

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA NO.1852/95

New Delhi this the 4th day of February, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman(J)
Hon'ble Mrs. Shanta Shastri, Member (Admv)

1. S.C. Pahlajani,
S/o Late Shri Watu Mal,
R/o Pocket A-9,
Kalkaji Extension,
New Delhi - 110 019.
2. Smt. Kamla Madan,
W/o Shri Ravinder Madan,
115, Shakti Nagar,
Delhi.
3. I.D. Sharma,
S/o Late Shri Shardenand,
Vill S P.O. - Badli,
Delhi - 110042
4. Miss Dropati Rani,
D/o Late Shri C.R. Gurnani
J-10/37, Rajouri Garden,
New Delhi - 110027.
5. Smt. Achia Alagh,
W/o Shri G.P. Alagh,
B-1, Shanker Garden,
Nagarganj Road,
New Delhi - 110015.
6. Smt. Santosh Manchanda,
W/o Shri Ashwini Kumar,
A-325, Lajpat Nagar-II,
New Delhi - 110024.
7. Shri Subhash Chopra,
S/o Shri S.L. Chopra,
1/69, Ramesh Nagar,
New Delhi.
8. Smt. Asha Sethi,
W/o Shri Subhash Sethi,
B-71, SFS DDA Flats,
Sheikh Sarai,
New Delhi - 110017.
9. Smt. Sunita Arora,
W/o Shri Chander Sekhar,
459, Parmanand Colony,
Delhi - 110009.
10. Smt. Suman Solanki,
W/o Shri Karan Singh Solanki,
X/1648, Street No. 20,
Rajgarh Colony,
Delhi - 110031.
11. Smt. Jasvinder Kaur,
W/o S Balvinder Singh,
3/23, Vijay Nagar,
Double Storey, Delhi - 110009.
12. Smt. Rekha Kapoor,
W/o Shri V.K. Kapoor,
A-195, Moti Bagh,
New Delhi.
13. Smt. Parvinder Kaur Takkar,
W/o Shri B.S. Takkar,
2220, Outram Line,
Guru Teg Bahadur Nagar,
Delhi - 110009.
14. Shri Bhim Dutt,
S/o Late Shri H.R. Thakur,
Sector V/1501,
R.K. Puram,
New Delhi 110022.
15. Smt. Sumita Mukherjee,
W/o Shri H.N. Mukherjee,
KG II/366,
Vikas Puri,
Delhi - 110018.
16. Ashok Kumar,
S/o Shri Prem Singh,

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Sector 11/195.
Sadiq Nagar.
New Delhi - 110049.

17. A.K. Ghosh.
S/o Late Shri P.C. Ghosh.
A-1/169. Safdarjung Enclave.
New Delhi - 110029.

18. Smt. Renu Abbi.
W/o Shri K.K. Abbi.
A-91/1. SFS Flats.
Saket, New Delhi - 110017.

19. Smt. Rita Thawani.
W/o Mr. A.G. Thawani.
21/25. West Patel Nagar.
New Delhi - 110008.

20. Smt. K. Sabhnani.
W/o Shri P.N. Sabhnani.
9/3, East Patel Nagar.
New Delhi-110008.

... Applicants.

(By Advocate Shri A.K. Behera)

Vs.

1. Comptroller and Auditor General of India.
10, Bahadur Shah Zafar Marg,
New Delhi-110002.

2. Secretary,
Ministry of Finance,
Deptt of Expenditure,
North Block,
New Delhi 110001.

... Respondents.

(By Advocate Shri Madhav Panikar)

O R D E R

By Reddy, J.-

The applicants are Stenographers Grade II working in the office of the Comptroller and Auditor General of India, respondent No.1 herein. It is their case that their scales were all along at par with the pay scales of the Central Secretariat Stenographer Grade 'C' (for short CSS Grade 'C') and the functions and

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responsibilities of both the posts have been similar/identical. The main grievance of the applicants is that they were not extended the pay scale of Rs.1640-2900 which has been given to the CSS Grade 'C'. It is contended by the learned counsel for the applicants Sh. A.K. Behera that the OM dated 31.7.90 by which the above scale of Rs.1640-2900 has been given to the Assistant Grade of Central Secretariat Service as well as the CSS Grade 'C' w.e.f. 1.1.86 is illegal as the basis on which the revised pay scale was denied to the applicant, viz. the method of recruitment through open competitive examination is wholly illegal. It is submitted that the Supreme Court in Bhagwan Dass v. State of Haryana, AIR 1987 SC 2049 rejected the justification ^{for} in the difference in pay scale only on the ground of method of recruitment. Since their representations have not met with any response, the applicants have filed the present OA.

2. A preliminary objection has been raised by the respondents that the OA is barred by limitation. Even on merits the case of the respondents is that in view of the decision in OA-1538/87 of the Principal Bench of the Tribunal dated 23.5.89 in The Direct Recruit Assistants Association v. Union of India & Ors. the revised pay scale of Rs.1640-2900 was extended to the applicants therein. Consequently, by the OM dated 31.7.90 the same pay scale has been extended to the Secretariat Stenographers Grade 'C'. It was also extended to the Assistants and Stenographers in other organisations like Ministry of External Affairs and other organisations where the posts are in comparable grade with same classification and pay scale and the method of

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recruitment is through open competitive examination. The same benefit was not extended to the applicants as the classification and method of recruitment of Personal Assistants in the respondents office was not the same. The Pay Commission vide OM dated 26.4.95 constituted an inter-Ministerial Group to examine the pay scales between Secretariat Stenographers and the other departments. It is now submitted that in view of the acceptance by the Government of the recommendations of the Fifth Pay Commission the applicants are entitled to the replacement scales only and not any thing further.

3. The learned counsel for the respondents, therefore, contends that the OA is barred by limitation and that the applicants are not entitled for the reliefs claimed by them.

4. We have given careful consideration to the pleadings as well as the contentions raised by the learned counsel on either side. We shall first take up the objection as to the maintainability of the OA on the ground of limitation. It is not in dispute that the Stenographers in the Secretariat were extended the benefits of the revised pay scale by the OM dated 31.7.90. The grievance of the applicants arose on account of the fact that the same benefit was not given to them. The applicants themselves state in the OA that they made several representations seeking the same benefits. Thus the cause of action for the applicants arose in July 1990. The applicants' case is that since all along they were given the same benefit as was given to the CSS Grade 'C' they were also entitled for the revised pay that was given to the Secretariat

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Stenographers, viz. 1640-2900. It is their case that as their representations were not met with any response they filed the OA. But for the Government extending the benefit of the higher pay scale to the CSS Grade 'C' in 1990, the applicants could have no grievance. Thus, we are of the view that the cause of action to the applicant arose on 31.7.90. Under Section 21 of the Administrative Tribunals Act, 1985 the applicants after making representations could only wait for six months and even in the absence of any response they will have to approach the Tribunal within a period of one year from the date of expiry of six months. Thus the OA filed in 1995 is barred by limitation. The law is well settled that the repeated representations would not either extend or prolong the litigation. No reasons whatsoever have been assigned in the OA for not approaching the Tribunal within the period of limitation. No application for condonation of delay also has been filed.

5. The learned counsel for the applicants, however, contends that in view of the ratio of M.R. Gupta v. Union of India & Ors., 1995 (5) SCC 628, the period of limitation is not attracted as the question of payment of pay scale is a continuing cause of action. We do not agree. We are of the view that the cause of action arose on 31.7.90 and it was one time action not a continuous cause of action. Hence, M.R. Gupta's case (supra) has no application. We have considered this question in OA-88/96 All India DRDO Stenographers Association & Anr. v. Union of India & Ors. in our order dated 17.12.99. In that case also the applicants sought the pay scales as were given to the CSS Grade 'C' on the ground that they were also entitled to the same in

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view of the impugned OM dated 31.7.90. M.R. Gupta's case (supra) was relied upon. Rejecting the contention, we held that the OA is barred by limitation. Following the same view we have to hold that the present OA is also barred by limitation.

6. We shall now consider the case on merits. The applicants seek the relief of the same pay scale as given to the CSS Grade 'C' on the principle of 'equal pay for equal work' both for men and women. This principle was given a statutory shape by enacting Equal Remuneration Act of 1976. The definition under Section 2 (h) reads:

"2(h). "Same work or work of a similar nature" means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the difference, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment."

7. Noticing this definition the Supreme Court in State of Madhya Pradesh & Anr. v. Pramod Bhatia & Ors., JT 1992 (5) SC 683 held as under:

"It would be evident from this definition that the stress is upon the similarity of skill, effort and responsibility when performed under similar conditions. Further, as pointed by Sh. Mukherji, J. (as he then was) in Federation of All India Customs and Excise Stenographers the quality of work may vary from post to post. It may vary from institution to institution. We cannot ignore or overlook this reality."

8. It is, therefore, necessary to ascertain the similarity in duties and responsibilities before we proceed to give any relief to the applicants. It is true as stated by the applicants that their pay scales have

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been identical all along till the pay scales were revised in favour of CSS Grade 'C' in 1990. But we are of the view that the mere fact of getting the same pay scale would not reflect the similarity in the skills and responsibilities performed by both the employees under similar conditions. As stated supra by the Supreme Court in Pramod Bhaita's case it may vary from institution to institution. Further the law is settled that it was for the administration to decide as to the similarity of the functions and responsibilities of the post and the same should be left to the determination of the expert body like the Pay Commission vide State of U.P. v. J.P. Chaurasia, AIR 1989 SC 121. The Supreme Court in fact cautioned the Tribunal in interfering with the prescribed pay scales in Union of India & Ors. v. P.V. Hariharan, JT 1997 (3) SC 569 and observed:

"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 this issue. Very often, the doctrine of "equal pay for equal work" is also being mis-understood and mis-applied, freely 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."

9. The OM dated 31.7.90 by which the CSS Grade 'C' were given the revised pay scales which is now impugned in this OA has also come for consideration in OA-88/96 before a Bench in which both of us (Justice V.Rajagopala Reddy, Vice-Chairman (J) and Mrs. Shanta Shastri, Member (Admnv) constituted the Bench and disposed of the OA by order dated 17.12.99. In this case also the Stenographers of the DRDO Grade II sought the

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benefit of the OM dated 31.7.90. The same question has come up for consideration in OA-515/96 All India Income-Tax Stenographers Association & Anr. v. Union of India & Ors. decided on 3.12.99. In both the cases the claims of the applicants have been rejected. In the latter case the Tribunal relied upon Federation of All India Custom and Central Excise Stenographers (Recognised) and Ors. vs. Union of India & Ors., 1988 SCC (L&S) 673, where the Supreme Court held:

"the same amount of physical work may entail different quality of work some more sensitive, some requiring more tact, some less - it varies from nature and culture of employment."

10. Relying upon the above observations, the Tribunal rejected the claim of the applicants.

11. The learned counsel for the applicant relied upon Alvaro Noronha Ferriera and Another v. Union of India & Others, 1999 (4) SCC 408. In this case the question that came up for consideration was whether it was permissible to disturb the parity of pay scales between the District and Sessions Judges of Delhi and Goa Courts. There was parity of pay scale between them all along till it was disturbed in 1982. It was common ground that the nature and dimension of work performed by the officers in the two different territories were similar. The court also found that the duties hours would be substantially the same and the powers are also the same between the District Judge in Goa or in Delhi. In these circumstances on the basis of the undisputed facts the Supreme Court held that it was for the respondents to show that there was change in the nature

o wok which necessitated the Government to keep two different levels of pay to the same officers working at two different places.

12. Those facts are not found in the instant case. They are the employees working in two different institutions having basically different characteristics. The Fifth Pay Commission in its report which has been accepted by the Government of India brought out the differences between the two classes of employees as follows:

".....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."

13. Consequently, the applicants are entitled only for the replacement scales w.e.f. 1.1.96. The above decision, therefore, has no application to the facts of the case.

14. Considering the above, we are of the view that we cannot substitute the expert body's recommendations of the Pay Commission in fixing the pay scales of the applicants. The OA, therefore, fails and is accordingly dismissed. No costs.

Shanta Shastri

(Smt. Shanta Shastri)
Member(Admnv)

V. Rajagopala Reddy

(V. Rajagopala Reddy)
Vice-Chairman(J)

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