CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

O.A. No.2380/2011

Order Reserved on 01.08.2012

Order Pronounced on 29.01.2013

Honble Mr. G. George Parcken, Member (J)

Honble Mr. Sudhir Kumar, Member (A)

Zamir Hasan Khan, S/o Shri A.H.Khan,

Aged about 42 years, Occupation-Private Secretary Commissioner of Income-tax (Appeals), Income-tax Office, Ujjain

R.M. Shrivastava, S/o Late Shri V.D. Srivastava,

Aged about 50 years, Occ. Administrative Officer, Gr.III,O/o Chief Commissioner of Income-tax, Income-tax Office, Bhopal

D.K. Halder, S/o Late Shri S.C. Haider,

Aged about 58 years, Occ. Administrative Officer,

Gr.III, Director General of Income-tax (Inv), Income-Tax Office, Bhopal

Nandlal Posia, S/o Late Shri Bhawani Pd.

Aged about 50 years, Occ. Administrative Officer, Gr-III, Director General of Income-tax(Inv.), Income-tax Office Bhopal

Dilip Kumar Bhatnagar, S/o Late Shri Ram Dayal

Verma, Aged about 59 years, Occ.Administrative

Officer, Gr.III, Commissioner of Income-tax, Income-Tax Office, Bhopal

Alka Malik, D/o Late Shri B.P. Chandna,

Aged about 43 years, Occ. Administrative Officer, Gr-III, Commissioner of Income-tax (CO), Income-tax Office, Bhopal

Purnima Bhatia, D/o Late Shri Ghanshyamdas Lal, Aged about 54 years, Occupation-Administrative Officer, Gr-III, Commissioner of Income-tax (Audit), Income-tax Office, Bhopal

Shilpanjali Shinde, D/o Late Shri Vithal Waman,

Nimkar Aged about 59 years, Occupation-Administrative Officer, Gr-III Commissioner of Income-tax (Appeal)-I, Income-tax Office, Indore.

Ranjana Joshi, D/o Late Shri Shrish Joshi

Aged about 57 years, Occupation- Administrative Officer, Gr-III Commissioner of Income-tax-I, Income Tax Office, Indore.

Tasneem Shahzad, S/o Late Nazir Mohammad

Aged about 59 years, Occupation- Administrative Officer, Gr-III Commissioner of Income-tax-I, Income Tax Office, Indore.

S.K. Mondel, S/o Late Shri M.M. Mondel,

Aged about 59 years, Occupation- Administrative Officer, Gr-III Commissioner of Income-tax-I, Income Tax Office, Raipur.

Shri Samarlal Mukherjee, S/o Late Shri Satyalal Mukherjee, Aged about 57 years, Occupation- Administrative Officer, Gr-III (Bldg.under Range-47), Kolkatta.

Murali Prasad, S/o Shri Ram Sanehi,

Aged about 52 years, Occupation- Administrative Officer, Gr-III, Office of Chief Commissioner of Income Tax, Allahabad.

Jayanti Puri, D/o Late Shri S.D. Chand,

Aged about 56 years, Occupation- Private Secretary, Office of the Commissioner of Income-tax (Audit), Bhopal.

Meena Sahu, D/o Shri N.L. Sahu,

Aged about 45 years, Occupation- Private Secretary, Office of the Commissioner of Income-tax (CO), Bhopal.

Reji P.John, S/o Shri P.A. John,

Aged about 40 years, Occupation- Private Secretary, Office of the Chief Commissioner of Income-tax (CCA), Bhopal.

16-A Shyamala Nair, W/o Shri P.K. Nair Aged about 54

years, Occupation- Private Secretary, Office of the

Director General of Income-tax (Inv). Bhopal.

Valsala Sundaran, W/o Shri Sundaram,

Aged about 53 years, Occupation- Private Secretary, Office of the Commissioner of Income-tax (Appeals), Gwalior.

Surjeet Kaur Khalsa, W/o Shri Ajit Singh,

Aged about 51 years, Occupation- Private Secretary, Office of the Commissioner of Income-tax, Gwalior;

Jomol James, W/o Shri James George

Aged about 42 years, Occupation- Private Secretary, Office of the Commissioner of Income-tax, Raipur;

Anita Adil, W/o Shri Deepak Adil,

Aged about 43 years, Occupation- Private Secretary, Office of the Commissioner of Income-tax (Appeals), Raipur;

Edwina, D/o Shri A. Ligouri,

Aged about 40 years, Occupation- Private Secretary, Office of the Commissioner of Income-tax, Bilaspur;

Oomen George, S/o Shri P.J. George,

Aged about 58 years, Occupation- Private Secretary, Office of the Chief Commissioner of Income-tax, Raipur;

R.P. Dwivedi, S/o Shri Dhan Raj Dwivedi,

Aged about 53 years, Occupation- Private Secretary, Office of the Commissioner of Income-tax, Allahabad;

Joginder Singh S/o Late Shri Kesar Singh,

Aged about 46 years, Occupation- Private Secretary, Office of the Chief Comissioner of Income-tax-XII, New Delhi;

VijayKumar, S/o Late Shri Prem Chand

Aged about 48 years, Occupation- Private Secretary, Office of the Addl. Commissioner of Income-tax (HQ-Admn.), New Delhi;

Karam Singh Dogra, S/o Late Shri Dhani Ram,

Aged about 50 years, Occupation- Private Secretary, Office of the Chief Commissioner of Income-tax-IV, New Delhi.

Smt. Sahjo Pushkarna, D/o Late Shri Ram Chander, Aged about 56 years, Occupation- Private Secretary, Office of the Commissioner of Income-tax-XII, New Delhi;

Smt. Veena Saxena, D/o Late Shri M.P. Bhatnagar, Aged about 54 years, Occupation- Private Secretary, Office of the Commissioner of Income-tax-I, New Delhi;

R.K. Khurana, S/o Shri Bhagwan Dass

Aged about 55 years, Occupation- Private Secretary, Office of the Commissioner of Income-tax (judicial) New Delhi;

Smt. Geeta Munjal, D/o Shri Lal Chand,

Aged about 40 years, Occupation- Private Secretary, Office of the Addl. Commissioner of Income-tax (judicial) New Delhi;

Rama Taneja, S/o Shri Sham Ram,

Aged about 58 years, Occupation- Private Secretary, Office of the Chief Commissioner of Income-tax-IX, New Delhi;

Jugandra Pal Kasni, S/o Shri Harbansh Singh,

Aged about 46 years, Occupation- Private Secretary, Office of the Commissioner of Income-tax-XII. New Delhi;

Smt. Shashi Bala Bhandari, D/o Shri Mohinder Singh, Aged about 59 years, Occ. - Private Secretary, Office of the Chief Commissioner of Income-tax-VII, New Delhi;

Barun Mitra, S/o Late Shri Aswini Kuamr Mitra,

Aged about 47 years, Occupation- Private Secretary, Office of the Commissioner of Income-tax (Judicial), Kolkatta;

Aswini Das, S/o Shri Gumadhar Das,

Aged about 48 years, Occupation- Private Secretary, Office of the Commissioner of Income-tax (CO), Kolkatta;

Smt. Chandrika Mirdha, /D/o Shri Madhab Ranjan, Bain, Aged about 43 years, Occupation- Private Secretary, Office of the Directorate of Income-tax (T.P) Kolkata;

Smt. Mousami Biswas, D/o Shri Radha Nath Biswas, Aged about 46 years, Occupation- Private Secretary, Office of the Commissioner of Income-taxII Kolkatta

Smt. Asha Biswas, D/o Shri Ramani Kanta Barman, Aged about 47 years, Occupation- Private Secretary, Office of the Commissioner of Income-tax (Audit)-II Kolkatta;

Shri Sukumar Kayal, S/o Late Shri Beehu Roy,

Aged about 54 years, Occupation- Private Secretary, Office of the Commissioner of Income-tax (ITAT-IV), Kolkatta;

Shri Sukhendu Naskar, S/o Late Shri Somantam Naskar, Aged about 54 years, Occupation- Private Secretary, Office of the Commissioner of Income-tax (ITAT-II),

Kolkatta;

Shri Barun Kumar Naskar, S/o Late Shri Sudhir Ch. Naskar, Aged about 48 years, Occupation- Private Secretary, Office of the Commissioner of Income-tax & Member (Approp. Authority), Kolkatta;

Shri Sanjib Paul, S/o Late Shri Sachindra Kumar, Aged about 54 years, Occupation-AO, Office of Commissioner of Income-tax (CO), Kolkata;

Mrs. Mary Lukose, W/o Shri V.Lukose,

Aged about 58 years, Occupation-Sr. PS, O/o DGIT (Inv.), Jaipur;

Mrs. Sundaram Ambal, w/o Shri N.Sadasivan,

Aged about 60 years, Occupation- Retired PS,

R/o C-228, Mahesh Nagar, Jaipur-302 015;

Shri Shakuntala Purohit, w/o Shri N.K. Purohit,

Aged about 60 years, Occupation-Retired PS, R/o 6/377, S.F.S. Mansarovar, Jaipur -302 020;

Shri Roselin Albert, W/o Shri K.L. Albert,

Aged about 59 years, Occupation- PS, Office of

Directorate of Income-tax(Inv.) Rajasthan, Jaipur;

Shri T.M. Shankarnaryan, S/o Late Shri K.P.B. Nair, Aged about 57 years Occupation- PS

Office of the Commissioner of Income-tax (CCA),

Jaipur;

Mrs. K.K. Dakshyani, W/o Shri R.Sargnadharan,

Aged about 58 years, Occupation-PS, Office of

Commissioner of Income-tax (A)-I, Jaipur;

Mrs. Susamma Vijay, W/o Shri V.K. Pillai,

Aged about 53 years, Occupation- Private Secretary, Office of the Commissioner of Income-tax-I, Jaipur;

Mrs. Mary Kutty George, W/o Shri Varkey George, Aged about 56 years, Occupation- Private Secretary, Office of the Commissioner of Income-tax-II, Jaipur;

Shri Ram Swaroop Sharma, S/o Late Shri R.C.Sharma, Aged about 50 years, Occupation- Private Secretary, To Sr.DR, ITAT, M.I. Road, Jaipur;

N.M. Sabu, S/o Late Shri N.U. Mathai,

Aged about 44 years, Occupation- Private Secretary, Office of the Director of Income-tax (CIB), Jaipur;

Gopal Lal Meena, S/o Late Shri Sunderilal Meena, Aged about 45 years, Occupation- Private Secretary, Office of the Director of Income-tax (CIB), Jaipur;

Ganesh Narain Verma, S/o Late Shri Nanu Ram Verma, Aged about 46 years, Occupation- Private Secretary, Office of the Addl. CIT, Range-2, Jaipur;

G.Vijay Kumar, S/o Shri Gopinathan Nair,

Aged about 58 years, Occupation- Private Secretary, Office of the Chief Commissioner of Income-tax, Udaipur;

Mrs. Gyanwati Sharma, W/o Late Shri Nandlal Sharma Aged about 60 years, Occupation-Retired PS R/o Quarters No. 4/9 Income-tax Colony, New Shahi Bagh, Udaipur;

Mrs. Subashini Srivastava, S/o Shri Dinesh Srivastava, Aged about 58 years Occupation- Private Secretary, Income-tax Office, Jaipur Road, Ajmer (Rajasthan);

Ms. Indira Khangwal, D/o Late Shri Herprasad Khangawal, Aged about 45 years, Occupation- Private Secretary, Office of the Addl. Commissioner of Income-tax, Ajmer;

Mrs. Algira Fernandes, D/o Shri Ignatius Fernandes, Aged about 50 years, Occupation- Private Secretary, Office of the Commissioner of Income-tax, Ajmer (Rajasthan);

Mukesh Gupta, S/o Shri Mandanlal Gupta,

Aged about 45 years, Occupation- Private Secretary, Office of the Commissioner of Income-tax, Alwar;

Pramod Goyal, S/o Shri S.C. Goyal,

Aged about 58 years, Occupation- AO

Office of the Commissioner of Income-tax II, Jaipur;

R.K. Panjwani, S/o Late Shri K.H. Panjwani,

Aged about 58 years, Occupation- AO,

Office of the Chief Commissioner of Income-tax (CCA), Jaipur;

Mr. Rajendra Pd. Soni, S/o Rajeshwar Dass,

Aged about 60 years, Occupation- AO,

Office of the Commissioner of Income-tax (CO), Jaipur;

Shri R.K. Verma, S/o Late Shri Panna Lal,

Aged about 55 years, Occupation- AO,

Office of the Commissioner of Income-tax-I, Jaipur;

Shri L.N. Palia, S/o Late Shri N.L. Palia,

Aged about 57 years, Occupation- AO,

Office of the ITAT, M.I. Road, Jaipur;

Shri Avinash Chandra Sharma, S/o Shri R.P.Sharma, Aged about 55 years, Occupation- AO, Office of the DIT (Inv), Jaipur;

Shri Pooran Mal, S/o Late Shri Devi Lal,

Aged about 58 years, Occupation- AO,

Office of the CIT (Appeals-II), Jaipur;

Shri G.L. Kuldeep, S/o Shri Girdharilal Kuldeep,

Aged about 57 years, Occupation- AO,

Office of the Director General of Income-tax(Inv), Jaipur;

Shri Vinay Kumar Tyagi, S/o Late Shri Vijay Kumar Tyagi Aged about 50 years, Occupation- AO, Office of the Commissioner of Income-tax-IIII, Jaipur;

Shri Nagar Mal Moyal, S/o late Shri Ghisaram Moyal, Aged about 56 years, Occupation- AO,

Office of the Commissioner of Income-tax (Audit), Jaipur;

Mrs. Neera Khurana, W/o Shri Yashpal Khurana,

Aged about 57 years, Occupation- AO,

Office of the DIT (CIB), Jaipur;

Shri S.P. Acharya, S/o Late Shri C.L. Acharya,

Aged about 57 years, Occupation- AO,

Office of the Commissioner of Income-tax (TDS)), Jaipur;

Shri Krishna Avadhar Sharma, S/o Late Shri P.C. Sharma, Aged about 56 years, Occupation- AO, Office of the Commissioner of Income-tax (Central), Jaipur;

Shri Umed Singh, S/o Late Shri Bhanwar Singh,

Aged about 59 years, Occupation- AO,

Office of the Addl. CIT, Range-VII, Jaipur;

Shri M.A. Shaikh, S/o Shri P.M. Saikh,

Aged about 60 years, Occupation- AO,

Office of the Commissioner of Income-tax, Jaipur;

Mrs. Ranjana Kaushik, w/o Shri K.K. Kaushik,,

Aged about 57 years, Occupation- AO,

Office of the Commissioner of Income-tax, Udaipur;

Shri Govind Ram Mungenia, S/o Late Shri Sukhlal, Aged about 60 years, Occupation- AO,

Office of the Income-tax, Ajmer (Rajasthan);

Shri Arjun Singh, S/o Late Shri Deepa Ram,

Aged about 59 years, Occupation- AO,

Office of the Addl. CIT, Ajmer (Rajasthan);

Mrs. Sushila Sunaria, W/o Shri Chaman Lal,

Aged about 53 years, Occupation- AO,

Office of the Addl.CIT, Jhuinjhunu, Rajasthan;

Applicants

(By Advocate: Shri G.D. Gupta, Sr. counsel with

Shri Vikram Singh and Shri Piyush Sharma)

Versus

1. Union of India

Through the Secretary

Department of Expenditure,

Ministry of Finance

Government of India

New Delhi.

2. Central Board of Direct Taxes (CBDT),

Through its Chairman,

North Block,

New Delhi.

3. Director of Income Tax

(Human Resource Development)

Through its Director of Income Tax (HRD)

6, Vasant Kunj Institutional Area, Phase-II

New Delhi. -Respondents

(By Advocate; Shri V.P. Uppal)

O R D E R

Mr. Sudhir Kumar, Member (A):

The 80 applicants of this OA are working as Administrative Officers (Grade-III & Grade-II) and Private Secretaries/Senior Private Secretaries in the gazetted Group-B cadres of the Income Tax Department. They are before this Tribunal, being aggrieved by the respondents not have extended the benefit of the Grade Pay of Rs.4800/- in Pay Band-2 to them, and not granting to them the Grade Pay of Rs. 5400/- after completion of 4 years of substantive service, as has been allowed to the Income Tax Officers (ITOs, in short), and also to the Section Officers, and the Private Secretaries in the Central Secretariat Service (CSS, in short)/Central Secretariat Stenographer Service (CSSS, in short). Their plea is that the VIth Central Pay Commission (VIth CPC, in short) had recommended parity in pay and allowances of the personnel in the field and secretariat offices, which general recommendation has not been accepted in their case. They are also aggrieved that Senior Tax Assistants, and the Office Superintendents and Stenographers Grade I, who all form the feeder grades for the posts of Administrative Officers and Private Secretaries respectively, have also been placed in the same pay band and Grade Pay of Rs.4200/- in PB-2, thereby creating an anomaly.

2. The applicants are aggrieved that when a proposal regarding removal of this disparity in the pay scales in respect of Administrative Officers and Private Secretaries was sent to the Department of Expenditure by the Directorate of Income Tax (Human Resource Development), the proposal was not agreed, to leading to the issuance of the impugned Annexure A-1 dated 28.02.2011. They are also aggrieved because the applicants erstwhile pay scale of Rs.6500-10500, which they were drawing equal to the Grade-II ITOs, as per the recommendation of the IVth and Vth CPC, has not been upgraded on par with that of Income Tax Officers, which was revised w.e.f. 21.04.2004 from Rs.6500-10500 to Rs.7500-12000, leading to a disparity, which was not addressed even by the VIth CPC. It was submitted that the request of the applicants is fully justified, as the posts of Administrative Officers and Private Secretaries carry higher responsibilities, and they are attached to senior officers up to the rank of Additional Secretary, Govt. of India, while the Administrative Officers even function as DDOs, and are delegated with certain administrative and financial powers.

3. In another claim, the applicants also pleaded that the Administrative Officers (Grade-III) among the applicants had enjoyed historical parity with the CSS, with the same hierarchical structure upto the implementation of the recommendations of the Vth CPC. But a disparity was introduced when the Section officers of CSS in the pay scale of Rs.6500-10500 were extended the benefit of a non-functional pay scale of Rs.8000-13500, w.e.f. 03.10.2003, on completion of 4 years of substantive service in the grade. Similarly, it was submitted that the Stenographers of the Income Tax Department were also enjoying absolute historical parity with CSSS, with the same hierarchical structure, upto the implementation of the recommendation of Vth CPC, and in their case also disparity arose for the first time because with the introduction of non-functional pay scale of Rs.8000-13500 in CSSS w.e.f. 03.10.2003, after completion of 4 years of substantive service in the pay scale. It was submitted that while notifying the Central Civil Services (Revised Pay) Rules, 2008, effective from 01.01.2006, for the purpose of fixation in the new Pay Band system, the Section Officers and the Private Secretaries of CSS and CSSS were first accorded a revised pay scale of Rs.7500-12000, enhancing their pay from their earlier scale of pay of Rs.6500-10500/-, and were then placed in PB-2 with the Grade Pay of Rs.4800/-, while it was further prescribed that after completion of 4 years, they would be eligible for revised pay scale of Rs.8000-13500, and the Corresponding Pay Band and Grade Pay would be PB-3 with the Grade Pay of Rs.5400/-, which was the adoption by the Government of a modified form of Para 3.1.9 of the VIth CPC Report. It was mentioned that the Note below this Notification stated as follows:-

Note : The scales shall be available only in such of those organizations/services which have had a historical parity with CSS/ CSSS. Services like AFHQSS/ AFHQSSS/ RBSS and ministerial/ secretariat posts in Ministries/Department Organizations like MEA, Ministry of Parliamentary Affairs, CVC, UPSC, etc. would therefore be covered.

4. It was submitted that though it was clearly prescribed that this pay scale will be available for all such organizations, which have had a historical parity with CSS and CSSS, and the word etc. used in the Note was sufficient to cover the cases of the Income Tax Department also, the benefit of this intermediate pre-revised pay scale of Rs.7500-12000, and after completion of 4 years, the pay scale of Rs.8000-13500/-, was not extended to the applicants, despite their having enjoyed a historical parity with CSS and CSSS.

5. It was claimed that in so far as parity between the Section Officers of CSS and the Administrative Officers of Income Tax Department is concerned, actually the Administrative Officers are discharging the duties as onerous as Section Officers in CSS, and similarly the Private Secretaries of the Income Tax Department are also performing duties not less onerous than the members of CSSS. The applicants had in their OA re-produced a chart giving historical parity in respect of five designations, but gave up their arguments in support of their contentions at Sl. No.1 regarding historical parity with ITOs, but pressed for historical parity in respect of Sl Nos. 2,3,4 & 5 of the following Table:-

S.No. Designation 4th CPC 5th CPC 6th CPC

1. ITO 2000-3500 6500-10500

7500-12000

w.e.f.

21.04.04 Given up

2. PS(I.T.Deptt) 2000-3200 6500-10500 PB2/4200 Pressed

3. Sr.PS(I.T.Deptt) ---- 7500-12000 PB2/4800 Pressed

4. AO(I.T.Deptt) 2000-3200 6500-10500 PB2/4200 Pressed

5. SO/PS of CSS/CSSS

(Central Sectt) 2000-3500 6500-10500

8000-13500

(On completion of 4 years) PB2/4800

PB3/5400 Pressed

6. The applicants have submitted that the actions of the respondents are discriminatory and violative of their rights under Article 14 & 16 of the Constitution of India, as there is no intelligible differentia in classification sought to be adopted by the respondents, and no reasonable nexus exists between the classification and the alleged object sought to be achieved. It was further submitted that this Tribunal had already granted parity to the Private Secretaries working in the Tribunal vis-`-vis the Private Secretaries of CSSS vide its order dated 19.02.2009 in OA No.164/2009 (S.R. Dheer & Ors. v. Union of India & Ors.], which judgment has already been implemented. The applicants also pointed out that the Recruitment Rules for the posts of Private Secretaries and Senior Private Secretaries in the Income Tax Department were notified on 04.04.2007. The Recruitment Rules for the posts of Stenographers Grade-II and Grade-III were notified on 02.02.2003, and subsequently amended on 15.09.2010, and the Recruitment Rules for the posts of Senior Administrative Officers, Administrative Officers, Grade-II and Grade-III, were notified on 30.12.2004 as per Annexures A-3 and A-4 of the OA. But since during arguments the applicants had given up their claim regarding parity with the Income Tax Officers, that aspect of the OA is not being discussed here. It was further submitted that the functions and duties of the posts of Private Secretaries, and the functions and duty list of different grades of Stenographers and that of the various levels of Administrative Officers have been described in detail in the Manual of Office Procedure as brought out by the Directorate of Income Tax in February 2003, placed at Annexure A-6.

7. It was further submitted that the President of All India Income Tax Private Secretaries Association had on 28.12.2006 taken up the matter regarding differences in the pay scales of Senior Private Secretaries/Private Secretaries working in Income Tax Department with those of the CSS in the Central Secretariat, pointing out that they are discharging the same functions, duties and responsibilities as their counterparts in other Ministries and Departments, & their work in the Income Tax Department in the very sensitive in nature, and this request dated 28.12.2006 was followed up by another similar request dated 09.09.2008, and much emphasis were laid on the equivalence as given in the Table at Para 4.11 of the OA as reproduced below:-

Private Secretary

Working in the Central Secretariat offices Pay Scale Private Secretary working in the Incometax Department Pay Scale

PS attached with Joint Secretary 8000-13500 PS attached with Commissioner/Director of Incometax 6500-10500

PPS attached with Addl. Secretary 10000-15200 Sr. PS attachi with Director Generals/Chief Commissioners (Addl. Secretary level) 7500-12000

Sr. PPS attached with Secretary 12000-16500

8. The applicants have thereafter also tried to demonstrate the historical parity enjoyed by them with the CSS and CSSS on the basis of the recommendations of the IIIrd, IVth and Vth CPC, and it was submitted that actually after the implementation of the VIth CPC recommendations, the Private Secretaries have been placed along with their subordinates, namely Personal Assistants and Stenographers Grade-I and II in PB-2, with Grade Pay of Rs.4200/-, and it was only after vehement opposition that their Grade Pay has since been revised to Rs.4600, but which is also not reasonable enough.

9. Similarly, it was submitted that the Administrative Officers Grade-III among the applicants had also submitted a representation dated 28th April/21st May 2010 for removal of disparity in their pay scales, as after implementation of the VIth CPC recommendations, they had also been placed along with their subordinates, namely Office Superintendents, in the pre-revised scale of Rs.6500-10500 (PB-2 with Grade Pay of Rs.4200), and only after vehement opposition, their Grade Pay was revised to Rs.4600/-, which is also still unreasonable. It was submitted that in the case of the applicants, analogy requires to be drawn from the VIth CPC in Paragraphs 3.1.14, in order to maintain the principle enunciated by the VIth CPC of having parity in the pay and allowances of the personnel in the field and secretariat offices.

10. In the result, the applicants have prayed for the maintenance of their historical parity in pay and allowances with the Secretariat offices as per Chapter 3.1.9 of the Report of the VIth CPC, more so because the aforesaid revised pay scales have already been implemented in many named Organizations, without bothering that the enumeration of the offices where such parity existed earlier is not exhaustive, and that both the VIth CPC and Government of India had incorporated the word etc. in the Note, to include other relevant offices like the Income Tax Office also. Similarly they have also pleaded that the duties of Administrative Officers are not less onerous than the Section Officers of the CSS, and those of Private Secretaries of the Income Tax Department are also no less onerous than those of the members of the CSSS.

11. It was further submitted that in fact the recruitment agency for both the applicants of the OA, as well as the members of CSS/CSSS, and the minimum qualifications prescribed for each categories of employees, are exactly identical, and the recruitment is also made by a common selection process, and allocation is made depending upon the individual concerned, depending upon his merit in the select list, and in fact the applicants have an All India Transfer liability, which the employees of CSS and CSSS do not have. They have reiterated that in view of the fact that the Private Secretaries of the Central Administrative Tribunal have already been granted parity with the Private Secretaries of CSSS through the orders dated 19.02.2009 (supra), under the law as laid down by the Honble Apex Court through Three Judges Bench order in Randhir Singh vs. Union of India, AIR 1982 SC 879, persons holding identical posts, performing identical and similar duties, under the same employer, i.e., Central Government, should not be treated differently in the matter of their pay, which law was also affirmed in the case of D.S. Nakara and others vs. Union of India & Ors. [1983 AIR 130]. The applicants have in the result prayed for only one main relief as follows:-

(i) Direct the respondent to grant the applicants the pay scale of Rs.7500-12000 i.e. Pay Band 2 with Grade Pay of Rs.4800/- and Rs.5400/- on completion of four years of service as per the recommendations of Sixth Pay Commission to maintain parity with ITOs of Income Tax Department and with their counterparts Section Officers/Private Secretaries in CSS/CSSS with all consequential benefits from the dates such revision was made applicable to their counterparts.

(ii) Any other and such further order or orders as are deemed fit and proper by this Honble Tribunal in the facts and circumstance of the case.

12. The applicants had also filed an MA No.1690/2011 for being permitted for joining together, which MA was allowed on 08.07.2012.

13. The respondents filed their counter reply on 24.10.2011. They had taken a preliminary objection regarding misjoinder of parties, submitting that the present OA has been filed by Administrative Officers Grade-II & III, as also by the Private Secretaries/Senior Private Secretaries in Gazetted Group B Cadres of Income Tax Department, and that these two categories of officials have nothing in common in regard to their duties and responsibilities, and also in terms of the Recruitment Rules applicable, and they even have separate Associations, and they also have a separate cause of action, for which separate OAs are required to be filed, and, therefore, this OA needs to be dismissed on account of misjoinder of parties.

14. On merits, it was submitted that there is a distinct difference of duties and responsibilities between the Section Officers and Private Secretaries of CSS and CSSS and that of the Income Tax Department officials, to which the applicants belong, and they are also governed by a different set of Recruitment Rules, and the mode of recruitment and nature of duties and responsibilities are also different. It was further stated that as was held by a five-member Bench of this Tribunal in M.V. Rao & Ors. v. Union of India & Ors. [ATJ 2002 (2) 6-19], the Full Bench had decided that Stenographers and Assistants of subordinate and attached offices of the Government of India are not entitled to the same pay scales as applicable to the Stenographers and Assistants of Central Secretariat, and that there cannot be any parity in the pay scales. It was submitted that the said judgment of this Tribunal was affirmed by the Honble High Court vide its order dated 31.05.2002 in C.W.P. No.2344/1999. It was also submitted that as per the law laid down by the Honble Apex Court, while deciding parity of pay scales, experience, process of recruitment, qualification, quality and nature of work, functions, responsibilities, promotional avenues etc. are relevant considerations, which have to be taken into account, and unless there is complete and wholesome identity in all these aspects between two groups, there cannot be a parity of pay in between them, and that, taking into account all these factors, applicants have no claim for parity of pay scales as prayed for by them. It was further submitted that there is no similarity in duties and responsibilities, mode of recruitment and promotional avenues, as claimed, and moreover the duties and responsibilities of ITOs are entirely different from that of the applicants, and later, during the course of arguments on the case, it was submitted that once the claim of the applicants of parity with the ITOs was given up, the OA itself fails, as nothing survives thereafter in the OA.

15. In regard to the case of Stenographers, Private Secretaries and Senior Private Secretaries, the respondents have placed reliance on the decision of the Honble Apex Court in the case of Federation of All India Customs and Central Excise Stenographers v. Union of India, AIR 1988 SC 1291. It was further pointed out that other similarly placed applicants had filed OA No.276 & 288 of 2010 before the Hyderabad Bench of this Tribunal in C.B.N. Prasad & Ors. v. Union of India & Ors., in which the Hyderabad Bench had dismissed those OAs as being devoid of any merit. In the result, it was prayed that the OA be dismissed and costs be imposed on the applicants.

16. The applicants filed a rejoinder on 30.01.2012, more or less reiterating their contentions as given in the OA, and reiterating their grievance that they were not extended a non-functional pay-scale on completion of 04 years of service in the grade, as granted to the officers of CSS and CSSS w.e.f. 03.10.2003. It was further denied that there has been any misjoinder of parties, and in support of their contention it was submitted that they had submitted a joint representation on 30.06.2010 (Annexure RJ-/1), and a joint meeting was convened to discuss their grievances on 19.04.2011, the minutes of which were issued on 31.05.2011, Annexure RJ/2. It was further submitted that this Tribunal had vide order dated 22.12.2009 in OA-1499/2009 V.K. Sharma v. Indian Council of Agriculture Research (ICAR) held that the ICAR Headquarters Section Officers are entitled to the non-functional pay scale at par with the Section Officers of CSS notionally w.e.f. 1.1.1996, and financially w.e.f. 3.10.2003. The Honble Delhi High Court later dismissed the appeal of the Union of India and others in WPC No.4439/2010 on 17.05.2010, and even the SLP (Civil) in CC No.17537/2010 filed by the ICAR was dismissed by the Honble Apex Court. It was further submitted that the Honble Apex Courts decision in the matter of Federation of All India Customs and Central Excise Stenographers (supra) and the judgment and order of the Tribunals Hyderabad Bench dated 28.02.2011 in OA Nos.276 & 288/2010 (supra) were not relevant and applicable to the facts of the present case.

17. After the orders were reserved, written submissions were also submitted, on behalf of both the applicants as well as respondents. In their written submission the applicants had once again reiterated their contentions as made out in the OA, and had emphasized that even the Directorate of Income Tax (HRD) had supported the proposal as per their request in the present OA. It was further submitted that the Central Board of Direct Taxes (CBDT) actually forms part of the Secretariat of the Ministry of Finance for Administering Laws relating to direct taxes, and in that sense the CBDT is the Apex Organization, and the Directorate General of Income Tax is an attached office, and the offices of Commissioner, Income Tax/Chief Commissioner of Income Tax etc. are the Field Formations. It was submitted that the applicants are posted in the Attached office/Field Formations, and are classified as ministerial staff of CBDT. It was further submitted that this Tribunal has allowed a similar OA No.2002/2010 vide its order dated 11.11.2011 in the matter of R. Natrajan & Ors. v. Union of India & Ors., where it has been held that the applicants therein are entitled to the benefits equal to their counterparts in CSS/CSSS. It was also submitted that the case of M.V. Rao & Ors. v. Union of India & Ors. (supra) as affirmed by the Delhi High Court, and also by the Honble Apex Court, is not relevant in the present case, as it relates to the V CPCs recommendations, and not the VI CPCs recommendations.

18. It was further submitted that the Tribunals Hyderabad Bench order in OA No.276 and 288/2010 relates to the claim of the petitioners therein for parity in pay scales with the ITOs, but since that claim for parity with the ITOs has already been given up by the present applicants during the course of final hearing, as such the Hyderabad Bench order (supra) would not be applicable in the instant case. It was further submitted that the remaining case of the applicants is fully covered by the judgments and orders in the above cited cases of S.R. Dheer (supra) and R. Natarajan & Ors. (supra), and it was prayed that the OA be allowed. Along with this, the applicants had also filed a chart showing the Administrative set-up of the Income Tax Department, at Annexure W/1, the Government order dated 24.06.2005 of the DoP&T regarding introduction of the non-functional selection scale to the Private Secretaries (Grade A & B merged) of CSSS at Annexure W/2, and the subsequent order dated 25.01.2006, partially modifying the earlier order regarding grant of non-functional scale to Private Secretaries of CSSS w.e.f. 1.1.1996 at Annexure W/2 colly.

19. It is seen that in its judgment dated 11.11.2011 in OA-2002/2010 R. Natrajan & Ors. (supra), in a case concerning the Assistant Registrars, Section Officers, Private Secretaries and Court Masters in the National Consumer Disputes Redressal Commission, the Bench had noted as follows:

9. It is trite law that the fixation and grant of pay scale is prerogative of the executive which should be left to the expert body like the Pay Commission. However, the recommendations made by the Pay Commission is subject to the acceptance or rejection by the Government of India. It is also well settled position of law that the Tribunal and Court cannot direct the Government either to accept the pay fixation recommended by the Pay Commission or to direct grant of pay parity, unless there is full and complete functional similarity between the two groups of employees. Jurisdiction of the Tribunal in judicial review in this context is not to sit on appeal over the decision taken by the Government on the Pay Commission recommendations. Only if the pay parity existed earlier have been brought out clearly, and discrimination is noticed against the affected employees, the Courts and Tribunal have jurisdiction to interfere and direct the respondents-Government to rectify the said anomaly. In this context, we draw strength from the judgments of the Honble Supreme Court in Union of India Vs. Arun Jyoti Kundu [(2007 (2) SCC (L&S) 695]. In a three judge Bench in the case of M.P. Rural Agriculture Extension Association Vs. State of M.P. [ 2004 SCC (L&S) 667] the Honble Apex Court, inter alia, prescribed that Article 14 does not forbid reasonable classification and the Court and Tribunal cannot prescribe equal scales of pay for different class of employees and when recommendations are made by a Pay Commission where the evaluation of job has been made, should not be interfered with to issue any writ in the nature of mandamus. However, it is settled preposition of law that once the final recommendations made by the expert body like the Pay Commission is accepted by the Government, the benefit of Pay Commission on the principle of equal pay for equal work cannot be denied to the employees and if there is any such denial on discriminatory and arbitrary grounds, the same would not only violate Article 14 of the Constitution but would provide opportunity for the Court and Tribunal to interfere.

10. We may not go into details of the judgments and law laid down by the Honble Apex Court on the doctrine of pay parity and also principle of equal pay for equal work. Suffice to say that in S.R.Dheers case (supra) this Tribunal has analyzed the judgments of Honble Apex Court in different cases and have come to the conclusion that the pay parity denied to the applicants in S.R.Dheers case needed to be rectified and the benefits available to the employees in CSS/CSSS employees should be extended to their counterpart SOs/PSs/CMs of CAT.

11. xxx xxx xxx xxx

12. In view of the above judgment, we have very thoughtfully examined the pleadings and notice that the functions, powers and responsibilities discharged by the applicants in NCDRC are same as are being discharged by their counter parts in the CAT. The applicants in the present OA are similarly placed as their counterparts in CSS/CSSS. Therefore, we are of the considered opinion that pay band and grade pay extended to the SOs/PSs and other employees in the CAT and to CSS/CSSS in the 6th CPC would need to be extended to their counterparts in NCDRC.

13. Considering the facts and circumstances of the case, to sum up, the applicants in the present OA are entitled to the benefits as their counterparts in CSS/CSSS are getting under 6th CPC recommendations accepted by the Government. Further, we are of the considered opinion that the applicants in the present OA are similarly situated / circumstanced as the applicants in S.R.Dheers case (supra). In view of the above conclusion, we direct the first and second respondents to extend to the applicants in terms of directions issued in the judgment in S.R.Dheers case (supra) pay and Grade Pay as per 6th CPC recommendations within a period of three months from the date of receipt of a certified copy of this order.

20. In their written submissions submitted on behalf of the respondents, it was submitted that while the entire focus of the OA as originally filed was for having parity with the ITOs, which had in the past been equated with the Section Officers of the CSS in the matter of pay scales only, once that claim has been given up by the applicants during the final arguments, without producing any documents to show that the post of Administrative Officer is also equivalent to that of Section Officer, the applicants cannot claim pay parity as sought for by them. It was submitted that the Honble Apex Court has in a three-Judge Bench judgment in State of Haryana v. Charanjit Singh [2006 (1) SCSLJ 11] held that the parties who claim equal pay for equal work have to make necessary averments, and to prove that all things are equal. It was further submitted that in the judgment of the Honble Apex Court in S.C. Chandra & Ors. v. State of Jharkhand [2007 (8) SCC 279], it has been held that there has to be proof of identical duties and responsibilities for claiming parity of pay. In saying so, the respondents had cited paragraphs 35 & 37 of the judgment of the Honble Apex Court in S.C. Chandra & Ors. (supra), which has stated as follows:

35. In our opinion fixing pay scales by Courts by applying the principle of equal pay for equal work upsets the high Constitutional principle of separation of powers between the three organs of the State. Realizing this, this Court has in recent years avoided applying the principle of equal pay for equal work, unless there is complete and wholesale identity between the two groups (and there too the matter should be sent for examination by an expert committee appointed by the Government instead of the Court itself granting higher pay).

36. xxx xxx xxx

37. Similarly, in State of Haryana and another vs. Haryana Civil Secretariat Personal Staff Association (2002) 6 SCC 72, the principle of equal pay for equal work was considered in great detail. In paragraphs 9 & 10 of the said judgment the Supreme Court observed that equation of posts and salary is a complex matter which should be left to an expert body. The Courts must realize that the job is both a difficult and time consuming task which even experts having the assistance of staff with requisite expertise have found it difficult to undertake. Fixation of pay and determination of parity is a complex matter which is for the executive to discharge. Granting of pay parity by the Court may result in a cascading effect and reaction which can have adverse consequences vide Union of India and others vs. Pradip Kumar Dey (2000) 8 SCC 580.

21. It was further pointed out that the applicants have claimed a wrong historical parity, inasmuch as the pay parity was actually disturbed on 3.10.2003 itself, when the non-functional selection grade on completion of 4 years of service was introduced for the officers of CSS, as has been accepted by the applicants also, and that they cannot be allowed to challenge it belatedly now. In view of this position, it was submitted that the OA suffers from delay and laches, and should not be entertained. In saying so, the respondents had sought shelter behind the Honble Apex Court judgment in State of Orissa & Another v. Mamta Mohanty [2011 (3) SCC 436], in which the Honble Apex Court has held that if no explanation is furnished for delay in filing the Suit or appeal before the period of limitation, the Court may dismiss the Suit or appeal, even if no plea is raised on the issue of limitation.

22. It was further submitted that since the disparity in pay now sought to be removed by the applicants through this OA was so introduced in the years 2003 and 2004, the applicants of this OA ought to have raised the matter before the VIth CPC, which they have failed to do so, and hence it was submitted that the present OA is not maintainable. It was further submitted that there is a vast difference in the method of recruitment and the mode of promotion between Administrative Officers Grade-II and III, and Section Officers of CSS, as while the appointing authority for the posts of Section Officers is the President of India, the appointing authority in respect of the Administrative Officer Grade-II and III is only the Chief Commissioner of Income Tax.

23. It was further submitted that while promotion to the posts of Section Officers of CSS carrying the pay scale of Rs.7500-12000 is made from amongst the Assistants carrying the pay scale of Rs.6500-10500, effective from 15.09.2006, in the case of the posts of Administrative Officers Grade-III, the existing pay scale is Rs.6500-10500 equivalent to that of an Assistant, and their promotion is from the post of Office Superintendents in the pay scale of Rs.5500-9000, which is a lower pay scale, and as such, there cannot be a claim of parity between the Administrative Officers Grade-III and Section Officers. It was further submitted that if the present OA is allowed, the difference of identity between the Administrative Officers Grade-III in the pay scale of Rs.6500-10500, and Administrative Officers Grade-II in the pay scale of Rs.7500-12000 itself would be lost, as the applicants from both the grades have joined together in the present OA to claim parity with the Section Officers, which abolition of difference between Grade III and Grade II amounts to a merger of the cadres, which merger of Cadres cannot be a result of a judicial decision, and it can only be an administrative decision.

24. The respondents had reiterated their claim for seeking shelter behind the Honble Apex Court judgment in Federation of All India Customs and Central Excise Stenographers Association (supra) to state that the pay scales of Stenographers in CBEC, which is a counterpart of CBDT, were not found by the Honble Apex Court to be eligible for equivalence with the pay scales of Stenographers in the Secretariat Organization. The respondents have further submitted that the Honble Apex Court has reiterated in Union of India v. Hiranmoy Sen & Others, [(2008) 1 SCC 630] that even if two posts, A & B, are carrying the same pay scales, that by itself cannot result in increase in the pay scale of post B to the same level as that of post A, and that it is entirely for the Government to decide whether the pay scale of post B should be increased or not. The respondents had also relied upon the judgment of this Tribunal dated 1.3.2012 in OA-2051/2010 S.S. Ingaleshwar v. Union of India, in which the parity of pay scales of the employees of National Water Development Agency (WDA), an autonomous body under the Ministry of Water Resources, seeking parity of pay scales with the Office Superintendents of Central Water Commission (CWC), was considered, and in which one of us (Mr. G. George Paracken, Member (J)) was a Member, and in which all the relevant case-laws in this regard were considered.

25. During arguments, the learned counsel of respondents had also relied upon an extract from Blakes Dictionary regarding the definition of ministerial officer, in which it is seen that the dictionary meaning of ministerial officer has been given as follows:

Ministerial Officer

One whose duties are purely ministerial, as distinguished from executive, legislative, or judicial functions, requiring obedience to the mandates of superiors and not involving the exercise of judgment or discretion.

26. Heard. The case was argued vehemently by both the sides. As mentioned above also, during the course of the arguments, the learned counsel for the applicants had given up the claim of the applicants regarding maintenance of parity of the applicants with ITOs of the Income Tax Department, and had pressed only the case of their parity with their counter-parts Section Officers/Private Secretaries in CSS and CSSS.

27. We have given our anxious consideration to the facts of the case.

28. A comparison of the Recruitment Rules is essential for the purpose of determining the absolute equivalence and for a claim of parity in pay to be sustained. As seen in Annexure A-3, Department of Revenue, Central Board of Direct Taxes Notification dated 04.04.2007, the 698 posts of Private Secretaries have been classified as General Central Service (GCS) Group B Gazetted (Ministerial), and appointments to these posts are through a process of selection, failing which by deputation, and the Departmental Promotion Committee for considering promotions to such Group B posts is chaired by a Commissioner of Income Tax, nominated by the Cadre Controlling Authority, who is the Chief Commissioner of Income Tax. The posts can also be filled up by deputation from amongst officers holding analogous posts on regular basis in the parent cadres or departments in the Stenographers cadre, after their having completed three years in the Stenographers grade. Similarly, in the case of 116 posts of Senior Private Secretaries also, the Cadre Controlling Authority is the Chief Commissioner of Income Tax, and the Departmental Promotion Committee is chaired by a Commissioner of Income Tax, to be nominated by the Cadre Controlling CCIT.

29. Similarly, in the case of Senior Tax Assistants, it is seen that the 8329 posts of Senior Tax Assistants have been classified as General Central Services Group C, Non-Gazetted, (Ministerial), which have to be filled up 100% by promotion from amongst Tax Assistants, who have rendered a minimum regular service of three years in the grade, and have qualified the prescribed departmental examination for Ministerial staff, and they are having Data Entry Speed of 8000 Key Depressions per hour, and in their case, the Group C DPC consists of Additional and Joint Commissioner of Income Tax (Headquarters) as the Chairperson. The 9325 posts of Tax Assistants have also been classified as General Central Services Group C, Non-Gazetted, (Ministerial), to be filled up 25% by way of promotions and 75% by way of Direct Recruitment, with recruitment by promotion being from eligible Group C employees like Lower Division Clerks, Notice Servers, record keepers and Senior Gestetner Operators with a combined service of five years in Group C and D and all Group D employees who have put in five years of regular service, and who have passed Matriculation or equivalent examination, and have qualified the prescribed departmental examination for data entry skill of 5000 key depressions per hour. In their case also, the Group C DPC is chaired by Additional or Joint Commissioner of Income Tax (Headquarters) as the Chairperson.

30. The 2002 posts of Stenographers Grade II have been classified as General Civil Services Group C Non-Gazetted (Ministerial), which posts are to be filled up 100% by way of promotion from amongst Stenographers Grade III, who have put in 5 years of regular service in the grade, and in their case also the Group C DPC consists of Additional or Joint Commissioner of Income Tax (Headquarters) as the Chairperson. The 2002 posts of Stenographers Grade III are also classified as General Central Services Group C Non-Gazetted (Ministerial), and have to be filled up 100% by way of Direct Recruitment. These Recruitment Rules of 2003 were amended by the CBDT Notification dated 15.09.2010 in respect of Stenographers Grade II by Notification of the Rules called Income Tax Department Stenographer Grade II (Group C) Recruitment Rules, 2010, in which the number of posts was increased to 2051, to be filled up through direct recruitment through Staff Selection Commission, with a probation period of 2 years, and the Departmental Promotion Committee (DPC) constituted for their confirmation is chaired by Additional or Joint Commissioner of Income Tax (Headquarters).

31. The applicants had also filed the Rules called Income Tax Department Administrative Officers (Group A & B Posts) Recruitment Rules, 2004, notified on 30.12.2004, in which 5 posts of Senior Administrative Officer were classified as General Central Service Group A Gazetted (Ministerial), and 35 posts of Administrative Officers Grade-II were classified as General Central Services Group B Gazetted (Ministerial), and 774 posts of Administrative Officers Grade-III were classified as General Central Services Group B Gazetted (Ministerial). The posts in all the three grades of Senior Administrative Officer, Administrative Officer Grade-II, and Administrative Officer Grade-III, were to be filled up only by way of promotion, with the last category post of Administrative Officer Grade-III having the feeder cadre of Office Superintendents, with residency criteria of three years regular service in their grade, and for promotions to Administrative Officer Grade-II, the residency period was three years of regular service in the pay scale of Administrative Officers Grade-III, and for the posts of Senior Administrative Officers the residency criteria in the pay scale of Administrative Officers Grade-II was six years regular service in that grade.

32. None of the applicants before us is a Senior Administrative Officer, but many of them belong to Administrative Officer Grade-II and Grade-III, whose Cadre Controlling Authority has been shown to be the Chief Commissioner of Income Tax. Since the applicants had given up their claim of parity with the Income Tax Officers, the Rules called Ministry of Finance, Department of Revenue, Income Tax Officers, Group B Posts, Recruitment Rules, 2004, as filed by the applicants, and its subsequent amendments, are not being discussed here in detail. However, it is seen that the applicants service conditions, the promotional criteria, the constitution of the Departmental Promotion Committee, the periods of residency prescribed in the feeder cadre, and the percentages prescribed for promotions, and the qualifications for direct recruitment in a few cases, are such that they are not exactly at par with the terms and conditions of service as prescribed in the case of the officials of the CSS and CSSS. Therefore, the applicants have not been able to make out an unassailable case for equivalence in parity with the officials of the CSS and CSSS.

33. During arguments, the learned counsel for the applicants had laid much emphasis on the recommendations of the VIth CPC at para 3.1.9 of its report which stated as follows:

3.1.9 Accordingly, the Commission recommends upgradation of the entry scale of Section Officers in all Secretariat Services(including CSS as well as non participating ministries/departments/organizations) to Rs.7500-12000 corresponding to the revised pay band PB 2 of Rs.8700-34800 along with grade pay of Rs.4800. Further, on par with the dispensation already available in CSS, the Section Officers in other Secretariat 161 Offices, which have always had an established parity with CSS/CSSS, shall be extended the scale of Rs.8000-13500 in Group-B corresponding to the revised pay band PB 2 of Rs.8700-34800 along with grade pay of Rs.4800 on completion of four years service in the lower grade. This will ensure full parity between all Secretariat Offices. It is clarified that the pay band PB 2 of Rs.8700-34800 along with grade pay of Rs.4800 is being recommended for the post of Section Officer in these services solely to maintain the existing relativities which were disturbed when the scale was extended only to the Section Officers in CSS. The grade carrying grade pay of Rs.4800 in pay band PB-2 is, otherwise, not to be treated as a regular grade and should not be extended to any other category of employees. These recommendations shall apply mutatis-mutandis to post of Private Secretary/equivalent in these services as well. The structure of posts in Secretariat Offices would now be as under:-

Post Pre revised pay scale Corresponding revised pay band and grade pay

LDC Rs.3050-4590 PB-1 of Rs.4860-20200 along

with grade pay of Rs.1900

UDC Rs.4000-6000 PB-1 of Rs.4860-20200 along

with grade pay of Rs.2400

Assistant Rs.6500-10500 PB-2 of Rs.8700-34800 along

with grade pay of Rs.4200

Section

Officer

Rs.7500-12000

Rs.8000-13500\*

(on completion

of four years)

PB-2 of Rs.8700-34800 along

with grade pay of Rs.4800.

PB-2 of Rs.8700-34800 along

with grade pay of Rs.5400\*

(on completion of four years)

Under

Secretary

Rs.10000-15200 PB-3 of Rs.15600-39100 along

with grade pay of Rs.6100

Deputy

Secretary

Rs.12000-16500 PB-3 of Rs.15600-39100 along

with grade pay of Rs.6600

Director Rs.14300-18300 PB-3 of Rs.15600-39100 along

with grade pay of Rs.7600

Note:- This scale shall be available only in such of those organizations/services which have had a historical parity with CSS/CSSS. Services like AFHQSS/ AFHQSSS/RBSS and Ministerial/ Secretarial posts in Ministries/Departments organisations like MEA, Ministry of Parliamentary Affairs, CVC, UPSC, etc. would therefore be covered.

(Emphasis supplied)

34. It was also submitted that the case of the applicants could not be covered under paragraph 3.1.14 of the recommendations of the VIth CPC which may be reproduced here for the purpose of record as follows:

3.1.14 In accordance with the principle established in the earlier paragraphs, parity between Field and Secretariat Offices is recommended. This will involve merger of few grades. In the Stenographers cadre, the posts of Stenographers Grade II and Grade I in the existing scales of Rs.4500-7000/Rs, 5000-8000 andRs.5500-9000 will, therefore, stand merged and be placed in the higher pay scale of Rs.6500-10500. In the case of ministerial post in non- Secretariat Offices, the posts of Head Clerks, Assistants, Office Superintendent and Administrative Officers Grade III in the respective pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500- 10500 will stand merged. The existing and revised structure in Field Organization will, therefore, be as follows:-

(in Rs.)

Designation Present pay scale Recommended pay scale Corresponding Pay Band & Grade Pay

Pay band Grade Pay

LDC 3050-4590 3050-4590 PB-1 1900

UDC 4000-6000 4000-6000 PB-1 2400

Head

Clerk/Assistants/

Steno Grade

II/equivalent

4500-7000/

5000-8000

Office

Superintendent/

Steno Grade

I/equivalent

5500-9000

Superintendent/

Asst. Admn.

Officer/ Private

Secretary/

equivalent

6500-10500

Administrative

Officer Grade II

/Sr. Private

Secretary/equ. 7500-12000

7500-12000

entry grade

for fresh

recruits)

8000-13500

(on

completion of

four years)

PB-2

4800

(5400

after 4

years)

Administrative

Officer Grade I 10000-15200 10000-15200 PB-2 6100

Note 1 The posts in the intermediate scale of Rs.7450-11500, wherever existing, will be extended the corresponding replacement pay band and grade pay.

Note 2 The existing Administrative Officer Grade II /Sr. Private Secretary/equivalent in the scale of Rs.7500-12000 will, however, be placed in the corresponding replacement pay band and grade pay till the time they become eligible to be placed in the scale of Rs.8000-13500 corresponding to the revised pay band PB 2 of Rs.8700-34800 along with grade pay of Rs.5400.

(Emphasis supplied)

35. The applicants had, during arguments, relied upon para 7.15.12 of the Report of the VIth CPC to make out a point that the part B, Section II of the Central Civil Services (Revised Pay) Rules, 2008, Table-I and Table-II, had incorrectly distinguished between the Section Officers/Private Secretaries and equivalent of Central Secretariat to be covered by para-3.1.9 of the VI CPC Report (supra), and the applicants to be covered rather under the category of Office Staff working in Organizations outside the Secretariat, and being covered by para-3.1.14 of the VIth CPC recommendations (supra), which had given rise to the anomaly against which they are before this Tribunal in the present OA. The applicants have pointed out their representations dated 20/21.04.2010 (Annexure A/12), and dated 20th April/21st May, 2010 (Annexure A/15), and the representation given by one of the applicants to the General Secretary of the Association on 20.07.2010 through Annexure A/16.

36. However, it is clear that the Central Board of Direct Taxes and the Central Board of Excise & Customs are two separate Boards, functioning under the Department of Revenue, Ministry of Finance, Government of India. As held by the Honble Apex Court in the case of Federation of All India Customs and Central Excise Stenographers (supra), the employees of CBEC cannot claim to be employees of the Secretariat Organization under which the Board functions. The same ratio, as laid down by the Honble Apex Court, would apply in the case of the present applicants also, as was rightly argued by the respondents.

37. The claim of historical parity has also not been successfully proved by the applicants, as the so-called claim of parity had been disturbed already in the years 2003 and 2004, as per the admission of the applicants themselves, as recorded above, and also the applicants later had full opportunity to represent their case before the VIth CPC, which they may have done also, and it does not appear that the VIth CPC did not want their cases to be classified under para-3.1.14, rather than under para-3.1.9, which is applicable only to the Secretariat employees.

38. In any case, when the posts of Administrative Officers Grade-II have to be filled up 100% by promotion from the posts of Administrative Officers Grade-III, the applicants belonging to both the categories of Administrative Officers Grade-II and Administrative Officers Grade-III cannot claim the same relief, of equivalence with the same grade or cadre in the CSSS. The respondents are also right in submitting that the main basis or structure of the claim for parity, as was initially built up by the applicants in the present OA, was on the foundation of a claim for parity between the Income Tax Officers Group B and the Central Secretariat Officers. When, in the light of the judgment of the Hyderabad Bench of this Tribunal in C.B.N. Prasad & Ors. (supra), the applicants have given up their claim for equivalence and parity with the Income Tax Officers (Group B), it is apparent that the very foundation of the claim of the applicants disappears altogether.

39. However, as has been held by the Apex Court in the cases of P.U. Joshi & Ors. vs. Accountant General, Hyderabad & Ors. with Union of India and Ors. vs. Basudeba Dora and Others (2003) 2 SCC 632; S. P. SHIVPRASAD PIPAL vs. UNION OF INDIA AND OTHERS 1998 (4) SCC 598; & ANIL KUMAR VITTHAL SHETE & ORS vs. STATE OF MAHARASHTRA & ANR (2006) 12 SCC 148: AIR 2006 SC 2018, and in the case law as cited by the respondents, the State can change the cadre structure and the Recruitment Rules in the case of administrative exigencies. In this context, we may refer to the findings of the Honble Apex Court in Para-10 of P.U. Joshi & Ors with Union of India and Ors. vs. Basudeba Dora and Others (supra), in which the Honble Apex Court had stated as follows:-

10. We have carefully considered the sub-missions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/ posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.

40. Similarly in the case of S. P. SHIVPRASAD PIPAL (supra), the Honble Apex Court had in Paragraphs 14 to 19 held as follows:-

14. The Cadre Review Committee after examining the kinds of duties discharged by these officers decided that since they all worked in the area of labour welfare, it would be desirable that they could widen their experience. This would be possible if the cadres were integrated and the posts were made interchangeable so that the members of the cadre could get a more varied experience in different areas of labour welfare, thus making for a better equipped cadre. Therefore, although the exact nature of work done by the three cadres was different, it would be difficult to say that one cadre was superior or inferior to the other cadre or service.

15. A decision to merge such cadres is essentially a matter of policy. Since the three cadres carried the same pay scale at the relevant time, merging of the three cadres cannot be said to have caused any prejudice to the members of any of the cadres. The total number of posts were also increased proportionately when the merger took place so that the percentage of posts available on promotion was not in any manner adversely affected by the merger of the cadres.

16. The appellant, however, contends that as a result of the merger his promotional chances have been very adversely affected because his position in the seniority list has gone down. Rule 9 of the Central Labour Service Rules, 1987 under which the merger is effected, lays down the Rules of Seniority. It provides that the inter se seniority of the officers appointed to the various grades mentioned in Schedule I at the initial constitution stage of the service shall be determined according to the length of regular continuous service in the grade subject to maintenance in the respective grade of inter se seniority of officers recruited in their respective original cadres. The proviso to this Rule prescribes that although Assistant Labour Commissioner (Central), Labour Officer and Assistant Welfare Commissioner shall be equated, all Assistant Labour Commissioners (Central) holding such posts on or before 31st of December, 1972 shall be en block senior to Labour Officers and (2) senior Labour Officers and Regional Labour Commissioners shall be equated. But all Regional Labour Commissioners holding such posts on or before the 2nd of March, 1980 shall be en block senior to the senior Labour Officers.

17. Explaining the proviso the respondents have said that before 31st of December, 1972 Assistant Labour Commissioners were in a higher pay scale than Labour Officers. The parity between their pay scales came about only from January 1973. That is why to preserve their inter se position, Assistant Labour Commissioners appointed prior to 31st of December, 1972 have been placed above Labour Officers. Similarly, Regional Labour Commissioners drew a higher pay scales than senior Labour Officers prior to 1980. The parity has come about in 1980 and hence Regional Labour Commissioners holding such posts on or before 2nd of March, 1980 have been placed above senior Labour Officers.

18. The seniority Rules have thus been carefully framed taking all relevant factors into consideration. The respondents have also pointed out that as a matter of fact, by reason of the merger, the appellant has not, in fact, suffered any prejudice and he has also received promotions.

19. However, it is possible that by reason of such a merger, the chance of promotion of some of the employees may be adversely affected, or some others may benefit in consequence. But this cannot be a ground for setting aside the merger which is essentially a policy decision. This Court in Union of India v. S. L. Dutta (AIR 1991 SC 363) (supra) examined this contention. In S. L. Dutta's case (supra) a change in the promotional policy was challenged on the ground that as a result, service conditions of the respondent were adversely affected since his chances of promotion were reduced. Relying upon the decision in the State of Maharashtra v. Chandrakant Anant Kulkarni (AIR 1981 SC 1990) (supra) this Court held that a mere chance of promotion was not a condition of service and the fact that there was a reduction in the chance of promotion would not amount to a change in the conditions of service.

41. Further, in the case of ANIL KUMAR VITTHAL SHETE & ORS (supra), the Honble Apex Court has held as follows:-

30. In S.P. Shivprasad Pipal v. Union of India & Ors., (1998) 4 SCC 598, three cadres in labour service were merged by issuing a notification. It was contended by the appellant that different cadres could not have been merged inasmuch as they had different qualifications, functions, duties and powers and by merging those cadres, unequals had been treated as equals which was not permissible. It was also contended that by reason of merger, chances of promotion of the appellant stood diminished. The action was thus violative of Articles 14 and 16 of the Constitution.

31. The Court, however, negatived the contention holding that it was open to the State to merge different cadres. Following Chandrakant Kulkarni, the Court observed that, when different cadres are merged, the principles laid down in that decision had to be complied with. The Court reiterated that it was not open to the judiciary to consider whether the equation of posts made by the Government was right or wrong. It was a matter exclusively within the province of the Government. Perhaps the only question the Court could enquire into was as to whether the principles laid down in Chandrakant Kulkarni had been kept in mind and properly applied.

32. Dealing with the contention that as a result of merger of cadre, promotional chances of the petitioner had been adversely affected because his position in the seniority list had gone down, the Court stated that the seniority rules had been carefully framed and appellant had not suffered prejudice. It, however, proceeded to state that by reason of such a merger, chances of promotion of some of the employees may be adversely affected or some others may be benefitted in consequence. But that cannot be a ground for setting aside the merger which is essentially a policy decision. It is well established that 'chances of promotion' is not a 'condition of service' and reduction of chances of promotion would not amount to 'change in condition of service'.

33. From the above decisions, it is clear that it is always open to an employer to adopt a policy for fixing service conditions of his employees. Such policy, however, must be in consonance with the Constitution and should not be arbitrary, unreasonable or otherwise objectionable. When several cadres are sought to be unified in few cadres, e.g. three cadres in the instant case, it is natural that all Judicial Officers have to be placed in one or the other cadre. The said fact itself cannot make the decision vulnerable. The High Court, in our opinion, considered the question in its proper perspective and while creating three cadres and placing Judicial Officers in one of the cadres, took into account the relevant principles.

42. In this connection we may also cite the Honble Apex Court decision in `State of Haryana & Anr. v. Haryana Civil Secretariat Personal Staff Association JT 2002 (5) SC 189 in which in para-9 of the judgment, the Honble Apex Court had cited with approval its earlier judgment in the case of Secretary, Finance Department & Ors. v. West Bengal Registration Service Association & Ors. JT 1992 (2) SC 27 by stating as follows:-

9. This Court in the case of Secretary, Finance Department & Ors. v. West Bengal Registration Service Association & Ors., JT 1992 2 SC 27 : 1993 SUPP1 SCC 153 dealing with the question of equation of posts and equation of salaries of government employees, made the following observations: "We do not consider it necessary to traverse the case law on which reliance has been placed by counsel for the appellants as it is well settled that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary and, therefore, ordinarily courts will not enter upon the task of job evaluation which is generally left to expert bodies like the pay commissions, etc. But that is not to say that the court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary state action or inaction. Courts must, however, realize that job evaluation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performances of different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing nature of job requirements. The factors which may have to be kept in view for job evaluation may include (i) the work programme of his department (ii) the nature of contribution expected of him (iii) the extent of his responsibility and accountability of the discharge of his diverse duties and functions (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharge of his duties (v) the extent of powers vested in him (vi) the extent of his dependence on superiors for the exercise of his powers (vii) the need to co-ordinate with other departments, etc. We have also referred to the history of service and the effort of various bodies to reduce the total number of pay scales to a reasonable number. Such reduction in the number of pay scales has to be achieved by resorting to broadbanding of posts by placing different posts having comparable job charts in a common scale. Substantial reduction in the number of pay scales must inevitably lead to clubbing of posts and grades which were earlier different and unequal. While doing so care must be taken to ensure that such rationalization of the pay structure does not throw up anomalies. Ordinarily a pay structure is evolved keeping in mind several factors, e.g. (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v) avenues of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay, etc. We have referred to these matters in some detail only to emphasize that several factors have to be kept in view while evolving a pay structure and the horizontal and vertical relativities have to be carefully balanced keeping in mind the hierarchical arrangements, avenues for promotion, etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well. It is presumably for this reason that the Judicial secretary who had strongly recommended a substantial hike in the salary of the sub-registrars to the second (state) pay commission found it difficult to concede the demand made by the registration service before him in his capacity as the chairman of the third (state) pay commission. There can, therefore, be no doubt that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post and court's interference Is absolutely necessary to undo the injustice.

(Emphasis supplied)

43. We have also examined all the case laws as cited by the respondents, and by the learned counsel for the applicants, in detail. Although we are not discussing the salient points and ratio emerging out of each of those cases here, but we find that in none of those cases it has been clearly held that this Tribunal would be bound to provide relief only by a claim of historical parity, when an expert body like the Pay Commission has had an occasion to examine threadbare in detail the rival claims and contentions, and has arrived at conclusions, and has divided its recommendations into two separate Paragraphs 3.1.9 and 3.1.14 of its recommendations.

44. Therefore, it is held that the respondent - Union of India have correctly decided to follow the recommendations of the VIth CPC, as contained in Para-3.1.14, and applied that specific recommendation in the case of the applicants, and the applicants cannot claim any relief merely on the basis of a claim of a past historical parity, even though in some cases some such parity may have been granted to them by the Courts and this Tribunal in the past from time to time, in view of the prayers made in those cases, and the circumstances prevailing at that point of time.

45. In the result, since it has been held by the Honble Apex Court that a claim for parity of the pay scales to be sustained not only as the nomenclature of the posts has to be compared, but the duties, functions, powers, responsibilities and various criteria like promotional avenues, availability of speeded promotion in the offices other than the Secretariat etc., have to be considered, it is obvious that the applicants of this OA have not been able to prove their case on any of these counts, as mentioned above, and, therefore, the prayer made in the OA cannot be allowed, and the OA fails accordingly. However, there shall be no orders as to costs.

(Sudhir Kumar) (G. George Paracken)

Member (A) Member (J)

cc.