

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No.180/00569/2014**

**Tuesday, this the 3<sup>rd</sup> day of April, 2018**

**CORAM:**

**HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER  
HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER**

1. All India Naval Clerks Association  
represented by the General Secretary,  
All India Naval Clerks Association,  
Door No.39/3293C/2<sup>nd</sup> Floor,  
KSN Menon Road, Kochi – 16.
2. T.M.Mathew,  
S/o.T.J.Mathai,  
Lower Division Clerk,  
Naval Ship Repair Yard,  
Naval Base, Kochi.
3. K.B.Shaji,  
S/o.late K.K.Bhaskaran,  
Headquarters, Southern Naval Command,  
Naval Base, Kochi – 04.  
Kallumadathil House, Njarakkal P.O.,  
Manjanakkad, Ernakulam – 682 505.
4. Santha Gopinath,  
Office Superintendent,  
Naval Ship Repair Yard,  
Naval Base P.O., Kochi – 04.  
Kozhakkappilil House,  
Ramamangalam P.O., Ernakulam.
5. C.U.Molly,  
W/o.Sabu P Abraham,  
Office Superintendent,  
INS Venduruthy, Naval Base,  
Kochi – 4.

6. P.Elizabeth,  
W/o.D.Thimothiyos,  
Office Superintendent,  
Material Organization,  
Naval Base, Kochi – 4.  
Panikkaveetil Vadakkethil,  
P.O.Pallippadu, Aleppy District.
7. K.J.Mary Margeret,  
W/o.K.J.Mathew,  
Office Superintendent,  
INS Garuda, Headquarters,  
Southern Naval Command,  
Naval Base, Kochi – 4.
8. P.Kunjambu,  
S/o.K.Govind,  
Assistant, INS Garuda,  
Southern Naval Command,  
Naval Base, Kochi – 4.

...Applicants

**(By Advocate Mr.S.Radhakrishnan)**

**V e r s u s**

1. Union of India represented by  
the Secretary to the Government of India,  
Ministry of Defence, New Delhi.
2. The Flag Officer Commanding in Chief,  
Headquarters, Southern Naval Command,  
Naval Base, Kochi – 04.
3. Chief Staff Officer (P&A),  
Headquarters, Southern Naval Command,  
Naval Base, Kochi – 04.
4. The Director,  
Principal Controller of Defence Accounts (Navy)  
(Pay Section), No.1 Cooperage Road,  
Mumbai – 400 001.

...Respondents

**(By Advocate Mr.N.Anilkumar,Sr.PCGC [R])**

This application having been heard on 1<sup>st</sup> March 2018 the Tribunal on 3<sup>rd</sup> April 2018 delivered the following :

**ORDER**

**Per HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER**

The applicants are All India Naval Clerks Association and 7 other individual civilian employees of the Southern Naval Command. They are aggrieved by the refusal to grant the benefit of fixation of initial pay in the revised pay structure in accordance with Rule 7 of CCS (Revised Pay) Rules, 2008 which is in *pari materia* with Civilians in Defence Services (Revised Pay) Rules, 2008 (hereinafter referred to as CDS (RP) Rules, 2008) applicable to them. Prior to the implementation of the 5<sup>th</sup> Central Pay Commission (CPC) the ministerial cadre of civilians working in the Indian Navy were divided in to five grades viz. Lower Division Clerk (for short, LDC), Upper Division Clerk (for short, UDC), Office Superintendent Grade II, Office Superintendent Grade I and Administrative Officer Grade II. According to the applicants the 5<sup>th</sup> CPC had clubbed together 10% of the UDC discharging complex duties and Office Superintendent Grade II in to the unified cadre of Assistant. The Assistants were drawing the 5<sup>th</sup> Central Pay Commission (for short, CPC) pay scale of Rs.5000-8000 and Office Superintendents were drawing the scale of Rs.5500-9000. On implementation of the Assured Career Progression Scheme (ACP Scheme) the LDCs and UDCs were granted their 2<sup>nd</sup> and 1<sup>st</sup> financial upgradations and were placed in the scale of pay of Assistants at Rs.5000-8000 (pre-revised) when they were granted the 2<sup>nd</sup> and 1<sup>st</sup> financial upgradations respectively. However, after the 6<sup>th</sup> CPC the CDS (RP) Rules, 2008 clubbed together the posts carrying the pay of

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Rs.5000-8000 (S-9) and Rs.5500-9000 (S-10) and placed them in the revised pay scale of Rs.6500-10500 by way of merger of two posts in Pay Band -2 (for short, PB-2) with Grade Pay Rs.4200/-. The Ministry of Defence issued Annexure A-3 circular in this regard making it clear that the order will take effect from 1.1.2006. As stated above, the applicants' grievance is about the manner in which the initial pay is fixed in the revised pay structure in accordance with CDS (Revised Pay) Rules, 2008.

2. Rule 7 of the CDS (RP) Rules, 2008 (a copy of which is produced as Annexure A-4) reads as follows :

“1. the initial pay of a Government servant who elects, or is deemed to have elected under Sub Rule 3 of Rule 6 to be governed by the revised pay structure on and from the 1<sup>st</sup> day of January 2006, shall, unless in any case the President by special order otherwise directs, be fixed separately....

(A) In the case of all employees :-

(i) The pay in the pay band/pay scale will be determined by multiplying the existing basic pay as on 1.1.2006 by a factor of 1.86 and rounding off the resultant figure to the next multiple of 10.”

3. The grievance of the applicants their pay has been fixed by the respondents in the revised pay scale taking the pay drawn before the implementation of the merger of posts as their basic pay as on 1.1.2006. According to the applicants this calculation was beneficial for those persons who are drawing their pay in the pre-revised scale at Rs.6500/- or above but those persons who had not reached the stage of Rs.6500/- either in the scale of Rs.5000-8000 or in the scale of Rs.5500-9000 this calculation has resulted in

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huge financial loss. The applicants have furnished a table of fixation of initial pay of the individual applicants in this O.A which ought to have been applied to them and indicating their loss, as below :

Sl. No.	Name	Pay as on 31.12.05 (Rs.5000-8000). Rs.	Pay as on 1.1.06 (Rs.6500-10500). Rs.	Initial pay granted in the revised pay structure as on 1.1.06. Rs.	Eligible initial pay as on 1.1.06. Rs.6500 x 1.86. Rs.	Difference in basic pay as on 1.1.06. Rs.
1	T.M.Mathew	5300	6500	5300 x 1.86=9858	12090	2230
2	K.B.Shaji	5300	6500	5300 x 1.86=9859	12090	2230
3	Santha Gopinath	5150	6500	5150 x 1.86=9579	12090	2230
4	C.U.Molly	5750	6500	5750 x 1.86=10695	12090	1390
5	Elizebeth	5300	6500	5300 x 1.86=9858	12090	2230
6	K.J.Mary	5300	6500	5300 x 1.86=9859	12090	2230
7	P.Kunjambu	5750	6500	5750 x 1.86=10695	12090	1390

4. Applicants point out that in Annexure A-4(a) pay fixation of Applicant No.2 existing pay has been taken as Rs.5150/- in the scale of Rs.5000-150-8000 and pay in the revised pay band has been fixed at Rs.9580/- causing a huge financial loss to him which will have adverse impact on his entire service including pension.

5. Explaining all these facts the Applicant No.1 association submitted Annexure A-5 representation on 29.9.2008 to the Flag Officer-Commanding -in-Chief wherein it was stated as the pay scale of the Assistants was revised from Rs.5000-8000 to Rs.6500-10500 with effect from 1.1.2006 and they are

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to be placed in the scale of Rs.6500-10500 with effect from 1.1.2006 and hence they are entitled to be in the PB-2 with Grade Pay Rs.4200/- from 1.1.2006 and hence the Assistants and Office Superintendents drawing salary in the pre-revised scale of pay Rs.5000-8000 and Rs.5500-9000 are entitled to get their salary fixed in the corresponding scale of Rs.6500-10500 with Grade Pay Rs.4200/- with effect from 1.1.2006. By way of reply the Directorate of Civilian Personnel in Annexure A-6 communication dated 6.10.2008 intimated the Applicant No.1 that the upgraded post will come into effect after obtaining concurrence from the Ministry of Defence; but nothing is mentioned about the issue raised by the Applicant No.1 regarding the fixation of initial pay in the revised pay structure. Again Applicant No.1 association submitted Annexure A-7 representation on 23.10.2008 requesting for parity between Assistants in the Central Secretariat and which had been recommended by the 6<sup>th</sup> CPC to have a uniform scale of Rs.6500-10500 to all Assistants with retrospective effect from 1.1.2006. The Integrated Headquarters of the Ministry of Defence vide Annexure A-8 communication dated 6.11.2008 stated that in case of upgradation of post as a result of 6<sup>th</sup> CPC recommendations the fitment table attached to the O.M dated 13.10.2008 (Annexure A-8[2]) has to be followed.

6. The applicants state that pre-revised scale is not the scale before the merger but it is scale after the merger but before revision of these scales on the 6<sup>th</sup> CPC and therefore the pre-revised scale specified in Annexure A-8(2)

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O.M dated 13.10.2008 can only be the scale after the merger which came into force with effect from 1.1.2006. Referring to Annexure A-9 order of this Tribunal wherein it was held that the salary first as on 1.1.2006 has to be notionally enhanced and thereafter resort to fixation of initial pay in the revised pay structure, the Applicant No.1 had sent another representation dated 5.8.2013 (Annexure A-10). On 29.10.2013 the Respondent No.2 informed the Applicant No.1 vide Annexure A-11 that the issue raised in Annexure A-10 representation was taken up with the Respondent No.4. Later Respondent No.2 sent Annexure A-1 communication to the Chief of Naval Staff stating that the Respondent No.4 has opined that pay is to be fixed by multiplying the factor of 1.86 with basic pay drawn in the pre-revised scale in respect of pay fixation in cases where pay scales have been merged. Annexure A-2 is the copy of the impugned letter from the office of the Respondent No.4.

7. The applicants state that there were no post of Assistants, Office Superintendent Grade II as on 1.1.2006 and there were no S-9 and S-10 scale of pay and that the above post and the scales came to an end on 31.12.2005 and therefore from 1.1.2006 the applicants were in the upgraded revised pay scale of Office Superintendent and their initial pay ought to have been revised upon the minimum of the pay scale of Rs.6500-10500. The applicants seek the reliefs as under :

1. Call for the records connected with the case.

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2. Declare that the Assistants in the pay scale of Rs.5000-8000 & Office Superintendent in the pay scale of Rs.5500-9000/- were inducted into the unified cadre of Office Superintendent in the scale of pay of Rs.6500-10500/- with effect from 1.1.2006.

3. Declare that the fixation of initial pay in the revised pay structure as per Rule 7 of the CCS (RP) Rules, 2008 should be based on the salary actually due as on 1.1.2006.

4. Declare that Annexure A-2 communication issued by the 4<sup>th</sup> respondent is patently illegal, wrong and not sustainable in the eye of law.

5. Set aside Annexure A-1 and Annexure A-2 communications.

6. Direct the respondents to fix the initial pay of the applicants including all the members of 1<sup>st</sup> applicant, in the revised pay structure by fixing their salary in the revised pay scale of Rs.6500-10500/- as on 1.1.2006 with all consequential benefits.

7. Grant such other relief as this Hon'ble Tribunal may deem fit, just and proper in the facts and circumstances of the case.

8. Respondents filed a reply statement producing copies of Annexure R-1 and Annexure R-2 O.Ms issued by the Department of Expenditure, Ministry of Finance indicating the fitment table with the basic pay in the pre-revised scale has been reckoned for the purpose of revised pay in the 6<sup>th</sup> CPC. They have also relied on Annexure R-2 which is corresponding to Annexure A-8(2).

9. We have heard Shri.S.Radhakrishnan, learned counsel for the applicants and Shri.N.Anilkumar, learned Sr.PCGC (R) for the respondents. Perused the records.

10. The short question that arises for consideration is as to how to fix the initial pay of the applicants including all the members of the Applicant No.1

association in the revised pay structure with effect from 1.1.2006. It is not in dispute that vide Annexure A-3 order of the Ministry of Defence read with Clause (ii) Section (ii) Part B of Annexure A-4, CDS (RP) Rules, 2008 the posts carrying Rs.5500-9000 and Rs.5000-8000 was revised to Rs.6500-10500 in PB-2 with Grade Pay Rs.4200/- with effect from 1.1.2006. The applicants rely on the aforequoted provisions in Rule 7 CDS (RP) Rules, 2008 (see para 1 of the order above).

11. The term 'existing basic pay' appearing in Rule 7 (1)(A)(i) is the eye of the vortex – ie. the controversy involved in this case. It is worth reading the provision in Rule 7 again :

“the pay in the pay band/pay scale will be determined by multiplying the existing basic pay as on 1.1.2006 by a factor of 1.86 and rounding off the resultant figure to the next multiple of 10.”

12. The term 'existing basic pay' has been defined in Rule 3 of the CDS (RP) Rules 2008 as under :

“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.

This leads us to examine as to how the term 'existing scale' has also been used in the CDS (RP) Rules 2008. Rule 3 (2) defines the term 'existing scale'.

It reads :

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

Explanation – In the case of a Government servant, who was on the 1<sup>st</sup> day of January 2006 on deputation out of India or on leave or on foreign service, or who would have on that date officiated in one or more lower posts but for his officiating in a higher post, “existing scale” includes the scale applicable to the post which he would have held but for his being on deputation out of India or on leave or on foreign service or, as the case may be, but for his officiating in a higher post.”

13. The aforequoted definitions of 'existing basic pay' and 'existing scale' are really essential for interpreting Rule 7 and for fixation of initial pay of the officials in the revised pay structure as per CDS (RP) Rules, 2008. A conjoint reading of the aforequoted definitions in CDS (RP) Rules, 2008 will reveal that the existing basic pay as on 1.1.2006 is the pay drawn in the prescribed 'existing scale of pay'. It can be interpreted only as the pay applicable to the post payable to Government servant as on 1-1-2006, because the pay in the old scale has ceased to exist on 1-1-2006 and a new pay scheme systemically different from the old scale of pay has come into existence from that day. If the framers of the rules had used the term 'old pay scale' the interpretation contained in Annexure A2 by respondent No.4 would have been correct.

14. It has to be borne in mind that CDS (RP) Rules, 2008 is a rule notified under the proviso to Article 309 of the Constitution of India made by the President and hence it has a statutory status in the eye of law. Therefore any interpretation of the provisions in the said rules has to be in terms of the rules itself. Any O.M issued by way of clarification, explanation or prescribing the modalities for fixation of initial pay of the Government employees as per the revised pay structure can be only in terms of what is stated in the rules.

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15. As observed above, going by the definitions of the terms 'existing basic pay' and 'existing scale' in the CCS (RP) Rules, 2008, Rule 7 fixation can be only in accordance with the afore-mentioned definitions of 'existing basic pay' and 'existing scale' only and not by way of administrative O.Ms and instructions contained in Annexure A-1 or Annexure A-2 communications. Therefore, we are inclined to quash and set aside Annexure A-1 and Annexure A-2 communications. We do so. We hold that the applicants are entitled to the declaration as prayed for and that the respondents should be directed to fix the initial pay of the applicants including all the members of Applicant No.1 association in the revised pay structure by fixing their salary in the revised pay scale of Rs.6500-10500 treating Rs 6500/- as the existing basic pay as on 1.1.2006 with all consequential benefits. We order accordingly. This order shall be complied within 3 months from the date of receipt of a copy of this order.

16. In the result, the O.A is allowed. Parties shall suffer their own costs.

(Dated this the 3<sup>rd</sup> day of April 2018)

**(E.K.BHARAT BHUSHAN)**  
**ADMINISTRATIVE MEMBER**

**(U.SARATHCHANDRAN)**  
**JUDICIAL MEMBER**

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**List of Annexures in O.A.No.180/00569/2014**

- 1. Annexure A-1** - True copy of the communication issued by the Headquarters Southern Naval Command to the Chief of Naval Staff, No.CS 2759/4 dated 10.3.2014 with copy to the 1<sup>st</sup> applicant.
  - 2. Annexure A-2** - True copy of the letter No.Pay/I/Pay Tech dated 24.2.2014 issued by the 4<sup>th</sup> respondent to the Staff Officer, Headquarters, enclosed along with Annexure A-1 letter.
  - 3. Annexure A-3** - True copy of the order No.CP(P)/8416/VI CPC/ADM/09/421/US(MP)/D(N-II) dated 5.4.2010.
  - 4. Annexure A-4** - True copy of the CDS(RP) Rules, 2008.
  - 5. Annexure A-4(a)** - True copy of the pay fixation order of the 2<sup>nd</sup> applicant.
  - 6. Annexure A-5** - True copy of the representation dated 29.9.2008.
  - 7. Annexure A-6** - True copy of the letter No.CP(P)/8416/VI CPC dated 6.10.2008 from the Directorate of Civilian Personnel.
  - 8. Annexure A-7** - True copy of the representation submitted by the 1<sup>st</sup> applicant to the Chief of the Naval Staff dated 23.10.2008.
  - 9. Annexure A-8** - True copy of the letter No.CP(P)/8416/VI CPC dated 6.11.2008.
  - 10. Annexure A-9** - True copy of the order passed by this Hon'ble Tribunal in O.A.No.856/2011 dated 13.7.2012.
  - 11. Annexure A-10** - True copy of the representation dated 5.8.2013.
  - 12. Annexure A-11** - True copy of the letter dated 29.10.2013.
  - 13. Annexure R-1** - Copy of Govt. of India, Ministry of Finance, Department of Expenditure (Implementation Cell) Office Memorandum F.No.1/1/2008-IC dated 30<sup>th</sup> August 2008.
  - 14. Annexure R-2** - Copy of Govt. of India, Ministry of Finance, Department of Expenditure Office Memorandum F.No.1/1/2008-IC dated 13<sup>th</sup> Oct. 2008.
  - 15. Annexure R-3** - Copy of IHQ of MoD (Navy) letter No.CP(P)/8416/VI/CPC/Policy dated 22<sup>nd</sup> Aug 2014.
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