

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(9)

O.A. No. 687/98

Date of Decision: 18.12.98

Surinder Kumar & Others Applicants
(By Advocate: Sh. H. K. Gangwani)

VERSUS

Union of India & Ors. Respondents
(By Advocate: Sh. R. P. Aggarwal)

CORAM

Hon'ble Shri T.N.Bhat, Member (J)
Hon'ble Shri S.P.Biswas, Member (A)

1. To be referred to the Reporter or not? *Y*
2. Whether it needs to be circulated to other Benches of the Tribunal? *Y*

W.M. 18.12.98
(T. N. BHAT)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 687/98

New Delhi, this the 18th day of December, 1998

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

1. Surinder Kumar
2. Pravakar Barad
3. Lokeshwar Das
all are working as Investigator in
the office of Registrar General of
India, 24 Man Singh Road, New Delhi) ..Applicants

(By Advocate: Shri H.K. Gangwani)

Versus

Union of India through:

1. The Secretary,
Min. of Home Affairs,
North Block,
New Delhi.
2. The Registrar General of India,
Min. of Home Affairs, Govt. of India,
24, Man Singh Road,
New Delhi.
3. The Deputy Director (AD-II),
O/o Registrar General of India,
M/o Home Affairs, Govt. of India,
24, Man Singh Road,
New Delhi. Respondents

(By Advocate: Shri R.P. Aggarwal)

O R D E R

delivered by Hon'ble Shri T.N. Bhat, Member (J)

Applicants in this OA are Investigators in the office of Registrar General of India (RGI. for short). They are aggrieved by the letter dated 18.2.1998 addressed to one of the applicants, namely, Lokeshwar Das by the Deputy Director in the office of RGI by which the decision not to accept the recommendations of the Fifth Central Pay

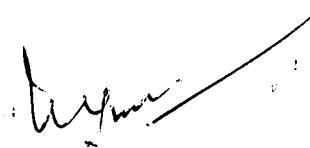
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Commission regarding restructuring the Statistical cadre in that office and retaining the existing structure has been conveyed to the said applicant.

2. The brief facts giving rise to this OA may be stated as follows:

3. The Fifth Central Pay Commission in its recommendations relating to the office of RGI recommended revision of pay scales and partial restructuring of that Organisation. As regards the post of Investigators, both Statistical as well as Social Study, the Commission proposed re-distribution/restructuring of posts into two grades, namely, Statistical Investigator Gr. I and Statistical Investigator Grade-II and also recommended that the qualification should be prescribed afresh. As regards direct recruits to Grade I the qualifications recommended were second class Masters Degree in Statistics/Maths/Economics or Commerce with Statistics and two years experience in collection, tabulation and analysis of statistical data. The pay scale of Rs. 2000-3500/- in the pre-revised scale of pay was recommended for this Group of Statistical Investigators. As regards Statistical Investigators Gr.II, which were to be filled up by promotion, the pay scale of Rs. 1640-2900/- was recommended. The applicants who have been appointed as Investigators by direct recruitment had, therefore, made representations to the Registrar General to place them in Grade-I of Statistical Investigators and



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to grant them the pre-revised pay scales of Rs.
2000-3500/- and also the replacement scale in pursuance to
the recommendations of the Fifth Central Pay Commission.

4. In reply, the Registrar General has stated
in the impugned letter that after examining the
recommendations of the Fifth Central Pay Commission the
RGI has decided not to accept the recommendation and to
retain the existing structure of Statistical cadre in the
office of RGI according to which the Investigator cadre in
the office of RGI shall have only one grade and the pay
scale applicable shall be the ordinary replacement scale
recommended by the Fifth Central Pay Commission and
accepted by the Govt. and included in part 'A' of the
First Schedule.

5. The contention of the applicants is that
Registrar General had no such discretion to reject the
recommendation made by the Fifth Central Pay Commission,
particulary so when the same had been accepted by the
Government as is evident from the Notification dated 30th
September, 1997 by which the Rules called the Central
Civil Services(Revised Pay) Rules, 1997 were framed and
enforced. In this regard the applicants have referred to
part 'C' of the First Schedule which specifically relates
to various cadres in the office of RGI including that of
Investigator, both Statistical as well as Social Study.
In part 'C' it is provided as follows:-

"The revised scales of pay mentioned in
Column 4 of this part of the Notification
for the posts mentioned in column 2 have

before

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been approved by the Government. However, it may be noted that in certain cases of the scales of pay mentioned in column 4, the recommendations of the Pay Commission are subject to fulfilment of specific conditions. These conditions relate inter-alia to changes in recruitment rules, restructuring of cadres, re-distribution of posts into higher grades etc. Therefore, in those cases where conditions such as changes in recruitment rules etc. which are brought out by the Pay Commission as the rationale for the grant of these upgraded scales, it will be necessary for the Ministries to decide upon such issues and agree to the changes suggested by the Pay Commission as pre-requisite for grant of these scales to certain posts such as cadre restructuring, redistribution of posts etc. It will be necessary for the Ministries/Department concerned to not only accept these preconditions but also to implement them before the scales are applied to those posts. It would, therefore, be seen that it is implicit in the recommendations of the Pay Commission that such scales necessarily have to take prospective effect and the concerned posts will be governed by the normal replacement scales until then".



(A)

6. The respondents have contended that even while accepting the recommendation of the Fifth Central Pay Commission, the Ministry of Finance which issued the Notification dated 30.9.1997 had left it to the discretion of the concerned Department/Ministry to either accept the pre-conditions or not. According to them the further provision that in case the scales of pay recommended by the Fifth Central Pay Commission are applied then the pre-conditions should be implemented, made this position even more clear. The respondents have in this regard laid emphasis on the following expression used in part 'C' of First Schedule of the Notification:

"It will be necessary for the Ministries/Department concerned to not only accept these preconditions but also to implement them before the scales are applied to those posts".

7. The applicants have also filed their rejoinder to which they have annexed the Office Memorandum dated 25.05.1998 issued by the Ministry of Personnel, Public Grievances and Pension.

8. We have heard the learned counsel for the parties at length and have perused the material on record.

9. By the Notification dated 30th Sep., 1997 the Government has accepted and approved the recommendations of the Fifth Central Pay Commission and while doing so it has been specifically stated in part 'C' of the First Schedule that before giving the higher pay

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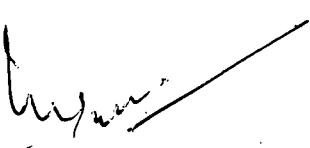
scales than the ordinary replacement scales the concerned Departments/ Ministries shall have to take steps to implement the recommendations of the Pay Commission relating to change/amendment of the recruitment rules. The plain reading of part 'C' would clearly reveal that no discretion is left with the concerned departments, more particularly the sub-ordinate offices like the RGI to refuse to implement the recommendations. There is a direction in part 'C' that before giving the higher pay scales the prescribed pre-conditions should be implemented. It is true that it contains a direction to the Ministries/Departments concerned to accept the pre-conditions but there is a further direction that they should implement the recommendations relating to the pre-conditions and only then grant the enhanced pay scales to the persons holding the particular posts. We are, therefore, of the considered view that the Registrar General's office had no power to refuse implementing the recommendations of the Fifth Central Pay Commission so far as it related to restructuring/redistribution of the posts of Investigator working in that office. It was incumbent on the concerned Ministry/Registrar General's office to appropriately amend the recruitment rules and grant the higher pay scales to Statistical Investigators Grade-I. This view taken by us also finds support from the office Memorandum dated May 25, 1998, as at Annexure RA-3, issued by the Ministry of Personnel, Public Grievances and Pensions. In sub para (iii) of para 1 of this OM, it has been specifically stated that where the Pay Commission has recommended a higher pay scale and not the equated revised scale but has placed a specific condition which has to be fulfilled before the higher pay scales can be granted.

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The concerned administrative Ministry/Department should reframe the recruitment rules and prescribe higher eligibility criteria for direct recruits or promotees, as the case may be, which criteria would necessarily have to be different from those prescribed for a post on a comparatively lower pay scale. Department of Personnel & Training has further advised that the necessary steps towards review of the recruitment rules should be taken and only then the higher pay scales should be allowed. By no stretch of reasoning can it, therefore, be held that the respective Ministries/Departments would have the power to even reject the recommendations of the Pay Commission in toto as regards restructuring/redistribution of some posts.

10. An attempt has been made by the learned counsel for the respondents to urge before us that since the applicants have already been appointed to the post of Investigator, they cannot be treated differently from those who have been promoted to that post. There is a further contention raised by the learned counsel that if the direct recruits are granted the higher pay scales this would amount to an undue benefit as even those who do not possess the requisite qualifications prescribed in the recommendations of the Pay Commission would have to be granted a higher pre-revised pay scales of Rs. 2000-3500/- . We are afraid this contention cannot be accepted, particularly so in relation to the three applicants who have filed this O.A. In this regard, it would be significant to note that all the three applicants



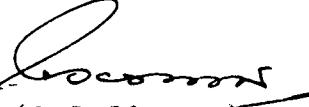
claim to possess the requisite qualification of second class Post-graduate degree and the necessary experience as prescribed in the aforesaid recommendation.

11. The question of granting higher pay scales to certain sections of employees on review of the relevant recruitment rules having been examined by an Expert Body like the Pay Commission and approved by the Government, its recommendations cannot be set at nought by a department of the Government simply on the ground that it has been found that the extent rules of recruitment do not give any weightage to the direct recruits or that it has not been found feasible or appropriate to accept the recommendations. We are convinced that this action is arbitrary. We may also state that the Pay Commission has made similar recommendations for restructuring/re-distribution in relation to the Statistical Staff working in other Ministries and Departments as well. If those Ministries/Departments grant the higher pay scales to the Staff while the RGI refuses to do so, this would clearly amount to hostile discrimination.

12. In view of what has been held and discussed above, we are convinced that the impugned letter dated 18.2.1998 issued by the office of the RGI whereby a decision has been taken not to accept the recommendations of the Fifth Central Pay Commission in relation to restructuring/re-distribution of posts in the Statistical cadre in that office cannot be allowed to stand as it violates Articles 14 & 16 of the Constitution. We accordingly allow this O.A. and set aside the above said letter/order. We further direct the respondents to

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expeditiously take steps towards fulfilling the pre-conditions laid down by the Fifth Central Pay Commission, as accepted by the Government by framing and issuing Central Civil Services (Revised Pay) Rules, 1997, including review of the recruitment rules and thereafter grant the consequential benefits to Investigators Grade-I as per the aforesaid recommendations. We further direct that this judgement shall be implemented by the respondents as far as practical within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.


(S.P. Biswas)

Member (A)


(T.N. Bhat)

Member (J)

18.12.98