabad. The other Benches Judgements of the Central Administrative Tribunal are based on the Judgement of the Allahabad Bench and no separate reasons have been indicated in the orders. A further submission has been made that the crucial point for fixation of pay in implementing the recommendations of the VI CPC is linked to the actual pay drawn in the pre-revised scale on the cut off date. Therefore, what is relevant is the pre revised pay actually drawn as on the cut off date ie. 1.1.2006 or later ate as elected by an employee. In terms of Rule 7 read with Rule 3 of CCS (RP) Rules, 2008, in case of those electing to be governed by the revised structure on and from 1.1.2006, pay in the Pay Band (Revised Structure) will be 1.86 times of the existing basic pay as on 1.1.2006. The existing basic pay means pay drawn in the prescribed existing scale of pay which in turn means, present scale applicable as on 1.1.2006. The department implemented the Judgement of Allahabad Bench of the Central Administrative Tribunal in OA.293/2011

subject to the outcome of the W.P. pending in the High Court of Allahabad and, therefore, mere implementation of the Judgement in OA.293/2011 cannot be construed that the finding recorded in OA.293/2011 reached finality.

10. Before dwelling deep into the rival contentions of the parties, it is trite to note Rules 5 & 11 of the CCS (RP) Rules, 2008 and they are thus:-

"5. Drawl of pay in the revised pay structure.-

Save as otherwise provided in these rules, a Government servant shall draw pay in the revised pay structure applicable to the post to which he is appointed;

Provided that a Government servant may elect to continue to draw pay in the existing scale until the date on which he earns his next or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale.

Provided further that in case where a Government servant has been placed in higher pay scale between 1.1.2006 and the date of notification of these rules on account of promotion, upgradation of pay scale etc., the Government servant may elect to switch over to the revised pay structure from the date of such promotion, upgradation etc.,

(1) The option under the provisos to Rule 5 shall be exercised in writing in the form appended to the Second Schedule so as to reach the authority mentioned in sub rule (2) within three months of the date of publication of these rules or where an existing scale has been revised by any order made subsequent to that date, within three months of the date of such order....."

"11. Fixation of pay in the revised pay structure subsequent to the 1st day of January, 2006.- Where a Government servant continues to draw his pay in the existing scale and is brought over to the revised pay structure form a date later than the Ist day of January, 2006, his pay from the later date in the revised pay structure shall be fixed in the following manner.-

(i) Pay in the pay band will be fixed by adding the basic pay applicable on the later date, the dearness pay applicable on that date and the pre-revised dearness allowance based on rates applicable as on 1.1.2006. This figure will be rounded off to the next multiple of 10 and will then become the pay in the applicable pay band. In addition to this, the grade pay corresponding to the pre-revised pay scale will be payable...."

As per Rule 5, a Government servant shall draw pay in the revised pay structure applicable to the post to which he is appointed. However, a Government servant can elect the revised pay scale either from 1.1.2006 or

the date of next increment or any subsequent increment in the existing scale or until he vacates his post or ceased to draw pay in that scale. In terms of Rule 11, where a Government servant continues to draw his pay in the existing scale and he is brought over to the revised pay structure from a date later than 1.1.2006, his pay from the later date in the revised pay structure will be fixed by adding the basic pay applicable on the later date, the Dearness Pay on that date and the pre-revised Dearness Allowance based on the rates applicable as on 1.1.2006. This figure will be rounded off to the next multiple of 10 and will then become the pay in the applicable Pay Band in addition to the Grade Pay corresponding to the pre-revised pay scale payable.

11. For completion of narration of facts, it is useful to refer to the relevant portion of the OM dated 30.8.2008 emanating from Ministry of Finance, Department of Expenditure (Implementation Cell) and it is thus:-

> **(ii) The tables in Annex-I will be applicable in cases where normal replacement pay scales have been approved by the Government. In cases of upgradation of posts and merger of pre-revised pay scales, fixation of pay will be done as prescribed in Note 2A and 2B below Rule 7(1) and in the manner indicated in Illustration 4A & 4B respectively of the Explanatory Memorandum to the CCS (RP) Rules, 2008.**

12. Note 2A below Rule 7 of CCS (RP) Rules, 2008 indicates the fixation of pay in the applicable Pay Band will be done in the manner prescribed in accordance with Clause (A) (i) and (ii) of Rule 7 by multiplying the existing basic pay as on 1.1.2006 by a factor of 1.86 and rounding the resultant figure to the next multiple of ten.

Note 2B below Rule 7 of CCS (RP) Rules, 2008 indicates that in the case of merger of pay scales, pay in the revised pay band will be fixed in the

manner prescribed in accordance with Clause (A) (i) and (ii) of Rule 7 by multiplying the existing basis basic pay as on 1.1.2006 by a factor of 1.86 and rounding the resultant figure to the next multiple of ten.

It is pertinent to note from the above referred Notes what is relevant is the existing basic pay as on 1.1.2006. What is existing pay is defined in Rule 3 of the Rules and it is thus:

> **'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.,**

Existing pay is defined in sub rule (2) of Rule 3 and it is as follows:-

> **'Existing scale' in relation to a Government servant means the present scale applicable to the post held by a Government servant (or, as the case may be, personal scale applicable to him) as on the 1st day of January, 2006 whether in a substantive or officiating capacity.**

13. The applicants exercised their option as provided under provisio to Rule 5 and sought for fixing of their pay on the date of promotion. As on the date of promotion, they were drawing a scale of pay applicable to Clerk/Auditor. A combined reading of Rules 5, 7, 11 and Notes 2A and 2B below Rule 7 does not give any room for doubt that what is relevant for fixation of pay in the revised pay scales is actual pay drawn by the applicants on the date of promotion. The Allahabad Bench of the Central Administrative Tribunal has not taken note of Notes (A) and (B) below Rule 7 (1) which have a statutory force while adjudicating the issue. Therefore, we are in respectful disagreement with the view taken by the Allahabad Bench of the Central Administrative Tribunal. The other coordinate Benches have relied upon the decision of the Allahabad Bench of the Central Administrative Tribunal to

extend the same benefits and did not examine independently the issue with reference to the Rules.

14. In view of the above discussion, we find that the pay of the applicants is to be fixed on the date of their promotion with reference to the actual pay drawn by them on the relevant date. The plea advanced by the respondents that their pay is to be fixed with reference to the upgraded scale cannot be accepted. If such a plea is accepted, there will be a great anomaly in the pay between Clerk/Auditor promoted to the post of Assistant Accounts Officer prior to 1.1.2006 and Clerk/Auditor promoted to the post of Assistant Accounts Officer after 1.1.2006. Accordingly these OAs are disposed of directing the respondents to fix the pay of the applicants taking into consideration the actual pay drawn by them on the date of their respective promotions. No order as to costs.