

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1537 of 2002

with

Original Application No. 1556 of 2002

New Delhi, this 13th day of May, 2003

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

OA 1537/2002

Shri P.L. Sharma
S/o Late Shri Ram Nath Bhatt
R/o 31 Panch Mahal Apartments,
I.P. Extension, Delhi-92.

-APPLICANT

OA 1556/2002

Dr. Bhagat Singh
S/o Late Shri Umrao Singh
R/o 593 Vikas Kunj
Vikas Puri,
New Delhi-110 018.

-Applicant

(By Advocate: Shri Subodh Markandeya, Sr. Counsel with
Shri Rajeev Kumar Dubey, Counsel)

Versus

1. Union of India
Through the Secretary,
Ministry of Human Resources Development,
Department of Education,
Shastri Bhawan,
New Delhi.
2. The Secretary,
The Department of Pension & Pensioner's
Welfare,
Ministry of Personnel, Public Grievance
and Pensions,
Lok Nayak Bhawan,
New Delhi.
3. The Secretary,
Department of Official Languages,
Ministry of Home Affairs,
Lok Nayak Bhawan,
New Delhi.

-RESPONDENTS

(By Advocate: Shri Rajeev Bansal)

ORDER

By Hon'ble Mr. Kuldip Singh, Member (Judl)

By this common order I will decide two OAs

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wherein common issue of facts and law are involved.

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2. Both the applicants are members of Central Secretariat Official Language Service and had risen to the position of Director of Official Languages. The applicant in OA 1537/2002 (P.L. Sharma) was in the Department of Posts, Ministry of Communications, Government of India and applicant in OA 1556/2002 (Dr. Bhagat Singh) was in the Department of Education, Ministry of Human Resources Development, Government of India. Applicant in OA 1537/2002 retired on 30.9.89 whereas applicant in OA 1556/2002 Dr. Bhagat Singh retired on 30.6.89. Both the applicants pleaded that the post of Director is apex post in the service known as Central Secretariat Official Language Service (hereinafter referred to as CSOLS). However, they have a common grievance that the Directors in other Central Services were enjoying the pay scale of Rs.4500-5700 (pre-revised) whereas the applicants were in the pay scale of Rs 3700-5000 (pre-revised).

3. The applicants submit that they have been making representations that they should be brought at par with other Directors but the same were pending consideration of the Central Government. However, the 5th Pay Commission in its report noted this anomaly and recommended upgradation of these posts and recommended the pay scale of Rs.4500-5700 for the post which applicants were holding.

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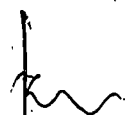
4. It is further submitted that the Central Government accepted the recommendations of the 5th Central Pay Commission which are published in Gazette Notification as per Annexure A-2.

5. It is further pleaded that though the applicants scale of pay which was Rs.3700-5000 was revised and revised pay scale was Rs.12000-16500. However, the applicants representation for upgradation of the post was still under consideration and vide an order dated 4.1.2001 the President on the recommendation of the 5th CPC sanctioned the pay scale of Rs.14300-18300 to all the Directors in CSOLS w.e.f. 1.1.1996. Thus as per the CCS ((Revised) Pay) Rules 1997 the pay for the post of Director had been revised to pay scale of Rs.14300-18300 vide order dated 4.1.2001 w.e.f 1.1.1996. Consequently the payment of the pension is also to be allowed on the basis of the pay scale w.e.f. 1.1.1996 and the petitioners are entitled to calculation of their pension taking the minimum of the pay scale of their post as Rs.14300/-.

6. It is further stated that all the Directors of CSOLS are being paid at the rate of Rs.7150/- from 1.1.1996 so the applicants are entitled to the same.

7. The respondents who have filed their counter-affidavit are contesting the OA. The plea of the respondents is that the applicants had been working in the pays scale of Rs.3700-5000 and corresponding revised pay scale of Rs.3700-5000 is Rs.12000-16500. The pay scale of Rs.14300-128300 had been granted to those

Directors only after upgradation which had nothing to do with the report of the Pay Commission. That had been done by a separate order.



8. Besides that the respondents pleaded that as per the clarification issued by the DOP&T vide OM dated 17.12.1998 minimum pension and minimum family pension to be 50% and 30% of the minimum of the post held at the time of retirement/death is concerned the clarification has been issued to the effect and as per the clarification, the pension is to be paid on the post last held by the applicant at the time of his superannuation. The second sentence of the OM dated 17.12.1998 reads that pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay w.e.f. 1.1.1996 of the post last held by the pensioner, which means that pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum of the corresponding scale as on 1.1.1996 of the scale of pay held by the pensioner at the time of superannuation/retirement. This clarification had been issued on 11.5.2001 so the learned counsel for the respondents submitted that the pension is to be calculated in accordance with the corresponding scale as on 1.1.1996 of the scale of pay held by the pensioner at the time of his superannuation. Since the applicants were in the pay scale of Rs.3700-5000 so the pay scale held by the applicants were Rs.3700-5000 and the corresponding scale of that scale is Rs.12000-16500 so the applicants are paid accordingly.



9. In reply to this the learned counsel for the applicants has submitted about the use of word "scale held by the pensioners" is not a proper use because the incumbent of a post hold the post and not the pay scale. The learned counsel for the applicant quoted from the Constitution of India the provisions with regard to the post held by the President of India and submitted that the President holds the post and not the emoluments attached with the post and similarly any incumbent in civil services holds the post and not the pay scale. Thus he said that this clarification of the holding of the pay scale is a creation of bureaucracy and should not be allowed to prevail.

10. The counsel for the applicant also pointed out that some of the Directors of CSOLS have already been paid pension taking the revised pay scale of Rs.14300-18300 and it is only in the department of Posts and in the Department of Education, these two persons are not being paid.

11. As against this the learned counsel for the respondents submitted that if someone had been paid then action for recovery has been/or has to be initiated. It is also stated that if someone has been paid that has been paid erroneously and they are entitled to draw pension in the scale of Rs.12000-16500 only.

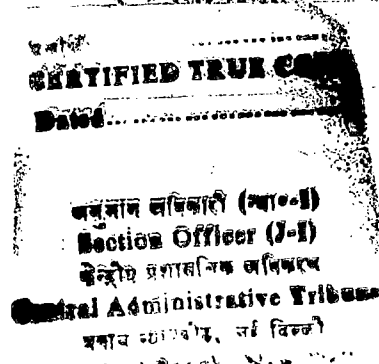
12. I have given my thoughtful consideration to the rival contention.

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13. It is not in dispute that the applicants had been working in the pay scale of Rs.3700-5000 and corresponding scale was that of Rs.12000-16500. Simultaneously on the acceptance of the recommendations of the 5th Pay Commission their pay scales were not upgraded and they remained in the scale of Rs.12000-16500 and it is only after an order was passed on 4.1.2001 when the pay scale of these Directors were also revised though it was revised with retrospective effect w.e.f. 1.1.1996. But on the date when the Central Civil Services (Revised) Pay Rules, 1997 came into force on that day the pay scale of these Directors remained to be that of Rs.12000-16500 as they were given only corresponding pay scale that of Rs.3700-5000 and were not given the pay scale of Rs.143000-18300 which was given only vide Notification dated 4.1.2001. So as on 1.1.1996 their pay scale remained to be that of Rs.12000-16500. If a post is upgraded separately then the pay of retirees are not to be upgraded in the revised pay scale but are to be given pension on the basis of the corresponding pay scale held by them as it has been clarified in the DOP&T OM dated 11.5.2001. Thus it cannot be said that this is merely creation of bureaucracy rather the Ministry of Personnel, Public Grievances and Pension after considering various representations had come to the conclusion that the pensioners are to be given minimum of pay scale as on 1.1.1996.

14. Hence, I am of the considered opinion that the action of the Government cannot be found fault with and no interference is called for. Accordingly the OA has no merits and the same is dismissed. No costs.

Rakesh



(KULDIP SINGH)
MEMBER (JUDL)