

Central Administrative Tribunal, Principal Bench

OA No.131/97

New Delhi this the 2nd day of ^{AUGUST} 2000.

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

K.C. Malik,
R/o 3112, Mohindra Park,
Rani Bagh,
Delhi-110 034.

...Applicant

(By Advocate Shri M.L. Ohri)

-Versus-

1. Union of India, through
the Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.
2. The Secretary,
Ministry of Finance,
Department of Expenditure,
North Block,
New Delhi.
3. The Secretary,
Ministry of Personnel, Public
Grievances and Pensions,
Dept. of Personnel & Training,
New Delhi.
4. The Chairman,
Appellate Tribunal for Forfeited Property,
4th Floor, Lok Nayak Bhavan,
Khan Market,
New Delhi.

...Respondents

(By Advocate Shri R.P. Aggarwal)

O R D E R

By Justice V. Rajagopala Reddy:

The applicant seeks to apply the revised scale of pay of Rs.1640-2900 w.e.f. 1.1.86 with arrears and all consequential benefits.

2. The facts of the case are as follows:

[Signature]

✓ 2.1 The applicant has been working as a Stenographer Grade 'C' in the pay scale of Rs.1400-2600 w.e.f. 6.3.86 in the office of the Appellate Tribunal for Forfeited Property (Tribunal for short). Prior to the Fourth Central Pay Commission Stenographers Grade 'C' in the Central Secretariate Stenographers Service (CSSS) and Stenographers Grade 'C' in the Tribunal were drawing the same scale of Rs.425-800. The Fourth Pay Commission also maintained the parity of scale of Rs.1400-2600. However, the Government of India in the OM dated 31.7.90 revised the scale of pay of Stenographers of CSSS to Rs.1640-2900 with retrospective effect from 1.1.86 disturbing the parity on the ground that the pay scale of Assistants in Central Secretariat (CS) has been revised. The case of the applicant is that as he was in no way inferior to that of the CSSS, his duties and responsibilities being similar, the Government should have also revised the applicant's scale at par with CSSS. It is also stated that Stenographers in CBI and also subordinate services of the Directorate of Field Publicity were also given the higher scales. The SLP filed by the respondents against the order dated 19.1.96 revising their scales was dismissed on merits by order dated 11.7.96. It is also stated that the applicant also filed OA-792/96, praying for the revised scale of pay of Rs.1640-2900 and the said OA was disposed of by the Tribunal by order dated 17.5.96, directing the applicant to submit a representation. But his representation was rejected, by order dated 8.11.96.

3. The respondents contested the case. It is averred in the reply that due to an order of the Central Administrative Tribunal (CAT) in OA No.1538/87 dated 23.5.89 as an anomaly arose between the scales of pay in the posts of



Assistants and Stenographers in the CS the Government passed the OM dated 31.7.90 to remove the anomaly, granting to the Stenographers Grade 'C' and Assistants the same scale of Rs.1640-2900 w.e.f. 1.1.86. But the Stenographers in CS and Stenographers in the Tribunal form separate and distinct category. Their functions and responsibilities are not the same. Recognising the basic difference in their structural and functional difference the Pay Commissions, including the Fifth Central Pay Commission, recommended different pay scales. The Fifth Central Pay Commission also considered the question of parity of pay scale but did not favour discontinuance of parity between the two on functional justification. In the case of the applicant, although he was in the pre-revised pay scale of Rs.425-800 prior to 1.1.86 there was no direct recruitment through Staff Selection Commission (SSC). The recruitment rules provide 50% of the posts to be filled up by promotion and 50% by direct recruitment. The direct recruitment quota was not filled up through SSC so far in the office of the applicant. Thus the conditions mentioned in the OM dated 31.7.90 were not fulfilled. It has been clarified that the revised scale could only be given in cases of posts whose direct recruitment are made through open competitive examination, i.e., IFS (B), Railway Board, Secretariat Service etc. where the method of recruitment is direct recruitment through Assistants Grade Examination and Stenographers Grade 'C' Examination respectively conducted by the SSC. Learned counsel, therefore, contends that their posts being not identical, the applicant cannot get any relief.



4. We have given anxious consideration to the contentions raised by the learned counsel for the applicant and the learned counsel for the respondents. The learned counsel for the applicant strenuously contends that as the applicant was drawing the same pay scale prior to the Fourth Central Pay Commission and thus having parity with the pay scale of the Stenographers Grade 'C' of CS, it is discriminatory to disturb the parity of pay scales, and the OM dated 31.7.90 is wholly illegal. Consequently, OM dated 8.1196 is liable to be quashed.

5. But, the question of revision of pay scales, on similar facts, has been considered by a Bench comprising of both of us in All India D.R.D.O Stenographers Association (recognised) v. Union of India & Others (OA No.88/96) decided on 17.12.99. We dismissed the OA on merits. In All India Income-tax Stenographers Association & Another v. Union of India & Others (OA No.515/96) and two connected matters, a Bench comprising of Hon'ble Chairman and Hon'ble Administrative Member Sh. R.K. Aahooja dealt with the same question of parity of pay scales of the Stenographers in the Income Tax department with the Stenographers in CSSS seeking the parity in the pay scale. Relying upon the ratio of the Supreme Court in the case of Federation of All India Custom and Central Excise Stenographers (Recognised) and Others v. Union of India and Others, 1988 SCC (L&S) 673 , which was not brought to the notice of the Tribunal in V.R. Panchal & Others v. Union of India and Others (OA No.144-A of 1993) decided on 18.1.96, the claim of the applicants before the Bench was disallowed.

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6. It may appear that a distinction could be drawn between the case of the applicant and the cases of the Stenographers in the above cases on the premise that the applicant was drawing the same pay scale of Rs.1400-2600 at par with the Stenographers in the Secretariat even before and after the Fourth Pay Commission. But it should be remembered that the parity of pay scale was not due to any conscious consideration by the Fourth Central Pay Commission with regard to their nature of duties and responsibilities. Why the Government revised the pay scales of Stenographers of CS? Because it was of the view that as their functions are identical with Assistants in CS, they should also be given the same pay scales. Merely because the applicant was drawing the same pay scale prior to the above revision, it cannot be presumed in the absence of any determination by any Central Pay Commission or Government or any Expert Body regarding the similarity of functions between the applicant and that of the Stenographers in the CS, they cannot seek parity of scales. On the other Hand, in Federation of All India Customs and Central Excise's case (supra) the Supreme Court, placing reliance upon the qualitative difference of responsibilities and nature of duties of the Secretariat Stenographers as compared to the Stenographers working in the Subordinate offices, upheld the difference of the pay scales.

7. In Nain Singh Bhakuni and Others v. Union of India & Another, 1998 (3) SCC 348 where the Draftsmen in various grade in the Central Water Commission claimed parity in the pay scales with their counter-parts in the CPWD on the ground that there was parity in the pay scales till 20.6.80, which was disturbed only on that date, the Supreme Court held that difference in educational qualifications and promotion

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criteria, was a valid ground for different pay scales. It was also held that appellants were not identically situated with the CPWD Draftsmen and that doing the same type of work as their counter-parts by itself was not sufficient. In Union of India and Another v. P.V. Hariharan and Another, 1997 (3) SCC 568, the Hon'ble Judges have clearly stated that it was the function of the Government which normally acts on the recommendations of the Pay Commission in fixing the pay scales of different categories of posts. The Pay Commission, which goes into the problem at great depth was the proper authority to decide upon this issue and the doctrine of 'equal pay for equal work' was being misunderstood and misapplied, freely revising and enhancing the pay scales. The learned Judges also stated that the Tribunal would exercise due restraint in the matter. The learned counsel for the applicant, however, brings to our notice the learned Judges' observation in the above judgement that the classification of posts should not result in any change of pay scale and that it had nothing to do with the fixation of pay scale. But in the present case the question is not as to the classification of the posts.

8. The Third Pay Commission in its report clearly brought out basic differences in the nature of Stenographic work in the Secretariat and outside the Secretariat in the subordinate offices. Again the Fifth Central Pay Commission's report which was accepted by the Government noticed the differences between the two sets of Stenographers. It was also stated the 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." Hence in the light of the authoritative



pronouncements of the Supreme Court we are of the view that the posts being not identical in view of the distinguishing features, it is not possible for us to concede the demand for parity of the pay scales.

9. The decisions cited by the learned counsel for the applicant in Bhagwan Das vs. State of Haryana, 1987 (2) ATJ 479 and V.R. Panchal & Others v. Union of India & Others, (OA No.144-A of 1993) cannot now be accepted in view of the judgement of the Supreme Court in Federation of All India Customs and Central Excise Stenographers (supra). These aspects of the matter were already considered by the Bench in All India Income-tax Stenographers Association's case (supra).

10. The decision in Alvaro Noronha Ferriera and Another v. Union of India & Others, 1999 SCC (L&S) 873 will not come to the aid of the applicant. In that case the question was whether there can be disparity of the pay scale of the District Judges working in different States/Union Territories? The Supreme Court held that their duties being identical, wherever they are posted, there cannot be any disparity of their pay scales. Thus the ratio of this case cannot be applied to the case of the applicant.

11. In view of the aforesaid discussion, the OA is dismissed. We, however, order no costs.

Shanta S
(Mrs. Shanta Shastry)
Member (Admnv)

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Om Rajagopal Reddy
(V. Rajagopal Reddy)
Vice-Chairman (J)