

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A. No. 1528/89

New Delhi: September 8th, 1995.

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

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

1. Shri S.C.Mittal,
23/2, Punjabi Bagh Extension,
New Delhi.
2. Shri T.R.Nehra,
Flat No.3, Type-IV,
Palika Vihar,
Willingdon Crescent,
New Delhi-110011.
3. Shri S.L.Mukhi,
J-7/14A, Rajouri Garden,
Extension,
New Delhi -27
4. Shri V.K.Khanna,
270-B, Pocket-2,
Mayur Vihar, Phase I,
Delhi.....Applicants.

By Advocate Shri S.C.Gupta with Shri L.R.Goel.

Versus

1. Union of India,
through the Secretary,
Ministry of Home Affairs,
North Block,
Central Secretariat,
New Delhi.
2. The Director,
Central Bureau of Investigation,
Block No.3, Kendriya Karyalaya,
Parisar,
New Delhi.
3. The Director,
Central Forensic Science Laboratory,
Block No.4, Kendriya Karyalaya
Parisar,
Lodhi Road,
New Delhi.

..... Respondents.

By Advocate Shri M.M.Sudan.

JUDGMENT

By Hon'ble Mr. S.R.Adige, Member (A).

In this O.A. filed on 7.8.89, Shri S.C. Mittal and others, all Senior Scientific Officers Grade-I (Documents), (SSO-I (Documents)), Central Forensic Scientific Laboratory, CBI, GOI New Delhi

seek a direction to treat the posts of SSO Gr.I CFSI at par with that of the Govt. Examiner of Questioned Documents (GEQD) and grant them the equivalent pay scales of Rs.3700-5000, instead of the impugned pay scales of Rs.3000-4500 w.e.f. the date the scale of Rs.3700-5000 was given to the GEQDs, together with arrears of pay, interest and other attached or consequential benefits.

2. The applicants' case is that three of them were promoted as SSO Gr.I (Documents) in 1985 and one of them in 1988 in the CFSI. These promotions were made after selection through UPSC as per recruitment rules. They state that prior to 14.10.82 (Annexure-B) these posts were called Assistant Director (Documents), and were one amongst several posts of Asstt. Directors such as Asstt. Director (Chemistry); Asstt. Director (Biology) etc. and even after redesignation continue to perform duties in the same discipline of Documents. They state that the posts of A.D. (Documents) have always been treated as equivalent to the posts of GEQD under the Bureau of Police Research & Training and this was clarified in Respondents' Circular dated 27.12.69 itself (Annexure-D), and it is only for administrative purposes that the work of examination of documents has been divided by the Home Ministry between GEQDs and A.D. (Documents), as would be apparent from Home Ministry's circular dated 17.6.76 (Annexure-E). Similarly the officers holding the posts of ADs (Documents) continued to hold their lien as GEQD (Memo dated 15.12.71) (Annexure-G) and were

subsequently appointed substantively as such vide Notification dated 1.9.73 (Annexure -F). It is further stated that the duties performed by the SSO Gr.I (Documents) are identical with that of GEOs vide Circular dated 5.7.77 (Annexure-H) and prior to the 4th Pay Commission's recommendations their pay scale was the same as that of the GEOs namely Rs.1100-1600. If anything the posts of SSO Gr.I (Documents) in CFSL were treated as superior to the GEOs vide Circular dated 5.7.77 (Annexure-H) and in certain cases the GEOs have themselves said that certain documents may be sent for examination to SSOs of CFSL, rather than to themselves as the former are equipped with special instruments (Copy of letter dated 17.9.84 at Annexure -K). They *in consequence to the 4th Pay Commission Recommendation* state that inspite all these facts, they were given only the general replacement scale, common to 9 pay scales lying between Rs.1100-1500 and Rs.1200-1800 i.e. Rs.3000-4500, whereas the GEOs who were also in the pay scale of Rs.1100-1600/- prior to the 4th Pay Commission's recommendations, were granted the pay scale of Rs.3700-5000, despite the 4th Pay Commission own recommendations in paragraph 10.341 of their report that pay scales of posts in CBI are comparable with pay structure of Central Police Organisation under the Home Ministry, and hence the CPO pay scales should be made applicable to the CBI. They state that they had filed representations addressed to the respondents, against the discriminatory, arbitrary and illegal action, but receiving no satisfactory reply, they have been compelled to file this O.A.

3. The respondents have contested the O.A. They aver that based upon the 4th Pay Commission Recommendations, the pay scale of Rs.3000-4500 was assigned to the post of SSOs Gr-I by Finance Ministry's (Dept. of Expenditure) Notification dated 13.3.89, and the Finance Ministry have not been impleaded in this proceeding. They state further that it is not possible to compare the duties of the officials belonging to a cadre in CSFL with the duties of officials in another cadre in another Organisation. Furthermore it is stated that in the documents division of CSFL, there are posts of SSO Gr.II, SSO Gr.I and Principal Scientific Officer and even on promotion from SSO Gr.II to SSO Gr.I and to PSO, the incumbents continue to perform the same duties. This is because under the Flexible Complementing Scheme introduced since 1978, promotions are made after a fixed period for meritorious services without waiting for vacancies in the next grade to arise. It is also averred that unlike SSO Gr.I in Documents Division of CSFL, the GEQDs also perform the duties of Head of Office, besides performing functions as Scientist/ Expert. The SSOs Gr.I are not required to perform any admin. duties and administrative matters are dealt with only at the level of PSOs whose pay scale is Rs.3500-5000 and a comparison, if any can only be drawn between PSOs and GEQDs. It is stated that the Circular dated 27.12.69 relied upon by the applicants pertains to a period when there was no Flexible Complementing Scheme and is no longer relevant. It is further averred that

according to FR's an officer continues to hold a lien on a post unless he acquires a lien on another post, and this by itself cannot be taken to imply that the post of A.D. is equivalent to that of GEQD particularly after introduction of the F.C. Scheme. Further more, it is stated that the recruitment rules of 13.8.76 have subsequently been superseded by notification dated 31.7.82, according to which there is a common cadre for all SSOs belonging to different disciplines and as such it is now even more difficult to equate posts in various divisions in CFSL with GEQDs. It is admitted that prior to 4th Pay Commissions recommendations, the pay scale of SSO Gr.I was equal to that of GEQD's, but the GEQDs were assigned a higher pay scale pursuant to the recommendations contained in paras 10.276 and 10.277 of the 4th Pay Commission Report which made a specific recommendation of Rs.3500-5000 for GEQDs unlike the SSO Gr.I who were assigned only the normal replacement pay scale of Rs.3000-4500. It is also pointed out that the feeder grade of GEQD is Dy. GEQD which is in the pay scale of Rs.3000-4500 and feeder grade of Dy. GEQD is Asstt. GEQD which is in the scale of Rs.2200-4000. In CFSL the feeder grade of SSO Grade I is SSO Gr.II which is in the pay scale of Rs. 2200-4000 and if at all any equation can be drawn, SSO Gr.I can be equated with Dy. GEQD and not with GEQD.

4. In their rejoinder, the applicants have broadly reiterated the contents of their O.A. regarding the PCS they state that there is no fixed period for

promotion and after implementation of the scheme in July, 1982 (and not in 1978) the first interview took for merit promotion took place only in 1985 and the next in 1987 and thereafter there was no interview till the O.A. was filed, and these posts are actually filled on the principle of seniority within the particular division.¹ Further more, it is contended that the 4th Pay Commission's recommendations does not recommend a higher pay scale to GEDs by virtue of any administrative duties they perform, and in fact does not refer to any administrative duties performed by them at all, and as regards the PSOs it is contended that they perform administrative duties alone, and not Scientific/Expert duties at all.² It is also denied that there is a common cadre of SSOs belonging to different disciplines and it is asserted that SSOs Gr.I are eligible to be absorbed against permanent posts of SSOs Gr.I in their respective divisions alone. It is claimed that posts of SSO Gr.I of other divisions like Physics, Chemistry, Biology, Photography, Serology, Fingerprints, Ballistics, Lie-Detections etc. are not equivalent to GEDs and only SSO Gr.I (Documents) are equivalent to GEDs.³

5. This O.A. came up for hearing before a Division Bench of the Tribunal on 26.5.94. The Tribunal by its order of the said date, noted the representations made by the applicants claiming parity in pay scales with GEDs and observed

" The authorities appear to have been impressed by the case put forward by the petitioners which is the reason why a recommendation was made by Shri Satish Sahney , Joint Director (AE), CBI that there is an anomaly and the petitioners' case deserves to be favourably considered by the Anomaly Committee."
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As respondents' counsel was not able to state that action had been taken by the respondents to pursue the recommendations made by the Joint Director (AE) CBI, the Tribunal observed further;

" Thus, we are left with the state of affairs that a strong recommendation made by the Joint Director (AE), CBI supporting the case of the petitioners remains without being examined at the proper level and being dealt with. Prima facie, we are inclined to think that much can be said in favour of the petitioners that they are entitled to pay scales which have been granted to the Govt. Examiner of Questioned Documents. But as the administration has not applied its mind to this aspect of the matter, we consider it just and proper to accord to them an opportunity of doing so within the time frame to be fixed by us The decision in this behalf shall be taken on or before 25.8.94. The respondents shall take a decision without fail by that time. If the decision is not taken by that time, the Court after hearing the parties on merits, may pass appropriate orders. If an adverse decision is taken, we make it clear that the correctness shall also be examined in this case."

6. Thereafter the respondents sought time to implement the above directions of the Tribunal, and subsequently one side or the other sought further adjournments. The matter was finally heard on 19.7.95. The applicants were represented by Shri S.C.Gupta along with Shri L.R.Goel while Shri M.M.Sudan represented the respondents. Before final hearing Shri Sudan was also called upon to furnish a Chart showing the educational qualifications (both necessary and desirable); the feeder grades; duties and responsibilities (both administrative & Technical) for SSO Gr.I and GEDs. The same was furnished and is taken

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on record.

7. At the time of hearing our attention was invited to respondents' Memo dated 30.12.94 which is on record containing their decision on the applicants' representation in compliance of the Tribunal's order dated 26.5.94. In that decision, it was reiterated that while SSOs Gr.I (Documents) in CFSI were required to perform only technical duties, the GEDs performed administrative duties also as they were Heads in different offices. The duties of the two cadres in the two different Organisations could not be treated as the same. Furthermore the SSO Grade I (Documents) were covered under the FCS which provided for insitu promotion upto the level of PSO (Rs.3700-5000) without linkage to vacancies, on completion of five years' regular service, subject to other conditions laid down in the recruitment rules while facility was not available to GEDs. Accordingly after consultation with the Finance Ministry the applicants' representation was rejected.

8. Drawing attention to the comparative chart prepared by the respondents in response to our direction, Shri S.C.Gupta has emphasised that with respect to Educational Qualifications, the GEDs require only a Master's Degree in Chemistry or Physics with three years practical experience of photography including some experience of documents, while SSOs Gr.I require atleast a 2nd Class Master's degree in the required discipline (Chemistry or Physics) with 5 years' experience in the relevant field, and as a desirable qualification, a doctorate degree in the discipline concerned. Furthermore, he has

pointed out that in the DPC for promotions, two experts are required to be associated in the case of GEQDs. Shri Gupta asserted that apart from all the other grounds asserted in the O.A. the educational and experience qualification and the level of experts in the DPC was itself sufficient to establish that the applicants were entitled to a pay scale atleast equal to, if not higher than the GEQDs. As regards those columns in the comparative statement emphasised by Shri Sudan containing the remarks of the Director, CESL himself (who is the Head of the Institution where the applicants are employed) that the GEQD is a Head of an independent Office, while the applicants do not even head a small division and merely report to a head of division who in turn reports to a Head of Office (PSO(A)), Shri Gupta has drawn attention to another statement (unsigned) containing duties and responsibilities of the GEQD, which he states contains no mention of any admin. duties performed by the GEQDs. Hence he asserts that the respondents claim that the GEQDs discharging adm n. duties in addition to his technical duties is not borne out by facts.

9. During the course of hearing, we put it to Shri Gupta that as the 5th Pay Commission had been constituted in May, 1994 and was now well into its deliberations, whether it would not be appropriate for this matter to be left to the 5th Pay Commission, more particularly in view of the fact that if we arrived at a finding adverse to the applicants, it might prejudice their case before the 5th Pay Commission. Shri Gupta, after consulting his clients stated that

their claim for equivalence in pay scales was from 1.1.86 i.e. the date from which the 4th Pay Commission's recommendations became effective, and as the 5th Pay Commission would not give any recommendations with retrospective effect, they sought a verdict from the Tribunal.

10. We have given this matter our very careful consideration. There is no doubt that equal pay for equal work is a concomitant which flows from Article 14 of the Constitution but, as has been held by the Hon'ble Supreme Court in Federation of AIC & CE Stenographers vs. UOI-AIR 1988 SC 1291

"Equal pay must depend upon the nature of the work done, it cannot be judged by the mere volume of work, there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who have been charged with administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bonafide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination."

Again in State of Madhya Pradesh & another vs. Premod Kumar Bhartiya & others- JT 1992(5)SC 683, the Hon'ble Supreme Court has observed that

"Whether two sets of lecturers in Madhya Pradesh, one in the Higher Secondary School and the other in the Technical School having similarity in the qualification, service conditions and status of the school be paid equal pay would significantly depend upon

whether they are discharging similar duties, functions and responsibilities It is not enough to say that the qualifications are same nor is it enough to say that the schools are of the same status. What is more important and crucial is whether they discharge similar duties, functions and responsibilities."

11. Thus, in the present case, what is crucial for determination is whether the applicants are discharging similar duties, functions and responsibilities as the GEQDs. In this connection, the Hon'ble Supreme Court in State of U.P. Vs. J.P. Chaurasia- AIR 1989 SC 19 has observed that

"It is for the administration to decide the question whether two posts which very often may appear to be the same or similar should carry equal pay, the answer to which depends upon several factors, namely, evaluation of duties and responsibilities of the respective posts and its determination should be left to expert bodies like the Pay Commission. The Court should normally accept the recommendations of Pay Commission."

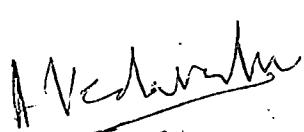
12. Now that the 5th Pay Commission has been constituted vide Notification dated 9.4.94 to make recommendations regarding the revision in the pay structure of all Central Govt. Employees, including the applicants, we are of the considered view that the Commissions' recommendations should be awaited because they are an expert body, specially set up for this purpose, with the necessary personnel, experties and resources to go into the claims of the applicants in detail and make a comprehensive analysis of their duties and responsibilities vis-a-vis that of the GEQDs. It is no doubt true that the Tribunal in its order dated 26.5.94 had stated that if the respondents

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took a decision adverse to the interests of the applicants, its correctness would also be examined in this case, but that order had not noticed the Notification dated 9.4.94 setting up the 5th Pay Commission. If after the setting up of the 5th Pay Commission, we, on the basis of the available and necessarily limited materials arrive at a finding in this case which is adverse to the applicants, we apprehend it might not be quite fair ^{to them} and also ~~prejudiced~~ their case before the 5th Pay Commission. On the other hand, if we hold in favour of the applicants, it would disturb the relativities viz-a-viz their pay scales and that of SSOs Gr. II, as well as their pay scales viz-a-viz SSOs Gr. I in other disciplines in the CFSL. More importantly, it would make the pay scales of SSOs Gr. I (documents) equal to that of PSs which would be treating unequals equally which itself would amount to discrimination and thus violates the Constitution. For these reasons, we hold that the claims of the applicants for equality of pay scales with that of the GEDs can best be considered within the frame work of a comprehensive, integrated and holistic review of pay scales of SSOs Gr. II; SSOs Gr. I and PSOs in the CFSL viz-a-viz their counterparts in the BPRD and such an ~~expertise~~ can be conducted most appropriately by an expert body such as 5th Pay Commission, which is already seized of the issue regarding the revision of pay scales of all the Govt. employees including the applicants. In so far as the applicants' claim that they are seeking parity with GEDs with retrospective effect,

the 5th Pay Commission is not precluded from making recommendations from a retrospective date and the Govt. accepting those recommendations, on and hence/that ground alone, it would not be sufficient to warrant our ^{in giving a} verdict on the merits of the applicants' claim at this stage, when the 5th Pay Commission is already well into its deliberations.

13. In the result, this O.A is disposed of with the observations that in the event the applicants have not preferred any representation regarding their claims before the 5th Pay Commission till date, they may do so even now, if so advised, with a copy to the respondents, ^{in name} who may forward ^{in name} with their own comments to the 5th Pay Commission for consideration, subject to the Commission accepting recommendations even at this stage. No costs.


(DR. A. VEDAVALLI)
MEMBER (J)


(S.R. ADIGE)
MEMBER (A)

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