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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. NO. 1334/2001
New Delhi, this the 19 day of February 2002.

Hon'ble Dr. A. Vedavalli, Member(J)
Hon'ble Shri Govindan S. Tamai, Member (A)

1. The National Archives & Museums Employees Union through its General Secretary
Sh. R S Atal, 39/466, Panchkuin Road,
New Delhi
2. Shri R S Atal,
General Secretary,
39/466, Panchkuin Road,
New Delhi.

.....Applicants

(By Sh. M.K. Bhardwaj Advocate)

VERSUS

1. The Union of India through the Secretary, Ministry of Human Resources & Development, Department of Culture, Shashtri Bhawan, New Delhi
2. The Director General, National Museum, Janpath, New Delhi

.....Respondents

(By Sh. Rajinder Nischal with Sh. Ashish Nischal Advocates)

O R D E R

BY HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Relief sought for by the applicants in this OA are as below:

- a) to pass any appropriate order/orders or direction, directing the respondents No. 1 enhance the strength on the post of Jemadar and Senior Jemadar upto 22 and 36 respectively as recommended by the Director General of National Museum i.e. Respondent No. 2 in compliance of judgements and orders dated 10.2.88 and 10.10.98 passed by the Hon'ble Supreme Court of India in Writ Petition (Civil) No. 1230/88 and/or,

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b) issue any appropriate directions to the respondents to revise the pay scales as directed by the Hon'ble Supreme Court vide order dated 10.2.88 referred to above on the basis of accepted formula FR 22 C or 22 A as made applicable by the President of India on the recommendation of the IVth Pay Commission in case of all other central govt. employees; and/or

c) issue any appropriate direction directing the respondents to fix the salary accordingly as prayed for in prayer (iii) and grant revised pay accordingly after the recommendations of the Vth Pay Commission; and / or

d) pass any appropriate order or orders directing the respondents to grant entire arrears of salaries alongwith interest @24% per annum w.e.f. 1.4.88 i.e. the date when the judgement and order dated 10.2.1988 was directed by the Hon'ble Supreme Court to come into effect for the purpose of equating the service conditions of Gallery Attendants in National Museum with those of Record Attendants in National Museum.

2. Heard Sh. M K Bhardwaj, learned counsel for the applicant and Shri Rajinder Nischal with Shri Ashish Nischal learned counsel for the respondents.

3. The applicants, working as Gallery Attendants in the National Museum, New Delhi, had been, after the implementation of IVth Pay Commission Report, agitating for parity in pay and service conditions with Record assistants, their counter-parts in the adjoining National Archives, also functioning under the Ministry of Human Resources Development. While the 53 Record Attendants attached to the Archives have 3 scales of Grade II, I and Special Grade, equal number of Gallery Attendants in the Museum had been stagnating that too and in the lowest grade without any elevation. On the Museum Staff Association, taking up the matter, Director General of the Museum considered the upgradation of the staff and in the Report of October 1985, suggested creation of 2 grades of Rs.900-1320 and 950-1455 in the ratio 50:50. As nothing further happened, the applicants filed CWP No. 1230/1987 before the Hon'ble

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Supreme Court seeking for them as well, the benefits being enjoyed by their counter parts in the National Archives. While disposing of the SLP, 3 Member Bench of the Hon'ble Apex Court held that the petitioners were entitled to the same scale of Pay Scale and other benefits as of the Record Assistants in the National Archives. The petitioners were also awarded Rs.2500/- towards costs. Following the institution of contempt proceedings for ensuring the implementation of the order, the scales of pay of Jamadars and Sr. Jamadar in the Museum were enhanced to Rs. 800-1150/- and Rs. 900-1400/- at par with Record Attendants Grade I and Record Attendants Special Grade in Archives. *Solver*

This however, did not solve the problem as only three posts of Jamadars and one post of Sr. Jamadars were available for the entire staff in the Museum as against greater number of higher posts for those in the Archives. This had led to acute stagnation, applicants being made to serve as long as for 30 to 35 years without any elevation. Government was initially opposed to the move for creation of any further posts still some assurances were given in the meetings the applicants had, with the concerned Additional Secretary, on 25.6.90, on the basis of which the subsequent CWP No. 246/1989 filed by the applicant was withdrawn. Thereafter both the Hon'ble Minister HRD and Hon'ble Prime Minister were addressed pointing out that the directions of the Supreme Court given in CWP No. 1230/87, decided on 10.2.88 had not been complied with. Following some inter ministerial discussions, moves were afoot for re-organising the cadre with some additional promotional avenues for the Gallery Attendants with requisite number of posts in 3 grades. The applicants' further move to obtain a clarification from the Hon'ble Supreme Court on their earlier order was disposed of with directions to approach

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the appropriate forum. OA No. 1947/98 was thereafter filed by the applicants, which was disposed of on 2.8.2000 directing the respondents to examine the case of the applicants and pass a detailed and speaking order. This led to the issue of the impugned order dated 21.12.2000 pointing out that the request made by the applicants for creation of more posts was not feasible and that with the implementation of ACP Scheme, many of the applicants have been benefitted. This, according to the applicants clearly showed that the respondents had not cared to implement the order of the Supreme Court in its entirety and that the whole exercise had become futile. When the Hon'ble Supreme Court had specifically directed equating the service conditions of the applicants (Gallery Attendants of the National Museum) with those of the Record Attendants of National Archives, it was for the respondents to fall in line, with it, which they had failed to do, thus dragging the applicants to the Tribunal to seek redressal of their genuine grievances. Persuasively, arguing for the applicants, Shri M K Bhardwaj, learned counsel, pointed out that the respondents were acting in total violation of the Hon'ble Supreme Court's directions and denying the applicants their just promotional avenues. Only Tribunal's intervention can help the applicants genuine cause, prays Shri Bhardwaj.

4. Stoutly rebutting the above claims of the applicants, the respondents aver that the applicants were seeking the very same reliefs which have been considered and adjudicated upon by the Hon'ble Supreme Court on 10.2.88 in CWP 1230/87 as well as by the Tribunal in OA 1947/1998. It is also stated that with the disposal of CMP No. 20977/88 in 1230/87, it would be seen that all the claims of the ^{core} applicants have been taken _{of}. The instant OA was therefore

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a clear case of abuse of process of law and liable for dismissal on that very count with exemplary cost in favour of the respondents. Second preliminary objection on the locus standi of the applicant raised in their reply was not, however, pressed by Shri Nischal. According to the respondents they have fully complied with the directions of the Hon'ble Supreme court and same has been accepted by the Hon'ble Court itself. The applicants had, plead the ~~to~~ respondents, even resorted to tactics of threat to pressurise the respondents to adopt their line of thinking but it was not accepted. As all the requests met by the applicant have been more than adequately made no reason or ground remained to be attended to. The impugned order No. 10-6/98/NM dated 21.12.2000 has therefore been correctly issued and deserved to be fully endorsed, argue, the respondents.

5. During the oral submissions Shri Rajinder Nischal, learned counsel for the respondents argued that the Hon'ble Supreme court had not given any direction to the respondents to give parity to the applicant but only advised to equate them with the Record Attendants of National Archives. Once the same has been done, the applicants cannot have any ground for complaint. More so as a number of Gallery Attendants of the National Museum have been benefitted by the ACP Scheme. In response to a specific query from the Court, Shri Nischal fairly submitted that no additional posts have been created in the National Museum to increase the promotional avenues of the applicants but felt that with the implementation of the ACP Scheme they would have no further grouse or complaint. In the circumstances the OA deserved to be dismissed is Shri Nischal's plea.

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6. We have carefully considered the matter. It is not disputed that the applicants who are the Gallery Attendants in the National Museum have been agitating for considerable time for equation of their status and conditions of services including pay parity with their counterparts i.e. Record Attendants in the adjoining National Archives which is also under the same Ministry. CWP 1230/87 filed by them before the Hon'ble Supreme Court has been disposed of by a Three Member Bench of Hon'ble Supreme Court on 10.2.98. The said decision is reproduced in full:

"Petitioners are Gallery Attendants of the National Museum located at New Delhi. In this application under Article 32 of the Constitution they have alleged discrimination so far as their service conditions are concerned by contending that they are equal in every respect with record attendants in the National Archives also located at New Delhi in the close proximity of National Museum; yet in regard to pay and allied conditions of service, discrimination has been made in the report of the Fourth Pay Commission and they are prejudiced on that account.

Rule was issued and the respondents were called upon to file their return. Several adjournments have been given to enable the Union of India and file its counter affidavit, inspite of repeated adjournments no reply has been filed. In the circumstances we are left with no option but accept the actual allegations of the petitioners. The qualification after the job, nature and conditions of work prescribed for Gallery attendants and Record Attendants in the two institutions are the same. the Fourth pay Commission has given benefits confined to the Record Attendants while the claim of the gallery attendants has not been taken into account.

In addition to the pleading of the petitioners, this fact has been specifically stated in the letter of the Director of the National Museum sent to Administrative Department and the petitioners have produced two communications of the Director as Annexures to the writ petition. These letters do support the claim of the petitioners. Petitioners are justified to claim equal pay for equal work. We are, therefore, of the view that the petitioners are entitled to the same scale of pay and other service benefits as of the Record attendants in the National Archives.

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A direction shall issue to the respondents to equate the service conditions of the petitioners with those of the Record Attendants of the National Archives within three months hence, with effect from 1st April 1988. The petitioners are entitled to the costs of the petition. Hearing fee is assessed at Rs.2500/-."

7. As would be seen the Hon'ble Apex Court had observed that the qualification of the job nature and conditions of work prescribed for the Gallery Attendants and Record Attendants are the same and therefore petitioners are entitled for same scale of pay and other benefits of the Record Assistants in the National Archives. Nothing much has been done except equating the pay scale of Jamadar and Sr. Jamadars of Rs. 800-1150/- and 950 - 1400/- equal to those of Record Attendants Grade I and Record Attendants Spl. Grade. This, had not solved their problems as the applicants continued to stagnate for long time which had led to their filing another CWP before the Supreme Court who directed them to approach the appropriate forum. OA 1967/98 had been disposed of by the Tribunal directing the respondents to examine the reliefs claimed by the applicants and determine the same by a detailed and speaking order. The impugned order of 21.12.2000 which has been issued, has disposed of the representation but indicating the total reluctance of the respondents for enhancing the number of posts of Jamadar and Sr Jamadars. They indicate that the applicants asked for creation of posts for which no functional justification existed and the Government was not legally bound to upgrade the post. While the respondents state that the Supreme Court's order in CMP No. 20977/98 dated 23.1.89 had been fully complied with perusal of the order, vis-a-vis the action taken by the respondent does not prove it. Relevant portion of the said order reads as below:

"The directions of this Court to treat them equally in regard to the pay scale has, therefore, been complied with."

S. Evidently therefore, there has been only a partial compliance of the Supreme Court order with regard to prayers made by the applicants for equality in service conditions including pay with their counterparts. While the pay scales of Jamadars and Sr. Jamadars have been revised upwards the same has not come as any relief as intended by the Supreme Court while they passed the orders that the applicants are entitled for equality with their counterparts in National Archives in respect of service conditions. Enhancing pay is only one such measure, Promotion to the higher grade after satisfactory completing some specified period is also a point which they had been agitating all the while. This has not been given, on the pretext of non existence of rules and/or the ground that ACP had been given effect to. This is not correct. ACP is only a stagnation removal measure adopted on the recommendations of the Vth Central Pay Commission in respect of those who have been continuing to work against the same post for period of 12 years and 24 years as the case may be, to grant them financial upgradation. It does not however, preclude any promotion, though for one who has already got the benefit of ACP, the promotion per se would not bring any raise in pay but only enhances the status and placement. Promotion in the cadre and the increased status are also incidence of service which everyone aspires for. With just one post of Senior Jemadar and 3 posts of Jamadars the applicants, 53 in number cannot at all have any method for fulfilling their "legitimate expectations" in the service. In terms of the directions of the Supreme court on 10.2.88, equation of the conditions of the applicants with those of the National Archives was provided for. It was incumbent on the respondents to open up reasonable promotional avenues for

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the applicants by creating a few posts instead of taking shelter under ACP scheme which incidentally came ten years later. The respondents have failed to give effect to the Supreme Court orders which, they were bound to do. The Tribunal therefore has to reiterate the directions of the Supreme Court and advise the respondents to act correctly and justly so that the legitimate grievance of the applicants are atleast partially met. We do not intend to tell the respondents as to how many posts are to be created but leave it to the respondents wisdom with the hope that they would act correctly and properly.

9. In the above view of the matter the OA succeeds and is accordingly allowed. The impugned order dated 20.12.2001, is quashed and set aside and the respondents are directed to take action in terms of Supreme Court's direction dated 10.2.88 and to provide equality in status for the applicants ^{to} them with their counter parts in National Archives both in terms of scales of pay and in terms of promotional avenues by identifying the posts for upgradation to the level of Jamadar and Sr. Jamadar so that the legitimate expectations of the staff who have been stagnating for considerably long time is adequately taken care of. This shall be done within four months from the date of receipt of a copy of this order. No costs.

(Govindan S. Tamp)
Member (A)
Patwal

A. Vedavalli
(Dr. A. Vedavalli)
Member (J)