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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.163/2002

New Delhi this the 18th day of December, 2002.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. Sudhir Kumar Saxena,
S/o Late Shri Diwan Chand Saxena,
working as ANSO-I,
Directorate of Aircraft Acquisition,
Naval Headquarters,
New Delhi.
2. Shri G.V.Subramaniam,
ANSO-I,
SO-II (P & A)
Office of Director General,
Naval Project,
Naval based post,
Visakhapatnam, A.P.
3. Prabir Kumar Das,
ANSO-I,
Naval Headquarters,
Directorate of Logistics Support,
'C' Wing, Sena Bhawan,
New Delhi-110 011.
4. T.Dinesh Kumar,
ANSO-I,
Naval Headquarters,
Directorate of Logistics Support,
'C' Wing, Sena Bhawan,
New Delhi-110 011.
5. D. Jayasimhan,
ANSO-I,
Naval Headquarters,
Directorate of Logistics Support,
'C' Wing, Sena Bhawan,
New Delhi-110 011.
6. Pratik Kanumdar,
ANSO-I,
Naval Store Liaison Office,
INS Netaji Subhash Napier Road,
Hastings, Kolkata.
7. R.K.Verma,
ANSO-I,
Naval Headquarters,
Directorate of Procurement,
'C' Wing, Sena Bhawan,
New Delhi-110 011.
8. Kumar Narendra,
ANSO-I,
Naval Headquarters,
Directorate of Naval Air Material,
'A' Block Hutment,
Dalhousi Road,
New Delhi-110 011.

9. Surjeet Singh,
ANSO-I,
Naval Headquarters,
Directorate of Naval Air Material,
'A' Block Hutment,
Dalhousi Road,
New Delhi-110 011.

10. Antony Thomas,
ANSO-I,
Naval Headquarters,
Directorate of Naval Air Material,
'A' Block Hutment,
Dalhousi Road,
New Delhi-110 011.

11. M.M. Varghese,
ANSO-I,
P.O. Box No. 621,
HADDO Post,
Port Blair,
Andmans-744 102.

12. R.S. Manjunath,
ANSO,
Naval Store Depot,
Naval Base,
Southern Naval Command,
Kochi-682 004.

13. G.K. Nair,
ANSO,
BV Yard,
Naval Base,
Southern Naval Command,
Kochi-682 004.

14. R. Issac,
ANSO-I,
Naval Store Depot,
Naval Base,
Southern Naval Command,
Kochi-682 004.

15. P.M. Babu,
ANSO-I,
Naval Store Depot,
Naval Base,
Southern Naval Command,
Kochi-682 004.

16. K.K. Rajappan,
ANSO-I,
Naval Store Depot,
Naval Base,
Southern Naval Command,
Kochi-682 004.

17. K.L. Krishnamurthy,
ANSO-I,
Naval Headquarters,

Directorate of Logistics Support,
'C' Wing, Sena Bhawan,
New Delhi-110 011.

18. B.L.Jatav,
ANSO-I,
Naval Headquarters,
Directorate of Procurement,
'C' Wing, Sena Bhawan,
New Delhi-110 011.

19. C.P.Singh,
ANSO-I,
Naval Headquarters,
Directorate of Naval Air Material,
'A' Block Hutment,
New Delhi-110 011.

20. E.Sivashankar,
ANSO-I,
Naval Headquarters,
Material Organisation,
N.A.D.Post,
Vishakhapatnam, A.P.Applicants.

(By Advocate: Shri Rajeev Sharma)

Versus

1. Union of India,
Through its Secretary,
Ministry of Defence,
South Block,
New Delhi.

2. Union of India,
Through its Secretary,
Ministry of Finance,
North Block,
New Delhi.

3. Naval Headquarters,
Through Chief of Naval Staff,
'C' Wing, Sena Bhawan,
New Delhi.

4. Union of India,
Through its Secretary,
Department of Personnel,
Public Grievances & Pensions,
North Block,
New Delhi.Respondents.

(By Advocate: Shri B.K.Barera)

O R D E R

By Mr. Shanker Raju, Member (J):

MA for joining together is allowed. Applicants in this OA impugn respondents' order dated 8.12.2000, denying them the pay scale as given to their counter-parts

in Intelligence Bureau. They have sought quashment of this order with grant of pay scale of Rs.2200-4000 (un-revised) and revised scale w.e.f. 1.1.96.

2. Applicants are working as ANSO-I and II in Group "A" and "B" posts respectively. The existing staff of Naval Armament Service, Naval Store Officers and Civil Technical Officers are named as Civilian Officers and in the Indian Navy the sanctioned strength of Civilian Officers of Naval Store Cadre working as Senior Naval Store Officers, Naval Store Officers, Assistant Naval Store Depot at different places is 139. The same is an un-organised service.

3. A petition was filed before the 13th Lok Sabha under the Parliamentary Rules, which has been forwarded to a Committee to examine the grievances. The committee vide its report dated 21.11.2000 recommended formation of Naval Store Organisation as an organised service. Prior to 5th Pay Commission at the level of ANSO there were 94 posts, out of which 47 posts were to be filled up through direct recruitment and the remaining 47 through departmental promotion. Applicants who have been directly recruited the feeder cadre was Assistant Store Keeper, Store Keeper, Senior Store Keeper, Foreman of Store and Senior Foreman of store. The next promotional level was in the cadre of Naval Store Officer (NSO) and the eligibility is 8 years as ANSO having the pay scale of Rs.3000-4500. The next post is Senior NSO in the pay scale of Rs.3700-5000 and thereafter Director. After the 5th Pay Commission's recommendations ANSO has been re-designated as ANSO-I and as per the new pattern ANSO-II is the lowest

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rung as far as direct recruits are concerned. As far as the existing direct recruits under the old pattern are concerned the post of ANSO can be compared with the post of ANSO-I under the new pattern. The post of ANSO-I is to be filled up by direct recruitment as well as by promotion. The scale of pay under the new pattern for ANSO-II is Rs.2000-3200 (Rs.6500-10500) and for ANSO-I it is Rs.2200-4000 (Rs.8000-13500). The recommendation of 5th Central Pay Commission was to merge all the three services, i.e., Naval Armament Service, Naval Store Officers and Civil Technical Officers as Indian Naval Engineering Service prescribing an examination.

4. The existing staff of ANSOs was bifurcated in two parts-31 designated as ANSO-II and 63 as ANSO-I. Respondents have fixed five years requisite service as ANSO-II to become eligible for the post of ANSO-I.

5. Similar was the case in the Intelligence Bureau under the Ministry of Home Affairs in respect of the post of Deputy Central Intelligence Officer and after considering carefully the case of the officers of the Intelligence Bureau, Government has issued a memorandum dated 1.6.98 under which all the existing officers were given pay scale of Rs.2200-4000 (pre-revised) and accordingly upgrading the existing post for temporary period to provide benefit of Fifth Pay Commission to the existing staff. The new pattern is given effect for future recruitment in the department. Technical Officers of the Intelligence Bureau were also extended the same benefit and applicable from 1.1.96. Applicants are also demanding the same pay scale w.e.f. 1.1.96. Their request contained in

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their representation was rejected by the respondents on 8.12.2000 contending that the two cadres are not similar as the post of DCIO in IB is an existing post whose pay scale has been upgraded whereas the post of ANSO-I is a new creation involving restricting of the cadre and as the Finance has not agreed to the recommendations they have not been promoted as ANSO-I retrospectively. This has given rise to the present OA..

6. Learned counsel for the applicants Shri Rajeev Sharma alleges hostile discrimination violative of Articles 14 and 16 of the Constitution of India by referring to the Parliamentary Committee where strong recommendations have been made in respect of applicants. According to him declaration of existing ANSOs as ANSOs-II was illegal and unconstitutional and the condition of five years to become ANSO-I is arbitrary. This has deprived the existing incumbents for consideration for higher post.

7. Shri Sharma states that applicants are identically situated as DCIO. The present bifurcation is developed on the similarity of other departments, i.e., IB, where the applicants are similar and the denial by the Ministry of Finance is unreasonable. The concept of dispensation as a defence is negated in several pronouncements by the Apex Court. He contends that being under the same Government applicants and DCIOs in IB should not have been meted out differential treatment being identically situated in all respects.

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8. According to him before implementation of 5th Central Pay Commission's recommendations feeder cadre for the posts of ANSO was Assistant Store Keeper, Store Keeper, Senior Store Keeper, Foreman of Store and Senior Foreman of Store and they have been enbloc promoted as ANSO. Duties and responsibilities of ANSO-I are identical to ANSO-II or erstwhile ANSO. Fifth Pay Commission's recommended similar and identical pattern for the applicants and the IB, but they have been discriminated. For JTOs of IB 30 posts have been upgraded enbloc against 150 posts without five years condition and were given higher pay scale w.e.f. 1.1.96.

9. Shri Sharma has contended that on the basis of letters issued by Ministry of Home on 5.2.2001 as well as recommendations of Fifth Central Pay Commission contained in para 70.59 the enbloc upgradation had taken place but applicants have been deprived of the same. According to him, re-distribution is identical and as far as seniority is concerned, Senior Foreman Stores which was a dying cadre was the feeder cadre of SRO has been given the pay scale of ANSO and feeder cadre has been brought at par. According to applicants when a discretionary power is vested with the administration the discretion should be exercised judicially without any infringement of Articles 14 and 16 of the Constitution of India for which he places reliance on a decision of the Apex Court in Dwarka Prasad v. Union of India, AIR 1989 SC 1642. He lastly contends that the equals cannot be treated differently.

10. On the other hand, respondents' counsel Shri A.K. Bhardwaj vehemently opposed the contentions of the applicants and stated that the Government has not approved

the recommendations of the Fifth Central Pay Commission regarding merger of cadre of ANSO and Technical Officer due to variance in their duties and responsibilities. It is further stated that ANSO-II is not a dying cadre and as per SRO 47 dated 5.2.2002 direct elements have been introduced in ANSO and SO grade. It is also stated that the duties and responsibilities of ANSO-I and ANSO-II are not identical. Whereas ANSO-I is a Group 'A' post with higher duties and responsibilities, ANSO-II is Group 'B' post. It is stated that for ANSO cadre recruitment rules have been finalised on 5.2.2000 through SRO 47. As per the recommendations of the Fifth Central Pay Commission contained in para-5 bifurcation of ANSOs has taken place with further introduction of ANSO-I which is to be filled up by promotion and number of posts are to be decided by the Ministry of Defence. It is stated that it was not intended that all existing incumbents of ANSO should be re-designated as ANSO-I. Accordingly a qualifying service of five years was provided for promotion from ANSO-II to ANSO-I as per DOP&T instructions.

11. Shri Bhardwaj has further referred to the decision of the Apex Court in Union of India v. P.K. Dey, 2000 (8) SCC 580 to contend that in case of equal pay of equal work where a chain reaction is likely to take place the issue is to be gone into by the expert body like Pay Commission and the Government and this matter should be left alone to such bodies and the only interference is when it is a proven case of hostile discrimination. In absence of any hostile discrimination it should not be interfered with.

12. We have carefully considered the rival contentions of the parties. Normally except on hostile discrimination this court has no jurisdiction to go into the parity of pay scale which has been left to expert bodies like Pay Commission or Government, as held by the Apex Court in Union of India v. P.V. Haribaran, 1997 (3) SCC 568. Moreover, in the matter of parity of pay scale not only functional requirements but other factors, which, *inter alia* includes qualification, method of recruitment, degree of skills, experience in performance of job training required, responsibilities undertaken are to be gone into and should be identical.

13. In the light of the settled position of law the claims of the applicants have been rejected solely on the ground that the post of DCIO in IB, which has been compared, but for getting pay scales w.e.f. 1.1.96 by the applicants was an existing post, whose pay scale has been upgraded, whereas the post of ANSO-I being newly created involving restricting the cadre the matter though recommended has not been acceded to by the Ministry of Finance.

15. In para 70.53 of the Executive cadre of DCIO 25% of the posts are to be filled by direct recruitment, as such we find that there has been a re-distribution of the posts involved in DCIO, which is contrary to what has been stated by the respondents.

16. Moreover, we find that as per recommendations of 5th CPC for the new grade of ANSO-I it is by graded promotion prescribing qualification of five

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years as ANSO-II and as per the recommendations these new grades of ANSOs are to be filled by gradual promotion and these posts have to be decided by the Ministry of Defence. We also find that the contentions of the applicants have been meticulously gone into by the respondents and through their letter dated 7.2.2001 the request for retrospective upgradation has been rejected. The only ground which has forthcoming is that the Fifth Central Pay Commission has not recommended enbloc upgradation of the posts and only certain number of posts are to be upgraded while it is the stand of the respondents that DCIOs as well as Technical cadre there was no re-distribution of posts in the pay scale of Rs.8000-13000 subject to fulfilment of guidelines. This is belied from the action of the Government in the case of IB where despite recommendation for 30% of the posts to be upgraded the entire cadre enbloc has been upgraded. Although in accord of pay scale conditions laid down in several pronouncements including P.V. Hariharan (supra) are to be looked into and satisfied but in case of hostile discrimination interference in a judicial review of this Tribunal is not precluded. Government in an administrative action cannot be allowed to mete out differential treatment to similarly circumstanced, although equality in all respects is to be established before hand, as a condition precedent, we find from the comparative study of NS cadre of IB in case of ATOs and NSO that they are almost stand on similar footing but yet have been discriminated in the matter of giving benefit w.e.f. 1.1.96. Rejection of the request of the applicants is not well founded and is contrary to the factual position. In

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the light of the decision of the Apex Court in Dwarka Prasad's case (supra) the grounds adduced to deny applicants the benefits, cannot be countenanced.

17. However, having regard to the ratio in P.V. Hariharan's case (supra) though we are of the view that applicants have been discriminated in the matter of accord of upgradation and higher pay scale w.e.f. 1.1.96 with their counter-parts DCIOs in IB, we partly allow this OA and set aside the orders passed by the respondents on 7.2.2001 and direct respondents to re-consider the issue of according upgradation to applicants w.e.f. 1.1.96 in the light of the observations made above and particularly the en bloc upgradation accorded to their counter-parts in IB. This exercise shall be done by passing a detailed and speaking order within a period of four months from the date of receipt of a copy of this order. If the respondents decide to accord them the benefit from 1.1.96 applicants shall be entitled to all consequential benefits. No costs.

S. Raju

(Shanker Raju)
Member (J)

"San."



(V.K. Majotra)
Member (A)