

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2346-A/95

199

T.A.No.

DATE OF DECISION 18-11-99

Sh.Y.D.Sharma and Ors

....Petitioner

Sh.J.K.Das

....Advocate for the
Petitioner(s)

VERSUS

UOI & Ors.

....Respondent(s)

....Advocate for the
Respondents.

CORAM

The Hon'ble Shri S.R. Adige, Vice Chairman(A)

The Hon'ble Smt. Lakshmi Swaminathan, Member(J)

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal
Principal Bench

O.A. 2346A/95

New Delhi this the 18 th day of November, 1999

Hon'ble Shri S.R. Adige, Vice Chairman(A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

1. Y.D. Sharma,
S/o late Shri R.C. Sharma,
R/o Sector III-154, R.K. Puram,
New Delhi-22.
2. Shri Ashok Malik,
S/o Shri V.R. Malik,
H.No. 3275, Gali Doorwati,
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3. Smt. Paramjit Duggal,
W/o Shri Baldev Duggal,
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New Delhi.
4. Smt. Meena Sengupta,
W/o late Shri N.K. Sengupta,
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New Delhi-19.
5. Miss. N.K. Jani,
W/o Shri Medha ram,
B-63, Moti Nagar,
New Delhi.
6. Smt. Shakun Bhakru,
W/o Shri Jagdish Bhakru,
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Shastri Bhawan,
New Delhi.
7. Smt. Savita Bansal,
W/o Shri Rajendra Kumar,
Sector VIII, Q. No. 1201,
R.K. Puram,
New Delhi.
8. J.P. Singhal,
S/o late Shri J.K. Dass,
R/o R-1/29/1, Mehrauli,
New Delhi.
9. Smt. Kiran Sood,
W/o Shri B.P. Sood,
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10. Motia Sabharwal,
S/o Shri D.K. Sabharwal,
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Pankha Road,
New Delhi.

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11. Smt. Renu Sachar,
W/o Shri R.K. Sachar,
Q.No. BD-854, Sarojini Nagar,
New Delhi.
12. Smt. Viman Kwantra,
W/o Shri N.D. Kwantra,
CC-32E, DDA Flats,
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New Delhi.
13. Satish Kumar,
S/o late Shri Jai Ram,
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14. Smt. Aruna Bhasin,
W/o Shri S.K. Bhasin,
Krishiappartment, 'D' Block,
Vikaspuri,
New Delhi.
15. Smt. Kanta Mittal,
W/o Shri S.K. Bhasin,
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16. Smt. Adarsh Ajmani,
W/o Shri Shiv Nath Ajmani,
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New Delhi.
17. Smt. Charanjit Pasricha,
W/o Shri P.S. Pasricha,
KU-57, Pitampura,
Vishakha Enclave,
Delhi.
18. Smt. Rita Dennison,
W/o Shri A. Dennison,
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19. Smt. Ranjit Chhabra,
W/o Shri J.P. Chhabra,
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20. Smt. Kamlesh Kalra,
W/o Shri O.P. Kalra,
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21. S.K. Bhatnagar,
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22. Smt. Usha Mathur,
W/o Shri Rajeev Chandra,
R/o BB/32B, Janak Puri,
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23. B.S. Dogra,
S/o Shri Raghunath, Singh,
Q.No. 86/15, Sector-I,
Pushp Vihar,
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24. Smt. Sheela Walia,
W/o late Shri Atamjit Singh Walia,
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25. Smt. Veena Kapoor,
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26. Smt. C.M. Oberoi,
W/o Shri D.R. Oberoi,
Sector-VIII, Q.No. 55,
R.K. Puram,
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27. Smt. Usha Kiran Batra,
W/o Shri A.K. Batra,
H.No. I-G 60, Lajpat Nagar,
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28. Smt. Lalita Verma,
W/o Shri S.C. Verma,
R/o A-2/119, Sector-5,
Rohini, Delhi.
29. Smt. Veena Grover
W/o Shri S.L. Grover,
C-3/184, Janak Puri,
New Delhi.
30. Smt. Kiran Chandhok,
W/o Shri V.K. Chandhok,
R/o F-14/19, Krishna Nagar,
Delhi.
31. L.P. Sharma,
S/o late Shri Shriram Sharma,
R/o Q.No. 192, Chitra Gupta Road,
Pahar Ganj, New Delhi.
32. V.P. Saxena,
S/o late Shri R.C. Lal,
R/o BD-84B, Sarojini Nagar,
New Delhi.
33. S.L. Jain,
S/o late Shri Puran Chand Jain,
R/o II-55, Sarojini Nagar,
New Delhi.
34. Harsaran,
S/o Shri Harish Chand,
R/o Q.No. 559, Sector-IX,
R.K. Puram, New Delhi.
35. Smt. Meera Saxena,
W/o Shri S.K. Saxena,
R/o 42/2B Area, Beshwa Road,
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36. Smt. H.K. Purwa,
W/o Shri Satwant Singh,
R/o 13, Anand Kunj, Vikaspuri,
New Delhi.

37. Smt. Kamlesh Kalra,
W/o Shri O.P. Kalra,
R/o BG-173, Shalimar Bagh,
Delhi.

38. R.K. Dhawan,
S/o late Shri I.R. Dhawan,
158, Tilak Nagar,
Delhi.

39. S.K. Jain,
S/o Shri T.C. Jain,
R/o Room No. 103, F-wing,
Shastri Bhawan,
New Delhi.

.... Applicants.

By Advocate Shri J.K. Das.

Versus

1. Union of India through
the Secretary,
Ministry of Home Affairs,
North Block, N.Delhi.

2. Ministry of Agriculture,
through its Secretary,
Department of Agriculture and
Cooperation, Directorate of
Economics and Statistics,
Shastri Bhawan, N.Delhi.

3. The Secretary,
Ministry of Finance,
Department of Expenditure,
New Delhi.

.... Respondents.

By Advocate Shri N.S. Mehta for Respondents 1 & 2.

By Advocate Shri S.M. Arif, proxy for Shri K.C.D. Gangwani,
for Respondent 3.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicants, thirty nine in number, are aggrieved by the order passed by the respondents dated 29.11.1991 giving them the revision of pay scales with effect from 11.9.1989 and rejection of their representation by Office Order dated 8.9.1995 for giving effect to the pay scales from 1.1.1986 as claimed by them.

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2. The applicants have relied on the judgements of the Hyderabad Bench of the Tribunal dated 9.7.1992 in O.A. 957/90 and Lucknow Bench dated 10.12.1992 in O.A.389/91. The Special Leave Petition filed by the Union of India against these judgements has been dismissed by the Supreme Court by order dated 5.12.1994. The Hyderabad Bench of the Tribunal had directed that the Electronic Data Processing (EDP) staff working under the Directorate of Census Operations, be given the rationalised pay scales w.e.f. 1.1.1986 as were given to the EDP staff working under the Railway Administration and paid the difference of arrears of pay for the period from 1.1.1986 to 10.9.1989 in accordance with the rules and regulations. ¹⁸ The Similar orders have been passed by the Lucknow Bench of the Tribunal. In Balbir Singh & Ors. Vs. Union of India & Ors. (O.A.665/96) (Principal Bench), decided on 14.8.1996, the Tribunal had allowed the claim of all the applicants, excepting Applicant 43, in that case, granting them the respective pay scales w.e.f. 1.1.1986 instead of 11.9.1989. In this case, it was noted that the applicants belong to the very same organisation as the applicants before the Calcutta and Nagpur Benches and it was, therefore, held that there was no justification in the respondents' denying to extend to the benefit of the judgement in the other two O.As to the applicants who are in the very same organisation. Shri J.K. Das, learned counsel has submitted that the respondents in the impugned Office Order dated 8.9.1995 have stated that the rationalisation of pay scales w.e.f. 1.1.1986 has been implemented in spite of the judgements of the Cuttack, Hyderabad and Lucknow Benches of the Tribunal only in respect of those applicants and the revision of pay scales of EDP staff of the Directorate of Economics and Statistics, New

Delhi - Respondent 2, where the applicants work, has been denied. Learned counsel has submitted that this stand of the respondents is arbitrary and unreasonable as the EDP employees discharging similar functions, who are working in the Railway Administration, were given the revised pay scales.

3. The respondents in their reply have submitted that this is not, in fact, a case of ante-dating the implementation of the revised pay scales from 11.9.1989 to 1.1.1986 but it is a case of re-structuring and redesignation of posts. They have submitted that by the impugned order the Ministry of Finance, Department of Expenditure, have rationalised the pay scales of Data Entry Operators 'A', 'B', 'C' and 'D' and fixed the date as 11.9.1989. They have referred to Paragraphs 11.44 and 11.45 (Chapter 11) of the 4th Pay Commission dealing with EDP staff in various Ministries/Department. The Commission had stated that there are about 4000 posts of EDP staff in 21 Ministries/departments. They are in 14 pay scales at different levels from Rs.260-400 to Rs.650-960. Special pay of Rs.20/- is given with some of these posts. They have also stated that there are a large number of EDP posts at different levels in the National Informatic Centre (NIC), Department of Electronics, Registrar General of India (Ministry of Home Affairs), Ministry of Defence, Planning Commission and Department of Statistics. EDP posts in the Department of Railways have been dealt with in Chapter 10. They had suggested that there should be a regularly constituted service for staff engaged on EDP work. After referring to the rapid development in Computerisation in administration and new technology of work, they have stated that as a long term policy it will be desirable to develop a cadre of experienced employees trained in EDP and other related areas of work. In

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in this connection, they have stated that the Department of Electronics should examine the matter and suggest reorganisation of the existing posts and prescribe uniform pay scales and designations in consultation with the Department of Personnel. Until then the pay scales and special pay recommended by them in Chapters 8 and 24 will apply to these posts. In Chapter 31, the 4th Pay Commission had also stated that in regard to their recommendations, it should be from beginning of the current financial year i.e. 1.1.1986 and with regard to the recommendations on other matters, Government will have to take specific decisions to give effect to them from a suitable date, keeping in view all relevant aspects, including the administrative and accounting work. *(emphasis added)*. The respondents have submitted that in accordance with the recommendations of the Commission the normal revised replacement scales to the incumbents of the various EDP posts have been given effect to w.e.f. 1.1.1986 and in other cases the Government, after considering all relevant aspects, had given effect to the revised pay scales w.e.f. 11.9.1989 after rationalisation of the pay scales. Shri N.S. Mehta, learned counsel, has relied on the judgement of the Supreme Court in Union of India & Ors. Vs. Secretary, Madras Civil Audit and Accounts Association and Anr. (1992(20)ATC 176) and has submitted that in similar circumstances where restructuring of posts had to be done, the Supreme Court had upheld the stand of the Government, namely, giving a later date in implementing certain recommendations relating to the scales of pay. They have also stated that though the nomenclature of EDP posts in different Departments may be similar, yet the recruitment qualifications, method of recruitment and job requirement in each Department has been different and accordingly the pay scales were different. It was only after the 4th Pay Commission made its recommendations, EDP posts have been

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reorganised in such a manner that it should carry the same recruitment, qualifications and the same job content and scales of pay. Therefore, the respondents have contended that the revision of pay scales for the EDP staff in the Directorate of Economics and Statistics w.e.f. 11.9.1989 is in order. The learned counsel has, therefore, submitted that the O.A. may be dismissed.

4. The applicants in their rejoinder have referred to their arguments in the O.A. and have referred to in detail the judgements relied upon by them and the orders of the Supreme Court in SLP No. 5526/94 and Review Petition No. 1145/94. They have also submitted that the judgement of the Supreme Court relied upon by the respondents in Union of India Vs. Secretary, Madras Civil Audit and Accounts Association and Anr. (supra) is misplaced and in fact, they have relied on the same judgement to state that there should be parity in the pay scales of staff in the I.A. and A.D. with other accounts organisations.

5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

6. The applicants have relied on the judgement of the Tribunal, Lucknow Bench dated 10.12.1992 in O.A. 389/91 which on appeal by the Union of India to the Supreme Court by SLP was dismissed by order dated 5.12.1994 (Annexure 'D'). In this order, the Supreme Court has, while condoning the delay, dismissed the Special Leave Petition by the Union of India against the order dated 9.7.1992 of the CAT, Hyderabad Bench in O.A. 957/90 and Lucknow Bench order dated 10.12.1992. The Supreme Court in a recent decision in C.G. Govindan Vs. State of Gujarat (1999 SCC (L&S) 15) has reiterated the

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settled law that "when a Special Leave Petition is summarily dismissed under Article 136, by such dismissal, the Supreme Court does not lay down any law as envisaged by Article 141". It, therefore, follows when a SLP is ^{dismissed by an order} simpliciter, it cannot be said that there has been declaration of law by the Supreme Court under Article 141.

7. The applicants in O.A. 957/90 before the Hyderabad Bench were employed in the office of the Director of Census Operations. The judgement of the Hyderabad Bench was followed by the Lucking Bench in its order dated 10.12.1992 in O.A. 389/91. The judgement of the Tribunal (Principal Bench) in O.A. 665/96 dated 14.8.1996 had noted that the applicants belong to the very same organisations as the applicants before the Calcutta Bench and Nagpur Benches, namely, the National Sample Survey Organisation under the Ministry of Planning and accordingly the same benefits were extended to them. The present applicants who are working in the Ministry of Agriculture, Directorate of Economics and Statistics, are claiming the revision of pay scales w.e.f. 1.1.1986 i.e. the date of the implementation of the Central 4th Pay Commission. The 4th Pay Commission itself had recommended that in the case of EDP staff, the Department of Electronics should examine the matter and suggest reorganisation of the existing posts and prescribe uniform pay scales and designations in consultation with the Department of Personnel. Until then the pay scales and special pays recommended by them in Chapters 8 and 24 will apply to these posts. It is also relevant to note that the Commission itself had noted that there are large number of EDP posts at different levels in the National Informatic Centre, Department of Electronics, Registrar General of India, Ministry of Home Affairs, Ministry of Defence, Planning Commission and Department of Statistics. They have also

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stated that the EDP posts in the Department of Railways have been dealt with separately in Chapter 10. Taking into account these facts, we find force in the submissions made by the learned counsel for the respondents that the revision of pay scales in the case of EDP staff in the Railway Administration has been relied upon by the Lucknow, Hyderabad and Cuttack Benches of the Tribunal while allowing the revision of pay scales of the applicants/EDP staff in their offices at different places. No doubt, the SLP and the Review Petition filed by the Union of India against these judgements have been dismissed by the Supreme Court and the judgements have also been implemented by the Government in the case of those applicants. However, as seen from the recommendations of the Pay Commission, in the case of EDP staff in other Departments, the Department of Electronics in consultation with the Department of Personnel were required to examine the matter and suggest reorganisations of the existing posts and prescribe uniform pay scales which will necessarily involve some time for rationalisation and implementation.

8. The Supreme Court in Union of India & Ors. Vs. Secretary, Madras Civil Audit and Accounts Association and Anr. (supra) have in considering the question whether there was any apparent reason for implementation of the recommendations of the Pay Commission in respect of members of the Accounts Wing and whether such an implementation offends Articles 14 and 16 of the Constitution in any manner, held that there was no infirmity on this ground. In that case, it was held that it was not in dispute that after the report of the Pay Commission, the Government accepted the report and gave effect to the revised pay scales w.e.f. 1.1.1986. It was also observed that it is clearly indicated in the report that in regard to the

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recommendations in other matters the Government will have to take specific decisions to give effect to them from a suitable date keeping in view all the relevant aspects including the administrative and accounting work. The Supreme Court has held that these recommendations clearly fall in the category of other recommendations and the Pay Commission itself has indicated that in respect of such recommendations the Government will have to take specific decisions to give effect from a suitable date. The Court examined the question regarding the second part of the recommendations which relates to treatment of scales of pay of Rs.1400-2000 and Rs.2000-3200 as functional grades requiring promotion as per normal procedure and also the number of posts to be placed in these scales of pay. The Supreme Court held that the principle of equal pay for equal work is not attracted irrespective of the fact that the posts were identified and upgraded in the year 1987. Several petitions had been filed in the Nagpur Bench and Madras Bench of the Tribunal, including a Full Bench of the Tribunal against which the appeals had been filed to the Supreme Court. The Apex Court held that the Full Bench as well as Nagpur Bench of the CAT have not correctly interpreted the scope of the recommendations. It was held that:

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"a combined reading of the Pay Commission report and the Office Memo makes it abundantly clear that the second set of the recommendations could only be given effect to after identifying these posts. For that purpose, the whole matter is required to be examined and the necessary decision has to be taken. In this context, it is also necessary to note that the post of Assistant Accounts Officer was not in existence earlier which is now brought under a functional grade. For that purpose necessary rules have to be framed prescribing the eligibility etc. and the senior Accountants who have completed three years regular service in the grade are upgraded to this post. It is evident that all this could have been done only in the year 1987 and in the said Organised Accounts office higher scales of pay were given with effect from April 1, 1987 i.e. from the beginning of the financial year. We are unable to see as to how the respondents can insist that they must be given higher scales with effect from January 1, 1986. This claim is obviously based on the ground that some of the officers


belonging to the Audit Wing were given scales with effect from January 1, 1986. But it must be borne in mind that they were eligible on that date for the higher scales. Likewise, some of the officers of the Accounts Wing who were eligible for higher scales were also given. But with reference to the second part of the recommendations categories of posts in the functional grades in the Accounts Wing have to be identified and created. The respondents who got that benefit of being upgraded now cannot claim that they must also be given same scales like others in respect of whom the recommendations of the Pay Commission were given effect to with effect from January 1, 1986. There is a clear distinction between the two categories. Therefore, the submission that giving two different dates of implementation of the recommendations in respect of these two categories of personnel of the Accounts Wing and the Audit Wing offends Articles 14 and 16, is liable to be rejected".

(Empahsis added)


9. We are of the view that the reasoning given in the judgement of the Hon'ble Supreme Court in Union of India and Ors. Vs. Secretary, Madras Civil Audit and Accounts Association and Anr. (supra) is fully applicable to the facts and circumstances of the present case, taking into account the recommendations of the 4th Pay Commission and the subsequent decision of the Government in issuing the impugned O.M. dated 11.10.1989 giving effect to the revised pay scales w.e.f. 11.9.1989. The 4th Pay Commission had suggested, inter alia, that in respect of large number of EDP posts which are existing in various Ministries/Departments, other than the Department of Railways, which have been dealt with separately in Chapter 10, there should be a regularly constituted service for staff engaged on EDP work. In this connection, they had recommended that the Department of Electronics should examine the matter and suggest reorganisation of the existing posts and prescribe uniform pay scales and designations in consultation with the Department of Personnel which exercise will naturally take some time. The applicants cannot, therefore, claim that their case is similar to the EDP staff in the Railway Administration because the Pay Commission itself had dealt with them separately. They had also recommended that the Government will

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have to take specific decisions to give effect to the revised pay scales from a suitable date keeping in view all relevant aspects, including the administrative exigencies. Admittedly, in pursuance of the 4th Pay Commission's recommendations, the Government has carried out the exercise to consider the replacement pay scales to the incumbents of the various EDP posts and issued the impugned O.M. dated 11.10.1989 which gave effect to the revised pay scales from 11.9.1989. We respectfully follow the observations of the Hon'ble Supreme Court in Union of India & Ors. Vs. Secretary, Madras Civil Audit and Accounts Association and anr. (supra) that giving two different dates of implementation of the recommendations in respect of the EDP personnel being dealt with here does not violate the principles of equality enshrined in Articles 14 and 16 of the Constitution. In the light of the Supreme Court judgement which is fully applicable to the facts of this case, which we are bound to follow in the present case, we find the contentions of the applicants that there must be parity in the pay scales with the other EDP staff who were given the pay scales w.e.f. 1.1.1986 on the recommendations of the 4th Pay Commission cannot be accepted and are accordingly rejected. In the circumstances, O.A. fails and is dismissed. No order as to costs.


(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'


(S.R. Adige)
Vice Chairman (A)