

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 271/2001
MA No. 247/2001
MA No. 817/2002

(7)

New Delhi this the 7th day of May, 2002.

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

1. V.S. Choudhary,
S/o Shri R.K. Choudhary
2. A.C. Khanna,
S/o late Shri Ram Prasad Khanna
3. B.R.N. Choudhary,
S/o late Shri B. Subba Rao
4. C.P. Sharma,
S/o late Shri Baldev Nath Sharma
5. R.P. Singh,
S/o late Shri Harish Chand

-Applicants

(By Advocate Shri V.S.R. Krishna)

-Versus-

1. Union of India through
the Secretary,
Ministry of Home Affairs,
Govt. of India,
North Block,
New Delhi.
2. The Director,
National Crime Records Bureau,
East Block-7, R.K. Puram,
New Delhi-110 066
3. The Secretary,
Ministry of Finance,
Dept. of Expenditure,
North Block,
New Delhi.

-Respondents

(By Advocate Shri R.V. Sinha)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicants, working as Joint Assistant Directors (JADs for short) in National Crime Records Bureau (NCRB for short) have assailed the inaction of the respondents by not granting them the pay scale of Rs. 4100-5300/- (pre-revised) (4th Pay Commission recommendations) as accorded to the Superintendent of Police in Central Bureau of Investigation as also to the equivalent post in Central Police

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Organisations. They have sought accord of this pay scale with all consequential benefits.

2. Applicants earlier worked in the Directorate of Coordination Police Computers (DCPC for short). NCRB was constituted as a new organisation by the Ministry of Home Affairs in 1986, merging all departments of Govt. of India concerning recording of Crime records in the country.

3. The JADs were having pay scale of Rs.1200-17000 higher than the pay scale of SP of CBI. This parity was shown in the Ministry of Home Affairs (MHA) letter dated April, 1981 where the post of JAD was considered to be equivalent to the post of SP. The feeder post of Junior Staff Officer was also considered equivalent to the post of DSP having the pay scale of Rs.700-1300. As per the recruitment rules of JADs in DCPC dated 20.1.84 the post of JAD was to be filled up by promotion and deputation among the officers of IPS holding analogous post among the officers of Central/State Police Forces with six years regular service in the rank of Assistant Superintendent of Police or equivalent. As a result of the IVth Central Pay Commission the JADs in NCRB were recommended a pay scale of Rs.3000-4500 at par with JAD of NCRB. The post of SP as a feeder cadre of DSP in the pay scale of Rs.650-1200 was classified as Group "B" post. The recruitment rules of the post of JAD envisage feeder cadre of Junior Staff Officer having pay scale of Rs.700-1300, a Group "A" post.

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4. IVth CPC recommended for the post of Commandant/Second-in-Commandant in CISF, which is equivalent to Superintendent of Police, a pay scale of Rs.4100-5300, which was more than the pay scale recommended for the post of JAD in NCRB and SP in CBI.

5. On a representation Government revised the pay scale of SP in CBI to Rs.4100-5300 vide order dated 8.2.96.

6. Applicants were promoted as JADs in the year 1996 from the grade of JSOs, Group "A" and accordingly were placed in the scale of Rs.3000-4500, as a result of which an anomaly has cropped in. IVth CPC solicited representations from various departments as the DCPC (now NCRB) was in the process of re-organisation no representation was made. As such the posts of DCPC were omitted to be mentioned by the IVth CPC, who in turn considered the pay structure of Central Police Organisation under the MHA separately. Despite the fact that NCRB is a part of MHA and Central Police Organisation having equivalence in posts with CPO were not given the pay scale as to SP in CBI. Representations have been made and in one of the communications sent to the applicants by the respondents' memo dated 12.2.2001 it is communicated that their representation for higher pay scale at par with their counter-parts in CBI had already been taken up with the MHA and a final decision is yet to be received, giving rise the present OA.

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7. Learned counsel for the applicants Shri V.S.R. Krishna stated that applicants have been arbitrarily discriminated in the matter of their pay scale which is violative of Articles 14 and 16 of the Constitution of India. By resorting to the recruitment rules of 1984 where one of the modes of selection to the post of JAD was amongst the officer having analogous post, including IPS/SP it is contended that there existed a parity between the SP in CBI and JAD in NCRB. As the pay scales of JAD and SP of Rs.1200-1700 was comparable to the pay scale of SP in CBI at Rs.1100-1600 plus Rs.100/- as special pay the respondents have disturbed the parity in the pay scale without any valid reasons. It is also contended by Shri Krishna that in April, 1981 by an order passed by the MHA the parity between the posts of JAD and SP stood admittedly established and there is no justification not to allow the applicants the pay scale of Rs.4100-5300 w.e.f. 1.1.86 as accorded to the SP in CBI. He further stated that at one point of time after implementation of IVth CPC recommendations the pay scale of both the posts of JAD and SP in CBI were identical, i.e., Rs.3000-4500 and having regard to the pay scale of Commandant in CISF at Rs.4100-53000 the Government granted pay scale of Rs.4100-5300 rectifying the anomaly and as the Pay Commission could not take into account the posts in DCPC as NCRB was being re-organised and merger applicant have not been treated at par with SPs in CBI. According to the learned counsel as a model employer it was incumbent upon the Government to have corrected the existing anomaly at least after issuance of OM dated 8.2.96.

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8. Learned counsel also stated that the duties and responsibilities of JAD in NCRB are in no way inferior to that of SP in CBI and are comparable as in both the cadres assimilating and analysing the data through the latest computer techniques is one of the prime duties.

9. It is also stated that the question in the present OA is to equate the pay scale of both the posts having regard to the anomaly and comparison of duties and responsibilities would not be a valid criteria for accord of pay scales.

10. Learned counsel for the respondents took a preliminary objection as to limitation by contending that the IVth CPC recommendations were published in the year 1986 and the applicants have raised their grievance only in the year 1996 which is hopelessly barred by limitation and would amount to unsettling the settled position. It is contended that the IVth CPC has never recommended the case of JADs in NCRB whereas the recommendations made for SP in CBI were implemented by the Government. Neither the Vth CPC nor IVth CPC made any recommendation for enhanced pay scales to JAdS of NCRB. As the Pay Commission consists of experts and after evaluating all the relevant aspects recommendation is submitted to the Govt. The Court cannot interfere in the matter of pay scales unless the action is found to be arbitrary or violative of Articles 14 and 16 of the Constitution of India. It is contended that the JADs in NCRB are entitled to get the normal replacement scale which they are getting without any dispute. As regards equation of the posts of JAd and SP is concerned, these posts are having different set of recruitment rules, duties

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and responsibilities having different promotional prospects. Merely because the scales of pay at one point of time were comparable would not make the posts identical. Further placing reliance on the decision of a coordinate Bench of this Court in OA-1436/2000 - S.K. Rattan v. Union of India & Ors., decided on 1.10.2001 wherein a prayer has been made for correction of pay scale of JAD. By an order passed on 1.10.2001 by taking note of the recruitment rules of 2000 the Court rejected the OA by holding that these posts are not comparable. Further decision in OA-156/1998 - G.P. Gupta & Ors. v. U.O.I. & Ors., decided on 10.12.2001, also reiterated the same position, wherein the claim of the applicants of NCRB was rejected. In this backdrop it is stated that the applicants are not entitled for the relief claimed. Further it is submitted that the matter was not placed before the Anomaly Committee. It is further contended that the applicants have been promoted in the year 1996 as JADs and they are not entitled to get any benefit of JAD prior to 1996. As there was no recommendation for enhanced pay scale to the JAD by the Vth CPC the normal pay scale has been accorded to them, which is in order. It is also stated that the CBI is an investigating organisation whereas the NCRB is not so. Applicants are JADs in the Computers & Systems Division of NCRB and they are not having any direct involvement in the actual investigation of case like CBI. As such, there is no anomaly, which is required to be set right or corrected.

11. Applicants in their rejoinder have re-iterated their contentions taken in the OA.

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12. We have given careful thought to the rival contentions and perused the material on record. Letter dated April, 1981 was with regard to creation of various posts in DCPC. Subsequently on merger of DCPC and formation of NCRB no recommendation has been made by the IVth CPC as to the pay scale of the applicants, i.e., JADs. As there has been a recommendation for CBI and to remove the anomaly the Government has taken a decision to accord enhanced pay scale to the Deputy SP and SP in CBI in the year 1996. Although at one point of time there was a parity in the pay scale of SP, CBI as well as JADs but the expert body, i.e., the IVth CPC having made a recommendation to enhance the pay scale of Dy. SP in CBI at par with CPO the recommendations having been accepted by the Govt. and implemented applicants who were not even JAD at that time could not raise their grievance at that point of time. We find no representation made by them and the matter was also not referred to the Anomaly Committee. Now after the expiry of more than 15 years from the date of recommendations of the IVth CPC the claim of the applicants for parity of pay scale with that of SP/DSP in CBI is hopelessly barred by limitation. Annexure-R-1 the communication by the respondents to the effect that the representation of the applicants for higher pay scale is pending with MHA would not entitle them to have a lease of limitation and a cause of action to raise their grievance at this belated stage. Further, having regard to the fact that the recommendations of Vth CPC where enhanced pay has not been recommended to the applicants being implemented, any interference would amount to unsettling the settled position. In this view of the matter, we hold that the grievance of the applicants and the relief prayed



for accord of benefits of higher pay scale at par with SP, CBI w.e.f. 1.1.86 is not maintainable and is barred by limitation.

13. However, in the interest of justice we have also considered the case on merits. Having regard to the decisions of the coordinate Benches (supra) where the matter has been meticulously gone into the claim of the similarly circumstance applicants has been rejected. Learned counsel for the applicants has not been able to show that these decisions have been reversed or set aside on appeal and to our mind they have already attained finality. Merely because at one point of time the pay scale of both the posts were comparable and at par would not bestow an indefeasible, vested right to the applicants to claim parity in the pay scale, particularly when expert bodies like IVth and Vth CPCs have not made any recommendation for enhancement of the pay scale of the applicants. Apart from it, claim of the applicants has arisen only in 1996 as on their promotion as JDAs they cannot have parity of pay scale with SP from back date. The IVth CPC has recommended the enhanced pay scale to the CBI, which was implemented by the Govt. by their letter dated 8.2.96. As we find that the posts of JAD and SP are ~~not~~^h identical ~~and~~^h belonging ~~to~~^h to different organisation with different set of recruitment rules, duties and responsibilities, more particularly the factum of investigation, which is one of the prime duties for SP in CBI is missing from the duties of JAd, these posts cannot be compared at all for parity of pay scale. In the matter of parity of pay scale and equal pay for equal work it has to be established that the posts are identical in all

respects. It is also equally settled principle of law as derived from various judicial pronouncements of Apex Court not to interfere in the matter of pay scale and this task should be left open to the expert bodies like Pay Commissions. There is no recommendation either by IVth CPC or Vth CPC of enhanced pay scale to the applicants, we refrain from interfering in this matter and are fortified in this view of ours by the decision of the Apex Court in Union of India & Anr. v. P.V. Hariharan & Anr., 1997 SCC (L&S) 838. We are also in respectful agreement with the decisions of the coordinate Benches (supra) where the identical claims were rejected.

14. From the foregoing discussion we do not find any merit in the OA. The OA is dismissed. No costs.

S. Raju

(Shanker Raju)
Member (J)

V.K. Majotra

(V.K. Majotra)
Member (A)

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