

3. The Secretary,
Ministry of Finance,
Dept. of Expenditure,
North Block,
New Delhi.
4. The Director General of Meteorology,
India Meteorological Dept.,
Mausam Bhawan,
Lodi Road,
New Delhi-110003. ... Respondents

4. O.A. No. 112 of 1987

1. Smt. Prem Lala Magoo,
W/o Shri Gulshan Rai Magoo,
E-12/5, Krishan Nagar,
Delhi-110051.
2. Smt. Sushma Puri,
W/o Shri S.K. Puri,
3. Smt. Anita Sodhi,
W/o Shri R.K. Sodhi
4. Smt. Neelam Sardana,
W/o Shri H.C. Sardana
5. Smt. Prem Lata Bhutani,
W/o Shri Shankar Lal Bhutani
6. Smt. Kanta Datta
W/o Shri I.J.K. Datta
7. Smt. Sudesh Anand,
W/o Shri H.C. Anand
8. Shri Ram Kumar Sharma
W/o Shri Maha Singh ... Applicants

Versus

1. Union of India through
the Secretary,
Ministry of Finance,
Dept. of Revenue,
North Block, New Delhi.
2. The Secretary,
Ministry of Personnel, Public Grievances
& Pensions,
Dept. of Personnel & Training,
New Delhi.
3. The Director General,
Directorate of Revenue Intelligence,
'D' Block, 7th Floor,
I.P. Bhawan,
I.P. Estate, New Delhi.

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4. The Secretary,
Ministry of Finance,
Dept. of Expenditure,
North Block,
New Delhi. .. Respondents

5. O.A. No. 117 of 1998

1. Mrs. Manju Krishnani,
R/o D-132, Sarita Vihar,
New Delhi.
2. Mrs. Santosh Virmani,
R/o S-8, Srinivaspur Extension,
New Delhi-110065. .. Applicants

Versus

1. Union of India through
the Secretaryb (Labour),
Ministry of Labour,
Government of India,
Shram Shakti Bhawan,
New Delhi.
2. The Secretary,
Govt. of India,
Ministry of Finance,
North Block,
New Delhi.
3. The Director,
V.V. Giri National Labour Institute,
NOIDA.
4. The Administrative Officer,
V.V. Giri National Labour Institute,
NOIDA. .. Respondents

By Advocates: Shri M.L. Ohri for applicants
S/Shri R.P. Aggarwal, V.P. Uppal
A.K. Bhardwaj, Rakesh Tikku
Shri Anil Singal proxy counsel for
Mrs. Pratima K. Gupta

ORDER

S.R. ADIGE, V C (A)

These five O.As filed by Stenographers Grade II and Assistants working in some of the subordinate and attached offices of the Government of India have been referred to this larger Bench to answer the following reference.

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"Whether Stenographers and Assistants of subordinate and attached offices of Government of India are entitled to the pay scale of Rs.1640-2900 applicable to Stenographers and Assistants working in Central Secretariat Service."

2. This controversy has a long history. Stenographers working in offices outside the Secretariat had been agitating for the removal of disparities in the pay scale at various levels between themselves and those working in the Central Secretariat. The entry level for a Stenographer in Central Secretariat is Grade D corresponding to Junior Grade in subordinate/attached offices. At this level the Stenographic speed of 80 words per minute being the same in both the Central Secretariat as well as subordinate/attached offices, the 2nd Pay Commission itself removed the pay disparity, but in respect of the higher levels, the 2nd Pay Commission felt that the pay differential should remain. Considerations which weighed with the 2nd Pay Commission in retaining the pay differential at higher levels were that Stenographers in Central Secretariat were recruited through All India Competitive Examination conducted by UPSC, whereas in the case of non-Secretariat offices, the appointment was done invariably through local recruitment from names sponsored by Staff Selection Commission and furthermore that Stenographers in Central Secretariat attached to Ministers and Secretaries had a more onerous duties and responsibilities than those attached to Heads of offices in non-Secretariat offices. The 3rd Pay

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Commission also broadly endorsed these views. Meanwhile certain improvements were also made in the promotional prospects of Stenographers in subordinate/attached offices with the result that just prior to the recommendations of the 4th Pay Commission's recommendations effective from 1.1.86. The position was as follows:

C. Secretariat	Subordinate/attached offices
Scale Rs.	Scale Rs.
(i) Steno. Gr. D 330-560	i) Steno. Jr. Grade 330-560
(ii) Steno. Gr. C 425-800	ii) Steno Sr. Grade 425-640 (Non-functional)
(iii) Steno. Gr. B 650-1040	iii) Steno. Sr. Gr. 425-700
iv) Steno. Gr. A 650-1200	iv) P.A. 550-900

3. Stenographers in subordinate/attached offices of Government of India kept pressing their demand for parity in pay scales with their counterparts in Central Secretariat. The matter was raised in J.C.M. and because of disagreement it was referred to a Board of Arbitration on 4.8.96.

4. The Board of Arbitration took note of the stands of each of the two sides.

5. The stand of the staff side was this. The basic qualification (matric.), speed in Stenography (80 Words Per Minute) and functional responsibility being identical, there was no justification for discrimination in the scale of pay so far as Stenographers in subordinate/attached offices were concerned, vis-a-vis their counterparts in Central Secretariat. This disparity was a relic

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and hangover based on the concept of Imperial Secretariat and it was being continued to be perpetuated in spite of vast changes that had taken place in the nature of functions and responsibility carried out by non-Secretariat organisations, particularly in the context of progressive decentralisation of power and authority. Furthermore with the recruitment of Stenographers in non-Secretariat organisation on the basis of all India competitive examination through Staff Selection Commission, and Stenographers of Central Secretariat being attached to offices even ^{at} the level of Joint Secretary/Director/Dy. Secretary, the main reasons which weighed with the 2nd and 3rd Pay Commissions in maintaining the pay differential were no longer applicable. Furthermore, while it was true that in Central Secretariat 50% vacancies at Group C level were filled by direct recruitment and 25% by promotion through departmental examination in which a minimum speed of 100 words per minute was prescribed, 25% vacancies in Central Secretariat were filled on the basis of seniority, in which the minimum of 80 words per minute prescribed at entry level was sufficient for consideration for promotion.

6. The stand of the official side was this. This issue had been considered by successive Pay Commissions in reasonable detail and in a justifiable manner. While these Pay Commissions were of the view that the disparity should be reduced as far as possible, they had not recommended absolute parity on account of functional considerations. No doubt

great changes had taken place in the nature of functions and level of responsibility, particularly in the context of devolution of power and authority, but such changes were not confined to non-Secretariat organisations alone. The scale of personal staff required at various levels in the Central Secretariat had been determined on the basis of functional justification, and the levels and context of stenographic assistance required in each case, and was not a ground to justify complete parity. The functional responsibilities for Stenographers in Central Secretariat were heavier than those working in subordinate/attached offices. There were differences in the hierarchical structure, as well as in the work entrusted. The stricter selection process of recruitment through an All India Competitive Examination conducted by UPSC in the case of Central Secretariat Stenographers, as contrasted with selection through Staff Selection Commission in the case of Stenographers in subordinate/attached offices was because of the more onerous duties and responsibilities of Central Secretariat Stenographers both in qualitative as well as quantitative terms.

7. Meanwhile the 4th Pay Commission's recommendations had also become available by then and the Board of Arbitration took note of the same, whereby, while at the level of Stenographer Grade D in Central Secretariat, corresponding to Stenographer Junior Grade in non-Secretariat organisations, a common scale of Rs.1200-2040 was recommended, at the next level of Stenographer Grade C in Central

Secretariat corresponding to Stenographer Grade II in non-Secretariat organisations, a differential was recommended in as much as the former were recommended a scale of Rs.1400-2600 while the latter were recommended a scale of Rs.1400-2300. These scales were accepted by Government w.e.f. 1.1.86.

8. The Board of Arbitration announced its award on 18.8.89. Stenographers in the subordinate offices in the existing scale of Rs.1400-2300 were to be placed in the scale of Rs.1400-2600. In all other respects, the claims of the staff side were rejected.

9. Pursuant to the aforesaid award, Finance Dept. (Dept. of Expenditure) issued O.M. dated 4.5.90 (Annexure A/3 of O.A. No. 1901/99) revising the pay scale of Stenographers Grade II in subordinate offices of Government of India from Rs.1400-2300 to Rs.1400-2600 w.e.f. 1.1.86.

10. Meanwhile the Assistants in the Central Secretariat who had also been granted the pay scale of Rs.1400-2600 w.e.f. 1.1.86 pursuant to the 4th Pay. Commission's recommendations, were separately agitating for a higher scale, and upon their grievances not being redressed by Government, the Central Secretariat Direct Recruit Assistants Association filed O.A. No. 1538/87. They contended that though they had been classified as Group B (Non-Gazetted) under Rule 4 CCS (CCA) Rules, 1965 the revised pay scale of Rs.1400-2600 replacing their earlier pay scale of Rs.425-800 was inconsistent with

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such classification, as it was less than the lowest revised pay scale applicable to Group B Officers (Rs.1640-2900), and in fact was one of the pay scales applicable to Group C officers. Secondly it was urged that the pay relativities had been seriously disturbed as a number of posts included in Group C in the pre-revised scales of pay which were either the same as or lower than that of Assistants, had been given better pay scale of 'Rs.1640-2900 or Rs.1600-2660. Thirdly it was emphasised that

- i) Assistants in addition to the normal duties and responsibilities of Government employees make important contributions to the taking of policy decisions, a function admittedly not discharged by Group 'C' employees.
- ii) Assistants are appointed by the President of India while Group C employees are appointed by officers of lesser rank.
- iii) Assistants are selected by UPSC while Group C posts are generally filled through Staff Selection Commission.
- iv) Assistants are given greater security of tenure, because in matters of disciplinary proceedings, UPSC has necessarily to be consulted unlike in the case of other Group C officers.
- v) Assistants are liable to submit annual immovable property returns under Rule 18 CCS (Conduct) Rules like other Group B officers but unlike Group C officials which was a reflection of their larger incomes and the greater power they exercise.

11. The Tribunal disposed of O.A. No. 1538/87 by its detailed order dated 23.5.89 reproduced in (1991) 16 ATC 891. The Bench held that it was pay which determined the classification/status of a post and not the otherway around, and pay itself was determined by the duties and

responsibilities of the post. However, it noted that right from independence days a higher classification was deliberately accorded to Assistants because they formed part of the Imperial Secretariat Service, the status of which was more or less equated with members of the Provincial Service. The Tribunal concluded by holding that those applicants had a prima facie case for consideration of their claims for a higher scale firstly because they were in the highest pre-revised scale of Rs.425-800; secondly because they were the first rung of important functionaries in Central Secretariat whose comprehensive note containing all facts, rules, precedents etc. was an important aid in taking policy decisions; and thirdly because they stood out separately as a Group for the reasons given in the preceding paragraph.

12. Pursuant to the aforesaid order dated 23.5.89 respondents issued impugned O.M. dated 31.7.90 (Annexure A1 of O.A. No. 1901/99) revising the scale of Rs.1400-2600 to Rs.1640-2900 w.e.f. 1.1.86 in respect of Assistants of CSS and Stenographers Grade C of CSSS, and extending the aforesaid pay scale to Assistants and Stenographers in other organisations like Ministry of External Affairs which are not participating in CSS/CSSS but where the posts are in comparable grades with same classification, and pay scales, and the method of recruitment through open competitive examination is also the same.

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13. Applicants in all these O.As sought the extension of the benefits of the aforesaid O.M. dated 31.7.90 to themselves. These O.As came up before a Division Bench of the CAT, P.B. The Division Bench noted the conflicting decisions on this issue between different Benches of the Tribunal including a Full Bench decision handed down by CAT Full (Calcutta) Bench order dated 19.5.95 in D.G. Ordnance Factories Stenographers Association Vs. Union of India & Others as reproduced in 1996 (32) ATC 466 leading that Division Bench by its order dated 16.10.2000 to recommend placement of these cases before this larger Bench of five members to answer the aforementioned reference.

14. We have heard Shri M.L. Ohri for the applicants in all these O.As while respondents were represented by S/Shri V.P. Uppal, R.P. Aggarwal, A.K. Bhardwaj, Anil Singal proxy counsel for Mrs. P.K. Gupta and Shri Rakesh Tikku, all of whom have also been heard. Both sides have cited several rulings in support of their rival contentions.

15. Shri Ohri has emphasised that the denial of the pay scale of Rs.1640-2900 w.e.f. 1.1.86 and the corresponding revised scale of Rs.5500-9000 w.e.f. 1.1.96 to applicants in the present O.As is discriminatory, arbitrary, malafide and violative of Articles 14 and 16 of the Constitution read with the directive principles of equal pay for equal work enshrined in Article 39 (d) when the same has been granted to Stenographers/Assistants in CSSS/CSS,

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Directorate of Field Publicity; Central Administrative Tribunal; National Archives of India; Direct General of Inspection; and several other non-Secretariat offices. He has argued that once the Board of Arbitration had given its award for parity of pay scales between Stenographers Grade C in CSSS and Stenographers Grade II in subordinate offices of Government of India, and the same was accepted by Government of India, there was no justification on the part of Respondents to change drastically the Award to the detriment of applicants. He has urged that giving preferential treatment to Stenographers Grade C in CSSS in the matter of pay scales amounts to favouritism and hostile discrimination against applicants. He has also argued that as there was no change in the nature of work, duties and responsibilities of Stenographers Grade C in CSSS after the Award was announced, applicants should also have been extended the benefits of O.M. dated 31.7.90 for maintenance of pay parity because the Hon'ble Supreme Court in G.C. Ghosh & Others Vs. Union of India & Others (1992) 19 ATC 94 has held that the benefit of a judgment should be extended to similarly situated persons and in Smt. Prema Devi & Anr. Vs. Delhi Administration & Others 1989 Supp (2) SCC 330 it has been held that this should be done suo moto, without resorting to unnecessary litigation. It has been contended that the 4th Pay Commission had recommended the same classification of Group C for both Stenographers Grade C in CSS as well as Stenographers Grade II in non-Secretariat organisation, and merely because

Government decided to retain CSSS Stenographers Grade C in Group B on notional basis was no reason to deny applicants pay parity. Particular emphasis has been laid by Shri Ohri on the CAT P.B. order dated 19.1.96 in O.A.No. 144A/93 V.R. Panchal & Others Vs. Union of India & Others and 2 connected cases directing extension of the benefits contained in O.M. dated 31.7.90 to the applicants in those three cases who were Assistants and Stenographers Grade II in C.B.I.; Directorate General of Income Tax and Directorate of Field Publicity, all non-Secretariat Organisations. It was emphasised that SLP No. 2835/96 against that order dated 19.1.96 allowing one of the aforesaid three O.As namely O.A. No. 985/93 was dismissed on merits by the Hon'ble Supreme Court on 11.7.96 (Annexure A-6 in O.A. No. 1901/99) and that dismissal order was a binding precedent in terms of the Hon'ble Supreme Court's ruling in JT Officers Forum & Others Vs. Union of India & Others 1994 SCC (L&S) 366. and it would be gravely improper for the Tribunal not to follow it in the background of the Hon'ble Supreme Court's ruling in S. Kalkat Vs. Union of India & others 1995 SCC (L&S) 960.

16. On behalf of Respondents S/Shri V.P. Uppal and others have vehemently challenged these contents. It has been contended that unlike their counterparts in the non-Secretariat offices, Stenographers and Assistants in the Secretariat belong to CSSS/CSS respectively. Again unlike their counterparts in non-Secretariat offices they are Presidential appointees, and as against the

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Stenographers and Assistants in non-Secretariat offices who are Group C employees they are Group B employees. It is urged that the relatively higher pedestal on which Stenographers and Assistants of Central Secretariat were placed is because of the nature of duties and responsibilities which they have been called upon to shoulder ^{in which} are qualitatively as well as quantitatively more arduous.

17. Attention has been drawn to recommendations of successive Pay Commissions, which while conceding the demand for pay parity at the initial entry level, did recognise the need for pay differential at higher levels beginning from Stenographer Grade C in Secretariat corresponding to Stenographer Grade II in non-Secretariat offices and above. Considerable reliance has been placed on Para 46.33 and 46.44 of the 5th Pay Commission's Report which are extracted below:

Associations representing stenographers have urged before us that there should be complete parity between stenographers in non-secretariat offices and in the secretariat in matters relating to (a) pay scales, (b) designations, (c) cadre structure, (d) promotion avenues, (e) level of stenographic assistance to officers in technical, scientific and research organisations etc. Suggestions have also been made for a higher pay scale for stenographers in the entry grade, treating advance increments granted for acquiring proficiency in stenography at higher speed as pay allowing stenographers in non-secretariat offices to compete in the Limited Departmental Competitive Examination (LDCE) and grant of Special Pay for operating computers, fax machines etc.

We have given our careful consideration to the suggestions made by Associations representing stenographers in offices outside the Secretariat in the light of observations made by the Third CPC. The Commission had

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observed that as a general statement, it was correct to say that the basic nature of a stenographer's work remained by and large the same whether he was working with an officer in the secretariat or with an officer in a subordinate office. The Commission was of the considered view that the size of the stenographer's job was very much dependent upon the nature of work entrusted to that officer and that it would not be correct, therefore, to go merely by the status in disregard of the functional requirement. By the very nature of work in the secretariat the volume of dictation and typing work was expected to be heavier than in a subordinate office, the requirement of secrecy even in civil offices of the secretariat could be very stringent. Considering the differences in the hierarchical structures and in the type of work transacted in the secretariat and in the subordinate offices, the Commission was not in favour of adopting a uniform pattern in respect of matters listed in the preceding paragraph. To our mind, the observations of the Third CPC are as relevant today as they were at that point of time and we are not inclined to overlook them totally. In view of the above mentioned distinguishable features, we do not concede the demand for absolute parity in regard to pay scales between stenographers in offices outside the secretariat and in the secretariat notwithstanding the fact that some petitioner stenographers Grade II have got the benefit of parity in pay scale through courts. However, pursuing the policy enunciated by the Second CPC that disparity in the pay scale prescribed for stenographers in the secretariat and the non-secretariat organisations should be reduced as far as possible, we are of the view that Stenographers Grade II should be placed in the existing pay scale of Rs.1600-2660 instead of Rs.1400-2300/ Rs.1400-2600.

18. It is emphasised that these differences in hierarchial structure, the volume and nature of work and the requirements of secrecy in the Secretariat as compared to non-Secretariat offices fully justify the pay scale differential and the Tribunal should abide by the recommendations of the Pay Commissions, which as the Hon'ble Supreme Court has time and again held, is the appropriate authority to determine pay scales, it being a high powered

expert body with the necessary expertise, knowledge and resources to take a holistic approach to the issue, while maintaining the relativities as between different pay scales.

19. Both sides have cited several rulings and we have examined the rival contentions in the light of the facts and law placed before us.

20. The first ground taken by the applicants is that denial of the pay scale of Rs.1640-2900 to them w.e.f. 1.1.86 and the replacement scale of Rs.5500-9000 to them w.e.f. 1.1.96 consequent to the implementation of the 5th Pay Commission report is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution read with the directive principle of equal pay for equal work enshrined in Article 39 (d), particularly when the same has been granted to Stenographers of CSSS, Directorate of Field Publicity, Central Administrative Tribunal, National Archives of India, Directorate General of Inspection, Customs and Central Excise etc. Reliance has been placed on the Hon'ble Supreme Court's judgment in Bhagwan Das & Others Vs. State of Haryana & Others 1988 SCC (L&S) 24 wherein it has been held that if the duties and responsibilities of the temporary employees and employees of a regular cadre in the same Government department were similar, there could not be discrimination in pay between them, merely on grounds of difference in mode of their selection, or that the appointment or selection under which they had been appointed, was a temporary one.

Another ruling ^{in which} has been relied upon, on this very account is Jaipal & Others Vs. State of Haryana & Others 1988 (3) SCC 354, on the point that the difference in the mode of selection would not affect the application of the doctrine of equal pay for equal work, if both classes of persons performed similar duties and functions under the same employer. Yet another ruling relied upon by Shri Ohri is C.A.T., P.B.'s order dated 4.2.93 in S.R. Dheer Vs. Union of India ATR 1993 (1) CAT 480 which related to a C.A.T. employee a Stenographer Grade 'C' who was drawing the scale of Rs.425-800 before 1.1.86 and whose recruitment qualifications of Stenographer Grade 'C' in C.A.T. was the same as ^{as} his counterparts in CSSS, but whose parity was disturbed by respondents' O.M. dated 31.7.90 leaving him in the scale of Rs.1400-2600, the benefits contained in the aforesaid O.M. were also ordered to be extended to him.

21. We have already noted that Stenographers and Assistants in Central Secretariat are members of CSSS and CSS, unlike their counter parts in non-Secretariat offices like the applicants' organisations. They are Group 'B' employees, unlike their counterparts in non-Secretariat employees like the applicants' organisations, who are Group 'C' employees. The Tribunal in its order dated 25.3.89 in O.A. No. 1538/87 had acknowledged that Assistants in Central Secretariat are required to prepare the first comprehensive note citing relevant facts, rules, precedents, etc. which forms an

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important base paper in policy formulation, review, appraisal, etc. and thus Assistants forms the first rung of the important functionaries in the Central Secretariat. It is true that the CAT, Ernakulam Bench in its order dated 20.7.95 in O.A. No. 1322/94 and O.A. No. 276/95 K.R. Chandrasekaran Kunji Vs. Secretary, Ministry of Finance, took the view that officials at comparatively lower levels in the Secretariat were unlikely to have anything to do with policy making in the real sense, and this view was echoed by CAT, P.B. in its order dated 30.1.96 in Panchal's case (supra), but in our view the test is not what the Assistant actually does or does not do, but what is expected of him, and the Tribunal has already concluded that what is expected of an Assistant who is the first rung of the important functionaries of the Secretariat is to aid actively in policy making by preparing the comprehensive note. In the case of Stenographer in the Secretariat the distinction may not be as sharp vis-a-vis their counterparts in non-Secretariat offices, but even there in terms of maintenance of secrecy, work load etc. the distinction cannot be said to be wholly absent, when we consider the nature of work in the Secretariat, including the volume of work as well as the requirements of maintenance of secrecy, all of which have been emphasised in the V Pay Commission report.

22. In Bhagwan Das' case (supra) the facts relate to duties and functions of temporary employees, and employees of a regular cadre in the

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same department being similar, and hence that ruling is distinguishable from the facts and circumstances of the present cases before us. In Jaipal's case (supra) the Hon'ble Supreme Court has specifically held that mode of selection alone would not affect the application of the doctrine of equal pay for equal work, as the different modes of selection is not the only point of difference between Stenographers and Assistants in ^{the} Secretariat on the one hand, and Stenographers and Assistants in non-Secretariat offices on the other, as we have already noticed. Hence the ruling in Jaipal's case does not help the applicants. In Dheer's case also we have noticed that that applicant was a Stenographer Grade 'C' drawing the pay scale of Rs.425-800 upto 31.12.85 and after the Fourth Pay Commission he was granted the replacement scale of Rs.1400-2600 w.e.f. 1.1.1986. He was a Group B official, whereas applicants in the present O.As are Stenographers Grade II, who were in the scale of Rs.425-700 upto 31.12.85 and are Group C officials. They were initially granted the replacement scale of Rs.1400-2300 on the basis of Fourth Pay Commission w.e.f. 1.1.86 and subsequently they were given the scale of Rs.1400-2600 on the basis of the Award. Thus the ruling in Dheer's case also does not advance applicants' case.

23. It is true that through Court orders issued from time to time, some Stenographers in non-Secretariat offices have also been extended the benefits of impugned O.M. dated 31.7.90, but a

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perusal of those orders reveals that in none of them were the contents of Paras 46.33 ^{and} 46.34 of the ^{5th} Pay Commission report ^{specifically} brought to the notice of the respective Benches.

24. In this connection what is extremely relevant to note is that consequent to the implementation of the ^{5th} Pay Commission's report, the replacement scale of Rs.1640-2900 is Rs.5500-9000 which is the pay scale granted to Stenographers Grade I in non-Secretariat offices. Thus granting the scale of Rs.1640-2900 w.e.f. 1.1.86, to Stenographers Grade II and Assistants in non-Secretariat offices will entail granting them the replacement scale of Rs.5500-9000 w.e.f. 1.1.96 (which indeed has been claimed by applicants), which would put them on par with those occupying the promotional posts of Stenographers Grade I. In other words unequals would be treated as equals which would be directly violative of Articles 14 and 16 of the Constitution.

24A. This ground, therefore, fails.

25. It has next been contended that the Board of Arbitration having given the Award of parity of pay scales between Stenographers Grade 'C' in Secretariat and Stenographers Grade II in non-Secretariat offices, and the same having been accepted by Government of India, there was no justification on the part of Government to change drastically the Award to the detriment of the applicants. Reliance in this regard has been placed

on Randhir Singh Vs. Union of India & others (1982)
1 SCC 618 wherein it was held that drivers in Delhi
Police performed the same functions as drivers in the
service of Delhi Administration and Central
Government and if anything by reason of their
investiture with the powers, functions and
privileges of a police officer their duties and
responsibilities were more arduous and there was,
therefore, no reason for giving them a lower pay
scale than others. Yet another ruling cited in this
connection is A.N. Ferreira & Anr. Vs. Union of
India & others 1999 SCC (L&S) 873 which relate to pay
scales of judicial officers. There was parity in the
pay scales between judicial officers of Union
Territory of Delhi and Goa (now Goa, a State) but
that parity was disturbed in 1982 by granting better
scales to Delhi Judges. It was held that Goa judges
were entitled to restoration of parity, the nature of
judicial work being substantially the same. Yet
another ruling cited by Shri Ohri in this connection
is Raj Bidichandani & Others Vs. Union of India &
Others 1998 SCC (L&S) 253 which was a case where
bilingual Stenographers in Official Languages Wing of
Law Ministry who were earlier in the pre-revised
scale of Rs.425-800 whose pay was subsequently
revised to Rs.1400-2600 were denied the benefit of
Rs.1640-2900 pursuant to O.M. dated 31.7.1990 until
the appeal was allowed. On this very issue Shri Ohri
has relied upon yet another ruling Haryana State
Biologists' Association Vs. State of Haryana 1994
(2) SLR 389 on the point that once the State has
consciously decided to provide parity in pay scale of

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employees falling in two different cadres they cannot be permitted to deprive one class or category by disturbing the parity. This ruling had itself relied upon an earlier Supreme Court's ruling in Employees of Tannery and Footwear Corporation of India Ltd. & Another Vs. Union of India & Others 1992 SCC (L&S) 164. of pay scale was disturbed in 1982.

26. It is important to note here that there was no change in the Award of Board of Arbitration. What has actually happened is that Stenographers Grade 'C' of CSSS, Assistants of CSS and certain other categories of Stenographers Grade 'C'/Assistants have been granted the higher scale by O.M. dated 31.7.1990. It is also relevant to note that upto 31.12.1985 Stenographers Grade 'C' and Assistants in the Secretariat and certain other categories of Stenographers Grade 'C'/Assistants were in the higher scale of Rs.425-800 as compared to their counterparts in the non-Secretariat offices who were in the lower scale of Rs.425-700. Pursuant to the Fourth Pay Commission's recommendations they were placed in the higher replacement scale of Rs.1400-2600 while the latter were placed in the lower replacement scale of Rs.1400-2300. It is important to note that pursuant to the Award of Board of Arbitration, the pay scale of Stenographers Grade II in subordinate and attached offices of Government of India was raised vide O.M. dated 4.5.90 to Rs.1400-2600 w.e.f. 1.1.86, but within less than two months, the pay scale of Stenographers Grade 'C' and Assistants whose pay scale was Rs.1400-2600 was

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raised to Rs.1640-2900 vide O.M. dated 31.7.90 w.e.f. 1.1.86 on the basis of CAT, P.B. order dated 23.5.89 in O.A. No. 1538/87. Thus it would be fair to say that the parity in pay scales was for an extremely brief period if at all. Hence the aforesaid rulings, all of which relate to the parity in pay scales which remained for considerable lengths of time, are distinguishable on facts.

27. It has next been contended that giving preferential treatment to Stenographers Grade 'C' in CSSS amounts to favouritism and hostile discrimination against applicants. This is only an assertion unsupported by any material. The burden of proof is on the applicants to establish that granting of scale of Rs.1640-2900 to Stenographers Grade 'C' of CSSS amounts to favouritism, and applicants have not established the same satisfactorily.

28. It has next been contended that ^{as} there is no change in the discharge of duties and responsibilities of Stenographers Grade 'C' of CSSS after the Award granting the pay scale of Rs.1400-2600 to applicants, they also ought to have been 'Awarded' the revised pay scale of Rs.1640-2900, to maintain parity. In this connection we note that in Union of India & others Vs. P.K. Dey JT 2000 (Suppl. 2) SC 449 the Hon'ble Supreme Court has categorically held that in the absence of material relating to other comparable employees as to the qualification, method of recruitment, degree of skill, experience involved in performance of the job,

training required, responsibilities undertaken and other facilities in addition to pay scales, Court cannot order grant of relief.

29. If a claim for equal pay for equal work is to succeed the burden of proof rests on the applicants to furnish materials regarding qualifications, mode of recruitment, degree of skill, experience involved in the performance of the job etc. in the background of the Hon'ble Supreme Court's ruling cited above. No such factual materials have been placed before us in these O.As, and there are only certain bald averments to the effect that duties and responsibilities of applicants are identical with those of Stenographers Grade 'C' in Secretariat in respect of whom they are claiming parity. Clearly such averments unsupported by factual material is not sufficient to grant the claim for pay parity in the light of the Hon'ble Supreme Court's ruling in Dey's case (supra).

30. It has next been contended that the revised pay scale of Rs.1640-2900 has been granted to the promotee Stenographers Grade 'C' of CSSS, and, therefore, the mode of recruitment mentioned in the impugned O.M. dated 31.7.90 cannot be made a ground to discriminate against the applicants. In regard to the Stenographers Grade 'C' in the Secretariat, the mode of recruitment is 50% by Direct Recruitment in which the minimum speed in stenography is 100 W.P.M., 25% through Limited Departmental Competitive Examination in which also the minimum speed in

stenography is 100 W.P.M. and 25% promotion on the basis of seniority. On the other hand in the case of Stenographers Grade II in non-Secretariat offices the mode of recruitment is 100% through promotion. Thus in addition to the difference in qualifications, nature of duties and responsibilities etc. there is also considerable difference in mode of recruitment also, and merely because in the case of posts of Stenographers Grade 'C' in the Secretariat there is component of promotion on the basis of seniority from Stenographers Grade 'D', does not obliterate the difference in mode of recruitment, and respondents cannot, therefore, be faulted for stipulating the condition of source of recruitment in O.M. dated 31.7.90 as one of the grounds to entertain or deny the benefits contained therein.

31. It has next been contended that the revised pay scale of Rs.1640-2900 having been granted to Stenographers Grade 'C' working in various other subordinate and attached offices of Government of India, ~~and~~ denial of the same to applicants amounts to hostile discrimination. In this connection Shri Ohri has relied upon the Hon'ble Supreme Court's ruling in G.C. Ghosh & Others Vs. Union of India & Others (1992) 19 ATC 94. Other rulings relied upon in the same way include Union of India Vs. Debasish Kar & Others 1995 SCC (L&S) 1303 and the CAT, Full (Calcutta) Bench's order in DGOF Stenographers' case (supra) and in K.P. Grover & Others Vs. Indian Road Construction Corporation Ltd. 1999 (1) ATJ 443. Shri Ohri has also relied upon Bureau of Indian

Standards Employees Union & Others Vs. D.G., Bureau of Indian Standards 80 (1999) Delhi Law Times 35 and order dated 16.10.98 in C.W. No. 3790/95 Dr. B.C. Pant & Others Vs. Sangeet Natak Akademy & Others.

32. While there is no doubt that employees similarly placed are entitled to similar treatment, and no doubt some Stenographers Grade II/^{Assistant}~~Grade II~~ in non-Secretariat offices have been extended the benefits of O.M. dated 31.7.90, we notice that the grant of the higher scale of Rs.5500-9000 to applicants w.e.f. 1.1.96 which is the scale admissible in the promotional posts of Stenographers Grade I would amount to treating dissimilar persons similarly which would be directly violative of Articles 14 and 16 of the Constitution. It is for this very reason that the Hon'ble Supreme Court in Union of India Vs. P.V. Hariharan & Others 1997 SCC (L&S) 838 has observed as follows:

"....Quite often the Administrative 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."

33. It has next been contended that the Fourth Pay Commission had recommended the same

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classification viz. Group 'C' for both the categories, viz. Stenographers Grade 'C' of CSSS and Stenographers Grade II in the subordinate and attached offices, ^{and} merely because the Government allowed the Stenographers Grade 'C' of CSSS to continue with the existing classification of Group 'B' on notional basis, was no justification in adopting the classification as a ground for denying applicants the benefit of O.M. dated 31.7.90. Even if the Fourth Pay Commission had recommended the same classification for both Groups of employees, the fact remains that Stenographers Grade 'C' of CSSS are Group 'B' employees while Stenographers Grade II in non-Secretariat offices are Group 'C' employees. As long as this classification exists, it remains a relevant factor while adjudicating the claims of equal pay for equal work.

34. Lastly it has next been contended that the Tribunal in its order dated 19.1.96 in Panchal's case (supra) has held the O.M. dated 31.7.90 to be discriminatory, which order having been challenged before the Hon'ble Supreme Court in the form of an SLP, and the same has been dismissed on merits after condoning the delay, the same is a binding precedent. In this connection Shri Ohri has relied upon the Hon'ble Supreme Court's ruling in JT Officers' Forum & Others Vs. Union of India & Others 1994 SCC (L&S) 366 and the Hon'ble Supreme Court's ruling in S. Kalkat Vs. Union of India & Others 1995 SCC (L&S) 960.

35. In JT Officers Forum's case (supra) wherein petitioners P.N. Lal (1966) and Brij Mohan (1965) who had qualified in JTO's qualifying examination in 1974 filed writ petitions in Allahabad High Court (Lucknow Bench) complaining of their placement in the eligibility list below the last man who passed the qualifying examination in 1975. The department's case was that the eligibility list had been prepared on the basis of seniority. The High Court after considering the rules and relevant paras of the P&T Manual granted the relief. Thereupon SLP No. 3384-3386 of 1996 was filed in Supreme Court. After hearing, the SLP was dismissed on merits. It was stated that the Bench was not inclined to interfere with the High Court's judgment except to a limited extent. CAT, Ernakulam Bench and CAT, P.B. followed those orders in O.As filed before them. On 22.4.92 some applications were filed in CAT, P.B. Therefore, the Forum filed ^{an} intervention application and opposed the relief. That application of Forum was rejected and relief was granted to the applicants. Thereupon Forum approached the Hon'ble Supreme Court contending that dismissal of the SLP in P.N. Lal's case and Brij Mohan's case (supra) was not operative as a precedent. In the facts of that case, the Supreme Court held that it was a binding precedent though the SLP was dismissed in limine. Clearly the facts and circumstances of the present set of O.As are distinguishable and the Hon'ble Supreme Court's order dated 30.7.96 dismissing the challenge to the Tribunal's order dated 19.1.96 in Panchal's case (supra), even though on merits, cannot

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be treated as a binding precedent to follow in the present case, because as we have already seen that applicants who are Stenographers Grade II claim the higher replacement scale of Rs.5500-9000 which is the pay scale available for the promotional posts of Stenographers Grade I in non-Secretariat offices, and this would be violative of Articles 14 and 16 of the Constitution.

36. In this connection it is relevant to note that in State of Tamil Nadu Vs. M.R. Alagappan (1997) 4 SCC 401 the Hon'ble Supreme Court has held that substantial similarity in duties and responsibilities and inter-changeability of posts does not necessarily attract the principle of equal pay for equal work when there are other distinguishable features like educational qualifications for appointment, mode of recruitment, status, special assignments assigned to one category only, different seniority lists etc. In the present case, mode of recruitment, status, as well as seniority lists are quite different. Again in Garhwal Jal Sansthan Karamchhari Union Vs. State of U.P. & others (1997) 4 SCC 24 the Hon'ble Supreme Court has held that principle of equal pay for equal work is not applicable even if there is some similarity in duties and functions, if there is a qualitative difference in duties, functions and responsibilities. In this connection materials have to be brought on record. In none of the present O.As before us have relevant materials been brought on record, as already noticed.

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37. Again in State of U.P. & Others Vs. Ministerial Karamchari Sangh 1998 (1) SCC 422, the Hon'ble Supreme Court has held that the principle of equal pay for equal work is not always easy to apply; that there may be educational or technical qualifications which may have a bearing on the scales which the holders bring to the job, although the designation may be the same. Evaluation of such jobs must be left to expert bodies and unless there are malafides the evaluation should be accepted. Again in State of U.P. Vs. J.P. Chaurasia AIR 1989 SC 19 the Hon'ble Supreme Court has held that it is for the administration to decide whether two posts which may appear to be same or similar should carry equal pay, the answer to which depends on several factors, namely evaluation of duties and responsibilities should be left to expert bodies like the Pay Commission whose recommendations the Court should normally accept. We also notice that successive Pay Commissions have been consistent in their view that at the higher levels commencing from Stenographers Grade 'C'/Grade II, the retention of disparity is valid.

38. Again in Association of AIC & CE Stenographers Vs. Union of India AIR 1988 SC 1291 the Hon'ble Supreme Court has held that equal pay for equal work is a fundamental right, but equal pay must depend upon the nature of the work done and cannot be judged by the mere volume of work, because there may

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be qualitative differences regarding reliability and responsibility. Often the difference may be a matter of degree and there is an element of value judgment in fixing the pay and other conditions of service, but so long as such value judgment is bonafide, reasonable and based on an intelligible criteria which has a rational nexus with the object of differentiation such differentiation would not amount to discrimination.

39. Lastly we place on record the following further observations made in P.K. Dey's case (supra)

"It is an indisputable fact that the pay scales now claimed by the respondent (P.K.Dey) are those prescribed for the post of Assistant Sub-Inspector. As already noticed above, it is once again a promotional post for a Naik. Acceding to the claim made by the respondent would not merely result in change in the pay scales but may also lead to alternation of the pattern of hierarchy requiring re-orientation and restructuring of the other posts above and below the post of respondent. Added to this, such consequences are likely to be felt in the various other Central Police Establishments as well. All these which are likely to have a chain reaction, may require further consideration afresh by expert body like the Pay Commission or the Government itself at an appropriate time in an appropriate manner. Courts should normally leave such matters for the wisdom of administration except the proven cases of hostile discrimination. But in the case on hand, having regard to the facts and circumstances of the case and the position of law stated above, the Division Bench of the High Court was not right in granting the relief itself, straightaway to the respondent; that too, without examining the implications and impact of giving such directions on other cadres. However, we make it clear that the rejection of the claim of the respondent need not be taken as an issue closed once and for all. It is always open to the Government to consider the issue either by making reference to the Pay Commission or itself once again as to the grant of pay scales to

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the respondent. It is open to the respondent to make further and detailed representation."


40. In the present case also we have already noticed that grant of the pay scale of Rs.1640-2900 w.e.f. 1.1.88 and its corresponding replacement scale of Rs.5500-9000 w.e.f. 1.1.96 to the applicants in the present O.As, which is the scale admissible for promotional posts of Stenographers Grade I, would be tantamount to placing holders of the the lower as well as the higher posts in the same pay scale of pay, which would be treating dissimilar persons similarly, and would ^{be} directly violative of Articles 14 and 16 of the Constitution.

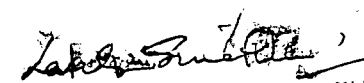
41. In the result the reference is answered in the negative.

42. Let these O.As now be returned to the appropriate Bench^{es} for disposal on merits and in accordance with law.

43. Let a copy of this order be placed in each of the O.A. case records


(ASHOK AGARWAL)
CHAIRMAN


(S.R. ADIGE)
VICE CHAIRMAN (A)


(MRS. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN (J)


(V.K. MAJOTRA)
MEMBER (A)


(SHANKAR RAJU)
MEMBER (J)