

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF EXPENDITURE

LOK SABHA
UNSTARRED QUESTION No. 3281

TO BE ANSWERED ON MONDAY, DECEMBER 16, 2024
25 AGRAHAYANA, 1946 (SAKA)

PAY RELATED COURT CASES

3281: SHRI RAJMOHAN UNNITHAN

Will the Minister of Finance be pleased to state:

- a) the policy of Government in respect of extending benefits to similarly placed applicants in pay related court cases dismissed by Apex court in SLP and Review petition;
- b) whether Review petition No.11687/2024 in SLP 18423-18429/2023 filed by the Government in the case of Neeraj Kumar Srivastava & Ors. Vs. UoI & Ors. has been dismissed by the Hon'ble Supreme Court, if so, the details thereof;
- c) whether the Government has rejected the proposal to extend the benefits to similarly placed applicants while accepting that no more judicial avenues are left to the Government in the above case; and
- d) whether by not implementing the judgement in above case to similarly placed applicants, the Government is encouraging such applicants to take shelter of various Tribunals, High Court and Apex Court across the country and to file cases similar to the one already settled by Hon'ble Apex Court thereby increasing the number of cases in courts and wasting the valuable time of the Hon'ble Courts?

ANSWER

**MINISTER OF STATE IN THE MINISTRY OF FINANCE
(SHRI PANKAJ CHAUDHARY)**

- a) Orders of the Apex Court are implemented as per the directions of the court.
- b) Yes sir, Hon'ble Supreme Court vide Order dated 18th July, 2024 dismissed the review petition No. 11687/2024 in SLP No. 18423-18429/2023.
- c) & d) The directions of Hon'ble Supreme Court in SLP No. 18423-18429/2023 have been agreed for implementation.

भारत सरकार
वित्त मंत्रालय
व्यय विभाग

लोक सभा

लिखित प्रश्न संख्या - 3281

सोमवार, 16 दिसम्बर, 2024/25 अग्रहायण, 1946 (शक)

वेतन संबंधी अदालती मामले

3281. श्री राजमोहन उन्नीथन:

क्या वित्त मंत्री यह बताने की कृपा करेंगे कि:

- (क) उच्चतम न्यायालय द्वारा एसएलपी और पुनरीक्षण याचिका में खारिज किए गए वेतन संबंधी आदालती मामलों में समान स्थिति वाले आवेदकों को लाभ प्रदान करने के संबंध में सरकार की नीति क्या है;
- (ख) क्या नीरज कुमार श्रीवास्तव एवं अन्य बनाम भारत संघ और अन्य के मामले में सरकार द्वारा दायर एसएलपी 18423-18429/2023 में पुनरीक्षण याचिका संख्या 11687/2024 को माननीय उच्चतम न्यायालय द्वारा खारिज कर दिया गया है और यदि हां, तो तत्संबंधी ब्यौरा क्या है;
- (ग) क्या सरकार ने समान स्थिति वाले आवेदकों को लाभ देने के प्रस्ताव को अस्वीकार कर दिया है और कहा है कि उपर्युक्त मामले में सरकार के पास और कोई न्यायिक अवसर नहीं है; और
- (घ) क्या उक्त मामले में समान स्थिति वाले आवेदकों के निर्णय को लागू न करके सरकार ऐसे आवेदकों को संपूर्ण देश के विभिन्न अधिकरणों, उच्च न्यायालयों और उच्चतम न्यायालय में जाने और माननीय उच्चतम न्यायालय द्वारा पहले से तय किये गए मामले के समान याचिका दायर करने के लिए प्रोत्साहित कर रही है जिससे न्यायालयों में मामलों की संख्या में वृद्धि हो रही है और माननीय न्यायालयों का बहुमूल्य समय बर्बाद हो रहा है?

उत्तर

वित्त राज्य मंत्री (श्री पंकज चौधरी)

- (क): माननीय उच्चतम न्यायालय के आदेश न्यायालय के निदेशों के अनुसार लागू किए जाते हैं।
- (ख): जी, हां। माननीय उच्चतम न्यायालय द्वारा एसएलपी संख्या 18423-18429/2023 में पुनरीक्षण याचिका संख्या 11687/2024 को दिनांक 18 जुलाई, 2024 के आदेश के माध्यम से खारिज कर दिया गया है।
- (ग) और (घ): एसएलपी संख्या 18423-18429/2023 में माननीय उच्चतम न्यायालय के निदेशों को लागू करने के लिए सहमति बनी है।

**IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION**

REVIEW PETITION (C) NO(S). _____ OF 2024
[DIARY NO. 11687 OF 2024]

IN
SPECIAL LEAVE PETITION (C) NOS. 18423-18429 OF 2023

**PRINCIPAL CONTROLLER OF
DEFENCE ACCOUNT (P) & ORS. ETC.PETITIONER(S)**

VERSUS

NEERAJ KUMAR SRIVASTAVA & ORS. ETC. ...RESPONDENT(S)

O R D E R

Delay condoned.

I.A. No. 64629 of 2024 for oral hearing is rejected.

We have carefully perused the Review Petitions as also the grounds in support thereof. In our opinion, no case for review of order dated 22.08.2023 is made out.

The Review Petitions are, accordingly, dismissed.

Pending application(s), if any, shall stand disposed of.

.....**J.**
(J.K. MAHESHWARI)

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Nidhi Ahuja
Date: 2024.07.20
13:00:05 IST
Reason: 

.....**J.**
(K.V. VISWANATHAN)

NEW DELHI;
JULY 18, 2024.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

REVIEW PETITION (CIVIL) Diary No. 11687/2024

(Arising out of impugned final judgment and order dated 22-08-2023 in SLP(C) No. No. 18423/2023 22-08-2023 in SLP(C) No. No. 18424/2023 22-08-2023 in SLP(C) No. No. 18425/2023 22-08-2023 in SLP(C) No. No. 18426/2023 22-08-2023 in SLP(C) No. No. 18427/2023 22-08-2023 in SLP(C) No. No. 18428/2023 22-08-2023 in SLP(C) No. No. 18429/2023 passed by the Supreme Court of India)

PRINCIPAL CONTROLLER OF
DEFENCE ACCOUNT (P) & ORS.ETC.

Petitioner(s)

VERSUS

NEERAJ KUMAR SRIVASTAVA & ORS.ETC.

Respondent(s)

(IA No. 64630/2024 - CONDONATION OF DELAY IN FILING REVIEW PETITION and IA No. 64629/2024 - ORAL HEARING)

Date : 18-07-2024 This matter was circulated today.

CORAM : HON'BLE MR. JUSTICE J.K. MAHESHWARI
HON'BLE MR. JUSTICE K.V. VISWANATHAN

By Circulation

UPON perusing papers the Court made the following
O R D E R

Delay condoned.

I.A. No. 64629 of 2024 for oral hearing is rejected.

We have carefully perused the Review Petitions as also the grounds in support thereof. In our opinion, no case for review of order dated 22.08.2023 is made out.

The Review Petitions are, accordingly, dismissed.

Pending application(s), if any, shall stand disposed of.

(NIDHI AHUJA)
AR-cum-PS

(POOJA SHARMA)
COURT MASTER (NSH)

[Signed order is placed on the file.]

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 24270/2023

(Arising out of impugned final judgment and order dated 01-12-2022 in WA No. 13860/2013 01-12-2022 in WA No. 11270/2016 01-12-2022 in WA No. 20477/2013 01-12-2022 in WA No. 33288/2014 01-12-2022 in WA No. 33711/2014 01-12-2022 in WA No. 33712/2014 01-12-2022 in WA No. 60422/2014 passed by the High Court Of Judicature At Allahabad)

**PRINCIPAL CONTROLLER OF DEFENCE
ACCOUNT (P) & ORS. ETC.**

Petitioner(s)

VERSUS

NEERAJ KUMAR SRIVASTAVA & ORS. ETC.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.153429/2023-CONDONATION OF DELAY IN FILING and IA No.153430/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 22-08-2023 This petition was called on for hearing today.

**CORAM : HON'BLE MR. JUSTICE J.K. MAHESHWARI
HON'BLE MR. JUSTICE K.V. VISWANATHAN**

**For Petitioner(s) Mr. Vikramjeet Banerjee, A.S.G.
Ms. Sneha Kalita, Adv.
Mr. Nachiketa Joshi, Adv.
Mr. Abhishek Singh, Adv.
Ms. Sweksha, Adv.
Mr. Arvind Kumar Sharma, AOR**

For Respondent(s) Mr. Robin Khokhar, AOR

**UPON hearing the counsel the Court made the following
O R D E R**

Delay condoned.

We find no ground to interfere with the impugned order(s) passed by the High Court. The Special Leave Petitions are, accordingly, dismissed.

Pending interlocutory application(s), if any, is/are disposed

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Jayant Kumar Arora
Date: 22-08-23
16:48:56 IST
Reason: 

**(JAYANT KUMAR ARORA)
ASTT. REGISTRAR-cum-PS**

**(VIRENDER SINGH)
BRANCH OFFICER**

Court No. - 3

Case :- WRIT - A No. - 13860 of 2013

Petitioner :- Principal Controller Of Defence Account P And Ors.

Respondent :- Neeraj Kumar Srivastava And Ors.

Counsel for Petitioner :- Praveen Shukla, Pradeep Singh, Vinay Kumar Singh

Counsel for Respondent :- A.B.Singhal, S.C., Shyamal Narain

With

Case :- WRIT - A No. - 11270 of 2016

Petitioner :- Union Of India And 8 Others

Respondent :- Praveen Kumar And 30 Others

Counsel for Petitioner :- Satish Kumar Rai, Ashok Mehta, Chandra Prakash Yadav

Counsel for Respondent :- S.C

With

Case :- WRIT - A No. - 20477 of 2013

Petitioner :- Union Of India And 3 Ors.

Respondent :- Pravin Goswami And Anr.

Counsel for Petitioner :- Ashok Singh

Counsel for Respondent :- S.C., Shyamal Narain

With

Case :- WRIT - A No. - 33288 of 2014

Petitioner :- Union Of India Thru Secy. And 3 Others

Respondent :- Arun Kumar Srivastava 27 Others

Counsel for Petitioner :- Praveen Shukla, Central Govt. Counsel, Devendra Gupta, Prakash Chandra Tiwari, R.B. Singhal

Counsel for Respondent :- Shyamal Narain

With

Case :- WRIT - A No. - 33711 of 2014

Petitioner :- The Union Of India Thru Secy. And 5 Others

Respondent :- Mahesh Chandra Sharma And 16 Others

Counsel for Petitioner :- Sanjay Kumar Yadav,Dhurva Kant Chaturvedi,Manoj Kumar Singh,R.B. Singhal,Saurabh Srivastava

Counsel for Respondent :- Shyamal Narain

With

Case :- WRIT - A No. - 33712 of 2014

Petitioner :- The Union Of India Thru Secy. And 7 Others

Respondent :- Manish And 30 Others

Counsel for Petitioner :- Ram Dular,Pramod Kumar Pandey,R.B. Singhal

Counsel for Respondent :- Shyamal Narain

With

Case :- WRIT - A No. - 60422 of 2014

Petitioner :- Union Of India And 5 Ors

Respondent :- Mukesh Kumar And 18 Ors

Counsel for Petitioner :- Ajay Singh,Prem Sagar Gupta

Counsel for Respondent :- Shyamal Narain

Hon'ble Surya Prakash Kesarwani,J.

Hon'ble Rajendra Kumar-IV,J.

1. Heard Sri S.P. Singh, learned Additional Solicitor General of India assisted by Sri Ashok Singh, Vinay Kumar Singh, Devendra Gupta, Chandra Prakash Yadav, Pramod Kumar Pandey, Manoj Kumar Singh, Arvind Singh and Gaurav Kumar Chandra, learned Central Government Standing Counsel for the petitioners and Sri Shyamal Narain, learned Counsel for the respondents.

2. In this batch of writ petitions, common facts and controversy is involved. Therefore, with the consent of the learned Counsel for the parties, all the writ petitions are being heard together and the Writ A No.13860 of 2013 is treated as the

leading writ petition.

3. The respondents herein filed Original Applications before the Central Administrative Tribunal Allahabad Bench, Allahabad (hereinafter referred to as Tribunal) claiming the benefit of Rule 11 of the Rules 2008. The relief sought before the Tribunal in the leading Original Application No. No.293 of 2011, is reproduced below:-

“In view of the facts, mentioned in Para 4 above, the applicants pray for following reliefs:-

That this Hon’ble Tribunal be pleased to:

a) quash and set aside the impugned order dated 25.10.2020 in so far as it states and holds that para 3 of IC’s U.O. dated 27.01.2010 is applicable in respect of Assistants/PAs of Central Secretariat Services only (Annexure Nos. A-1 to compilation No.I).

*b) quash and set aside the impugned order dated 22.11.2010 issued under the signature of Sri R.K. Bhatt, on behalf of the Controller General of Defence Accounts, Delhi, holding that in view of the clarification dated 25.10.2010 issued by the Ministry of Finance, Department of Expenditure, **the benefit of pay fixation in the scale of Rs.7500-12000 cannot be granted to S.O.(A)/AAO working in the office of the Principal Controller of Defence Accounts (P), Allahabad, who had opted for the 6th C.P.C. after 1.1.2006 till the date of Notification of the Revised Pay Rules, 2008.** (Annexure No.A-2 to Compilation No.I).*

c) issue a suitable time bound order or direction commanding the respondents to fix the pay of the applicants in the revised pay structure from the date of their promotion as S.O.(A), on the basis of the pay scale of Rs.7500-12000, instead of the pay scale of Rs.6500-10500, and pay them the entire arrears arising out of such fixation, along with interest.

d) issue such other orders or directions, and grant such other and further relief, as might be considered just and proper in the facts and circumstances of the case.

e) award the costs of this Original Application in favour of the applicants, throughout.”

4. Tribunal has allowed the leading Original Application No.293 of 2011 by the impugned orders with the observations, as under :-

*“9. As per Rule 5 regarding drawl of pay in the revised pay structure, a Government servant shall draw pay in the revised pay structure applicable to the post to which he is appointed provided that in cases where a government servant has been placed in a higher pay scale between 01.01.2006 and the date of notification of these rules on account of promotion, up-gradation of pay scale etc., the Government servant may elect to switch over to the revised pay structure from the date of such promotion, up-gradation etc. meaning thereby an option has to be called and it left to the Government servant to opt the date of re-fixation of his pay. **As per Rule 7 regarding fixation of initial pay in the revised structure, the pay in the pay band / pay scale was to be determined by multiplying the existing basis pay as on 01.01.2006 by a factor of 1.86 and rounding off the resultant figure to the next multiple of 10. As per Rule 11, which stipulated the method of fixation of pay in revised pay structure subsequent to the 1st day of January 2006, where a government servant continues to draw 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 by adding the basic pay applicable on the later date. After accepting the recommendation of 5th CPC the posts were up-gradation in pay scale of Rs.1450-11500. Subsequently by merging the post of the applicants in***

pay scale of Rs.7500-12000 w.e.f. 01.01.2006 the posts were re-designated as Assistant Accounts Officer. As per rules of 2008 since the applicants opted to have the revised pay scale w.e.f. the date of their promotion i.e. after 01.01.2006 but before 31.08.2008, therefore, as per rule 11, their pay in the Pay Band will be fixed by adding the basic pay applicable on the last date. Therefore, the action of the respondents in rejecting the representation of the applicants for fixing their pay in pay scale of Rs.7500-12000 is illegal and against the rules. The action of the respondents also smacks favouritism and discriminatory as the same benefit, which the applicants are asking, has already been given to the Assistants/PAs of M/o Petroleum and Gas, therefore, the impugned orders are also liable to be dismissed being discriminatory.

10. Accordingly, the O.A. is allowed. The impugned orders are quashed and set aside. The matter is remitted back to the respondents to consider the claim of the applicants regarding fixation of their pay in the revised pay structure from the date of their promotion as S.O.(A) in the light of observations made above. No costs."

5. Aggrieved with the aforesaid impugned orders of the Tribunal, The petitioners-Union of India have filed the present writ petitions against the impugned orders passed in original applications. The details of Original Applications and writ petitions, as under:-

S.No.	Original Application Nos.	Writ Petition Nos.
1	O.A. No.293 of 2011	Writ A No.13860 of 2013
2	O.A. No.330/01564 of 2014	Writ A No. 11270 of 2016
3	O.A. No.1459 of 2010	Writ A No.20477 of 2013

4	O.A. No.1646 of 2013	Writ A No.33288 of 2014
5	O.A. No.1646 of 2013	Writ A No.33711 of 2014
6	O.A. No.330/00122 of 2014	Writ A No.33712 of 2014
7	O.A. No.330/00634 of 2014	Writ A No.60422 of 2014

6. Since facts, controversy and reliefs sought in this batch of writ petitions are similar, therefore, the relief prayed by the petitioners in the leading Writ A No.13860 of 2013, is reproduced below:-

(i) Issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 09.08.2012 (Annexure-1 to the writ petition) passed by the Hon'ble Tribunal in O.A. No.293 of 2011, Neeraj Kumar Srivastava & others versus U.O.I. & others.

(ii) Issue any other suitable writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(iii) Award costs of this petition to the petitioners."

FACTS

7. Briefly stated the facts of the present case are that all the respondents have initially joined the petitioner's department as Auditors / Clerks. After passing department's SAS examination, **they were promoted to the post of Sections Officers on or after 17.04.2006 but before 31.08.2008** on different dates in the **pay scale of Rs.6500 – 10500/-**. Accepting the recommendations of 6th Central Pay Commission (in short CPC), The Central Civil Services (Revised Pay), Rules 2008 (hereinafter referred to as

Rules, 2008) was notified and published in The Gazette of India on 29.08.2008. The Rules, 2008 came into force with effect from 01.01.2006. Thus as per the Rules, 2008, the aforesaid pay scale of Rs.6500 – 10500/- stood revised to Rs.7500 – 12500/-.

8. In view of the first proviso to Rule 5 of the Rules, 2008 all the respondents herein exercised the option to continue in the existing scale until the date on which they earn the next or any subsequent increment in the existing scale. As per definition in Rule 3(2) of the Rules, 2008 the “existing scale” in relation to Government Servants means the **present scale** applicable to the post held by the Government Servant (or, as the case may be, personal scale applicable to him) **as on the 1st day of January, 2006 whether in a substantive or officiating capacity**. Thus in terms of the first proviso to Rule 5 of the Rules, 2008, the respondents herein exercised their option for the existing pay scale.

9. To the aforesaid effect the respondents herein had made specific averments in paragraph no.4.7 of their original application before the Tribunal, which is reproduced below:-

“(4.7) That it is categorically submitted, and is a matter of record, that all the applicants herein had exercised their option in favour of switching over to the revised pay structure from the date of their promotion as S.O.(A).”

10. The aforequoted paragraph was replied by the petitioners herein before the Tribunal in paragraph no.15 of their counter affidavit, as under :-

“That the contents of paragraph 4.7 of the Original Application need no comments being matter of record.”

11. Thus, it stands admitted to the petitioners herein that all the respondents herein have exercised their option for revised pay structure from the date of their promotions as S.O.(A).

12. In paragraph nos. 9 and 16 of the writ petition, the petitioners herein clearly admitted that Rule 11 of the Rules 2008 is applicable to the respondents herein. For ready reference the relevant portion of paragraph no. 9 of the writ petition, is reproduced below :-

“9. That the matter was contested by the petitioners / respondents by filing a counter affidavit to the O.A. No. 293 of 2011 as well as the Amendment Application wherein the case set up by the respondents was that the matter was referred to the Ministry of Finance, Department of Expenditure which has clarified vide its U.O. No. 18.02.10 – Legal dated 25.10.10 that “..... para 3 of the IC's U.O. dated 27.01.10 is applicable in respect of Assistant / PA's of the Central secretariat Services only. In the instant case Rule 11 of CCS (RP) Rules 2008 will apply and the pay fixation in respect of SO(A) / AAO may be fixed accordingly.” In view of the same it was averred that the pay of the applicant has been fixed correctly as per rules governing pay fixation after implementation of the 6th CPC. The case of Assistants / Pas of the CSS / CSSS, in whose case manner of fixation of pay was provided for in para 2(c) of the Ministry of Finance, Department of Expenditure, UO note Dt. 14.12.2009, in case of those promoted as Assistant / PAs between 01.01.2006 and 31.08.2008 stand on a different footing vis-a-vis the respondents. This is because in case of Assistants / PAs covered in the said UO Note Dt. 14.12.2009, the pre-revised scale of pay was revised from Rs.5500-9000 to Rs. 6500-10500 w.e.f.

15.09.2006 in the pre-revised structure itself in terms of Department of personal's O.M. Dt. 25.09.2006 to remove an anomaly vis-a-vis posts of Inspectors in the Central Excise Board of Direct Taxes and Central Board of Excise Customs. This was at a time when the 6th pay Commission was in the midst of its deliberations and the revised structure had still not been brought into force. In view of this, two different categories had come to subsist – those who were promoted after 01.01.2006 and opted for coming over to the revised scale from 15.09.2006 w.r.t. the pre-revised scale of Rs. 6500-10500 [an actual pre-revised scale] and those who were promoted after 01.01.2006 and before 31.08.2008. In view of these special circumstances, it was necessary to provide for two different sets of principles in these two cases and this is what has been done as per paras 2(b) and 2(c) of the said UO Note Dt.14.12.2009. On other hand, there is no such analogy involved in this case. The post of AAO was in the pre-revised scale of Rs.6500-10500, which has been revised/ upgraded based on the 6th pay commission recommendations in the from of PB 2 and the grade pay of Rs.4800 [which corresponds to the pre-revised scale of Rs.7500-12000. No intermediary sale in the pre-revised structure it self was introduced in their case between 01.01.2006 and 29.08.2008 during the pendency of the recommendation of the 6th Central Pay Commission, unlike the case of Assistants / PAs. Thus, the two cases are not similarly placed. No doubt, the respondents opted for the revised pay structure from a date later than 01.01.2006, as such they are governed by the rules 11 of CCS (RP) Rules 2008. Whether an employee to come over to the revised structure from 01.01.2006 or any later date, it is the actual pre-revised pay drawn by him in the actual pre-revised scale that is to be taken into account for fixation of pay, based on the fitment table appropriate to that pre-revised pays scale, plus the Grade pay as appropriate to that in revised structure, as clearly provided in Rule 11 as well as the clarification OM Dt.13.09.2008. A

Photostate copy of the O.M. Dt. 25.09.2006 and O.M. Dt. 13.09.2008 are being filed herewith and marked as Annexure-3 to this writ petition.”

13. In view of the aforementioned facts, it has been admitted by both the learned counsels for the parties before us that **the respondents have exercised option under the first proviso to Rule 5 of the Rules, 2008 and they shall be governed by Rule 11 of the Rules, 2008.**

14. Now, the question that arises for consideration is as to **whether the impugned order of the tribunal suffers from any infirmity.**

SUBMISSIONS

15. Reiterating the contention as raised in the afore quoted paragraph no. 9 of the writ petition, learned counsel for the petitioners submits that the respondents shall get the revised pay scale and not the revised pay scale of the existing pay scale of Rs.6500 – 10500/-. He submits that Rule 7 of the Rules, 2008 shall apply in the matters of the respondents in view of the law laid down by Hon'ble Supreme Court in the case of **Union of India and others vs. K.V. Rama Raju and others (Civil Appeal (S) No.1350 of 2018)** decided on 30.01.2018 holding as under :-

“It is clear that the pay had to be determined by multiplying the existing basic pay as on 1st January, 2006 by a factor of 1.86 and rounding off the resultant figure to the next multiple of 10 in terms of the rule.

The view taken that the multiplying factor is to be applied to the revised pay-scale is contrary to the above rule.

We accordingly hold that under the relevant Rules, the pay-scale is to be determined by multiplying basic pay as on 1st January, 2006 by a factor of 1.86. Thus, the view taken by the Madras Bench of the Central Administrative Tribunal by Order dated 7th July, 2015 in O.A. NO.310/00173/2014, R. Karthikeyan & Ors. v. Union of India & Ors., is upheld. Even though a writ petition against the said order is said to be pending before the High Court of Madras, since the matter has arisen before us and we have considered the issue, we approve the said view. Contrary view on the subject stands set aside.

The appeals are accordingly allowed. No costs.”

16. On the other hand, learned counsel for the respondents herein submits that once it is admitted case of the petitioners that Rule 11 of the Rules is applicable to the respondents herein then there is no question to apply Rule 7. Therefore, the judgement of Hon'ble Supreme Court in the case of **K.V. Rama Raju and others (supra)** is not applicable to the facts of the present case as clarified in a subsequent judgement in **Civil Appeal No. 3052 of 2019** (Union of India and others vs. Raj Kumar Anand) decided on 14.03.2019.

DISCUSSION & FINDING

17. We have carefully considered the submissions of learned counsels for the parties and perused the records of the writ petitions.

18. It is admitted to the parties, as afore noted; that all the

respondents have exercised option under the 1st proviso to Rule 5 of the Rules, 2008 and they were promoted subsequent to 01.01.2006 but before 31.08.2008. It has also been admitted in pleadings as well as before us by the petitioners that Rule 11 of the Rules 2008 shall apply to the case of the respondents. The objection taken by the petitioners while admitting applicability of Rule 11 of Rules 2008, is that "whether an employee to come over to the revised structure from 01.01.2006 or any later date, **it is the actual pre-revised pay** drawn by him in the **actual pre-revised scale** that is to be taken into account for fixation of pay, based on the fitment table appropriate to that pre-revised pays scale, plus the Grade pay as appropriate to that in revised structure, as provided in Rule 11."

19. Thus, the whole controversy relates to interpretation of Rule 11 of the Rules, 2008, which is reproduced below :-

"11. Fixation of pay in the revised pay structure subsequent to the 1st day of January, 2006.- Where a Government servant continues to draw his pay in the existing scale and is brought over to the revised pay structure 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 1.1.2006. This figure will be rounded off to the next multiple of 10 and will then become the pay in the applicable pay band. In addition to this, the grade pay

corresponding to the pre-revised pay scale will be payable. Where the Government servant is in receipt of special pay or non-practising 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 1.1.2006.”

20. We have also perused Schedule II of Part B of the first schedule appended to the Rules, 2008 and we find that the present and revised pay scale etc. are mentioned, as under :-

Section II

(In Rupees)

Sl.No.	Post	Present Scale	Revised Pay Scale	Corresponding Pay Band & Grade Pay		Para No. of the Report
				Pay Band	Grade Pay	
(1)	(2)	(3)	(4)	(5)	(6)	(7)
XX	ORGANISED ACCOUNTS CADRES*					
1	Section Officer	6500-10500	7500-12000	PB-2	4800	7.56.9
2	Assistant Accounts/Audit Officer	7450-11500	7500-12000	PB-2	4800	7.56.9
3	Audit/Accounts Officer	7500-12000	8000-13500	PB-2	5400	7.56.9
4	Senior Audit / Accounts Officer	8000-13500	8000-13500	PB-3	5400	7.56.9
*Also applicable to employees of Indian Audit & Accounts Department						

21. We find that there is nothing in Rule 11 of the Rules, 2008 which provides for revised pay structure "as defined in Rule 7 of the Rules 2008 to mean actual pre-revised pay drawn by the employee in the actual pre-revised scale, as has been asserted in

paragraph no. 9 of the writ petition.

22. Hon'ble Supreme Court considered the circumstances where Rule 7 or Rule 11 would be applicable and held in the case of **Raj Kumar Anand (supra)**, as under :-

“It is apparent from the first proviso to Rule 5 of Rules of 2008, that option was given to the government servant to continue to draw the pay scale until the date on which his next or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that pay scale.

Second proviso to Rule 5 which is attracted also made it clear that where the government servant has been placed in a higher pay scale between 1.1.2006 and the date of notification of these Rules on account of promotion, upgradation of pay scale etc., the government servant may elect to switch over to the revised pay structure from the date of such promotion, upgradation etc.

It is not in dispute that the ACP was granted to the respondent between 01.01.2006 and 29.8.2008 i.e. the date of notification of Rules 2008. It was granted w.e.f. 10.8.2006 vide order dated 25.4.2008. Thus, the benefit of upgraded pay scale was given to the respondent in between the aforesaid dates.

*Once he has elected for revised pay scale w.e.f. 10.8.2006, the date on which he was placed in the upgraded pay scale, obviously, Rule 7 cannot be said to be applicable. **It is Rule 11 which is applicable.***

*Rule 7 deals with the fixation of initial pay in the revised pay structure as per the 6th Central Pay Commission. **Note 2A** to Rule 7 relied upon by the appellants makes it vivid that **where a pay scale has been upgraded on the recommendation of Central Pay Commission** as indicated in para B and C of the first Schedule of the Rules of 2008, the fixation has to be made under Rule 7. **However, it was not the case of***

upgradation of the post as a result of the recommendation of the 6th Pay Commission and Schedule of Rules of 2008, but it was under ACP scheme which is a different scheme than the one as provided in the first schedule to the Rules 2008. The respondent has opted for revision of pay scale from the date of upgradation in the ACP scale w.e.f. 10.08.2006. Obviously, his pay has to be fixed under Rule 11 which deals with fixation of the pay in the revised pay scale in case such an option is exercised under the Rules of 2008. The Division Bench of the High Court was absolutely correct in applying Rule 11 as Note 2A of Rule 7 is not applicable in the case.

Coming to the decision rendered by this Court in K.V. Rama Raju & Ors. (supra), it does not appear from the facts that it was a case of exercising option from the date of upgradation under ACP that came for consideration before this Court. It is not clear whether it was a case of upgradation as a result of the recommendation of the 6th Pay Commission or independent thereto. In both the cases consequences are different. In the earlier exigency Rule 7 is attracted and in the later one Rule 11 of Rules of 2008 is attracted for fixation of pay. Thus, the decision cannot be an authority on the aforesaid issue which has not been decided. Apart from that, it was not the case of appellants that upgraded pay scale has been brought about by 6th Pay Commission as per provisions contained in Schedule of the Rules 2008 as provided in Note 2A of Rule 7. Thus, the decision in K.V. Rama Raju & Ors. (supra) is wholly distinguishable and cannot be applied to such cases where upgradation has been made otherwise than as per Schedule to Rules of 2008 framed as per recommendations of 6th Pay Commission and option is exercised in the aforesaid manner.

Resultantly, we have no hesitation to hold that the appeal is bereft of merit. Pay fixation has to be done under Rule 11 and not Rule 7 as discussed. Let pay

revision be worked out and arrears, if any, be paid within a period of 3 months from today.

The appeals deserve to be dismissed and are hereby dismissed. Parties to bear their own costs.”

23. In the aforequoted judgement, the Hon'ble Supreme Court has distinguished its own decision in the case of **Union of India and others vs. K.V. Rama Raju and others (supra)** and observed that decision in the said case cannot be applied where up-gradation has been made otherwise than as per schedule of the Rules, 2008. Bare reading of Rule 11 of the Rules 2008 itself clearly reveals that Rule 11 shall be attracted where a government servant continues to draw his pay in the existing scale and **is brought over to the revised pay scale from the later date** his pay from the **later date in the revised pay structure** shall be fixed in the manner as provided in the Clause (I). By the impugned order, the Tribunal has remitted back the matter to the petitioners herein to consider the claim of the respondents herein regarding fixation of their pay in the revised pay structure from the date of their promotion as SO (A) in the light of the observations made in the body of the order. Thus, we find no infirmity in the impugned order of the Tribunal.

24. For all the reasons afore-stated, we do not find any merit in these writ petitions. Consequently, all the writ petitions fails and are hereby **dismissed**.

Order Date :- 1.12.2022

I.A.Siddiqui