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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1610/2001

New Delhi, this 4th day of April, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman(J)
Hon'ble Shri M.P. Singh, Member(A)

1. Smt. M.B. Sahoo
140/S-I, Pushp Vihar, New Delhi
2. K.K. Satija
D-93, Mansarovar Garden, New Delhi
3. Tarun Kumar
776/Pocket D, Dilshad Garden, New Delhi
4. V.Ramaswamy
868, Delhi Admn. Flats,
Gulabi Bagh, Delhi
5. R.C.Kesarwani
964, Delhi Admn. Flats
Gulabi Bagh, Delhi
6. J.S. Bhatia
C-17, Sudarshan Park, New Delhi
7. Dharam Pal
3719, Gali No.3
Dharampura, Gandhi Nagar, N.Delhi
8. Radhe Shyam Samaria
16/399-E, Bapa Nagar
PS Road, Karol Bagh, New Delhi
9. Miss Promila Madan
A-306, Sector 19, Noida
10. Sabir Ali
2/3, Sadiq Nagar, Meerut City
(By Shri Deepak Verma, Advocate) .. Applicants

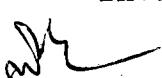
versus

1. Secretary (Planning)
Govt. of NCT of Delhi
1, Kripa Naain Marg, Delhi-54
2. Secretary
Dept. Expenditure
Ministry of Finance, New Delhi
3. Joint Secretary (UT)
Ministry of Home Affairs
North Block, New Delhi
4. Secretary
Ministry of Statistics & Programme Implementation
Sardar Patel Bhawan
Sansad Marg, New Delhi .. Respondents
(By Shri R.V. Sinha, Advocate)

ORDER

Shri M.P. Singh, Member(A)

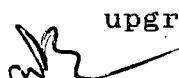
Applicants, 10 in number, were appointed/promoted as Research Officers/ Analysts in the pre-revised pay scale of Rs.1640-2900 (Group B Gazetted) on various dates invariably between 1988 and 1994 and are working as such



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under the Respondent No.1 (R-1 in short) i.e. Government of National Capital Territory of Delhi (GNCTD, for short), in terms of the Recruitment Rules (R/Rules) notified on 5.1.83. They claim that their post is comparable to that of Superintendent in Field Operation Division, National Sample Survey Organization (NSSO), Senior Investigator in the Central Statistical Organization (CSO) and Sr. Statistical Investigator in various other Ministries of the Central Government and the functions and R/Rules of all these posts are similar.

2. According to the applicants, the Fifth Central Pay Commission (Fifth CPC) in para 81.17 of its report has recommended that "all posts of Sr. Statistical Investigators/ Assistants at present in the pay scale of Rs.1640-2900 may be given the replacement scale of Rs.2000-3500 and be called Statistical Investigator Gr.1". Again para 104.4 of the said report states that the employees of the Union Territories (UTs), to which the applicants belong, shall have pay parity with their counterparts in the Central Government. Besides, para 168.3 of the report makes it clear that "In the event of any Central Govt. post being left out without allotment of revised pay scale of the report, it should be given the commensurate revised scale of pay as applicable for posts with similar entry qualification, duties and responsibilities, duly retaining the horizontal and vertical relativities in the organization. Respondent No.4, being the nodal Ministry for Statistical function posts, vide its OM dated 30.6.98 had extended the upgraded pay scale of Rs.2000-3500 to all statistical



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personnel holding posts in the pay scale of Rs.1640-2900 and gave them the replacement scale of Rs.6500-10500. This upgraded pay scale was further confirmed by the Delhi High Court in its judgement dated 5.7.1999 in CWP No.144/99 and 2044/99. Thereafter, R-4 vide its OM dated 15.7.1999 has directed all Ministries/departments to restore the upgraded pay scale of Rs.6500-10500 to all statistical function posts carrying pre-revised scale of Rs.1640-2900 w.e.f. 1.1.96 with all arrears.

3. Applicants would further contend that their post had identical pay scale with DASS Grade I till 19.3.1996. The mode of recruitment for both the posts is 100# by promotion. While GNCTD (R-1), with the concurrence of Min. of Home Affairs (R-3) revised the pay scale of DASS Grade I from Rs.1640-2900 to Rs.2000-3200 w.e.f. 19.3.96, he did not accord the same treatment to the applicants. R-1 approved the proposal for upgraded scale of Rs.2000-3200 to the applicants and forwarded the same to Min. of Home Affairs (R-3) on 23.10.96 for concurrence, which in its turn, vide its letter dated 2.6.97, stated that a final view with regard to upgradation of pay scales shall be taken up while finalizing the views of the Government on the Fifth CPC. Thereafter there was a protracted correspondence between R-1 and Central Government for upgradation of pay scale of applicants. Applicants also submit that the matter of pay parity for Planning & Statistical Cadre posts under R-1 with their counterparts is the Government of India stands approved by the then concerned Minister of Finance & Planning, GNCTD vide Cabinet decision dated 18.6.98.

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4. The cadre controlling officer of GNCTD had admitted in his letter dated 6/7.5.97 addressed to R-2 that as far as the case of applicants was concerned, the same was omitted by the Fifth CPC in its report. Para 5.4 of Cabinet decision dated 18.6.98 also endorsed the view that the post of Research Officer (i.e. of applicants) carries similar nature of duties, educational qualification and method of recruitment as that of their counterparts in NSSO etc. but unfortunately the Fifth CPC did not mention anything in its report about statistical cadre posts under R-1. The Fifth CPC in para 44.19 of its report had recommended that the supervisory staff should be granted pay scale not less than that of Rs.6500-10500. Applicants being the supervisory staff(Group B gazetted) have been denied the pay scale of Rs.6500-10500. When the representation made by the applicants on 30.3.98 did not yield any result, they filed an OA 540/2000, which was disposed of by this Tribunal vide its order dated 7.4.2000 directing the respondents to pass suitable and reasoned orders on the representation and legal notice expeditiously and within a period of three months, with liberty to the applicants to impugn the decision of R-2 if the same would be adverse to them. The respondents have rejected the claim of the applicants for the upgraded pay scale of Rs.2000-3500 vide its letter dated 12.1.2001, which is under challenge in the present OA. While praying for quashing and setting aside this impugned letter dated 12.1.2001, applicants also seek a direction to the

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respondents to grant them the upgraded pay scale of Rs.2000-3500 w.e.f. 1.1.96 with consequential/monetary benefits as a result of refixation of pay.

5. Respondents have contested the case and have taken the following five main grounds (which incidentally are the reproduction of the impugned letter dated 12.1.2001) for rejecting the claim of the applicants:

- (i) The Fifth Central Pay Commission, which specifically considered the demand of the applicants, did not recommend any upgradation in the scale of pay of these posts;
- (ii) The posts are not strictly comparable with the posts in the DASS Grade I in terms of their duties and responsibilities, mode of recruitment, hierarchy, source of recruitment etc. It is also relevant that whereas the Fifth Central Pay Commission specifically recommended grant of the higher scale of Rs.2000-3500 (pre-revised) for Grade I of DASS, no such recommendation was made in favour of Research Officers/Analysts;
- (iii) In so far as the comparison of these posts with statistical posts is concerned, the posts of Research Officers/Analysts are filled by direct recruitment only to the extent of 25%. The Fifth Central Pay Commission, on the other hand, specifically

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recommended that the higher pay scale of Rs.2000-3500 should be extended to the posts of Senior Statistical Investigators/ Assistants only when 50% of these posts are filled by direct recruitment of post graduates;

(iv) The next promotion post for Research Officers/Analysts in the Govt. of NCT of Delhi is that of Statistical Officer in the pre-revised scale of pay of Rs.2000-3500. If the same pay scale were to be extended to Research Officers/Analysts, it shall disturb the existing vertical relatives; and

(v) The higher pay scale for the post of Statistical Investigator Grade I was to be extended only if the department concerned agreed to merge these posts into Subordinate Statistical Service. However, it will not be possible to merge the posts of Research Officer/Analyst existing in the Govt. of NCT of Delhi in the proposed subordinate statistical service which will be limited only to Central Government departments.

6. Respondents, placing reliance on a catena of judicial pronouncements of the Hon'ble Supreme Court, details of which are mentioned in the reply, would contend that fixation of pay scales is primarily and exclusively a function which has to be left to be decided by the

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executive. It is the Pay Commission set up by a Government which goes into the problem at great depth and happens to have a full picture before it and is, therefore, the proper authority to decide upon this issue. They aver that apart from rank-structure, pay scales in the Government are determined on the basis of a number of considerations like degree of skill, volume of work, experience, training, responsibilities attached to the post, method of recruitment, avenues of promotion available, paying capacity of Govt, geographical conditions, source of recruitment of officers, quality of work, minimum educational/technical qualifications prescribed to the post, horizontal and vertical relativity with other jobs in the same service or outside etc. As per R/Rules, 25% of the vacancies of Research Officers/Analysts are to be filled up by direct recruitment and 75% by promotion, failing which by transfer on deputation. Fifth CPC have specifically recommended that the higher pay scale of Rs.2000-3500 should be extended to the post of Sr. Statistical Investigators/Assistants when 50% of these posts are filled by direct recruitment of post graduates.

7. The Fifth CPC have recommended that the isolated statistical function posts in the Central Government be merged to constitute the Subordinate Statistical Service. These posts cannot be compared with the posts of Research Officer/Analysts in the GNCTD for the reasons stated in letter dated 9.10.2000 of the Min. of Home Affairs. That apart, grant of pay scale of Rs.6500-10500 to Sr. Investigators is presently subjudice inasmuch as All

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India Assn. of Asstt. Supdts. have filed SLPs. No.10074/99 and 10075/99 in the matter before the Hon'ble Supreme Court challenging the judgement of High Court dated 5.7.99 in CWFs No.144/99 and 2044/99. The apex court vide its order dated 9.8.99, while granting leave, have directed that "The disbursement of salary in the scale objected by the respondents shall be subject to the ultimate decision of the appeals". The posts of Research Officer are not strictly comparable with the posts of DASS Gr.I in terms of their duties and responsibilities, mode of recruitment, hierarchy, source of recruitment etc. While examining a proposal, various functionaries and departments of the Govt. express their views with regard to the merits or demerits of the case but these views cannot take precedence over the final decision of the Govt. which is taken after considering all the matters on record. In the instant case, the Govt. considered the representations made for enhancement of the pay scale of applicants and rejected the same after assigning detailed reasons for the same. GNCTD is not competent to decide on the pay scales without the approval of the Central Govt. as the pay scales of the employees engaged in the affairs of the Union are determined by the Central Govt. on the basis of the recommendations of the Central Pay Commission. In view of this position, the OA has no merit and be dismissed.

8. Heard the learned counsel for the parties at length and perused the records.

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9. During the course of the arguments, the learned counsel for the applicants has drawn our attention to R-1's letter dated 23.10.96 addressed to R-3 recommending revised pay scale of the applicants i.e. Rs.2000-3500, wherein it has been specifically mentioned that mode of recruitment of DASS Gr.I and that of applicants is "100% by promotion". It is further mentioned therein that the pay scale of these two identical posts i.e. DASS Gr.I and Research Officer in Delhi Govt. was similar till 19.3.96. This issue was accordingly examined in consultation with the Finance Dept., Govt. of NCT of Delhi and it has been observed that the pay scale of Research Officer/Analyst also need to be revised from Rs.1640-2900 to Rs.2000-3200 to keep the parity in the pay scale of these 2 identical and similar grade posts in Delhi Govt. He also drew our attention to the letter dated 31.10.97 from R-1 to R-2 on the same subject wherein it has been stated that "4. Research Officer, Group B post although supervisory post but in the revised scale of Rs.5500-9000 applicable to supporting staff".

10. To sum up, the contention of the applicants are that the claim for upgraded scale of Rs.2000-3500 is (i) in tune with the principle of "equal pay for equal work" propounded by the Fifth CPC, (ii) in tune with upgraded scales given to Statistical functionaries in the erst-while scale of Rs.1640-2900, and (iii) that the employees of UTs are eligible for pay parity with the employees of the Central Govt. Besides, R-4 - the nodal agency for statistical matters, has directed that the statistical posts in the pay scale of Rs.1640-2900 be



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upgraded to Rs.2000-3500 and that R-1 had decided that the posts of applicants are equivalent to that of DASS Gr.I and further that applicants having been identified as Supervisory Staff by R-1 himself, should not have been denied the pay scale of Rs.2000-3500 meant for supervisory staff.

11. On the other hand, respondents have denied the aforesaid contentions. Their stand is that the principle of equal pay for work is not applicable in the present case. The recommendations of Fifth CPC in para 81.17 relates to the Subordinate Statistical Service in the Central Govt. and does not ipso facto extend to the applicants and that the Commission have not recommended upgradation of pay scales to the applicants. The Govt. while considering the request of the applicants did not find their posts comparable with the Senior Statistical Investigators/Assistants in the Central Government. R-4 is a nodal agency only for planning and integrated development of the statistical system in the country. In fact R-3 is the nodal Ministry in the case of service matters of the employees of the UTs which took a decision in this regard.

12. The learned counsel for the applicants continued his arguments to say that the post of applicants and that of Supdt. NSSO are same in all the fours as per the R/Rules including the mode of recruitment which is now 100% by promotion. He has placed reliance, in support of the prayer of the applicants for upgraded scale of Rs.2000-3500, on the judgements of the Hon'ble Supreme

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Court in the case of Bhagwan Das Vs. State of Haryana 1987(2) ATJ 479 wherein it has been held that when the nature, function and work are not shown to be dissimilar, the fact that recruitment was made one way or the other would hardly be relevant from the point of view of equal pay for equal work doctrine, and also in the case of Mewa Ram Kanojia Vs. AIIMS & Ors. ATJ 1989(1) 654, wherein it has been held that doctrine of equal pay for equal work would even apply on the premise of similar work, where other facts are same and that does not mean complete identity. The learned counsel further drew our attention to the judgement of the Principal Bench of this Tribunal in the case of AIESIC Employees Federation Vs. DG, ESI 2000(1) SLJ (CAT) 139, in which it has been held that court may sometime feel it necessary for the purpose of providing justice, to interfere with the orders issued by the executive, when there is a hostile discrimination in the matter of pay scale, viz. (i) Pay Commission fails to consider pay scale of some posts of particular service or (ii) after recommendation of the pay commission is accepted by the Government, there is unjust treatment by subsequent arbitrary state action or inaction. In all these cases the subject matter was parity in pay scales in respect of same category of posts.

13. In so far as respondents' contention that the case is subjudice, learned counsel for the applicants would submit that a judgement of the Court holds the field until and unless the same stayed or modified and that as per respondents' own submission, the disbursement of

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scale of Rs.6500-10500 has only been subject to outcome of the petition before Supreme Court in that case. Therefore, pendency of an appeal does not debar this Tribunal from adjudicating other matters pending before it.

14. It is not in dispute that R-1 in his letter to R-2 has admitted that the case of applicants was omitted by Fifth CPC in its report and that it is a clear case of omission. It is also not in dispute that the pay scale of DASS Gr.I and that of applicants, both under R-1, were the same till 19.3.96, but while the pay scale of DASS Gr.I was upgraded to Rs.2000-3200 by R-1, this benefit was not given to the applicants, which amounts to discrimination. The contention of the respondents that the posts of Research Officers/Analysts are filled by direct recruitment only to the extent of 25% is totally wrong and is, therefore, not tenable. The respondents are well aware that the posts are to be filled 100% by promotion as per the Recruitment Rules amended on 27.8.96 (Annexure J4 to the rejoinder) and, therefore, the ground taken by the respondents in rejecting the claim of the applicants vide their letter dated 12.1.2001 cannot be accepted. Apart from this, the other grounds taken by the R-1 for rejecting the higher pay scales to the applicants vide their aforesaid letter dated 12.1.2001 are wrong and are not tenable. It shows that there is no application of mind by the respondents while disallowing the revised higher scale of pay to the applicants. We also do not find any specific denial with supporting

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document on behalf of the respondents with regard to para 4.12 of the OA in which the applicants have referred to para 168.3 of Fifth CPC report(supra).

15. It is interesting to note that the respondents in their reply in para 4.27 have stated that "In fact, the Ministry of Home Affairs is the nodal Ministry for administration of the affairs of the Union Territories. On the other hand, as already stated, the Govt. of NCT Delhi is not competent to decide on the pay scales without the approval of the Central Government". But in a case involving similar subject (CWP 5976/2001) pending before the High Court they have stated that "...merely because the Govt. of India had suggested the grant of revised pay scale to the Asstt. Programmer & Data Processing Supervisors on the basis of OM dated 11.9.89, which dealt with the rationalization of pay scale structure of EDP staff, it did not mean that Govt. of NCT was under the obligation to follow the directive of the Govt. of India with regard to enhancement of the pay scale to Asst. Programmer & Data Processing Supervisor".

16. We are also informed that in GNCTD the pay scale of feeder post of DASS Gr.I as well as its promotional post i.e. DANICS are identical i.e. Rs.6500-10500 w.e.f. 1.1.96 which is not specifically denied by the counsel for the respondents. Therefore the plea taken by the respondents that if same scale is allowed to applicants it will disturb vertical relativities is not tenable and needs to be rejected.

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17. It is an admitted position that the pay scales of Rs.2000-3200 and Rs.2000-3500 have been merged together and revised to Rs.6500-10500 as per the recommendations of the Fifth CPC and accepted by the Government.

18. It would be seen from the aforesaid detailed discussions that the respondents have taken wrong grounds to deny the genuine claim of the applicants in the impugned letter passed on 12.1.2001 that too after a long gap of nearly eight months when they were directed to pass a speaking order, vide Tribunal's judgement dated 7.4.2000 in OA No.540/2000. In other words, they have not put up the correct position before the Home Ministry which gave its decision on 9.10.2000.

19. In the result, for the reasons recorded above, the impugned order dated 12.1.2001 is quashed and set aside. Respondents are directed to consider the applicants' claim for higher pay scale favourably in the light of what has been stated above for grant of upgraded pay scale of Rs.6500-10500 to them with effect from 1.1.1996 and take action accordingly. They shall pass a reasoned and speaking order in accordance with law and rules and complete this exercise within a period of four months from the date of receipt of a copy of this order.

20. In view of the fact that the respondents have passed the impugned order without proper application of mind to

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the pleas taken by the applicants in support of their claim and rather have taken totally wrong grounds to deny the claim of the applicants, thus driving them to the court twice for no fault of their's, we consider it appropriate to impose a cost of Rs.5000/- (Rupees Five Thousand only) against the Respondent No.1 and in favour of the applicants herein.

m P Singh
(M.P. Singh)
Member(A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice-Chairman(J)

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