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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH: NEW DELHI

O.A. NO. 423/88

New Delhi this the 15th day of November, 1993.

Shri Justice V.S. Malimath, Chairman.

Shri S.R. Aidge, Member(A).

1. C. Sahay
S/o Late Shri Chaturbhuj Sahay,
R/o III/II-B, Mayur Vihar,
Delhi-91.
2. K. Shouriah,
S/o Late Shri K. Innayya,
R/o A-1-A-116-A, Janakpuri,
New Delhi-58.
3. Jawaharlal,
S/o Late Shri Darbari Prasad,
R/o D-208, Curzon Road,
New Delhi.
4. K.N. Sharma,
S/o Shri Parmanand Sharma,
R/o B-17, Shakti Nagar Extn.,
Delhi.
5. S.N. Tiwari,
S/o Late Shri G.P. Tiwari,
R/o 4/25, East Punjabi Bagh,
New Delhi-26.
6. K.K. Chaturvedi,
S/o Late Shri Sohan Lal Chaturvedi,
R/o C-67, South Moti Bagh,
New Delhi.
7. J.P. Sharma
S/o Late Shri Joti Prasad Sharma,
R/o H.No. 827/16, Faridebad (Haryana). ... Petitioners.

By Advocate Shri K.P. Dohare (for petitioner No.2).

Shri C. Sahay, petitioner No. 1 present in person.

Vs.

1. Director,
Central Bureau of Investigation,
Block No.3, CGO Complex, Lodhi Road,
New Delhi-3.
2. The Secretary,
Ministry of Personnel, Public
Grievances and Pension, North Block,
New Delhi.

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3. The Secretary,
Ministry of Finance,
(Department of Expenditure)
North Block,
New Delhi.

... Respondents.

By Advocate Shri P.P. Khurana.

ORDER

Shri Justice V.S. Malimath.

The petitioners, Shri C. Sahay and six others have filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for quashing of the impugned order dated 17.3.1987 rejecting their representations and for a direction in the nature of mandamus to the respondents to fix the scale of pay of Deputy Legal Advisers - at Rs.4100-5300 w.e.f. 1.1.1986 and for consequential benefits. We shall briefly advert to the relevant facts as are necessary to comprehend the questions raised before us.

2. All the petitioners are in the service of Central Bureau of Investigation (hereinafter referred to as 'the C.B.I.'). They are holding the post of Deputy Legal Advisers in the C.B.I. They were in the scale of pay of Rs.1300-1700 before the IVth Pay Commissioner's recommendations became effective from 1.1.1986. With effect from 1.1.1986 their scale of pay has been revised to Rs.3000-5000. According to them, the proper scale that should have been accorded to them in fairness was the scale of Rs.4100-5300 which has been accorded to the Superintendent of Police and equivalent cadres in the other Central Police organisations, such as Border Security Force, Indo-Tibetan Border Police, Central Reserve Police Force and Central Industrial Security Force etc. Their principal case is that all along the Deputy Legal Advisers have enjoyed the scales of pay higher than the Superintendent

of Police which relativity now stands disturbed by Superintendent of Police and those holding equivalent posts in the Central Police organisations being granted higher scale of pay of Rs.4100-5300 and the petitioners, the Deputy Legal Advisers, the lower scale of pay of Rs.3000-5000. It was also brought to our notice that the immediate superiors of the Deputy Legal Advisers are the Additional Legal Advisers who enjoyed the pre-revised scale of pay of Rs.1500-2000 and which came to be revised w.e.f. 1.1.1986 to Rs.3700-5000. The petitioners rely upon the recommendations of the IVth Pay Commission in paragraph 10.341 of the IVth Pay Commission's report where-in it is stated:

"We have separately considered the pay structure of Central Police organisations under Ministry of Home Affairs. Pay scales of posts in the Central Bureau of Investigation (CBI) are comparable with them. Our recommendations regarding pay scales of Central Police Organisations will apply to CBI".

They also rely upon a decision of this Tribunal rendered in O.A. 1365/87 on 14.9.1993 between A.W. Degwekar & Ors. Vs. Union of India & Ors wherein a direction has been issued to the respondents to set up a Committee of Senior Officers to go into the entire question afresh regarding grant of pay-scale of Rs.4100-5300 to the Superintendents of Police of the CBI who were in the scale of Rs.1200-1700 plus special pay of Rs.100/- in the light of the observations in the said judgement. The petitioners also maintained that those holding corresponding positions in other organisations have been given higher scales of pay denying the petitioners just and equal treatment. The respondents on the other hand maintained that in absence of specific recommendations of the Pay Commission in respect of the Deputy Legal Advisers, the Government has rightly accorded

to them the corresponding replacement scale of Rs.3000-5000 as recommended by the 4th Pay Commission.

3. What has been invoked by the petitioners is the well known principle of equal pay for equal work. The burden in a case like this is undoubtedly on the petitioners, of proving that they have been discriminated against in the matter of according of proper scales of pay. As the law is well settled, it is enough if we advert to the recent judgement of the Supreme Court reported in the Judgement Today 1992 (5) SC 683 between State of Madhya Pradesh & Anr. Vs. Pramod Kumar Bhartiya & Ors. The Supreme Court has held that the claim for equal pay for equal work depends upon whether they are discharging similar duties, functions and responsibilities. It is also well settled that proper adjudication in regard to similar duties, functions and responsibilities can satisfactorily be made by expert bodies like the Pay Commission. It is bearing in mind these well recognised principles, we shall now proceed to evaluate the case of the petitioners.

4. At the outset we would like to advert to the decision of the Principal Bench of the Tribunal in DA.451/88 decided on the 6th of August, 1993 between Sone Lal & Ors. Vs. Union of India & Ors. That was a case in which the petitioners were holding positions higher than the petitioners in the CBI as Additional Legal Advisers. They were in the pre-revised scale of pay of Rs.1500-2000 and were accorded the revised scale of Rs.3700-5000 w.e.f. 1.1.1986. Their claim in the said case was for according of the scale of pay of Rs.4500-5700. The Tribunal dismissed the said application holding that no case has been made out by the petitioners for interference. The Tribunal held that an expert body like the Pay Commission having

made the recommendations and the Government having fixed the scale of pay as aforesaid, this was not a case for interference by the Tribunal. Thus, it is clear that the Additional Legal Advisers who hold admittedly higher positions than the Deputy Legal Advisers have failed to secure relief at the hands of the Tribunal in getting the scale of pay higher than Rs.3700-5000 which has been accorded to them w.e.f. 1.1.1986. If the petitioners in that case who were in the higher scale of pay of Rs.1500-2000 having been given only scale of Rs.3700-5000 w.e.f. 1.1.1986 and the Tribunal having affirmed the same in the aforesaid judgement, we fail to see how the petitioners who hold positions lower than the Additional Legal Advisers can seek a direction at the hands of the Tribunal for being placed in the scale of Rs.4100-5300, a scale higher than that accorded to their own superiors, a cadre the petitioners yet to get by promotion. Therefore, granting of pay scale to the petitioners of Rs.4100-5300 would be discriminatory and violative of Articles 14 and 16 of the Constitution. This would be sufficient for us to decline jurisdiction. But it was maintained by the learned counsel for the petitioners that though the petitioners were duly represented by an Advocate in O.A. 451/88, none was present when the case was heard and the said case was disposed of on consideration of the pleadings and hearing the counsel for the respondents. As the Tribunal has jurisdiction to dispose of the case on merits if the petitioners or their counsel are not present at the time of hearing, the judgement of the Tribunal does not cease to have efficacy merely because the judgement was rendered in these circumstances. We are also informed that an application for setting aside the judgement of the Tribunal and an application for seeking the review

of the judgement were rejected by the Tribunal. As the Tribunal by the judgement in O.A.451/88 has affirmed the decision of the Government in according scale of pay of Rs.3700-5000 to the Additional Legal Advisers of the C.B.I., we fail to see how we can exercise jurisdiction to grant much higher scale of Rs.4100-5300 to the petitioners.

5. But as the matter was debated at great length on the merits of the case, we consider it appropriate to record our findings on the merits also.

6. As already stated, the principal contention of the petitioners is that they should be treated on par with the Superintendents of Police and those holding equivalent positions in the Central Police Organisations in regard to according of the pay scale. In view of the law laid down by the Supreme Court to which we have adverted to earlier, what is of essence of the matter for invoking the principle of equal pay for equal work is the evaluation of the duties, functions and responsibilities. We fail to see how the Deputy Legal Adviser whose main functions are in the realm of law can be compared with the Superintendent of Police, who holds post of an executive nature. There is also no elucidation by the petitioners of the duties, functions and responsibilities of the Superintendent of Police. It is no doubt true that there is bound to be some interaction between the Deputy Legal Adviser on the one hand and the Superintendent of Police on the other hand for the reason that the Deputy Legal Adviser has to scrutinise the allegations, charge-sheet and the charges that are proposed to be levelled against the accused to ensure that the action of the administration conforms to law. The Superintendent of Police is responsible for maintenance of Law and order, to apprehend the criminals, investigate the cases and to prosecute them. It does not need an argument, to convince

that the basic duties of the Deputy Legal Advisers and those of Superintendent of Police are quite different. It is, therefore, not possible for us to accept the contention that because the Superintendents of Police have been given a particular scale of pay, the petitioners should be accorded the same scale of pay.

The mere fact that the Superintendent of Police enjoyed higher scale of pay than the petitioners earlier is not much of consequence when the claim is based on the principle of equal pay for equal work. Having regard to the nature of the duties, functions and responsibilities, the Deputy Legal Advisers cannot be compared with the Superintendent of Police in any manner.

7. The next contention of the petitioners is that the Pay Commission having made a particular recommendation in paragraph 10.341, the Government could not have deviated from that recommendation, unless it applied its mind to those recommendations and if it chose to deviate from the same, to do so for cogent and good reasons. What is stated therein is that the Pay Commission has separately considered the pay structure of Central Police Organisations under Ministry of Home Affairs and as the pay scales of posts in the C.B.I. are comparable with them, the same may be extended to them. The clear effect of the recommendations is that if a particular scale of pay has been accorded in respect of a particular post in the Central Police Organisations, the same scale of pay should be regarded as having been recommended for the corresponding post in the C.B.I. It is for the petitioners to establish the existence of corresponding posts. What has to be taken into account is not merely the scales of pay. It is in

this background that we shall examine the specific case put forward by the petitioners.

8. We have pointed out that there are five Central Police organisations. It is not pleaded by the petitioners that there is any post corresponding to the Deputy Legal Adviser in any of the Central Police Organisations other than the Central Industrial Security Force. Hence, we have to examine the case of the petitioners in regard to the corresponding post in the C.I.S.F. The averment made in this behalf for the sake of convenience be extracted as follows:

"The post of Assistant Inspector General(Law) in the Central Industrial Security Force now carries a scale of pay of Rs.4100-5300. The post is manned by an Assistant Legal Adviser, Ministry of Law, whose pay scale is Rs.3000-4500, who is on deputation. The qualifications and experience required for the post of Assistant Legal Adviser in the Ministry of Law are far less than those prescribed for a Deputy Legal Adviser in the CBI(Annexure-4), which carries the scale of pay of Rs.3000-4500 which, in turn, is lower than the post of Deputy Legal Adviser in the Ministry of Law, which now carries a scale of pay of Rs.3700-5000. Thus, while the Assistant Legal Adviser who in the Ministry of Law has the scale of pay of Rs.3000-4500; when posted in the Central Industrial Security Force gets a starting pay of Rs.4100-5300 on deputation while the Deputy Legal Advisers who perform more onerous duties than even the Deputy Legal Advisers in the Ministry of Law has been fixed in the scale of pay of Rs.3000-5000".

In the rules framed under the proviso to Article 309 of the Constitution regarding revision of pay-scale w.e.f.

1.1.1986, we do not find express mention of the post of Assistant Inspector General (Law) though there is mention

of the post of Assistant Inspector General. If there was

✓ a post in the C.I.S.F. by the designation Assistant Inspector

General (Law) one would have expected specific reference in the rules promulgated by the Government to it. What the petitioners have themselves stated is that the Assistant Legal Adviser in the Ministry of Law in the scale of Rs. 3000-4500 is brought on deputation as Assistant Inspector General (Law) in the C.I.S.F. and given the scale of Rs. 4100-5300. This material is not adequate to establish that there is a post of Assistant Inspector General (Law) in the C.I.S.F. In the reply filed by the respondents, there is no specific controversion of the averment of the petitioners in paragraph 7 of the application. The petitioners would, therefore, assert that there is an admission by non-traverse justifying the inference that there is a post of Assistant Inspector General (Law) in the C.I.S.F. Assuming that the petitioners are right in saying that there is a post of Assistant Inspector General (Law) in the C.I.S.F., we have to examine the question as to whether the post of Deputy Legal Adviser can be regarded as a corresponding equivalent post to Assistant Inspector General (Law) in the C.I.S.F. There is gross inadequacy of the pleadings so far as this aspect of the matter is concerned. Apart from saying that the qualifications and experience required for the post of Assistant Legal Adviser in the Ministry of Law are far less than those prescribed for a Deputy Legal Adviser in the C.B.I., no other specific averment has been made comparing the duties, functions and responsibilities of the Deputy Legal Advisers in the CBI with those of Assistant Inspector General (Law) in the CISF. The mode of filling up of the post in the CISF, according to the petitioners is by bringing a person from the Ministry of Law on deputation basis. The petitioners have not asserted that the duties, functions and responsibilities of the post of Deputy Legal Advisers are

comparable with the Assistant Inspector General (Law) in the CISF. The scale of pay of Assistant Inspector General (Law) in the CISF before 1.1.1986 was Rs.1100-1600 plus special pay of Rs.200. The holder of this pay scale has been given the revised scale of Rs.4100-5300. It is not possible to say that the pay-scale of Deputy Legal Adviser corresponds to the scale of Assistant Inspector General (Law). The petitioners were in the pre-revised pay scale of Rs.1300-1700. We find from the scheme of the rules that those who were in the pre-revised scale of Rs.1300-1700 have been given the revised scale of pay of Rs.3000-5000 whereas those in the same scale of pay of Rs.1300-1700 with a special pay of Rs.100/- have been given the revised pay scale of Rs.4100-5300. This clearly indicates that the special pay granted has weighed with the Pay Commission in granting the higher scales of pay. It is obvious that the Assistant Inspector General of Police enjoyed higher emoluments taking into consideration the special pay, as they would be getting Rs.1100+200 Spl pay=Rs.1300/- to Rs.1600+200 Spl pay=Rs.1800, than what the petitioners were getting Rs.1300-1700. It is in this background that the respondents have taken the stand that the general recommendations in Chapter 8 of the Pay Commission which recommends the general replacement scale has been identified and accorded to the Deputy Legal Advisers. We find that several scales of pay such as of Rs.1100-1800 and Rs.1300-1700 have been clubbed together and a replacement scale of Rs.3000-5000 has been recommended. As there was no post carrying corresponding scale of pay in the CISF, the respondents, in our opinion, have rightly accorded the replacement scale as recommended in Chapter B of the IVth Pay Commissioner's report.

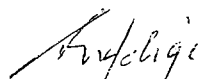
9. It was next submitted that the Deputy Legal Adviser

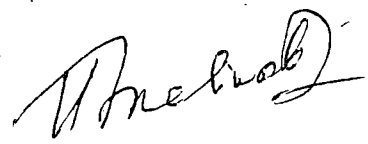
in the Directorate of Enforcement who was in pre-revised scale of Rs.1300-1800, the revised scale of Rs.^{Am}3700-5000 has been accorded. The answer to this part of the case of the petitioners by the respondents is that there is a specific recommendation in regard to this particular post, which has been accepted. The petitioners cannot, therefore, derive much assistance from the according of the higher scale of pay to the Deputy Legal Advisers in the Directorate of Enforcement.

10. Another contention of the petitioners is in relation to the scale of pay accorded to the Deputy Legal Advisers in the Ministry of Law. It is necessary to point out in this behalf that the Deputy Legal Advisers have been given only the scale of pay of Rs.3700-5000 and not the higher scale of pay claimed in this case of Rs.4100-5300. Be that as it may, the petitioners may argue that they should be accorded at least this scale. The same scale has been granted to the Additional Legal Adviser which is superior to the posts held by the petitioners. The petitioners would not, therefore, be entitled to claim a parity of pay scale with that of the Additional Legal Advisers. What is also important to notice is that the Deputy Legal Advisers in the Ministry of Law were in a higher scale of pay than the petitioners before 1.1.1986. Whereas the petitioners were in the scale of Rs.1300-1700, the Deputy Legal Advisers in the Ministry of Law were in the higher scale of pay of Rs.1300-1800. What has been accorded to them is only a general replacement scale for the holders of post in the scale of Rs.1300-1800. As the petitioners were in a lower scale, they cannot complain about a higher replacement scale given to the Deputy Legal Advisers. Besides the petitioners have not placed any materials to

show that the duties, functions and responsibilities exercised by them are comparable to the duties, functions and responsibilities exercised by the Deputy Legal Advisers in the Ministry of Law. It is, therefore, not possible to accept to this contention either.

11. For the reasons stated above, this petitioner fails and is dismissed. No costs.


(S.R. ADIGE)
MEMBER (A)


(V.S. MALIMATH)
CHAIRMAN

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