

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(15)

C.L./TAX. No. 1129/94 /19 Decided on: May 6th, 1997.

Gopal Prasad Chaudhary & Others. APPLICANT(S)
(By Shri K.B.S. Rajan, Advocate)

VERSUS

Union of India & others. RESPONDENTS
(By Shri E.X. Joseph, Advocate)

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THE HON'BLE SHRI S.R. ADIGE MEMBER(A).

THE HON'BLE SHRI DR. A. VEDAVALLI MEMBER(J)

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

Anfdg-
(S.R. ADIGE)
MEMBER (A).

(16)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

O.A.No. 1129/94

Dated: this the 6th day of May, 1997.

HON'BLE M.R.S.R.ADIGE, MEMBER(A).

HON'BLE DR.A.VEDAVALLI, MEMBER(J).

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(By Advocate: Shri K.B.S.Rajan)

.....Applicant(s)

Versus

1. Union of India through
the Ministry of Personnel, Pensions & Public
Grievances,
North Block,
New Delhi 110 011.
2. Union of India through
The Secretary,
Ministry of Defence,
Sought Block,
New Delhi - 110 011.
3. The Joint Secretary and CMO,
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New Delhi - 110 011

....Respondent(s)

(By Advocate: Shri E.X.Joseph).

JUDGMENT

BY HON'BLE M.R.S.R.ADIGE MEMBER(A).

Applicants, who belong to the Armed Forces

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Headquarters Civil Services (AFHQ CS), impugn communication dated 4.2.94 (Annexure-A), which states that DGP & T's O.M. dated 14.8.87 (Annexure-B) are not applicable to them, as the AFHQ CS is not a Group 'A' Central Service, and hence are not entitled to 15% of Senior duty posts in the Selection Grade.

2. The AFHQCS is an organised service under the Central Govt. and is governed by the AF HQCS Rules, 1968. It is under the administrative control of Defence Ministry (Respondent No.2). The entry into the service is at the level of ACSO (Gazetted) and Asstt (non-gazetted) which are Group B posts. Thereafter the hierarchy proceeds upwards to Civilian Staff Officer (Rs. 3000-4500); Senior Civilian Staff Officer (Rs. 3700-5000); Director (Rs. 4500-5700) Selection Grade; and SAG Level II (Rs. 5100-5700).

3. Respondents have pointed out that the III Pay Commission had recommended introduction of non-functional selection grade posts in Class I (Group A) Engineering Services, and Govt. while accepting this recommendation also accepted in principle the introduction of non-functional selection grade in other Class I (Group A) Central Services vide O.M. dated 31.7.82 (Annexure-R I). The IV Pay Commission only covered the conditions regarding stagnation at the maximum of JAG for two years for p-promotion to Selection Grade and provided a uniform criteria for promotion to selection grade and the basis for computing selection grade posts (Annexure-RII Only), in consonance of which impugned O.M. dated 14.8.87 issued, which was further clarified vide O.M. dated 16.7.90 (Annexure-RII).

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4. Respondents aver that the OM dated 14.8.87 is not applicable to AFHQ CS because (i) it does not have an element of direct recruitment of 50% and above at Junior time scale level (Rs.2200-4000) or in the hierarchy and direct recruitment is at Group B level; (ii) it is not a Group A Central Service, although Group A posts (all promotion posts) of the service carry the classification of Central Civil Service Group 'A'; (iii) the AFHQ CS already has posts in selection grade sanctioned on functional basis and as per Govt. instructions, it cannot have S.G. posts both on functional and on non-functional basis.

5. Applicant's counsel has argued (and has also filed written arguments which are taken on record) that respondents have rejected applicants' claim on the ground that AFHQ CS is not an 'Organised' Group A service, but the term 'organised Group A service' or 'Organised service' does not figure in OM dated 14.8.87, nor indeed in notification dated 13.3.87 or elsewhere. Hence he contends that this cannot be made a ground to reject the applicants' claim. It is further contended that the non-availability of the direct recruitment element at pay scale of Rs.2200-4000 to the extent of 50% at JTS level in AFHQ CS also is not fatal to the applicants in view of the judgment dated 22.11.90 of CAT Allahabad Bench in OA No.134/90 Surej Prakash Vs. UOI & Ors. and judgment dated 17.5.90 of CAT PB in OA No.119/88 Kashmir Singh Vs. UOI while denying the validity of any comparisons with CSS, it is

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contended that the AFHQ CS cannot be categorised as a Group B service in view of (i) its RRs which provide that all the Group A posts in it constitute Central Civil Service Group A.; (ii) Notification dated 26.11.86 (Annexure-D) whereby at serial 44 of the Schedule to CCS(CCA) Rules, AFHQ CS (Group A) has been indicated as one of the Central Civil Service Group A; and (iii) the order dated 6.8.74 (Annexure-III to written arguments) constituting cadre review committee in respect of Class I (now Group A) services under the Defence Ministry's administrative control in which AFHQ CS has also been included.

6. It has been argued that all Central Govt. Servants are classified in 4 categories under the CCS(CCA) Rules which has the protection of Article 309 of the Constitution and cannot be abrogated by respondents unilaterally, without following the prescribed procedure for amendment of Rules. On this basis, it is argued that all Group 'A' posts under the Central Govt. have to be part of a Group A service. Those posts which are included in any organised service as listed in Schedule 1 are to form part of that service, while all other Group A posts have to be categorised as General Central Service Group A. In this connection, it is also contended that applicants and others similarly placed are covered under CCS(Pension) Rules, and under Rule 10 thereof prior permission of Govt. is required in respect of all those in Central Service Group A who seek to accept commercial employment within two years of his date of retirement. The pith and substance of applicants' counsel's contention

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is therefore that while the AFHQ CS is formed both of Group A and Group B posts, the Group A posts therein are independent and classified separately as Central Govt. Service Group A to whom the impugned OM dated 14.8.87 is applicable (paragraph 9 of written arguments).

7. We have considered these arguments carefully. As according to applicants themselves the AFHQ CS is formed of both Group A and Group B posts, their claim can succeed only if they can establish that those posts in AFHQ CS classified as CCS Group A posts are entitled to be defined as a Group A Central Service within the meaning of respondents' OM dated 14.8.87 as further classified by OM dated 16.7.90. The AFHQ CS as its very name implies as a single service. Rule 3 AFHQ CS Rules, 1968 to which our attention has been drawn by respondents' counsel, states clearly that the service (it bears notice that the word 'service' is used in the singular) shall be composed of 4 grades:

<u>Grade</u>	<u>Classification</u>
i) Selection Grade	CCS Group 'A'
ii) CSO	
iii) ACSO	CCS Group 'B'
iv) Asstt.	Ministerial.

It further states that posts of selection grade and CSO shall be gazetted and those in grade of ACSO shall be non-gazetted. Manifestly therefore the AFHQ CS is a single service which consists of both gazetted and non-gazetted posts and includes ministerial posts too. If the AFHQ CS is a single service, it cannot legitimately be argued that some of the posts within that service, merely because they are classified as CCS Group 'A'

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in the Recruitment Rules and in the CCS(CCA) Rules, are entitled to be categorised as a Group 'A' Central Service, for the purposes of OM dated 14.8.87 read with OM dated 16.7.90. A service as a whole may be either a Group 'A' Central Service or a Group 'B' Central Service. Even if it is a Group 'B' Central Service, it may have posts in its higher echelons classified as Central Service Group 'A' as has been done in case of AFHQ CS and some other Group 'B' Central Services. The respondents' OM dated 14.8.87 as clarified by subsequent OM dated 16.7.90 clearly specifies that the benefit of NFSG is available to a Group 'A' Central Service. It is clear that it is not applicable to a Group 'B' Central Service, even if some of its posts in higher echelons are classified as Central Service Group A. It is in this context that the use of the word 'organised' becomes relevant. In this connection, it is important to note that the provision of functional SG is already available in AFHQ CS, and as has been pointed out by respondents' counsel, the service cannot have both Functional SG as well as Non-Functional Selection Grade.

8. During hearing, respondents' counsel has placed on record a copy of Chapter 48 of the 7th Pay Commission Report. Of the attributes of an Organised Group 'A' Central Civil Service mentioned in para 48.7 of the Chapter, the AFHQ CS possesses none except some common pay scales of Rs.3000-4500, Rs.3700-5000 and Rs.4500-5700. The Pay Commission

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is a high powered and expert body and in the absence of most of the attributes which would entitle the AFHQ CS to be categorised as a Group 'A' Central Service (including non-availability of direct recruitment element at pay scale of Rs.2200-4000 to the extent of 50 %). We are unable to hold that the AFHQ CS is a Group A Central Service for the purpose of respondents' OM dated 14.3.87 as clarified by OM dated 16.7.90 or indeed that the posts in its higher echelons, which are classified as CCS Group A are entitled to be treated as an independent Group 'A' Central Service for the purpose of these two OMs. In this connection, it is extremely relevant to note that in Chapter 49.6 of its Report while discussing the general issue relating to Group 'B' services, the 7th Pay Commission has observed thus

"Currently, the career progression of the various Group 'B' Services is quite variable. Some of the Group 'B' Services, as for example, in the Income Tax Department and the Customs and Central Excise Department, are feeder Services to the corresponding Group 'A' Services. Others like the Central Secretariat Service, Railway Board Secretariat Service, Armed Forces Headquarters Service etc. have chances of promotion in their offices and some of them have even reached the levels of Joint Secretary, Additional Secretary and Secretary. Some Group 'B' Services are feeder to the All India Services as for example the Delhi Andaman and Nicobar Civil Service and the Delhi Andaman and Nicobar Police Service. There are other Group 'B' services which do not have good chances of promotion and tend to stagnate for a long time."

Clearly therefore the AFHQ CS is a Group 'B' Central Service, even if some of its higher level posts are classified as CCS Group 'A'.

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9. In so far as Suraj Prakash's judgment dated 22.10.90 (Supra) relied upon by applicants' counsel is concerned, it was not denied that Scientific and Technical Stream of GSI were getting NFSG and the grievance was in respect of its non extension to another stream viz. Financial and Administrative Stream. The Tribunal directed that Financial and Administrative Stream also be granted the same benefit. It bears notice that GSI is included in the list of Group 'A' Services in OM dated 16.7.90 unlike AFHQ CS, hence that judgment does not help applicants.

10. Similarly in Kashmir Singh's judgment dated 17.5.90 (Supra) the Tribunal while dismissing the applicants' claim that benefits of OM dated 14.8.87 were admissible to Research Cadre in DP & T, directed respondents to examine and decide as to which cadres of posts included in General Central Service Group 'A', the benefit of NFSG would accrue, in terms of OM dated 14.8.87 so that the matter was settled beyond doubt. In the light of that judgment, respondents issued OM dated 16.7.90 (Annexure-IV) listing out the cadres/ services to which OM dated 14.8.87 was applicable, AFHQ CS was not included in that list. Applicants have not impugned that OM dated 16.7.90 and under the aforesaid circumstances, that judgment also cannot be said to advance the applicants' case.

11. In this connection, it is relevant to mention that the applicants themselves appear to have acknowledged that AFHQ CS is not a Group 'A' Central Service vide their representation dated 31.12.90 (Annexure-F).

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12. We may summarise. Pursuant to the 4th Pay Commission recommendations, respondents by OM dated 14.8.87 have granted NFSG for Group 'A' Central Services. The restriction regarding grant of such a benefit to Group 'A' Central Services alone (as distinct from Group 'B' Central Services or Group 'C' Central Services) has been upheld both in Suraj Prakash's case (Supra) as well as in Kashmir Singh's case (Supra) and no materials have been shown to us to suggest that the judgments in these two cases have not become final. In Kashmir Singh's judgment (Supra) respondents were specifically directed to issue a list of those cadres of posts to whom the benefits of OM dated 14.8.87 would be applicable to remove any ambiguity in the matter. In compliance thereto respondents have listed out those services/cadres to whom OM dated 14.8.87 would be applicable, vide OM dated 16.7.90. AFHQ CS is not one of the services mentioned in the list appended with OM dated 16.7.90 and that OM dated 16.7.90 itself has not been impugned. AFHQ CS was not included in the list appended with OM dated 16.7.90 because AFHQ CS is not a Group 'A' Central Service, notwithstanding the fact that some of the posts in its higher echelons are classified as Central Civil Service Group 'A'. AFHQ CS has its own selection grade posts admissible on a functional basis, and a particular service cannot have SG posts admissible both on functional as well as non-functional basis. NFSG in terms of respondents' OM dated 14.8.87 read with OM dated 16.7.90 is admissible as a percentage of senior duty posts in a particular Group 'A' Central Service Cadre as a whole, and not in terms of the posts in the higher echelons of a group 'B' Central Service like the AFHQ CS, merely because such posts are classified

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as Central Civil Service Group 'A'. Under the circumstance we are unable to grant the relief claimed.

13. The OA is dismissed. No costs.

A Vedavalli
(DR. A. VEDAVALLI)
MEMBER(J).

S. R. Adige
(S. R. ADIGE)
MEMBER(A).

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