

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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O.A. NO. 265/1998

New Delhi this the 30th day of November, 1999.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SMT. SHANTA SHAstry, MEMBER (A)

Atma Ram & Ors.

.... Applicants

(By Shri Shyam Babu, Advocate)

-Versus-

Govt. of N.C.T. of Delhi & Ors.

.... Respondents

(By Shri Arun Bhardwaj, Advocate)

1. Whether to be referred to Reporter ? Yes

2. Whether to be circulated to other No
Benches ?


(Ashok Agarwal)
Chairman

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HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SMT. SHANTA SHAstry, MEMBER (A)

1. Atma Ram Thakur
S/O Laxmi Singh Thakur.
R/O B-5, Tihar Jail.
New Delhi.
2. K.K. Sharma S/O P.L. Sharma.
R/O C-27, Tihar Jail.
New Delhi.
3. Harbhajan Singh S/O Man Singh.
R/O B-2, Tihar Jail.
New Delhi.
4. Triveni Lal S/O Loki Ram.
R/O C-7, Tihar Jail.
New Delhi.
5. Om Prakash S/O Kalika Pershad.
R/O C-8, Tihar Jail.
New Delhi. Applicants

(By Shri Shyam Babu, Advocate)

-Versus-

1. Government of National Capital Territory of Delhi through its Chief Secretary,
5, Sham Nath Marg, Delhi.
2. Inspector General of Prisons,
Central Jail, Tihar.
New Delhi.
3. Union of India through Secretary, Ministry of Home Affairs, North Block.
New Delhi. Respondents

(By Shri Arun Bhardwaj, Advocate)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

Applicants arrayed in the present O.A. are five in number. Applicant No.5, however, as per the statement made by the learned counsel appearing in

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support of the application, has since expired. Present application is, therefore, being prosecuted only on behalf of applicant Nos.1 to 4.

2. Aforesaid applicants are technical staff employed in Tihar Central Jail, New Delhi since prior to 1975. Applicant No.1 is working in the capacity of Carpenter Instructor w.e.f. 14.8.1973; applicant No.2 as Weaving Instructor w.e.f. 1.3.1974; applicant No.3 as Assistant Supervisor (Factory) since 14.8.1973; and applicant No.4 as Tailoring Instructor since 13.11.1968. All the aforesaid applicants prior to their employment had passed the matriculation examination which at the relevant time of their absorption was a requisite qualification for appointment to the said posts. They, amongst others, perform duties of imparting training to the inmates of the jail in their respective trades.

3. Till 1966 the Tihar Central Jail was under the management and supervision of the Punjab Government. However, with effect from October, 1966, the administrative control of the said Jail was taken over from the Punjab Government by the erstwhile Delhi Administration.

4. Recruitment regulations came to be amended w.e.f. 1.2.1975. The educational qualification for technical staff in Tihar Central Jail was prescribed as middle pass in place of erstwhile qualification of matriculation examination.

Y.A.

5. In the year 1987 an application being O.A. No.80/1987 was filed by the Central Jail Employees' Association, New Delhi claiming parity of pay scales on behalf of the technical staff in the Tihar Central Jail with the technical staff employed in the Punjab and Haryana jails. It was, inter alia contended before the Tribunal that the nature of functions and duties performed by the technical staff in the Tihar Central Jail were similar in nature to those performed by their counterparts in the Punjab and Haryana jails. A prayer was accordingly made for grant of parity of pay scales with those of the technical staff in Punjab and Haryana jails.

6. By the judgment and order passed by the Tribunal in O.A. No.80/1987 on 7.12.1990, it was inter alia, observed as under :

"21. As regards the technical staff, the comparison sought to be made by the applicants between them and the corresponding staff of the ITIs and Social Welfare Department is not tenable as their duties and responsibilities are not comparable. However, the material on record indicates that the technical staff in Punjab and Haryana are enjoying better pay scales and the duties and responsibilities of such staff appear to be comparable. In this light, there is force in the claim of the technical staff employed in the Central Jail for giving to them the same treatment as that of their counterparts in Punjab and Haryana Prisons.

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(ii) The respondents shall consider the request for parity in the pay scales between the technical staff working in the Central Jail with their counterparts employed in the Prisons at Punjab and Haryana. If the duties and responsibilities of such staff are found to be similar, they would be entitled to the same pay and allowances as those of their counterparts employed in the

Punjab and Haryana Prisons and in that event, they would be entitled to the parity in the pay scales with effect from 1.1.1986. The arrears of pay and allowances should be released to them within a period of three months from the date of receipt of this order....."

7. Aforesaid order which has been passed way back on 7th December, 1990 gives a *prima facie* finding that the duties and responsibilities of the technical staff employed in Tihar Central Jail appear to be comparable with the duties and responsibilities of their counterparts in Punjab and Haryana jails. A direction has been issued to enquire into the claim for parity so claimed and thereafter give parity of scales in case their duties and functions are found to be comparable and similar. This has been directed to be given with effect from 1.1.1986. The entire exercise has been directed to be completed and complied with within a period of three months from the date of the service of the order on the respondents.

8. The exercise as directed by this Tribunal appears to have been undertaken. By a communication dated 21.9.1992 addressed by the Deputy Inspector General (Prisons), Tihar Jail to the Secretary (Home), Delhi Administration, a recommendation was made to grant parity to the technical staff as claimed. Vide para 6 of this communication which is found at Annexure-F, it is, *inter alia*, recited as under :

W.J.

"6. We have re-examined the matter and are of the view that the duties and responsibilities of the Technical Staff are more or less similar to their counterparts in Punjab and Haryana since in the Jail Factory, not only they are engaged in their giving

vocational training to the inmates but the factory is engaged in the production of items such as furniture, durries, phenyl etc. and there is a system for maintaining records about the work given to the inmates and target achieved. The Technical Staff have been employed on this job for a number of years and now after the pay scale of Warders have been upgraded to Rs.950-1400 it is not at all justifiable to keep the Instructors having about 15 years of service in the same pay scale particularly when their counter-parts in other departments like I.T.I. and Social Welfare Department are given the pay scale of Rs.1400-2600.

7. It is strongly recommended that notwithstanding whatever stand had been taken by the administration in the past, we may give the following pay scales to the Technical Staff considering the review after the pay scales of Warders and Head-Warder have been upgraded :

Assistant Factory Supervisor	Rs. 1400-2600
Weaving Master	Rs. 1200-2040
Carpenter Master	Rs. 1200-2040
Tailor Master	Rs. 1200-2040
Mistry Fitter	Rs. 950-1500

8.

9. In keeping with the judgment of the CAT, it is recommended that the new pay scales may be given to the Technical Staff as well as Matrons/Head Matron w.e.f. 1.1.1986. The total financial implication of the proposal comes to Rs.1.07 lakhs P.A."

9. Aforesaid communication makes it clear that the issue at hand was examined and re-examined and it was found that the duties and responsibilities of the technical staff of the Tihar Central Jail are more or less similar to their counterparts in Punjab and Haryana jails. The finding is supported by reasons which are found in paragraph 6 of the communication. After recording the aforesaid finding, a recommendation is made. or to put it in the words employed in the letter itself "It is strongly

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recommended" to grant parity as claimed in the present O.A. Aforesaid communication as already noted was addressed by the Dy. Inspector General (Prisons), Tihar Jail to the Secretary (Home), Delhi Administration. After the same was received by the Delhi Administration, the issue was re-examined by the Government of Delhi and by a communication dated 25.3.1996 addressed to the Dy. Secretary (Delhi), Government of India, Ministry of Home Affairs by the Dy. Secretary, Home (General), Government of Delhi, this is what has been recommended :

"Sub: Revision of pay scales in respect of Technical Staff of Central Jail, Tihar, New Delhi.

Sir,

With reference to your d.o. letter No.U.13032/2/91-Delhi (Part) dated 2.12.91 on the subject cited above, I am directed to say that the matter has been re-examined and we are of the view that the duties & responsibilities of the technical staff are more or less similar to their counterparts in Punjab & Haryana Jails since they are not only engaged in giving vocational training to the inmates but they are also engaged in the production of items such as furniture, durries, phenyl etc. There is also a system for maintaining records about the work given to the inmates and target achieved.

But unfortunately duties & responsibilities of technical staff of jail, which were not earlier prepared properly, by jail Administration have now been prepared & incorporated in Delhi Jail Manual. The copy of the notification issued in this regard is enclosed for your kind perusal please.

At present the following technical staff is posted in the jail factory and their pay scales are as under :-



S. No.	Name of the post	No. of posts	Pay scale
1.	Asstt. Factory Supervisor	01	Rs. 1320-2040
2.	Weaving Master	01	Rs. 950-1400

3. Carpenter		
Master	01	Rs. 950-1400
4. Mistry Fitter	01	Rs. 800-1400
5. Tailor Master	01	Rs. 950-1400

The pay scales of Weaving Master, Carpenter Master, and Tailor Master in Haryana Jails is Rs.1200-2040, while the pay scale of Mistry Fitter is Rs.950-1500.

Keeping in view of the similarity of duties and responsibilities of technical staff Jail of Tihar, & Haryana Jails, the Govt. of N.C.T. of Delhi strongly recommends that the pay scales of technical staff may be revised equivalent to the pay scales given to their counter parts in Haryana i.e.

<u>S. No.</u>	<u>Name of the Post</u>	<u>Revised pay scale</u>
1.	Asstt. Factory Supervisor	Rs.1400-2600
2.	Weaving Master	Rs.1200-2040
3.	Carpenter Master	Rs.1200-2040
4.	Mistry Fitter	Rs. 950-1500
5.	Tailor Master	Rs.1200-2040

The financial implication involved in the proposal is approximately Rs.1.25 lacs per annum and will be met within from the allotted budget of the jail."

10. Copy of the aforesaid communication is found at Annexure R/2. The communication, as the subject recites, is in regard to revision of pay scales in respect of technical staff of Central Jail, Tihar, New Delhi. The communication in no uncertain terms recites that the matter has been re-examined and a view is expressed that the duties and responsibilities of the technical staff are more or less similar to their counterparts in Punjab and Haryana jails. Aforesaid finding is supported by reasons. It has been found that the technical staff in the Central Jail, Tihar are not only engaged in giving vocational training to the inmates but they are also engaged in the production of items such as

furniture, durries, phenyl etc. It has further been recorded that there is a system followed for maintaining records about the work given to the inmates and targets achieved. It is further recited that duties and responsibilities of the technical staff of the Jail which had not been earlier prepared properly by the Delhi Administration had now been prepared and incorporated in Delhi Jail Manual. The present pay scales of the technical staff of the Central Jail, Tihar have been shown in comparison with their counterparts in Punjab and Haryana prisons and a strong recommendation is made to grant the parity of pay scales to the technical staff of Tihar Central Jail on lines of the scales being paid to their counterparts in Punjab and Haryana jails.

11. After the aforesaid recommendation was sent to the Central Government, the Government of India, Ministry of Home Affairs by its communication dated 28.6.1996 addressed to the Dy. Secretary, Home (G), Government of N.C.T. of Delhi has informed that the matter had been examined in the Central Government. It is further provided that since revision of pay scales falls within the purview of 5th Central Pay Commission, it is requested that the proposal for revision of pay scales of the technical staff of Central Jail, Tihar may be placed before the 5th Central Pay Commission for their recommendations.

12. In our view, the aforesaid action on the part of the Central Government in seeking to refer the aforesaid issue to the 5th Central Pay Commission is

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totally unjustified in view of the positive directions issued by this Tribunal in the aforesaid O.A. No.80/1987. The issue was no longer res integra. The same was concluded by directions contained in the aforesaid order of the Tribunal. Hence, the Central Government, in our view, was left with no option but to grant the parity of scales, especially after the nature and functions of duties were found to be similar. The decision to refer the said issue to the 5th Central Pay Commission is nothing short of hoodwinking the directions contained in the aforesaid O.A.

13. Maladies of the applicants were not to cease. When the matter was taken up before the 5th Pay Commission, it appears a representation was made that the requisite qualification for the technical staff in Tihar Jail was middle pass and not matriculate as was the qualification requisite for their counterparts in Punjab and Haryana jails. The Pay Commission, it is apparent, was not informed that the requisite qualification for the technical staff prior to 21.2.1975 was matriculation. All that appears to have been placed for its consideration are the recruitment rules of 1975 which prescribed middle pass as the requisite qualification. It is significant that applicant Nos.1 to 4 in the instant case had passed their matriculation prior to their absorption as technical staff in Tihar Central Jail. Based on the information placed before the Commission, this is what has been recommended :



"Barring Assistant Factory Supervisor, the minimum qualification prescribed for all these posts is middle pass with diploma in the relevant trade. In view of their duties we recommend for the posts of Weaving Master, Carpenter Master, Tailor Master and Mistry Fitter, the pay scale of Rs.950-1500. Simultaneously, the qualifications prescribed for recruitment to these posts may be revised to matric along with ITI diploma....."

14. Aforesaid anomaly that has crept in the aforesaid recommendation of the Pay Commission at least so far as applicants are concerned has been clarified by a communication dated 13.1.1995 at Annexure-I to the O.A. issued by the Dy. Inspector General (Prisons), Delhi to the Dy. Secretary Finance (Budget), Government of N.C.T. of Delhi where, *inter alia*, it has been pointed out :

".....The academic qualification required for the posts of Tailor Master, Weaving Master & Carpenter Master has been shown in the notified Recruitment Rules of Delhi Admn. Delhi vide notification dated 21.2.75 as Middle Pass with Diploma/ Certificate in their respective trades alongwith 3 yrs. experience in the trade as desirable.....

However, these officials were recruited before 1975 on the basis of the RRs which contained that the qualification required is Matric and all these 3 are Matric qualified....."

15. Aforesaid facts make it clear that as far as the directions which are contained in the order passed by this Tribunal in O.A. No.80/87 are concerned, the same remain to be complied with till date. We have an opinion, rather a finding, of the Home Department that the duties and functions of the technical staff of the Central Jail, Tihar are similar to those in Punjab and Haryana jails. The Government,

D.P.A

in the circumstances. was enjoined with a duty of looking into the issue, find out whether their duties are same or similar and pass appropriate orders in regard to the pay scales of the applicants. This, however, has not so far been done. It is, however, not open to this Tribunal to fix the pay scales as the Supreme Court, time and again has held that fixation of pay scales is not the function of the Tribunal. That is the function of the Government. Government very often seeks the opinion of the Pay Commissions who are expert bodies in the field. The Tribunal has accordingly been asked to refrain itself from fixing pay scales. In the case of **Union of India v. P.V.Hariharan & Anr.**, 1997 SCC (L&S) 838 it has been observed as under :

"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 claim 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. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales. Sometimes orders have been passed by Single Members and that too quite often Administrative Members, allowing such claims. These orders have a serious impact on the public exchequer too. It would be in the fitness of things if all matters relating to pay scales, i.e., matters asking for a higher pay scale or an enhanced pay scale, as the case may be, on one or the other ground, are heard by a Bench comprising at least one Judicial Member."

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16. In view of the aforesaid observations, we refrain from passing any orders fixing the pay scales as prayed in the present O.A. In our view, interest of justice will be met by issuing a direction to the respondents to pass suitable orders taking into account all relevant factors in issue. It is pertinent to note that a direction similar to the one which we are now issuing was also issued in O.A. No.80/1987 way back on 7th December, 1990. No relief has so far been granted to the applicants. In the circumstances, we direct the respondents to pass appropriate orders in regard to the pay scales of the applicants as per their claim in the O.A. This they will do after considering the entire material on record, along with any further material that may be made available to them. This be done within a period of three months from the date of service of this order upon the respondents. The effect of the pay scales to be determined by the Government as per the directions issued in the aforesaid O.A., will take effect from 1.1.1986. As has been directed in the aforesaid O.A. No.80/1987, we also direct that arrears of pay and allowances should be released in favour of applicants within a period of three months from the date of receipt of this order.

17. Present O.A. is allowed in the aforesated terms. Respondents shall pay the applicants costs of this application, which we quantify at Rs.10,000/- (Rupees ten thousand).

Shanta F
(Shanta Shastry)
Member (A)

/as/

Ashok Agarwal
(Ashok Agarwal)
Chairman