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Central Administrative Tribunal
Principal Bench

O.A.No.2919/2001

New Delhi, this the 10th day of March, 2003.

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. A.P. Nagrath, Member (A)

Shri Rajender Chand,
S/o late Shri Maluck Chand,
R/o Type II/46,
Presidents Estate,
New Delhi

.... Applicant

(BY Advocate: Ms. Harvinder Oberoi, proxy for Shri Vikas
Dutta)

Versus

1. Union of India through
Secretary President Estate,
Rashtrapati Bhawan,
New Delhi.

2. The Under Secretary (Admn.)
President Secretariat,
Administration Section,
Rashtrapati Bhawan.

.... Respondents

(By Advocate: Shri N.S. Mehta with Shri S.M. Arif)

O R D E R (ORAL)

The applicant is working as Chief Driver to His Excellency the President of India. He was initially appointed as Cleaner on 2.1.71. In December, 1972, he was appointed as Driver and with effect from 26.3.88, he was promoted as Chief Driver in the then scale of 1320-2040. By virtue of the present application, the applicant seeks that a direction should be issued that he is entitled to the pay scale of Rs.5500-9000 w.e.f. 1.1.96 with consequential benefits including arrears.

2. The applicant contends that traditionally the Chief Drivers of the President of India have always been placed in a higher pay scale than that of the Grade-I Drivers of Govt. of India and Autonomous Bodies. The nature of duties performed by the Chief Drivers are such that higher pay scale has been recommended to them because they have to

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drive the special vehicle of the President of India. They have to be extra vigilant. They have to stand by even after the duty hours in the President House and supposed to remain on tour with the President of India. They have to reach the Railway Station in advance, take part in the Republic Day Parade and Beating Retreat. They have to open the seal of the garage of the Bullet Proof Car and after the duty to seal the Bullet Proof Car etc.

3. After the 5th Pay Commission, it is contended that the applicant has been placed in the corresponding scale of 1320-2040 to the scale of 4500-7000 whereas the Drivers Grade I of the Lok Sabha/Rajya Sabha have been upgraded to Rs.5000-8000. He has represented in this regard and claims that he is entitled to the scale of 5500-9000 from 1.1.96.

4. In the reply filed, the application has been contested. It is contended that there is no law which shows that the Chief Drivers of the President's Garage should enjoy a scale higher than that of other Drivers in the Government of India. It is admitted that the President's house hold is a unique Institution but it is denied that the applicant is entitled to the claim made. The pay scales of the Drivers of the President's Secretariat are fixed from time to time on basis of reasons and decisions taken by the expert committee. Plea has also been raised that this Tribunal should not fix the pay scale because the applicant is not being discriminated.

5. During the course of submissions, learned counsel for the applicant reiterated that the applicant has to perform unique functions and, therefore as in the past, he is entitled to the pay scale higher than the one in the other Government departments.

6. The representation of the applicant has been rejected

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on 21.12.2000 vide the order:

"With reference to your representation dated 12 August, 2000 and subsequent reminder thereto, dated nil, the undersigned is desired to convey that your request for a higher pay scale for the post of Driver was considered by competent authority, but it has not been found possible to accede to your request. The question of the revision of your pay scales could be considered when the Government considers the general revision of pay scales of the government staff, whenever that may be.

7. It is this decision which becomes the subject-matter of criticism. However during the course of submissions, our attention was drawn to the fact that orders have already been passed that the special grade driver of the President i.e. one post has already been placed in the scale of 5000-8000. It had been explained that a Scheme for the Staff Car Drivers and their promotions has been drawn and special grade of Rs.5000-8000 has been fixed at 5% of the strength of the cadre or the staff of the Staff Car Drivers.

8. Our attention has been drawn towards the representation of the applicant of 25.1.99 addressed to the Military Secretary to the President in which he himself had only claimed the scale of Rs.5000-8000. The operative portion of the same reads -

"In view of the above submissions, we have always been placed on higher scale than the Grade-I Staff Car Drivers. It is, therefore, humbly prayed that our pay scale be upgraded from Rs.4000-100-6000 to Rs.5000-150-8000 which has been a practice of distinction of the Grades and oblige please."

Presently he claims a higher scale despite having represented otherwise and the subsequent representation indicates a change of mind in this regard.

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9. Our attention has not been drawn as to how the applicant is being discriminated. Article 39 (d) read with Articles 14 and 16 of the Constitution certainly prescribes the recognised principle of equal pay for equal work. Before a person can raise a grievance, he must show that he is being discriminated which should be hostile and open to similarly situated persons. Merely because if the applicant feels that he has been discharging higher duties, by itself will not permit him to claim a higher scale. It is a decision to be taken by the Administration rather than invoke Article 39 (d) read with Article 14 and 16 of the Constitution.

10. The Supreme Court in the case of Shiba Kumar Dutta & ors. vs. Union of India & ors., AIR 1998 S.C. 2911 provided the guidelines that unless there is total discrimination between the similarly situated persons, the task of granting the scale must be left to be decided by the expert committee. The findings of the Supreme Court read:

"Unless the action is arbitrary or there is invidious discrimination between persons similarly situated, doing same type of work, as is pointed out, it would be difficult for the Courts to go into the question of equation of posts or fitment into a particular scale of pay. They must be left to be decided by the Expert Committees and Government. The Courts cannot go into them and evaluate the job criteria and scales of pay prescribed for each category. Under those circumstances, the Tribunal is justified in refusing to go into the question."

11. In fact the Supreme Court came heavily on this Tribunal in the case of Union of India & ors. vs. P.V.

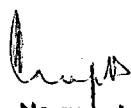
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Hariharan & ors., JT 1997 (3) S.C. 569. It held:

"5. Before parting with this appeal, we feel impelled to make a few observations. Over the past few weeks, we have come across several matters decided by Administrative Tribunals on the question of pay scales. We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is also being mis-understood and mis-applied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales."

In other words, unless as already pointed above that there is total discrimination, this Tribunal will not change the pay scales which is a fact to be gone into by the administrative authorities.

12. We have already noted above that in the facts of the present case, no such discrimination is noticeable and, therefore, the present application must be held to be without merit. The application fails and is dismissed.


(A.P. Nagrath)
Member (A)


(V.S. Aggarwal)
Chairman