GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

S.No. PC-VI/ 371
No. PC-VI/2014/MISC/04 **New Delhi, dated 24.10.2016**

The General Manager/ CAOs,
All Zonal Railways/ Production Units
(As per mailing list)

Sub: Sharing of judgement – Judgement dated 09.09.2016 of CAT/ Patna Bench in O.A. No. 441/2014 (Dharmendra Singh & Ors Vs UOI & Ors) on the issue of fixation of pay with reference to higher pre-revised pay scales of the upgraded/ merged scales w.e.f the date of promotion.

A number of court cases have been filed by the employees viz. Section Officer (A)/ Sr. Section Officer (A) etc. (in the pre-revised scales of Rs. 6500-10500/ 7450-11500) of various Railways before various benches of Hon'ble Central Administrative Tribunal seeking fixation of pay in the revised pay structure of grade pay of Rs. 4800/- based on upgraded pay scale in pre-revised terms viz. Rs. 7500-12000 from the date of their promotion. Similarly, some employees of certain other categories in scale Rs. 6500-10500 have filed cases for fixation in revised pay structure of PB-2 GP Rs. 4600 based on fixation table of pre-revised scale Rs. 7450-11500. The issue has been gone into the merits by CAT/ Patna vide their judgement dated 09.09.2016 in O.A. No. 441/2014 (Dharmendra Singh & Ors Vs UOI & Ors). Hon'ble Tribunal has dismissed above OA vide orders dated 09.09.2016 (**copy enclosed**) holding as follows:-

"43. As we have stated earlier, the claim of the applicants is not tenable as per the rules. This Bench in OA No. 442/2014 did not examine the matter independently. Rather, the direction was to extend the benefit of the judgement of Allahabad Bench subject to the outcome of the SLP. The Allahabad Bench judgement has already been examined in detail by the Principal Bench and the Full Bench and found not acceptable. We have also examined the Rules in detail and given our conclusions above.

44. On detailed examination, we have come to the conclusion that the applicants' prayer is not acceptable. All these reasonings which we have given in detail in this order and our independent examination were not available before the Hon'ble Patna High Court. It also appears that the judgements of the Principal Bench and the Full Bench of the Tribunal referred to above were not before the Hon'ble Patna High Court.

45. Accordingly, we find no merit in the OA. The OA is, therefore dismissed with no order as to costs."

Ministry of Railways
रेलवे बोर्ड/Railway Board
अनुलग्नक सहित जारी-
Issue with Enclosure
हस्ताक्षर
Signature
जारी की तिथि 27/10/16
Date of Issue

...2/-

2. The Railways may bring the above position to the notice of Railway Advocate contesting such other cases and take necessary action to file a copy of above judgement before the respective Tribunals.

3. Receipt of this letter may please be acknowledged.

DA: As above

(M. K. Panda)
Jt. Director, Pay Commission
Railway Board

O/C

FREE COPY U/R 22 OF CAT (PROCEDURE) RULES

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

Registration No. OA 441 of 2014

Reserved on : 25/05/2016
Date of Order: 09/09/2016

CORAM

HON'BLE MRS. URMITA DATTA [SEN], JUDICIAL MEMBER
HON'BLE MR. A.K. UPADHYAY, ADMINISTRATIVE MEMBER

1. Dharmendra Singh, son of Braj Kishore Singh, resident of 402, Vasudeo Jhari Apptt,. Vednagar, District-Patna.
2. Dinesh Prasad, son of H. C. Prasad, resident of At Biscoman Colony, Kumharar, District-Patna.
3. Ajit Kumar Singh, son of Sri Badshah Singh, resident of Opp. Navjyoti School, Kurji Balu Par, District-Patna.
4. Raj Kumar, son of A. Prasad, resident of SBI Colony Digha, District-Patna.
5. Om Prakash, son of Keshaw Sharma, resident of Tilak Nagar, Katira ARA, P.O.-Nawada, District-Bhojpour.
6. Nabendu Kumar Mitra, son of Sri Dilip Kumar Mitra, resident of Ghagha Ghat Road, Near Malaria Office, District-Patna.
7. Rajneesh Ranjan, son of Sri Birendra Kumar Sinha, resident of RPS More, Danapur, District-Patna.
8. Sidhnath Prasad, son of Sri Shyam Narayan Prasad, resident of Flat No. 402, CIBA place, Jagdeo Path, District- Patna.
9. Arvind Kumar, son of Sri Gopal Krishna Prasad, resident of 105, Nilambar Apptt. East Boring Kenal Road, District-Patna.
10. Suraj Kumar, son of Lakhan Kumar Sinha, resident of Adars colony, West Patel Nagar, District-Patna.
11. Barun Kumar Sinha, son of Sri Dwijendra Narayan Sinha, resident of Sukumar Bhawan, B.M.Das Road, District-Patna.
12. Abhay Kumar, son of Sri Ramdeo Pd. Singh, resident of Ranipur, Patna City, District- Patna.
13. Sushil Kumar, son of Sri Upendra Singh, resident of SBI Colony, Kurji Balu Par, District-Patna.
14. J.P.Pandit, son of Sri Jhulan Pandit, resident of Mitra Manda Colony, Anishabad, District-Patna.
15. Sanjay Kumar, son of Sr. Kishori Saw, resident of Road No. 4/E, Adarsh Colony, Khemnichak, District-Patna.
16. Arvind Paswan, son of Rambabu Bhagat, resident of Block-A/104, Rly Colony, Ramashish Chowk, Hajipur, District-Vaishali.
17. Ajay Kumar, sonof Sri Ramkrit Rai, resident of 6 Gandhi Nagar Bairiya, District-Muzaffarpur.
18. Ram Naresh Singh, son of Sri Awadh Lal Singh, resident of Block-F/101, Rly Colony, Ramashish Chowk, Hajipur, District-Vaishali.

19. Bijendra Kumar, son of Sukhuchand Pandit, resident of Shivpuri, Chitohara, Anishabad, District-Patna.
20. Sunil Kumar, son of Lt. Hiralal Prasad, resident of Bahadurpur Bazar Samti, District-Patna.
21. Krishna Kumar Sharma, son of Sri Rajendra Sharma, resident of West from Kalyani Naka, Amgola, P.O.-Ramna, District-Muzaffarpur.
22. Mukesh Kumar, sonof Sri Sidhya Nand Singh, resident of Hakimganj Mehandiganj, Gulzarbagh, District-Patna.
23. Uma Shankar Prasad, son of Sri Yogendra Sah, resident of Vachaspati Nagar, District-Patna.
24. Rahul Anand, son of Sri Umakant Singh, resident of M.M.Colony, Sect D, Saket Vhar, Anishabad, Patna.
25. Manoj Kumar, son of Sri R.N.P.Singh, resident of R.K. Nagar, Patna.
26. Shipra Dayal, son of Dr. D. Prasad, resident of Dayal Kutir, Veer Kunwar Singh Colony, Sough of Moti Brahm, Hajipur, District-Vaishali.
27. Rupesh Kumar, son of Lt. Yugal Kishore Mahto, resident of New Patna Colony, Beur, District-Patna.
28. Surendra Prasad, son of Sri Babulal Prasad, resident of R.K.Nagar, Patna.
29. Pankaj Kumar, so of Lt. Ramavatar Pd. Sinha, resident of Moh.-Atardah (santi Puram), P.O.-Ramna, District-Muzaffarpur.
30. Rakesh Kumar, son of Lt. Ramanand Singh, resident of At+P.O.-Brahampur, Via Bhagwanpur, District-Saran.
31. Vinay Kumar, sonof R.S.Mochi, resident of R.K.Nagar, District-Patna.
32. Sanjay Kumar Sinha, son of Lt. Kameshwar Pd. Srivastava, resident of Block-A/201, Rly Colony, Ramashish Chowk, Hajipur, District-Vaishali.
33. Arun Kumar, son of Suraj Kumar, resident of At. SDO Road, Hajipur, District-Vaishali.
34. Kumar Gyanjeet, son of Ramendra Kumar Singh, resident of Dighi Kala, Hajipur, District-Vaishali.
35. Dinesh Kumar, son of Sri Vishwanath Prasad, resident of At Kashipur, Musapur Road, District-Samastipur.
36. Pramod Prasad, son of Thakan Prasad, resident of Road No. 14, H. No. 15, Ashok Nagar, Kankarbagh, Patna.
37. Binod Kumar, son of Shiv Nandan Singh, resident of Moh. Nariyal Ghat, P.O.-Digha, Patna-10.
38. Rajeev Ranjan, sono f Anandi Thakur, resident of B/4, Savitri Sadan, Gardanibag, District-Patna.

..... Applicants.

By Advocate : Shri S.K.Bariar.

-Versus-

1. The Union of India through the Chairman, Railway Board, New Delhi.
2. The Director, Pay Commission-II, Railway Board, New Delhi.
3. The General Manager, East Central Railway, Hajipur.
4. The Financial Advisor & Chief Accounts Officer, East Central Railway, Hajipur.

..... Respondents.

By Advocate :- Shri S.K.Ravi, SC.

ORDER

Per Mr. A.K. Upadhyay, A.M.:- This application has been filed for the following reliefs :-

> [i] The applicants humbly pray that the Office Order no. A-26022/02/2012-SII dated 05.01.2016 and Office Order no. Misc.-1/330/2012-PPC dated 31.12.2015 may be treated illegal and be quashed and set aside.
>
> [ii] The applicants further pray that the respondents be directed to follow the fixation letter dated 03/04.10.2012 read with letter dated 18.06.2015 by which the pay of the applicants/Stenographers Gr. II of AIR & Doordarshan was fixed at minimum of the revised pay scale of Rs. 6500-10500 of the corresponding stage of 6500 as per illustration 4A in accordance with Note 2A below Rule 7 of 6th CPC w.e.f. 01.01.2006 being the upgraded post.
>
> [iii] Pass any order/orders, as your lordships may deem fit and proper.

2. The applicants, who are 38 in number, submit that they were initially appointed as Accounts Clerk (Junior Account Assistant) in the pre revised scale of Rs. 3050-4590/- Rs. 4500-7000/-, and then promoted to the next higher post of Junior Accounts Assistant/Accounts Assistant in the pre-revised scale of Rs. 4500-7000/- Rs. 5500-9000/-. The particulars of the applicants are given at Annexure A/1.

3. Thereafter, the applicants were promoted to the post of Senior Section Officer in the pre-revised scale of Rs. 6500-10500/- after 01.01.2006 but before 31.08.2008. As per the applicants, pursuant to the 6th Pay Commission recommendation, the pre-revised scale of Section Officers (Rs. 6500-10500/-) and Senior Officer (Accounts) of Rs.

7450-11500/- were merged and upgraded to the scale of Rs. 7500-12000/- and placed in the corresponding Grade Pay of Rs. 4800/- in PB 2. The CCS (Revised Pay) Rules 2008 were notified on 29.08.2008 and made effective from 01.01.2006.

4. Shortly thereafter, Railways also notified the Railway Services (Revised Pay) Rules 2008 vide RBE No. 103/2008 dated 04.09.2008 [Annexure A/4].

5. The applicants' contention is that by virtue of the aforesaid Rules, the pay scales of the post of Section Officer (A) in the pay scale of Rs. 6500-10500/-, on which the applicants were functioning and the post of Senior Section Officer (A) in the pay scale of Rs. 7450-11500/- were both upgraded to Rs. 7500-12500/- w.e.f. 01.01.2006 and eventually placed in the Pay Band 2 with Grade Pay of Rs. 4800/- [Annexure A/5].

6. The applicants' have invited our attention to Rule 11 of the Railway Services (Revised Pay) Rules 2008 which is as follows :-

> *"**11-Fixation of pay in the revised pay structure subsequent to the 1st day of January 2006**- Where a Railway servant continues to draw his pay in the existing scale and is brought over to the revised pay structure from a date later than the 1st 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 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 to this, the grade pay corresponding to the pre-revised pay scale will be payable. Where the Railway servant is in receipt of special pay or non-practicing allowance, the methodology followed will be as prescribed in Rule 7 (I), (B), (C) or (D) as applicable, except that the basic pay and dearness pay to be taken into account will be the basic pay and dearness pay applicable as on that date, but dearness*

allowance will be calculated as per rates applicable on 01.01.2006."

7. The applicants further submit that in cases of upgradation of post and merger of pre-revised scales, fixation of pay was to be done as prescribed in Note 2 A and 2B below Rule 7 (1) and in the manner indicated in illustration 4A and $B respectively of the Explanatory Memorandum to the RS (RP) Rules 2008.

8. It has been further stated by the applicants that after the notification of the RS(RP) Rules 2008 notified vide RBE No. 103/2008 dated 04.09.2008, some clarification were sought regarding the date of next increment, the method of fixation of pay on promotion after 01.01.2006, use of fitment tables for cases of pay fixation under 11 etc. For clarifying the issues, letter dated 25.09.2008 vide RBE 132/2008 was issued on the subject "Clarification on Railway Services (Revised Pay) Rules, 2008". As per the Clarification 3 for cases of pay fixation under rule 11 of RS RP) Rules 2008, the fitment tables annexed with Boards letter dated 11.09.2008 will be used as prescribed in the provisions contained in para 2 of the said 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. Further as per Clarification 6 regarding procedure for replacing employee in upgraded scale in case of merger of scale or upgradation recommended by the 6th CPC, the incumbents will be given the higher replacement scale/Grade Pay automatically without assessment for suitability. As for pay fixation, in the case of merger it would be fixed in accordance with the fitment table annexed to

Board's letter dated 11.09.2008 and in case of upgradation, the pay in the Pay Band will be fixed with reference to fitment table corresponding to pre-revised scale. However, the Grade Pay corresponding to the upgraded post will be granted.

9. The applicants further contend that the Ministry of Finance, Department of Expenditure, issued a clarification vide U. O. No. 10/2009 IC dated 04.02.2010 to the queries made by the Railway Board [Annexure A/7].

10. The applicants have referred to one OA No. 293/2011 before Allahabad Bench of the Tribunal filed by 65 persons of the Civil Defence Account for fixation of their pay in the revised pay structure of Rs. 7500-12000/- from the date of promotion to the post of Section Officer (A) during the period 01.01.2006 to 31.08.2008. This OA was allowed by order dated 09.08.2012. As per the applicants, pursuant to a Contempt Application bearing no. 01/2013 filed by the applicants of that OA, the department has issued order dated 04.12.2013 in compliance of the Tribunal's order.

11. The applicants further submit that SO(A)/AAO of Northern Railway, RDSOs/Lucknow, East Cost Railway, Bhubaneshwar have been granted the pay scale of Rs. 7500-12000/- on the date of promotion between 01.01.2006- 31.08.2008. The applicants of the present OA filed representation. After failing to get redressal from the department, the applicants have filed this OA. The applicants have also stated that in the case of Assistants of Central

Secretariat who were granted higher pay scales, their pay was revised with reference to the pre-revised higher pay scale.

12. Respondents have filed a detailed written statement stating that the revised pay structure pursuant to 6th CPC was given effect to on 01.01.2006, but an employee was given an option to elect to come over to the revised pay structure from a date later than 01.01.2006. The principle for fixation of pay on switch over to the revised scale is that the pre-revised pay/existing pay as actually drawn in the actual pre-revised scale 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. Thereafter, to the pay in the pay band so arrived, Grade Pay has to be added with reference to the scale allowed.

13. The respondents have quoted definitions of certain terms in support of their argument from the Railway service (Revised Pay) Rules 2008, which are as follows :-

"Para-3(1)- "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.

(2) "existing scale" in relation to a Railway servant means the present scale applicable to the post held by the Railway 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.

Explanation- In the case of a Railway servant, who was on the 1st day of January, 2006 on deputation out of India or an 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 higher post.

(3) "existing emoluments" mean the sum of (i) existing basic pay, (ii) dearness pay appropriate to the basic pay and (iii) dearness

allowance appropriate to the basic pay + dearness pay at index average 536 (1982=100).

(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."

14. The respondents have further quoted extensively from the Railway service (RP) Rules 2008. We would refer to only those provisions which are relevant to this case. As per Rule 5, second proviso *"where a railway servant has been placed in a higher pay scale between 01.01.2006 and the date of the notification of these rules (i.e. 04.09.2008) on promotion, up gradation of pay scale etc., the railway servant may elect to switch over to the revised pay structure from the date of promotion, up gradation etc."* The case of the applicants falls under this category.

15. Further, Rule 11 has been quoted by the respondents. Rule 11 was also cited by the applicants, and has been quoted verbatim at para 6 of this order.

16. The respondents have cited in tabular form, the recommendation of the 6th pay commission with regard to Section Officer (Accounts) regarding grant of higher replacement pay structure of PB 2 and Grade Pay of Rs. 4800/- corresponding to the existing scale of Rs. 7500-12000/- in place of Rs. 6500-10500/- for which the replacement in the revised pay scale was PB 2 and Grade Pay was Rs. 4200/-. This was accepted by the Government. However, the respondents have stated that while recommending the revised pay structure, the 6th CPC nowhere recommended that for the purpose of fixation in revised pay structure, pay has to be fixed in up

graded pre-revised scale and thereafter in upgraded revised pay structure consisting of Pay Bands and Grade Pay.

17. Respondents have further stated that the recommendations of 6th CPC were implemented by the Railways vide statutory rules known as Railway Services (Revised Pay) Rules, 2008. These rules and various schedules/clarificatory instructions issued thereunder provide for various categories of pay structure of Railway employees and also methodology for fixation from pre-revised pay scale to revised pay structure consisting of Pay Band and Grade Pay. As per the stipulation contained under Second Schedule annexed to the Railway Services (RP) Rules 2008, the Ministry of Railway have issued schedules indicating revised pay structure for various employees vide RBE no. 108/2008 dated 11.09.2008 [Anexure R/1].

18. Subsequently, pursuant to the 6th CPC recommendations, RBE no. 124/2008 was issued on 22.09.2008 [Annexure R/2] which deals with some specified categories including Accounts Department. In para 15 of this RBE, the pay scale of Section Officer Rs. 6500-10500/- and Senior Section Officer Rs. 7450-11500/- were merged and the revised Grade Pay of Rs. 4800/- in PB2 (Rs. 9300-34800/-) were recommended.

19. Thereafter, the respondents refer to the clarifications issued by RBE no. 132/2008 dated 25.09.2008 which has also been referred by the applicants, specifically the clarification 3 and 6 of this circular.

20. Based on the RS(RP) Rules 2008, and supplementary/clarificatory instructions, the respondents argue that pay fixation in the revised pay structure under Rule 11 of RS (RP) Rules 2008 is to be made based on the actual pre-revised scale and Grade Pay is thereafter to be added corresponding to the upgraded/scale.

21. The respondents have also drawn attention to the stipulation that because of dispensing with the pre-check of pay fixation, it was made clear to the employees that the payments are being made to subject to adjustment from amounts that may be due to them subsequently, should any discrepancies be noticed later.

22. The respondents have stated that the fitment tables as contained in Annexure E of the RBE no. 108/2008 dated 11.09.20008 is to be used where normal replacement pay scale to be given. In cases of up gradation/merger of the posts, the same will be done as per Note 2A/2B below Rule 7 in accordance with the illustration 4A/4B of the Explanatory Memorandum of RS(RP) Rules 2008. The respondents have stated that this illustration makes it abundantly clear that the pay in the Pay Band is to be fixed with reference to the existing pay as on 01.01.2006 (old pay) and then applicable GP is added. This has been further reiterated in the Board's letter dated 25.09.2008.

23. The respondents have also stated that where an employee chooses to have his pay fixed later than 01.01.2006 on account of promotion, Clarification no. 2 and 3 of RBE no. 132/2008

dated 25.09.2008, clearly provide that pre-revised pay is to be reckoned in such cases and corresponding fitment table circulated by Board letter dated 11.09.2008 is to be used. As per respondents, in case a higher Grade Pay corresponding to higher pre-revised pay scale is recommended, it does not mean that the pay is to be fixed based on deemed pay in such higher pre-revised scale, because such higher pre-revised pay scale was never an actual scale as on the cut off date, nor such deemed pay was ever drawn. 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, or placed on an upgraded scale reflected by a Grade Pay. It does not mean that the higher pay scale becomes applicable even in the pre-revised scale, as the upgraded structure comes into effect only from 01.01.2006 pursuant to the 6th CPC. Any contrary fixation would amount to giving the benefit of 6th CPC even prior to the date of its effect and this will be absurd.

24. The respondents have asserted that what the applicants are seeking is contrary to the statutory provisions of Railway Service (Revised Pay) Rules 2008 and clarificatory instructions issued thereunder in consultation with the nodal ministry, i.e. Ministry of Finance.

25. As regards the order of the Allahabad Bench of the Tribunal dated 09.08.2012 in respect of Defence Accounts

Department, the respondents state that the concerned Ministry has already filed an appeal before the Allahabad High Court.

26. The respondents have explained that the applicants' case differ from that of Assistants/PS of Railway Board Secretariat because in their case the pre-revised scale of Rs. 5500-9000/- was revised to Rs. 6500-10500/- w.e.f. 15.09.2006 based on the recommendation of DOP&T to remove anomaly by RBE no. 157/2006 [Annexure R/8 and R/9]. This was at a time when the 6th CPC was in the midst of its deliberation and revised structure has not been brought into force. The 6th CPC recommended Rs. 4200 as the Grade Pay for the Assistant corresponding to the pre-revised scale of Rs. 6500-10500/-. However, the government up graded the post of Assistant and placed them in the Grade Pay Rs. 4600/- corresponding to in the pre-revised scale of Rs. 7450-11500/-. In essence, the respondents argued that the case of the Assistants is different in the sense that their pay scale was upgraded before the 6th CPC recommendations came and they actually drew the higher pay scale of Rs. 6500-10500/-. However, in their case too, the revised pay was fixed with reference to the actual pay drawn and not the higher pre-revised scale of Rs. 7450-11500/- which was ultimately allowed to them. Similarly in the case of other categories of employees who were recommended a higher Grade Pay corresponding to a higher pre-revised scale, their pay in the revised pay scale was fixed with reference to the actual pay drawn in the pre-revised scale on which the higher Grade Pay was added.

27. Respondents have stated that the Principal Bench of the Tribunal have accepted this reasoning and in OA No. 1049/2013 by order dated 24.12.2014 have rejected the claim of the applicants in that case for having their pay fixed with reference to the upgraded pay scale which they had not actually drawn. A similar view was taken by the Principal Bench in OA no. 1108/2011 by order dated 25.02.2014 in which the Tribunal distinguished the case of the Assistants as they were in the substantive scale of Rs. 6500-10500/- prior to the CPC giving its recommendations. On the basis of this distinction, the claim of the Trained Graduate Teachers in whose case the pay scales of Rs. 5000-8000/- 5500-9000 and 6500-10500/- were merged and upgraded to Rs. 7450-11500/- was rejected.

28. The respondents have also drawn our attention to the Full Bench judgment of the Tribunal's Madras Bench in which Clerks/Auditors of Defence Accounts Department who were promoted between 01.01.2006 and 29.08.2008 in the pre-revised pay scale of Rs. 6500-10500/- were seeking fixation on the basis of Rs. 7500-12000/- on the identical ground of 6th CPC recommendations. This matter was placed before the Full Bench because the Division Bench was not in agreement with the decision of the Allahabad Bench of the Tribunal. The Full Bench vide its order dated. 07.07.2015 in OA No. 173/2014 disagreed with the judgment of Allahabad Bench and held that the revised pay has to be fixed with reference to the actual pay dawn by the applicants on the relevant dates.

29. The applicants have filed a rejoinder in which they have reiterated their submissions and filed a judgment dated 06.02.2015 in OA no. 442/2014 passed by this Tribunal by which the Tribunal has directed the respondents to fix the pay sale of the applicants on the basis of the judgment of the Allahabad Bench of the Tribunal in OA No. 293/2011, subject to the outcome of the SLP, if any.

30. The applicants have also filed the judgment dated 01.10.2015 passed by the Hon'ble Patna High Court in CWJC no. 6969/2015 affirming the aforesaid judgment of the Tribunal.

31. Heard the parties and perused the documents.

32. This matter is obviously governed by Railway service (RP) Rules 2008 notified by GSR No. 643-E, dated 04.09.2008 along with explanatory memorandum and circulars. These rules were issued pursuant to the implementation of 6th pay commission's recommendation vide CCS (Revised Pay) Rules 2008 vide Ministry of Finance, Department of Expenditure notification no. GSR 622 (E), dated 29.08.2008. These rules are more or less identical. Under these rules, 36 old pay scales were revised into a much smaller number of of Pay Bands having longer span. Within each Pay Band, there were a number of Grade Pays which signified the status and rank. These rules came into effect from 01.01.2006. However, an employee had the option to have his pay revised from a date later than 01.01.2006 in which case Rule 11 was applicable for revision which has been quoted earlier. The essential difference between fixation of pay in the revised pay structure on 01.01.2006 or a later date was that in

the former case the existing basic pay was to be multiplied by a factor of 1.86 on which the prescribed Grade Pay was to be added. However, in the latter case, pay in the Pay Band was to be fixed by adding the basic pay applicable on the later date, the dearness pay applicable on that date and pre-revised dearness allowance based on rates applicable as on 01.01.2006. This difference was incorporated because on 01.01.2006, a definite index could be determined for multiplying, whereas after 01.01.2006 since the dates were variable depending on the employee's option, no fixed multiple could be provided, rather the dearness pay applicable on the later date was taken into account. These two methods are mathematically equivalent.

33. The above basic structure is not in dispute. Since the applicants chose to have their pay fixed from a later date on account of promotion, they came under Rule 11. The dispute essentially centres around what would be taken as the pre-revised basic pay as reference for fixation in the revised pay scales. This arises only in those cases where there was merger of two or more pre-revised scales into one scale, and in cases where some scales were recommended to be upgraded. The essence of dispute is that the applicants claim that they have to be notionally brought into the upgraded pre-revised pay scale first and then the pay fixation done, whereas the respondents' contention is that in all cases of pay revision, whether normal, merger or up gradation, the reference to"existing basic pay" means actual pay drawn by the employee, and

not the notional pay which was never drawn by him. The recommendation about up gradation of the pay scale was only for the purpose of establishing parity and relativity between different posts which was signified by the Grade Pay. Thus, according to the respondents, there was no recommendation by the 6th CPC nor did the Rules provide for notional placement in a higher pre-revised scale. Rules only prescribed that first the basic pay was to be revised with reference to the pay actual drawn on which the higher Grade Pay would be admissible as per the recommended up gradation.

34. The respondents also state that fixing notionally in a higher pay scale would be contrary to the Rules and anomalous because the upgraded pay scale came into effect pursuant to the implementation of 6th CPC, and a notional fixation would amount to giving the same benefit even before the 6th CPC was implemented.

35. To understand the above two contentions, we need to refer to the Rules. The cases of up gradation and merger have been dealt in Note 2A and 2B of Rule 7 of the RS(RP) Rules 2008 which deal with the question **"Fixation of initial pay in the revised pay structure"**. Note 2A and Rule 2B of Rule 7 are quoted below for batter appreciation:-

> **"Rule 7-Fixation of initial pay in the revised pay structure**
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> .....
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> .....
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> .....
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> **Note 2A**- Where a post has been upgraded as a result of the recommendations of the Sixth CPC as indicated in the Schedule to these Rules, 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 01.01.2006 by a factor of 1.86 and rounding the resultant figure

to the next multiple of ten. The grade pay corresponding to the upgraded scale will be payable in addition. Illustration 4A in this regard is in the Explanatory Memorandum to these Rules. *(Emphasis supplied).*

Note 2B- In the case of merger of pay scales, pay in the revised pay bands will be fixed in the manner prescribed in accordance with Clause (A) (i) and (ii) of Rule 7 by multiplying the **existing basic pay** as on 01.01.2006 by a factor of 1.86 and rounding the resultant figure to the next multiple of ten. The grade pay corresponding to the merged scale will be payable in addition. Illustration 4B in this regard is in the Explanatory Memorandum to these Rules. *(Emphasis supplied)*

36. Thus, in both the cases, the key concept is the "existing basic pay". For understanding the meaning and intent of these rules, we need to refer to illustration 4A and 4B Explanatory memorandum which are as follows:-

Illustration 4A:- Pay fixation in cases where posts have been upgraded e.g. posts in pre-revised pay scale of Rs. 3050-75-3950 to Rs. 3200-85-4900 scale.

1. Existing Scale of Pay Rs. 3050-4590 (Corresponding Grade Pay Rs. 1900)
2. Pay Band applicable PB-1 Rs. 5200-20200
3. Upgraded pay scale Rs. 3200-4900 (Corresponding Grade Pay Rs. 2000)
4. Existing basic pay as on 01.01.2006 Rs. 3125/-
5. Pay after multiplication by a factor of 1.86- Rs. 5813 (Rounded as Rs. 5820)
6. Pay in the Pay Band-2 Rs. 5820/-
7. Pay in the pay band after including benefit of bunching in the pre-revised scale of Rs. 3050-4590, if admissible – Rs. 6060/-
8. Grade Pay attached to the scale of Rs. 3200-4900-Rs. 2000
9. Revised basic pay-total of pay in the pay band and grade pay-Rs. 8060.

Illustration 4B :- Pay fixation in cases where pay scales have been merged. pre-revised pay scale of Rs. 5000-8000, Rs. 5500-9000 and Rs. 6500-10500

1. Existing Scale of Pay Rs. 5000-150-8000
2. Pay Band applicable PB 2 Rs. 9300-34800
3. Merged with the scale of pay Rs. 6500-200-10500
4. Existing basic pay as on 1.1.2006 Rs. 5600
5. Pay after multiplication by a factor of 1.86 Rs. 10416 (Rounded off to Rs. 10420)
6. Pay in the Pay Band PB 2 Rs. 10420
7. Pay in the Pay Band after including benefit of bunching, if admissible Rs. 10420
8. Grade Pay attached to the scale of Rs. 6500-200-10500- Rs. 4200

9. Revised basic pay-total of pay in the pay band and grade pay-Rs. 14620

37. Thus, in either case whether up gradation or merger, "the existing basic pay" has been taken as the actual pay drawn by the employee in the pre-revised pay scale. After the basic pay in the pre-revised pay scale has been replaced as per the prescribed formula under the rules, the corresponding Grade Pay for the upgraded pay scale or the higher pay scale due to merger has been added. This is also collaborated by the Railway Board's circular RBE No. 132/2008 dated 25.09.2008 in which both in Clarification 3 (relating to fixation under Rule 11 of the Rules under which the applicants come) and Clarification 6 relating to merger of scales/up gradations, the reference is to pre-revised pay scale for using the fitment table. The stipulation in Clarification 6 clearly mentions " **Their pay in the Pay Band will be fixed with reference to their fitment table corresponding to pre-revised pay scale. However, the grade pay corresponding to the upgraded post will be granted."** This has been further re-affirmed in the Railway Board's circular no. PC0VI/2013/Z/7 dated 31.12.2013 (Annexure R/4) in which it has been clarified that **"Thus the principle of 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 scale as on the cut off date, either 1.1.2006 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."**

38. Thus, the scheme of the pay fixation pursuant to the implementation of 6th Pay Commission recommendation as per the Rules, Explanatory Note which are part of the Rules and various circulars and clarifications is that the pay fixation in the revised pay scale has to be done with reference to the actual pay drawn by the employee in the pre-revised scale. On this amount, a grade pay corresponding to recommended pay scale is to be given. Thus, the applicants demand is contrary to the statutory rules and the Railways have correctly revised their pay.

39. We have also noted from the written statement that in the zones or offices where erroneous fixation contrary to the Rules have been done, the Railways have given direction for rectification. Thus, the ground of discrimination is not tenable.

40. We have also noted that the case of the Assistants of the Secretariat or PAs is on a different footing because prior to the receipt of 6th CPC recommendation, government have allowed them higher pay scale which they actually drew before pay was revised in their case.

41. As far as the Rules are concerned, their literal meaning and their intent is quite clear. All the circulars and Explanatory Notes are consistent with the Rules which have been correctly applied by the respondents.

42. However, there have been varying judgments of different courts filed by the parties which we are briefly summarising below :-

Judgments filed by the applicants:-

[1] **OA 293 of 2011** filed before the Tribunal's Allahabad Bench, order dated 09.08.2012: In this case, a similar prayer of Section Officers (A) and Assistant Accounts Officer working in the office of Principal Controller of Defence Account, Allahabad was allowed. It appears that this judgment was affirmed by the Hon'ble High Court, Allahabad which has been challenged before the Hon'ble Supreme Court.

[2] **OA 442 of 2014** filed before the Tribunal's Patna Bench: By order dated 06.02.2015, the Tribunal directed the respondents to extend the benefit of the aforesaid judgments subject to the outcome of SLP, if any. There was no independent adjudication of the matter by this Bench.

[3] **CWJC No. 6969/2015** before the Hon'ble Patna High Court: By the judgment dated 01.10.2015 the Hon'ble High Court affirmed the aforesaid order in OA No. 442/2014.

Judgments filed by the respondents:-

[1] **OA No. 1108/2011** before the Tribunal's Principal Bench: By order dated 25.09.201, a similar prayer made by TGT was rejected.

[2] **OA 1049/2013** before the Tribunal's Principal Bench: By order dated 24.12.2014, a similar prayer of the applicants was rejected on the ground that as per rules, the pay has to be fixed with reference to the fitment table corresponding to the pre-revised scale and not the higher pay scale which comes into effect only post 6th CPC

recommendation. In this judgment, the Tribunal has taken note of the judgment delivered by the Allahabad Bench in OA 293/2011 and has held that that judgment was per incurium, and therefore, not binding.

[3] **OA no. 173/2014** filed before the Full Bench of the Tribunal at Madras. The matter was referred to the Full Bench as the Division Bench was not in agreement with the judgment of the Allahabad Bench. The Full Bench referred to the judgment of Allahabad Bench and after detailed discussion came to the finding that the reference to "existing basic pay" meant the pay actually drawn by the employee in the pre-revised scale. The Full Bench also held that the Allahabad Bench had not taken note of Note 2A and 2B below the Rule 7(1) which have statutory force. It was observed by the Full Bench that the other co-ordinate Benches have relied upon the decision of the Allahabad Bench of the Tribunal to extend the same benefit and did not examine independently with reference to the Rules. Accordingly, the prayer of the applicants in that OA to revise the pay with reference to the upgraded scale was not allowed.

43. As we have stated earlier, the claim of the applicants is not tenable as per the rules. This Bench in OA no. 442/2014 did not examine the matter independently. Rather, the direction was to extend the benefit of the judgment of Allahabad Bench subject to the outcome of the SLP. The Allahabad Bench judgment has already been examined in detail by the Principal Bench and the Full Bench and

found not acceptable. We have also examined the Rules in detail and given our conclusions above.

44. On detailed examination, we have come to the conclusion that the applicants' prayer is not acceptable. All these reasonings which we have given in detail in this order and our independent examination were not available before the Hon'ble Patna High Court. It also appears that the judgments of the Principal Bench and the Full Bench of the Tribunal referred to above were not before the Hon'ble Patna High Court.

45. Accordingly, we find no merit in the OA. The OA is, therefore, dismissed with no order as to costs.

[A.K. Upadhyay]
Administrative Member

[Urmita Datta(Sen)]
Judicial Member

"True Copy"

PKL/

Section Officer (J)
Central Administrative Tribunal
Patna Bench, Patna