

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

Original Application No. 144-A of 1993

THIS THE 19th DAY OF January, 1996.

HON'BLE MR N.V. KRISHNAN, ACTING CHAIRMAN
HON'BLE MR L.C. VERMA, JUDICIAL MEMBER

V.R. Panchal, S/o Sri Rati Lal, R/o F-49, Road No. 4,
Andrews Ganj, New Delhi, working as Crime Assistant
in the office of Central Bureau of Investigation, Delhi
Region, Block No. 4, C.G.O. Complex, Lodi Road,
New Delhi.

2. B.S. Sethi, Crime Assistant/CBI, as on 1.1.1986
(now JA/CBI)

3. Pritam Lal, Crime Assistant/CBI as on 1.1.1986
(now OS/CBI).

4. M.C. Das, Crime Assistant/CBI as on 1.1.1986
(now OS/CBI)

5. G.V.S. Rao, Crime Assistant/CBI, as on 1.1.1986
(now OS/CBI).

6. V.R. Prasad Rao, Crime Assistant/CBI as on 1.1.1986
(now OS/CBI).

7. Joy Joseph, Crime Assistant/CBI as on 1.1.1986
(now OS/CBI).

8. D.G.K. Sastry, Crime Assistant/CBI as on 1.1.1986
(now OS/CBI)-

9. B.D. Goel, Crime Assistant/CBI as on 1.1.1986
(now OS/CBI).

10. L.G. Rao, Crime Assistant/CBI, as on 1.1.1986
(now JAO/CBI). *U*

(13)

11. B.B. Goel, Crime Assistant/CBI.
12. M.C. Kholia, Crime Assistant/CBI.
13. Sobha Chand, Crime Assistant/CBI.
14. P.V. Krishnamurthy, Crime Assistant/CBI.
15. R.N. Murthy, Crime Assistant/CBI.
16. L.R. Chaddha, Crime Assistant/CBI.
17. Naresh Kumar, Crime Assistant/CBI.
18. G.K. Garg, Crime Assistant/CBI.
19. H.S. Chakravarthy, Crime Assistant/CBI.
20. R.N. Prashad, Crime Assistant/CBI.
21. Rajinder Singh, Crime Assistant/CBI.
22. R.N. Bhardwaj, Crime Assistant/CBI.
23. Prem Prakash, Crime Assistant/CBI.
24. N.K. Tiwari, Crime Assistant/CBI.
25. G.K. Swamy, Crime Assistant/CBI.
26. K.D. Singal, P.A. (Steno Gr.'C') as on 1.1.1986
(now Sr. P.A.).
27. Smt. Krishna Anand, PA (Steno Gr.'C') as on 1.1.1986
(now Sr. P.A.).
28. Smt. Kanta Gaba, PA (Steno Gr.'C') as on 1.1.1986
(now Sr. P.A.).
29. Prabha B. Singh P.A. (Steno Gr.'C').
30. OPB. Bhatia, P.A. (Steno Gr.'C') as on 1.1.1986.
31. D.P. Vohra PA (Steno Gr.'C') as on 1.1.1986
(now Sr. P.A.)

14

32. Smt. Parvesh Chawla PA (Steno Gr. 'C') as on
1.1.1986 (now Sr. P.A.).

33. Sri Ashok Sahaney, PA/CBI.

34. N. N. Datta, P.A./CBI.

35. R.N. Lutha PA/CBI.

36. Smt. Jayshree, P.A./CBI.

37. S.P. Narula, P.A./CBI.

38. M.L. Khanna, PA/CBI.

39. S.K. Srivastava, PA/CBI.

Applicants

By Advocate : Sri V.S. R. Krishna

Versus

Union of India through its Secretary, Department of
Personnel & Training, New Delhi.

2. Union of India through its Secretary, Ministry of
Finance (Department of Expenditure), New Delhi.

3. Central Bureau of Investigation, Block No. 3 CGO
Complex, New Delhi.

Respondents

By Advocate : Sri M.M. Sudan

With

Original Application No. 985 of 1993

Goverdhan Lal, S/o Late Sri Permanand, R/o SEC V/1558,
R.K. Puram, New Delhi.

2. Murari Lal, S/o Sri Banwari Lal, R/o E-574, West
Vinod Nagar, Delhi.

15

3. Bajjeet Singh, S/o Sri Ramji Lal, R/o 548, Chirag, Delhi.
4. Lakshman Dass, S/o Late Sri Behari Lal, R/o 510, Rishi Nagar, Shakur Basti, Delhi.
5. Charan Singh, S/o Sri Prem Singh, R/o 328 Munirka, New Delhi.
6. C.S. Negi, S/o Late Sri H.S. Negi, R/o S-IV, M.B. Road, New Delhi.
7. R.K. Chopra, S/o Sri Hans Raj Chopra, R/o 84, East Azad Nagar, New Delhi.
8. D.R. Khullar, S/o Late Sri Lal Chand Khullar, R/o 60/43, Kalibari Marg, DIZ Area, New Delhi.
9. M.N. Chopra, S/o Late Sri S.D. Chopra, 94, Moti Bagh, TYPE III, New Delhi.
10. Sampat Sahni S/o Sri M.L. Sahni, R/o 165-A Mayur Vihar, Phase II, Pocket-C, New Delhi.
11. P.G. Kirar, S/o Giri Raj Parshad, R/o LP-61-A Murya Enclave, Pitam pura, Delhi.
12. Miss Sarla Sachdeva, D/o Sri Kanaya Lal Sachdeva, R/o H-117, D.D.A. Flats, Naraina, New Delhi.
13. R.K. Arora, S/o Lt. Sri G.M. Arora, R/o 22-A Indra Park Palam Road, New Delhi.
14. R.M. Sharma, S/o Lt. Sri Ram Dhari Sharma, R/o 40-F Aram Bagh, Type-B, New Delhi.
15. S.R. Ghai, S/o Late Sri B.R. Ghai, R/o Sec. 3/928 R.K. Puram, New Delhi.
16. Smt. Abha Basra, W/o Sri Amrik Singh Basra, R/o QNo. 810, Sec. 2, R.K. Puram, New Delhi.

(b)

17. Radhey Shyam, S/o Late Sri Banwari Lal, 250, I.T. Colony, Unit, Pitam Pura, Delhi.
18. Smt. Urmil Bhatia, W/o Sri Gulshan Bhatia, R/o C-1 G.2 Dislshad Garden, Delhi.
19. Sri Bhanshyam, S/o Lt. Sri Rama Ram, R/o Vill & Post Karala, Delhi.
20. Ishwar Singh, S/p Lt. Sri Raja Ram, R/o Vill. Balanr, P.O. Bahadurgarh, Dist. Rohtak (Haryana).
21. Surinder Singh, S/o Sri J.B. Singh, R/o G-39 Nanakpura, New Delhi.
22. Smt. Meelam Raichand, W/o Sri Arun Kumar Raichand, R/o 9, Mousam Vihar, New Delhi.
23. Rajinder Kumar Arora, S/o late Sri O.P. Arora, R/o H.No. 494, Circular Road, Shahadara, Delhi.
24. Kasturi Lal, S/o Lt. Sh. Banshi Ram, R/o 4161/65 Gali Shahtara, Ajmeri Gate, Delhi.

Applicants

By Advocate : Sri M.L. Ohri

Versus

Union of India through the Secretary, Ministry of Finance, Dept. of Revenue, North Block, New Delhi.

2. The Secretary, Ministry of Personnel, Public Grievances and Pensions, Dept. of Personnel & Training, New Delhi.

3. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi.

Respondents

By Advocate :

11

with

Original Application No. 548 of 1994 ✓

Brahm Dass, Directorate of Field Publicity, Ministry of Information & Broadcasting, East Block 4, Level 3, R.K. Puram, New Delhi.

2. H.K. Mahto, Directorate of Field Publicity, Ministry of I & B, R.K. Puram New Delhi.

3. Sukhdev Raj Sharma, Directorate of Field Publicity, Ministry of I & B, R.K. Puram, New Delhi.

4. J.K. Garg, Directorate of Field Publicity, Ministry of I & B, R.K. Puram, New Delhi.

5. V.S. Negi, Directorate of Field Publicity, Ministry of I & B, R.K. Puram, New Delhi.

6. Mrs. Harbans Ahuja, Directorate of Field Publicity, Ministry of I & B, R.K. Puram, New Delhi.

7. Mrs. Rashmi Marwaha, Directorate of Field Publicity, Ministry of I & B, R.K. Puram, New Delhi.

8. N.S. Srivastava, Regional Office, Directorate of Field Publicity, Ministry of I & B, Vidhan Sabha Marg, Lucknow.

9. Vishan Das, Regional Office, Directorate of Field Publicity, Ministry of I & B, Chittranjan Marg, Jaipur.

10. Mrs. Shridevi Arun Moralwar, Regional Office, Directorate of Field Publicity, Ministry of I & B, Vidya Vihar, Pune.

11. K.K. Sharma, Regional Office, Dte of Field

(9)

Publicity, Ministry of I & B, Sector 34-A, Chandigarh.

12. Desh Raj, Directorate of Field Publicity,
Ministry of I & B, R.K. Puram, New Delhi.

13. Desh Raj, Regional Office Dte. of Field Publicity,
Assam Region, Guwahati.

14. V. Padmandabhan, Regional Office, Dte. of Field
Publicity, Ministry of I & B, Tamil Nadu Region,
Madras.

Applicants

By Advocate : Sri V.S. R. Krishna

Versus

Union of India through the Secretary, Ministry of
I & B, Shastri Bhawan, New Delhi.

2. The Secretary, Department of Personnel &
Training, Ministry of Personnel & Public Grievances
& Pensions, New Delhi.

3. The Secretary, Ministry of Finance, North
Block, New Delhi.

4. The Director of Field Publicity, East Block 4
Level 3, R.K. Puram, New Delhi.

Respondents

By Advocate : Sri M.M. Sudan

O R D E R

D.C. VERMA, MEMBER (J)

In the three O.A.s, the applicants are

Assistants and Stenographer Grade 'C' in various
Central Government departments and are claiming

6

(19)

parity in the Pay-scales given to their counterparts

in the Central Secretariat. As the points involved in the 3 O.A.s are common, it is being disposed of by a single order.

2. In O.A. No. 144-A/93, 39 applicants are working as Crime Assistants and Stenographers Grade 'C' (P.A.) in the department of Central Bureau of Investigation (in short C.B.I.) attached office of the Ministry of Personnel & Public Grievances & Pensions, Govt. of India.

3. In O.A. No. 985/93, 24 applicants are Assistants in the office of Director General of Income Tax (INV), North, New Delhi which is attached office of Central Board of Direct Taxes, Ministry of Finance, Department of Revenue.

4. In O.A. No. 548/94, 14 applicants are working as Stenographers Grade-II and Assistants in the Directorate of Field Publicity (in short DFP), Ministry of Information & Broadcasting.

5. All the applicants who are working as Assistants or Stenographers Grade-II, were recommended pay-scale of Rs. 1400-2600/- by the 4th Pay Commission (in short P.C.). The same recommendation was made by the 4th P.C. to the Assistants and Stenographers Grade-II (P.A.) who are working in the Central Secretariat. However, by a subsequent O.M. No. 2/1/90 CS.4 dated 31.7.90 revised scale of pay of Rs. 1640-2900 in the pre-revised scale of Rs. 425-800/- for duty posts included in the Assistant Grade of Central Secretariat Services and Grade 'C'

u

60
Stenographers

Stenographers of Central Secretariat Services

w.e.f. 1.1.1986 was given. The same revised pay-scales was also made applicable to Assistants and Stenographers who are working in other organisation like Ministry of External Affairs which were not participating in the Central Secretariat Services (in short CSS) and Central Secretariat Stenographers Services (in short CSSS) but where the posts were in comparable grades with same classification and pay-scales and the method of recruitment through open competitive examination was the same. This is the O.M. / cause of grievance to employees of various Govt. agrieved employees Central departments. The filed U.A. As in different Benches of the Tribunal.

6. Before discussing the facts of each case, it would be better to transverse the case law on the point.

In the case of Randhir Singh Vs. Union of India & others (AIR 1982 SC, 877), the apex court has held as below :

"It is true that equation of posts and equation of pay are matters primarily for Executive Government and expert bodies like the Pay Commission and not for courts, but where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments. Of course, if officers of the same rank perform dissimilar functions and the powers, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same."

"It is well known that there can be and there are different grades in a service, with varying qualifications for entry into a particular grade, the higher grade often being a promotional avenue for officers of the lower grade. The higher qualifications of the higher grade, which may be

(21)

either academic qualifications or experience based on length of service, reasonably sustain the classification of the officers into two grades with different scales of pay. The principle of equal pay for equal work would be an abstract doctrine not attracting Art. 14 if sought to be applied to them AIR 1962 SC 1139, Distinguished."

"It is true that the principle of "equal pay for equal work" is not expressly declared by our Constitution to be a fundamental right. But it certainly is a Constitutional goal."

"Constructing Articles 14 and 16 in the light of the preamble and Article 39(d), it is clear that the principle "Equal pay for Equal work" is deducible from those Articles and may be properly applied to cases for unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer."

The principle as laid down in Randhir Singh's case (supra) has been reiterated in the case of Mewa Ram Kanojia Vs. All India Institute of Medical Sciences and others (A.T.J. 1989 (1) page 654) in the following words :

"The doctrine of "Equal Pay for equal work" is not expressly declared a fundamental right under the Constitution. But Article 39 (d) read with Articles 14 and 16 of the Constitution declares the constitutional goal enjoining the State not to deny any person equality before law in matters relating to employment including the scales of pay. Article 39(d) read with Articles 14 and 16 of the Constitution enjoins the State that where all things are equal, persons holding identical posts, performing identical and similar duties under the same employer should not be treated differently in the matter of their pay. The doctrine of "Equal pay for equal work" is not abstract one, it is open to the State to prescribe different scales of pay for different post having regard to educational qualifications duties and responsibilities of the post. The principle of "Equal pay for equal work" is applicable when employees holding the same rank perform similar functions and discharge similar duties and responsibilities are treated differently. The application of the doctrine would arise where employees are equal in every respect but they are denied equality in matters relating to the scale of pay."

22

7. In view of the above, the principle of "Equal pay for equal work" is applicable when employees holding the same rank perform similar functions and discharge similar duties and responsibilities are treated differently in the matter relating to the scale of pay. While dealing with the parity of the pay-scale in the case of State of U.P. & others Vs. J.P. Chaurasia & others (1989 SC (I&S) 71), the apex court relied on the earlier decision including Randhir Singh's case (supra) and the case of Bagwandas Vs. State of Haryana (1987 (4) SCC 634) and observed as below :

"Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the court should normally accept it. The Court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration."

8. In view of the above, the Court should normally accept the decision taken on the basis of recommendations of the P.C., which is an expert body to determine pay-scales. However, in case it is found that for extraneous consideration -n, by a subsequent State action or in action, favourable treatment has been given to some resulting unfair treatment to others, the court

6

(23)

may sometime feel it necessary, for the purpose of providing justice, to interfere with the orders issued by the executive. Some such situations, amongst others, are as below, where,

(i) the pay commission committed to consider the pay-scale of some posts of any particular service, or

(ii) the Pay-commission recommended certain scales based on no classification or irrational classification, or

(iii) after recommendation of the Pay-commission is accepted by the Govt., there is unjust treatment by subsequent arbitrary State action/or in action. In other words the subsequent State action/in action results in favourable treatment to some and unfair treatment to others.

9. In the case of all the above three situations, courts interference is absolutely necessary to undo the in-justice. Aggrieved employees have a right and the courts have jurisdiction to remedy the unjust treatment metted by arbitrary State action or in action.

10. In view of the principle of law derived as above, facts of each case has to be examined separately to find whether the applicants of the three O.A.s are entitled to have their pay-scales revised on the basis of the O.M. of the Govt. of India dated 31.7.90.

11. O.A. No. 144-A/93

In this case, the applicants are Crime Assistants and Stenographers Grade 'C'

✓

2X

in the department of C.B.I. which is an attached office of Ministry of Personnel, Public Grievances & Pensions, Govt. of India. It is stated in the O.A. and not denied in the Counter reply that prior to 24.11.1967, all the ministerial posts in C.B.I. (Head Office) were manned by Personnel belonging to CSS, CSSS and CSCS services. It is also not denied that for the first time, the Ministry of Home Affairs vide its letter dated 24.11.1967 redesignated post of Assistant to Crime Assistant and Stenographer as Personal Assistant in the department of C.B.I. with a specific mention that "the redesignated posts would carry the same scale of pay and allowances as at present and there would also be no change in their classification". The result being that the Assistants and P.A.s in the department of C.B.I. stand automatically excluded from the purview of the CSS, CSSS and CSCS cadrés of the Ministry of Home Affairs.

12. In para 4.8 of the O.A., it is clearly stated that the "quality and nature of work, functions, duties and responsibilities of the Section Officers vis-a-vis Crime Assistants, Grade 'C' Stenographers vis-a-vis Personal Assistants of C.B.I. are identical and similar in all respects". This fact is not denied by the respondents in their reply. As regards the nature of work, functions, duties and responsibilities of the Crime Assistants and Grade 'C' Stenographers of the department of C.B.I. and the

6

25

Assistants and Grade 'C' Stenographers of the Civil Secretariat, we are of the view, are identical and similar in all respects. The judgment given by the Tribunal in O.A. No. 760/88 in the case of Puran Chand & others Vs. Union of India & others, the following paragraph. so far it relates to work and duties of the Assistants in the CSS and Crime Assistants of the C.B.I. are concerned, is very relevant and so extracted below:

"The Ministry of Finance have not agreed with the recommendations of the Department of Personnel without explaining as to show the work done by the Crime Assistants in the C.B.I. on their promotion as Office Superintendent is of lower category or responsibility. From the noting in the file of Ministry of Personnel, it is quite clear that the Ministry of Personnel have reached the conclusion that there is a parity between the duties and responsibilities of the applicants with those of the Assistants and Section Officers in the CSS and as such they should be entitled to "equal pay for equal work". They should be entitled to the same facilities. The Supreme Court has already held that "Equal pay should be paid for equal work".

13. Thus, from the documents on record, it is fully established that there is parity between the duties and responsibilities of the applicants in O.A. No. 144-A/93 with those of Assistants and Stenographers Grade 'C' in the CSS and CSSS.

14. As regards the pay-scales prior to 4th P.C., the scales of Crime Assistants of the C.B.I. and the Assistants of CSS cadres were Rs. 425-800/- and those of Personal Assistants of the C.B.I. and Stenographers Grade 'C' of CSSS cadres were also Rs. 425-800/-. The 4th P.C. recommended the pay-scales of Rs. 1400-2600/-

26

to all the above category i.e. Crime Assistants and the Personal Assistants of the department of C.B.I. and Assistants and Stenographers Grade 'C' of the CSS and CSSS and this recommendations of the Pay-scales was accepted by the Govt.

15. The recommendations of the 4th P.C. has been quoted in para 4.14 of the O.A. The relevant portion of the 4th P.C. as quoted in the O.A., are given below :

"8.41. The scale of Rs. 425-800/- covers posts of Assistant and Stenographer in different ministries/departments, auditor under C&AG, etc. The recruitment is either through competitive examination or by promotion from the scale of Rs.330-560/-

8.42. There are three other scales which are segments of the scale of Rs. 425-800/- and these are Rs. 425-700/-, Rs.440-750/- (at (c)) and Rs. 440-750/- (at (c)) . The categories of posts covered by the scale of Rs. 425-750/- are engineering assistant in doordarshan and all India radio, selection grade,inspector of telegraph and assistant superintendent (telegraph and telephone) in P&T and stock verifier in railways. The scale of Rs. 440-750/- at (c) and the scale of Rs. 440-750/- at (e) are for trained graduate teachers, the scale of Rs. 440-750/- at (e) having been introduced subsequent to the report of the Third Pay Commission, appointment to all these posts is partly by promotion from the scales of Rs. 330-560/- and Rs.425-640/- and partly by direct recruitment.

8.43. The scale of Rs. 470-750/- covers categories of posts like scientific assistant in departments of atomic energy and space, tradesman in the department of space, section controller in the railways, assistant foreman in the department of energy and grade IV officers of the Central Information Service (CIS). Appointment to these categories of posts is mostly by promotion from the level of Rs. 330-560/- and Rs. 425-700/-. There is also direct recruitment for certain categories of posts like reporter in All India Radio, Scientific Assistant in department of Space and for grade IV of CIS.

8.44. Considering the duties and responsibilities of these posts and the

fact that promotions to these are made from more or less similar levels, we recommend that all categories of posts presently covered by the scales of (a) Rs. 425-800/-; (b) Rs. 425-750/-; (c) Rs. 440-750/-; (d) Rs. 470-750/- and (e) Rs. 440-750/- may be grouped together and given the scale of Rs. 1400-40-1600-50-2300-EB-60-2600/-. In respect of the categories of posts in the scale of Rs. 470-750/- where graduates in science are directly recruited, we recommend that a suitable higher start may be given in the scale of Rs. 1400-40-1600-50-2300-EB-60-2600."

16. Thus, it is clear that after considering various factors to attract persons of required qualifications and calibre and with a view that the salary structure should be coherent and should adequately reflect the substantial differences in the nature and responsibilities of the various posts and to avoid frustration in the employees on comparing his lot with his peers and to minimise the number of pay-scales, the pay-commission made the above recommendations on the basis of duties and responsibilities of various posts. The concept of "Equal pay for equal work" as principle for determining the salary of the Government employees was also taken note of. The 4th P.C. observed in para 7.12 that "in the absence of any distinguishing features, employees of the Central Government in different branches should be paid equally, if their work was adjudged to be of equal value."

17. The learned counsel for the respondents has contested the claim of the applicants on the ground that each department had its own methods of recruitment and same/equal pay-scales cannot be claimed as a matter of right for posts in different departments. The contention of the learned counsel

(28)

is merely on the ground that the applicants did not satisfy the conditions laid down in D.P&T O.M. dated 31.7.90. In other words, his contention is that the nature of work performed by the Assistants/ Stenographers Grade 'C' in the Ministry of the Govt. of India and duties/functions of the Petitioners working in the C.B.I. are quite different and the posts with different qualifications have different methods of recruitment and source of entry and as such there cannot be any parity to justify the grant of the revised higher pay-scales to the petitioners.

18. It has been already discussed above and found established that sofar the work, duties and responsibilities of the applicants as Crime Assistants and P.A.s are concerned, they are equal to that of their counterparts working in the Civil Secretariat in the cadres of CSS and CSSS. It has also been found that even the department of Personnel had found parity between the duties and responsibilities of the applicants working as Crime Assistant with that of Assistants of CSS. The matter was examined by 4th P.C. and 4th P.C. also recommended the same scales to both the categories of employees. It is the subsequent action i.e. issue of O.M. dated 31.7.90, disparity has been created between the employees of CSS and the applicants of this case. Even in O.M. dated 31.7.90, it is mentioned that "the same revised pay-scale will also be applicable to Assistants and Stenographers in other organisation like Ministry of External Affairs which are not participating in the Central Secretariat Services

29
and the Central Secretariat Stenographers Services but where the posts are in comparable grades with same classification and pay-scales and the method of recruitment through Open Competitive Examination is also the same." This part of the O.M. has been examined by the various Benches of the Tribunal.

Assistants & Stenographers Grade 'C' working in the department of Central Administrative Tribunal, Border Security Force, Indo Tibetan Border Police, Central Industrial Security Force and Bureau of Police & Research Development were parity with Assistants of CSS and Steno Gr'C' of OSS, granted/by the Tribunal. It is also worthwhile mentioning that there was no provision for direct recruitment to the post concerned in Border Security Force and to the post of Assistants in Central Administrative Tribunal.

19. Besides the above, this point has been already considered by the apex court in the case of Bhagwan Das Vs. State of Haryana (1987 (2) A.T.J. 479. Therein, the contention on behalf of State was that the respondents were selected by the subordinate service Selection Board after competing with candidates from any part of the country and applicant's that normally the selection at best is limited to the candidates from the cluster of a few villages only. Repelling the arguments of State's Counsel, the apex court has held as below :

"We need not enter into the merits of the respective modes of selection. Assuming that the selection of the petitioners has been limited to the cluster of a few villages whereas Respondents 2 to 6 were selected by another mode wherein they had faced competition from candidates from all over the country. We need not examine the merits of these modes for the very good reason that once the nature and functions and the work are not shown

to be dissimilar the fact that the recruitment was made in one way or the other would hardly be relevant from the point of view of "Equal Pay for equal work" doctrine. It was open to the State to resort to a selection process where the candidates from all over the country might have competed if they so desired. If however they deliberately chose to limit the selection of the candidates from a cluster of a few villages it will not absolve the State from treating such candidates disadvantage of the selectees of in a discriminatory manner to the once they are appointed provided the work done by the candidates so selected is similar in nature."
(Emphasis made)

20. Thus, in view of the above discussions, the applicants are entitled to the scale of Rs. 1640-2900/- at par with the Assistants and Stenographers Grade 'C' working in the CSS and CSSS cadres.

21. O.A. No. 985/93

The applicants, in this case, are Assistants in the office of Director General of Income Tax (INV) North, New Delhi, in the pay-scales of Rs. 1400-2600/-. The office of the Director General of Income Tax is an attached office of the Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, New Delhi. The applicants are holders of Group 'C' Non-Gazetted post. The case of the applicants is that by all 4 previous P.Cs, parity was maintained between the applicants and their counterparts working in the CSS cadres. In para 4.3. of the O.A., the pay-scales of Assistant in the office of Central Board of Direct Taxes and Central Secretariat Services has been given, which is as below :

u

(3) "As revised by Scale of pay of Assistants in the attached office of Central Board of Direct Taxes & Central Secretariat Service

1st Pay commission	Rs. 160-450
2nd Pay Commission	Rs. 210-530
3rd Pay Commission	Rs. 425-800
4th Pay Commission	Rs.1400-2600 "

been

22. The above fact has not/denied by the respondents in their reply. The scale of Assistants working in the Central Secretariat Service were revised by O.M. dated 31.7.90 but w.e.f. 1.1.1980.

Assistants working in the Central Secretariat were given the pay-scale of Rs. 1640-2900/- in place of Rs. 1400-2600/-. The same revision in the scale of pay of the applicants was not made and the representation was rejected by the order dated 4/9.12.92 (Annexure-2). The grounds for rejection ~~maxximum~~ given in Annexure-2, is as below :

"Item Assistants in the Assistants in the Central Secretariat Directorates of the CBDT

1. Classification	Group 'B' (Non-gazetted)	Group 'C'
2. Method of Recruitment	partly by Direct Recruitment through UPSC and partly by no Direct Recruitment from UDCs	100% by promotion from UDCs. There is no Direct Recruitment from UDCs
3. Nature of Duties & Responsibilities	Assistants in the Central Secretariat contribute to the policy making of the Govt. of India	The Directorates of the CBDT not dealing with any policy of the matter. The nature of duties and responsibilities of Assistants is routine and clerical.
4. Promotion to Higher Grade	Assistants in the Central Secretariat are eligible for promotion to the post of S.O. (Rs.2000-3800) (group 'B' Gazetted)	Assistants in the Directorates are eligible for promotion to the post of Sr. TLA/ Technical Research Assistants in the scale of Rs.1640-2900.

(32)

as well, as in the scale of
Rs. 2000-3200 ~~Rs~~ per Recruit-
ment Rules (Group 'C' Non-
gazetted). "

23. As regards the grounds of rejection at Sl. No. ~~xxxxx~~ 2 is concerned, we need not discuss the same in detail, as the same has been already examined and found not tenable in the earlier O.A. No. 144-A/93, in view of apex court decision quoted in para 19 in the case of Bhagwan Das Vs. State of Haryana at Sl. No. 1 As regards classification is concerned, the point was discussed by the ~~Examiner~~ Ernakulam Bench in its judgment dated 26.7.95 in O.A. No. 1322/94 & O.A. No. 276/95 in the case of K.R. Chandrasekharan Kunji Vs. The Secretary, Department of Revenue, Ministry of Finance, Central Secretariat, New Delhi

The Ernakulam Bench has held as below :

"It was argued further that Assistants in the External Affairs Ministry are in Group 'B' while Assistants in the Passport Office are in Group 'C'. This exactly is the grievance of the applicants. According to them two classes who are similar are differently treated by dividing them into Group 'B' and 'C'. Therefore, the argument of respondents would only establish the case of discrimination and not justify it."

24. The third point is that the nature of duties and responsibilities of the Assistants in the Central Secretariat is to contribute to policy making of the Govt. of India and whereas the applicants who hold the posts of Assistants in CBDT do not deal with any policy matter and do only routine and clerical job, ~~are concerned~~. The ~~Examiner~~ Ernakulam Bench in O.A. No. 1322/94 and O.A. No. 276/95 in the case of K.R. Chandrasekharan Kunji Vs. Secretary, Deptt.

of Revenue, Ministry of Finance, Central Secretariat.

(33) New Delhi, decided on 20.7.95, (Supra) ~~which~~ was also considering the case of Assistants in the Enforcement Directorate and Passport Office for the scale of Rs. 1640-2900/- w.e.f. 1.1.1986. A similar ground was taken and Ernakulam Bench observed "we find it difficult to endorse the view that officials at a comparatively lower level like Assistants in the Ministry have anything to do with policy matters in the real sense."

25. We are in full agreement with the views expressed by the Ernakulam Bench, on the point.

26. The fourth ground of rejection is that Assistants in the Central Secretariat are eligible for promotion to the post of Section Officer in the pay-scale of Rs. 2000-3500/- (Grade 'B' Gazetted), on the other hand, the Assistants in the Directorates are eligible for promotion to the post of Senior Technical Assistant/Technical Research Assistant in the scale of Rs. 1640-2900/- as well as in the scale of Rs. 2000-3200/- which is Group 'C' Non-Gazetted post. In other words, the case of the respondents is that scale of Rs. 1640-2900/- is an intermediary scale between the post of Assistants and Technical Research Assistant which is a promotional posts of the applicants who are working in the scale of Rs. 1400-2600/-. The ~~xxxxxx~~ Assistants of the Directorates (in the scale of Rs. 1400-2600/-) are promoted to the post of Senior Technical Assistant (in the scale of Rs. 1640-2900/-) and

✓

3A

thereafter Technical Research Assistant (Scale
Rs. 2000-3200/-).

27. The objection of the respondents that due to intermediary scales, the applicants were not given the scales of Rs. 1640-2900/- is also not sustainable. This point has already been considered, in a similar matter by Hon'ble Supreme Court in the case of Union of India & Others Vs. Debasish Kar & others (1995 SCC (L&S) 1303). The apex court was dealing with the scale given to Draughtsmen Grade II in CPWD and Ordnance Factories. A similar objection, as in the case before us regarding intermediary scale, was taken before the apex court and the same was repelled in the following words :

"Sri N.N. Goswami, learned Senior Counsel appearing in support of the appeals as well as the special leave petitions and the review petition, has urged that the channel of promotion in Ordnance Factories is different from the channel of the promotion in CPWD inasmuch as in CPWD there is no further promotion after a person reaches the scale of Draughtsman Grade I while in Ordnance Factories a draughtsman is entitled to be promoted as Chargeman Grade II and thereafter as Chargeman Grade I and as Foreman and that the post of Chargeman Grade II which is the promotional post for draughtsman was in the pay-scale of Rs. 425-700 would result in placement of Draughtsman in the said pay-scale of Rs. 425-700/- would result in Draughtsman being placed at the same level as the promotional post of Chargeman Grade II and, therefore, the benefit of the revision of pay-scales under Office Memorandum dated 13.3.1984 cannot be extended to the Draughtsman in Ordnance Factories. On behalf of the respondents, it is disputed that there are no promotional chances for Draughtsman Grade I in CPWD. This question was not agitated in any of the matters before the Tribunal and we, are, therefore, unable to entertain this plea urged by Sri Goswami on behalf of the appellants/petitioners.

6

(35)

As regards the post of Chargeman Grade II being a promotional post for Draughtsman in Ordnance Factories and it being in the scale of Rs. 425-700/- cannot be a justification for denying the revision of pay scales to Draughtsmen and their being placed in the scale of Rs. 425-700/- on the basis of the Office Memorandum dated 13.3.1984 if such Draughtsmen are otherwise entitled to such revision in the pay-scale on the basis of the said memorandum. "

28. In the case before us, Assistants in the Directorates attached to CBDT and Assistants in CSS were in the same scale prior to issue of O.M. dated 31.7.90. Thus, for more than 4 decades since establishment of the ~~Directorates~~ Pay-Commissions till the 4th P.C., the parity of the pay-scales between the two were maintained. There is nothing on record to show that after recommendation of the 4th P.C., which was accepted by the Govt., any new developments occurred to create differentiation between the status of the Assistants working in the Directorates attached to CBDT and that of CSS. The O.M. dated 31.7.90 has, thus, created dis-parity between the two and, therefore, the order dated 4/9.12.92 refusing the pay-scale of Rs. 1640-2900/- to the applicants cannot be sustained on the ground of discrimination.

29. In our view, therefore, the present applicants are entitled to the scales of Rs. 1640-2900/- at par with the Assistants in the CSS.

30. D.A. No. 548 of 1994

The applicants, in this case, are

b

26

Stenographers Grade-II and Assistants in the Directorate of Field Publicity, Ministry of Information & Broadcasting. Both the post belong to General Central Service, Non-Gazetted ministerial post and are at present in the scale of Rs. 1400-2600/- . The Directorate of Field Publicity was a participating office in the Central Secretariat Service/Central Secretariat Stenographers Service from its inception. The posts sanctioned for the DFP were included in the authorised permanent strength of the Ministry of Information & Broadcasting and manned by the Personnel of the said Ministry upto 1975. Thereafter, DFP was excluded from the purview of the Central Secretariat Service/Central Secretariat Stenographers Service. At that time, those who had opted for the DFP were retained in the DFP with their original status, pay, scales etc. The O.M. dated 31.7.90 is the cause of grievance to the applicants.

31. The main ground for rejection of the claim of the applicants is (i) that the method of recruitment to these posts in the Directorate is not through open competition; (ii) that the pay-scales for the post of Stenographer Grade-II in the DFP was Rs. 425-700/- which was subsequently revised to Rs. 1400-2300/- on the recommendations of the 4th P.C. and later on it was again revised to Rs. 1400-2600/- w.e.f. 1.1.1986 by the Ministry of Finance, O.M. dated 8.5.90 and (iii) since 5th P.C. has been announced by the Government, the

le

(37)

matter will be taken with them.

32. It is not denied that right from the year 1971, the scales of Stenographers and Assistants in the DFP were comparable to the scale of Stenographers and Assistants in the Central Secretariat. A comparative table showing the equation of posts and pay-scales has been given in para 4.12 of the O.A., and is being reproduced below :

"Year Pay-Scale of Assts & Steno in the Central Sectt. Pay-Scale of Assts & stenos in DFP
Assts. and Stenos in the Central Sectt. & other organi-
sations like ITBP, CISF, Cabinet Sectt. as also in BPR&D AFHQ, IB, CBI, SSB RAW & BSF

1971	210-530	210-530	210-530
------	---------	---------	---------

CONSEQUENT UPON RECOMMENDATIONS OF 3RD PAY COMMISSION

1973	425-800	425-800	425-800
------	---------	---------	---------

CONSEQUENT UPON RECOMMENDATIONS OF 4TH PAY COMMISSION

1986	1400-2600	1400-2600	1400-2600
------	-----------	-----------	-----------

Upon issue of GOI Ministry of Personnel OM No. 2/1/90-CS.IV dated 31.7.90 (Ann.A-1) revising the pay-scales of Stenographers Grade 'C' and Assistants from Rs. 1400-2600/- to Rs. 1640-2900/- to be effective retrospectively from 1.1.1986 in the Central Secretariat Service.

1986	1400-2600	1640-2900	1640-2900
------	-----------	-----------	-----------

33. The applicants till the year 1975, were

(38)

participating in the CSS/CSSS and were discharging their duties of Stenographers Grade II and Assistants in the same manner as those of Stenographers and Assistants in the CSS/CSSS. It has been asserted in para 4.7 of the O.A. that the job contents of the Stenographers Grade II and the Assistants in the DFP was absolutely the same as in the comparable departments. It has been further asserted that status and responsibilities of the applicants in the DFP is in no way inferior than in any of the comparable posts in the CSS. This fact too has not been denied in the reply. Thus, as regards work, duties and responsibilities of the applicants vis-a-vis their counterparts in the CSS/CSSS are concerned, is not in dispute that they are comparable.

34. The point that there is no provision for direct recruitment on the basis of open competition, has already been discussed and found not sustainable, in our discussions in the earlier O.A.s above.

35. The other point is that pay-scale of Stenographers Grade-II of DFP was only Rs. 425-700/- whereas those of CSSS was Rs. 425-800/-. It is not disputed that the scale of Rs. 425-700/- was revised to Rs. 1400-2300/-, but the scale of Stenographers Grade II of DFP was subsequently revised to Rs. 1400-2600/-, by O.M. dated 4.5.90 w.e.f. 1.1.1986. Thus, the benefit of the scale of Rs. 1400-2600/- was made available to Stenographer Grade II of DFP w.e.f. 1.1.1986. The reason for doing so has not been brought on record. Whatever

39

may be reasons, the Government in its own wisdom thought it proper to bring the Stenographers Grade-II of DFP at par with CSSS. However, by the impugned order dated 31.7.90 different scale was given to CSSS and Stenographer Grade-II of some other departments. The ground mentioned in the O.M. dated 31.7.90 for putting CSSS in a higher pay-scale has not been found tenable, in view of various apex court judgments, by the Tribunal in various cases. In the case before us, we are of the view that the case of the applicants who are working as Assistants & Stenographers Grade-II in the DFP cannot be discriminated.

36. The third point that since 5th P.C. has been announced by the Government and the matter will be taken-up with them, the applicants should wait till the recommendations of the 5th P.C., is also not tenable. The applicants are claiming parity w.e.f. 1.1.1986. The Government has, after, putting the applicants at par with CSS/CSSS created a discrimination by issue of O.M. dated 31.7.90 and hence this matter can be well decided by this Tribunal.

37. In our view, therefore, the applicants, in this case, are also entitled to the scale of Rs. 1640-2900/- as their counterparts in the CSS/CSSS.

38. In view of our discussions made above, all the three O.A.s are allowed and the respondent of the respective O.A.s are directed to place the applicants of the respective O.A.s in

(AO)

the scale of Rs. 1640-2900/-, but the payment of arrears would be limited to one year prior to date of filing of the respective O.A.s. However, the fixation of pay will be effective w.e.f. 1.1.1986. If any of the applicant has, in the meanwhile, during the pendency of the case, retired he will be given consequential benefits thereof. The order and directions given in the case shall be complied with by the respondents within a period of two months w.e.f. the date of communication of this order.

39. In the facts and circumstances of the case, there shall be no order as to costs.

Member (J)

GIRISH/-

✓ Acting Chairman

True Copy
Attested
Attest
e.v/cy
Central Court Officer
Principal Bench, Faridkot House
Courtroom, Maru Nagar, Delhi-110001
18/1/86