

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA NO. 2491/1998

New Delhi, this the 20th day of December, 2000

HON'BLE SHRI JUSTICE V. RAJAGOPALA REDDY, VC (J)
HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

1. Pawan Chopra,
S/o Shri U.N. Chopra,
Aged 39 years,
R/o A-36, Chetak Apartments,
Plot No.27/2, Sector IX,
Rohini, Delhi-85
2. Rakesh Kumar Arora,
S/o Shri Motwala Ram,
R/o B-285/1, Derawal Nagar,
Delhi :110 009 Applicants
(By Advocate : Shri A.K. Behera)

VERSUS

1. Central Social Welfare Board through
its Executive Director,
Samaj Kalyan Bhavan,
B-12, Tara Crescent,
Institutional Area, South of IIT,
New Delhi : 110 016
2. The Secretary,
Dept. of Women & Child Development,
Ministry of Humans Resource Development,
Shastri Bhavan,
New Delhi
3. The Secretary,
Dept. of Expenditure,
Ministry of Finance,
North Block,
New Delhi Respondents
(By Shri E.X. Joseph, Sr. Counsel with Shri
S.S. Sabharwal, counsel for R-1 and
Sh. P.H. Ramachandran, counsel for R-2)

O R D E R

SHRI S.A.T. RIZVI, MEMBER (A) -

The applicants in this OA are aggrieved by the inaction on the part on the respondents in taking a decision on the question of grant of pay scale of Rs.200-3500 to the Welfare Officers of the Central Social Welfare Board (in short CSWB), notwithstanding the fact that a decision to that effect had already been taken by the Executive Committee of the CSWB on 27.12.1991, and also despite the clarification given by

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the Govt. of India that the CSWB can take a decision on the aforesaid question on their own without any reference to them. According to the applicants the aforesaid scale of Rs. 2000-3500 is the pre-revised scale operative from 1.1.1986 and the same would be converted to Rs. 6500-10500 with effect from 1.1.1996 in pursuance of the recommendations of the 5th Central Pay Commission. The prayer of the applicants is for the grant of the aforesaid pay scales.

2. The facts of the case in brief are as follows:-

3. Upto 1969, the entire set up of the CSWB was ad-hoc and accordingly the posts of the Welfare Officers were also operated on ad-hoc/provisional basis. In 1969, the Executive Committee of the CSWB restructured all the ad-hoc posts and granted regular scales of pay to all such posts including the post of Welfare Officer. A pay scale of Rs. 300-650 was sanctioned in favour of the Welfare Officers. The aforesaid scale of pay had no parallel in the scheme of things then obtaining in the Govt. of India. However, an equivalent pay scale of Rs. 350-650 existed in the Govt. of India. According to the applicants, the aforesaid scale of Rs. 300-650 was thus fixed in their case by mistake. Subsequently, following the introduction of the pay scales recommended by the 3rd CPC, the Welfare Officers were placed in the scale of Rs. 550-900. At this stage also the applicants were not given the correct scale of pay. The Govt.

servants then working in the pay scales with a maximum of Rs. 600/- and above were granted the revised pay scale of Rs. 650-1200. However, despite the fact that the maximum of the pay scale of the Welfare Officer (Rs. 300-650) exceeded Rs. 600/-, they were not considered for the grant of the aforesaid scale of Rs. 650-1200.

4. The Welfare Officers represented at this stage again like they had done earlier when they were placed in the scale of Rs. 300-650 instead of Rs. 350-650. After consideration of the representation filed by the applicants, the CSWB referred the matter to the Govt. of India in the Department of Social Welfare. Pending a decision, the aforesaid scale of Rs. 550-900 in which the Welfare Officers were then working was declared as provisional with intention to upgrade the same as and when a decision had been taken. The matter, however, remained under consideration and meanwhile the 4th CPC was appointed.

5. A comprehensive memorial was submitted by their Association with the recommendations of the CSWB for the consideration of the 4th CPC. According to the applicants, the Association did not receive any communication from the Board in regard to the fate of the aforesaid memorial and as a result of the 4th CPC, the Welfare Officers were equated with Assistants who were included in the clerical and ministerial grade (without any field duty whatsoever), and were placed in the scale of Rs. 1640-2900. The applicants' claim is that while they were placed in the aforesaid pay scale

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of Rs. 1640-2900, all other posts involving field duties and having ranks equivalent to the rank of Welfare Officers in the other departments of the Govt. were granted the scale of Rs. 2000-3500. Further, according to them, the above mentioned officers then working in equivalent ranks and in the same pay scale of Rs. 550-900 in the other departments of the Govt. were placed in the revised scale of Rs. 2000-3500 and the Welfare Officers were ignored. They have inter alia given the example of Work Supervisor in the Department of Social Welfare in Delhi Administration. These Work Supervisors were working like the applicants in the scale of Rs. 550-900, but were placed in the scale of Rs. 2000-3500 although the job description of a Work Supervisor is similar to that of a Welfare Officer in the CSWB.

6. The applicants' Association has since filed a series of representations without any positive results so far. The matter was considered by the Executive Committee of the CSWB in its 104th meeting held on 27.12.1991. After detailed consideration, the proposal to place the Welfare Officers in the higher grade of Rs. 2000-3500 was approved by the said Committee and the Govt. of India was requested in February, 1992 to convey their approval for the same. It was noted by the Executive Committee that the Work Study Unit of the Department of Women and Child Development had recommended the aforesaid scale of Rs. 2000-3500 in favour of the Welfare Officers. The CSWB, thereafter, sent reminders after reminders to the Govt., all in vain.

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7. Meanwhile, the 5th CPC was appointed by the Govt. As usual the Welfare Officers filed a detailed representation for the consideration of the 5th CPC, and did the necessary follow up. At the same time, the CSWB also kept on requesting the Govt. of India to convey their approval for placing the Welfare Officers in the higher grade of Rs. 2000-3500. While the effort was on, the CSWB informed the applicants' Association vide its letter of 14th October, 1997, that the matter had been examined by the Department of Women and Child Development in consultation with the Department of Expenditure (Ministry of Finance) and the latter had advised that the matter regarding rationalisation of the pay scale of Welfare Officers should be taken up only after the recommendations of the 5th CPC had been finalised (Annexure A-8). Accordingly, since the recommendations of the 5th CPC had already been implemented on 30.9.1997, the Board again made a reference to the Govt. of India on 24.10.1997, requesting them to accord their approval to the grant of pay scale of Rs. 2000-3500 to the Welfare Officers with effect from 1.1.1986 and Rs. 6500-10500 with effect from 1.1.1996. It was specifically pointed out in the aforesaid communication that the Executive Committee of the CSWB had already approved the placement of Welfare Officers in the pre-revised scale of Rs. 2000-3500 way back in 1991 (Annexure A-9).

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8. The aforesaid letter dated 24.10.1997 was replied to by the Department of Women and Child Development on 12.11.1997 (Annexure A-10). This is what the Department of Women and Child Development have stated in the aforesaid letter:

"Subject:- Rationalisation of pay scale of Welfare Officers of CSWB attached to different State Social Welfare Advisory Board.

Sir,

I am directed to refer to your letter No. F.2-I/F.O/Scale 97-SB.Admn. dated 24.10.1997 on the above cited subject and to say that as pointed on by the CSWB that the CSWB has all powers to decide such matters concerning employees drawing salary of Rs.4500/- or below. So the CSWB should not have made reference to us in this matter and should have taken an appropriate decision though its Executive Committee. It is advised that the CSWB may take an action accordingly. Further more the CSWB may send a proposal to appropriately modify its Memorandum and articles of Association in view of the 5th Pay Commission recommendations in this regard."

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It would seem that the CSWB (Respondent No.1 in this OA) were required to do the needful at their own level without making any reference to the Central Govt. It is at this stage that the matter remains held up and that is why this OA.

9. The respondents' contention is that the CSWB is an Autonomous Organisation and is not directly covered by the recommendations of a Pay Commission. That is why, according to the respondents, the replacement pay scales mentioned in the FIRST SCHEDULE (PART - 'A') of the Notification dated 30th September, 1997 have been given to the applicants. They have also contended that law is well settled that determination

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of pay scales is entirely a matter for administrative authorities and unless the decision of the administrative authorities is totally perverse, there cannot be a judicial review of the same. No perversity has been brought to the Tribunal's notice by the applicants in this case. Further, according to the respondents, law is again well settled that in the matter of determination of pay scales, the recommendations made by Expert Bodies like Pay Commissions, are required to be given utmost consideration and importance. The recommendations made by the 4th and 4th CPCs have already been implemented and, therefore, the same cannot be interfered with. The respondents have further contended that the applicants were mainly seeking merger with the cadre of Assistant Project Officers (APO) who have been placed in the scale of Rs. 6500-10500 by the 5th CPC, whereas the Welfare Officers have been placed in the lower scale of Rs. 5500-9000.

10. The respondents concede that in 1991 the Executive Committee of the CSWB had approved the proposal to grant the higher pay scale to the applicants. However, the CSWB's approval was, according to the respondents, recommendatory in nature inasmuch as a final decision in that regard could be taken by the Govt. alone and not by the CSWB. Later in 1997, the CSWB noticed that if the pay scale of the Welfare Officers was upgraded to Rs. 2000-3500 (pre-revised) they will become on par with the APOs. The matter of merger of the two cadres namely those of Welfare Officers and APOs, therefore, came up for

consideration and has remained under consideration so far. According to the respondents, such merger involves consideration of a number of factors and an appropriate decision in the matter could be taken only after a detailed review of cadres.

11. The respondents have also stated that it would be incorrect to say that the CSWB (Respondent No.1) had accepted the recommendations of the 4th and 5th CPCs in respect of the Welfare Officers. The fact is that the CSWB had merely implemented the pay scales mentioned in PART- 'A' of the FIRST SCHEDULE of the aforesaid Notification dated 30th September, 1997 issued by the Ministry of Finance, Govt. of India, for implementing the recommendations of the 5th CPC.

12. We have carefully heard the learned counsel on either side and have perused the material on record.

13. We find that on 5.9.2000, the learned counsel for the respondents had submitted before us that the matter regarding amendment of the Rules for integrating the posts of Welfare Officers and APOs in the CSWB was under the active consideration of the Govt. On the basis of this assurance held out by the learned counsel, we had then felt that for the disposal of this OA it would be necessary to amend the aforesaid Rules. We, accordingly, granted time to the learned counsel to obtain instructions from the Govt. and tell us what steps have been taken to amend the aforesaid Rules. On the very next date of hearing, namely 14.9.2000, the learned counsel submitted before us that the CSWB was

going to meet on 20th September, 2000 for taking appropriate decisions in the matter. The matter was accordingly posted for 25th September, 2000. The respondents have placed before us copy of a letter dated 13th September, 2000 from the CSWB to the Department of Women & Child Development by which a further request has been made to convey the decision of the Govt. in regard to the proposal earlier submitted by the Board (CSWB) for cadre restructuring etc. In that letter, a reference has been made to the assurance given to us by the learned counsel for the respondents on 5.9.2000. Another letter placed on file is dated 25th October, 2000. This one is from the Department of Women & Child Development to the CSWB. We find that the message conveyed in this letter is as follows:-

"..CSWB be informed that without proper examination, with or without a prior study of the staffing/cadre structure of CSWB, Govt. cannot, prima-facie, accept the merger of the two cadres."

14. At this stage, yet another letter dated 29th November, 2000 from the Deptt. of Women & Child Development (Respondent No.2) has been placed on record. We have perused this letter also and find that no serious effort has been made by this respondent to expedite a decision with regard to the merger of the posts of Welfare Officers and APOs. What is particularly dis-appointed is that the said letter does not indicate any time frame within which they would be able to reach a final decision in that regard.

15. In regard to the question of merger of the posts of Welfare Officers and APOs, we notice that firstly the same has been raised by the Department belatedly sometime in 1997, and secondly at no stage has an objection or a doubt been raised in clear term about the proposal to equate the pay scale of Welfare Officers to that of the APO. All that has been said by the department is that various aspects of cadre restructuring will have to be gone into before a decision is taken. At the same time, the department has not indicated as to why the CSWB cannot upgrade the pay scale even though the Board have the power to do so. They (the Deptt.) have also not indicated as to why the exercise of cadre re-structuring aforesaid cannot be initiated/completed after the grant of higher pay scale to the Welfare Officers. We also notice that since the recommendations of the Pay Commission do not directly apply to autonomous bodies like the CSWB the grant of the aforesaid pay scale of Rs. 2000-3500 to the Welfare Officers by the Board themselves will not constitute any breach of the recommendation of that Commission and by the same token, we will also be within our rights if we were to ask the CSWB to grant the said scale to the applicants. Having said this, incidentally we find that none of the contentions raised by the respondents in Paras 9, 10 and 11 above, ^{it can be sustained.} The amendment of Rules referred to in Para 13 above, should also, therefore, be unnecessary in the facts and circumstances of the case for arriving at a decision on the limited question of upgradation of applicants' pay

scale. In this view of the matter, we have not been able clearly to see why the matter has been so badly delayed.

16. For a proper consideration of the matter at hand at this stage, it would be appropriate to recall the decision already conveyed by the Department of Women & Child Development vide their letter of 12.11.1997 referred to by us in para 8. In order to resolve the limited issue of grant of higher pay scale of Rs. 2000-35000 (pre-revised) to the applicants, it would be sufficient to observe that the same can be resolved by the CSWB themselves by taking a decision in accordance with their own recommendations as per the authority given to the CSWB by the aforesaid letter. For this purpose, a further reference to the Govt. is not necessary at all.

17. We have, in order to understand the true implication of the authority extended to the CSWB by the Govt. as above, perused the MEMORANDUM OF ASSOCIATION and the ARTICLES OF ASSOCIATION of the CSWB. We find that Article 13 of the aforesaid ARTICLES OF ASSOCIATION provides as follows:

"13. The Committee shall, however, reserve for the decision of the Government:

(a) x x x x

(b) All proposals relating to emoluments, structure i.e. adoption of pay-scales, Allowances and revision thereof and creation and appointment in respect of all posts whose maximum salary exceeds Rs. 4,500/- per month."

In the ultimate analysis, therefore, we find that the power to sanction the aforesaid pre-revised grade of Rs. 2000-3500 to the Welfare Officers already stands vested in the CSWB themselves and, that is why, the Govt. in the Women & Child Development Department have asked the CSWB to take a decision in the matter without a reference to the Govt. We also find that the CSWB has already, in the past, in 1991, considered the matter, in detail, and has reached the conclusion that it would be appropriate to grant the aforesaid scale of Rs. 2000-3500 (pre-revised) to the Welfare Officers. As a matter of fact, the Executive Committee, at its ~~latest~~ meeting of 30.12.1997 reiterated the same views with greater clarity by saying that it agreed with the proposal for the merger of the cadres of Welfare Officers and the APOs into a single cadre, and went on to add that insofar as the consequent revision in the recruitment rules is concerned, an appropriate proposal may be sent to the department. We note that the minutes of the aforesaid meeting of the Executive Committee also provide that the Welfare Officers may be given the financial benefit notionally from 1.1.1986 (4th Pay Commission recommendations) and actually from 1.1.1996 (5th Pay Commission). The CSWB ^{still} hold the same view. In this view of the matter, we are inclined to think that the CSWB should take a decision in the matter at their own level and they should do this without getting involved in the exercise of merger of cadres which would necessarily entail consultation with the Govt. while seeking of their approval for amending the relevant Rules. We would like to observe, however, that we don't see any merit in the above mentioned decision of the Executive Committee (meeting dated 2

30.12.1997) that insofar as the grant of financial benefit is concerned, the same should be allowed only notionally (and no actually) from 1.1.1986 (4th CPC recommendations). This is so because the decision to grant the higher scale of Rs.2000-3500 was taken in 1991 during the currency of the 4th CPC's recommendations and well before the 5th CPC was even set up.

18. In the result, we are inclined to dispose of this OA by directing the respondent No.1 (CSWB) to exercise the power available to them under the ARTICLES OF ASSOCIATION and affirmed by the Govt. in their letter of 12.11.1997 and place the Welfare Officers in the scale of Rs. 2000-3500 with effect from 1.1.1986 and Rs.6500-10500 with effect from 1.1.1996 granting arrears of pay and other consequential benefits. We order accordingly. It is clarified that the respondent No.1 will take action as above expeditiously and, in any event, within a period of three months from the date of receipt of a copy of this order.

19. No costs.

S.A.T. RIZVI
(S.A.T. RIZVI)
MEMBER(A)

V. RAGOPALA REDDY
(V. RAGOPALA REDDY)
VICE CHAIRMAN (J)

(pkr)