

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.1365 of 1987

DATE OF DECISION: 14.9.93

A.W.Degwekar & 10Applicants.

Versus

Union of India & othersRespondents.

CORAM:

Hon'ble Mr.Justice V.S.Malimath, Chairman.

H on'ble Mr.S.R.Adige, Member(A)

For the applicants:

Mrs.Shyamla Pappu, Senior
Counsel.

For the respondents:

Shri P.P.Khurana, Counsel.

JUDGMENT

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

In this application, Shri A.W.Degwekar and ten others, all Superintendents of Police in the Central Bureau of Investigation(CBI) have prayed for

- a) quashing of the order dated 30.3.87, issued by the Director, Central Bureau of Investigation(Annexure-A1), placing the pay of non-IPS Superintendents of Police in the scale of Rs3000-4500/-, with double amount of special pay in respect of those posts of SP with which the special pay is attached at present.
- b) placement in the pay scale of Rs. 4100-5300/-
- c) introduction of a selection grade in the pay scale of Rs.4500-5700/- as has been done for the ranks equivalent to that of Superintendents of Police in the Central Bureau of Investigation(CBI) in other Central Police Organizations.

2. It must be stated, however that during hearing, it is only the reliefs (a) and (b) which were pressed.

3. The applicants' case is that they are non-deputanists, non-IPS Officers who are working as Superintendents of Police in the CBI and prior to recommendations of Fourth Pay Commission, they were drawing pay in the old pay scale of Rs.1200-1700/- with a special pay of Rs.100/- per month. It is their case that after carefully considering the nature of job, duties, responsibilities and pay structure of Central Police Organisations (CRPF, BSF, ITBP, CISF & Assam Rifles), the Commission made recommendations with respect to the same in Chapter 10 in paragraph 10.255 of their report.

After comparing the nature of job, duties responsibilities and pay structure of these CPOs with that of CBI, and after finding them comparable, made the following recommendations in paragraph 10.341 (Chapter 10) of their report:-

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

4. The applicants' case is that the posts of the Superintendents of Police in CBI are equivalent/comparable with that of Commandants in the CPOs as regards nature of job, the Officer to whom they report, the next promotional post, interchangeability, power to appoint employees etc. Prior to the Fourth Pay Commission's recommendations, the Superintendents of Police in the CBI were in the old pay scale of Rs.1200-1700/- with a special pay of Rs.100/- p.m.

and the Commandants in the CPOs were also in the pay scale of Rs.1200-1700/- with a special pay of those in the Rs.100/- p.m. However, CISF were in the pay scale of Rs.1100-1600/- with a special pay.

5. The applicants contend that the Fourth Pay Commission recommended a uniform pay scale of Rs.4100-5300/- without special pay, for the post of Commandants in the CPOs (and even made applicable to the AIGs in the CISF), and also recommended that these pay scales be made applicable to the CBI S.Ps. The Government of India in its resolution dated 13.3.87 had broadly accepted the Commission's recommendations subject to modifications mentioned in the said resolution. All the modifications, made in the Pay Commission's recommendations regarding pay scales improve upon the Commission's recommendations. It is mentioned in the resolution that the revised pay scales mentioned in Chapter 8 shall apply to all posts other than those for which specific recommendations have been made in Chapters 9, 10, 11 and 27. The case of the CBI Officers falls in Chapter 10 where the specific recommendations for the CBI Staff have been made by the Commission, but inspite of that, it is averred that the applicants have been given a pay scale of Rs.3000-4500/- which is the replacement scale for the old general pay scale of Rs.1200-1700/- to their detriment. Furthermore, it is averred that vide Para 1(iii) of the resolution dated 13.3.87, the Government of India has accepted the specific recommendations of the Commission in Chapters 9, 10, 11 and 27 subject to certain modifications which

have been notified separately. As no separate modifications have been notified in respect of CBI Staff, except with regard to the post of Director, CBI and DIG/CBI and, therefore, the recommendations of the Commission in respect of CBI Staff must be deemed to have been accepted by the Government. But unfortunately, the applicants have been placed in the lowest pay scale. It has further been averred that all the posts in the grade of Rs.1200-1700, with special pay of Rs.100/- in the different CPO, have been given in the scale of Rs.4100-5300/- but the applicants, who draw the same scale in CBI, have been discriminated against. By giving them the scale of Rs.3000-4500/- the applicants have been reduced to the status of the Assistant Commandants and Deputy Commandants in the CPOs and thus they have been treated below the rank of Second-in-Command in the BSF and CRPF. Furthermore, it has been averred that in Para A of Schedule I of the revised pay rules, wherein the pay scales as recommended by the Pay Commission and accepted by the Government with respect to Chapter 8 of the said report have been notified, there is no pay scale of Rs.1200-1700/- plus Rs.100/- special pay against which the pay scale of Rs.3000-4500/- is stated. The pay scale of Rs.1200-1700/- cannot be equated with the pay scale of Rs.1200-1700/- with special pay of Rs.100/- existing before the Fourth Pay Commission's recommendations.

6. The applicants state that they brought their grievances to the notice of the Director, CBI as well as to the Secretary, Department of Personnel and Training and the Ministry of Personnel Public Grievances and Pension, New Delhi. They received a reply from the Deputy Director, CBI dated 18.8.87

them informing that their representation had been rejected on the ground that the position in the CBI was analogous to that of the Intelligence Bureau (IB) and, therefore, their representation could not be accepted. Hence, they were compelled to file this O.A.

7. The respondents have challenged the contents of the application in their counter affidavit. While admitting that the posts held by the applicants carried pay scale of Rs.1200-1700/- prior to 1.1.86, they state that all the posts of Superintendents of Police in CBI did not only carry special pay and those Superintendents of Police who were posted in Central Units having All India jurisdiction, and those who were posted as Assistant IGP/Asstt. Directors received special pay. They have also stated that the nature of duties of Superintendents of Police in CBI and Commandants in CPOs are different. It is stated that although the Fourth Pay Commission had recommended that the pay scales prescribed by it for CPOs be applied to the CBI, this was not accepted by the Government, and it was made clear in Government/Ministry of Finance resolution dated 13.9.86/ as well as in Government (Finance Ministry) resolution dated 13.3.87/ that the specific recommendations made by the Commission in regard to the police personnel would be subjected to certain modifications which would be notified separately. These resolutions had to be read along with the notifications issued from time to time in regard to pay scales to arrive at the correct picture. The different revised pay scales were notified separately in Part 'C' of Finance Ministry's

notification dated 22.9.86 (Annexure-R4) and 13.3.87 (Annexure-R5). Under CBI, the different revised pay scales were indicated but these did not include the Superintendents of Police. As no separate revised scales were prescribed for Superintendents of Police, only the normal replacement scale prescribed against the existing scale of Rs.1200-1700/- i.e. Rs.3000-4500/- was made applicable to them. It has been stated that the recommendations relating to scales of pay payable to the Superintendents of Police in CBI vis-a-vis the CPOs were considered by the respondents but were not accepted on the ground that the CBI's pay scales were analogous to those of Intelligence Bureau(i.e. IB) and Delhi Police. The decision of the Government not to accept the recommendations of the Pay Commission vide paragraph 10.341 of their report was based on the principle that the existing parity between the CBI and the IB and the Delhi Police should remain.

8. We have heard Mrs. Shyamla Pappu, learned Senior counsel for the applicants and Shri P.P. Khurana, learned counsel for the respondents.

9. The argument advanced by the applicants that the recommendations of the Pay Commission as contained in Chapter 10 of their report in respect of CBI Staff would be deemed to have been accepted by the respondents, has no merit. This is clear from the fact that in the statement annexed to Government resolution dated 13.9.86 (Annexure-R1), it has been made clear that the Commission's recommendations in Chapter 10 in regard to the revised scales were "accepted subject to certain changes in the pay scales of police personnel which are/being notified separately". In the

subsequent resolution dated 13.3.87 (Annexure-R5), this is reiterated. The CCS(Revised pay) Rules were issued consequent upon the Government decision on the Pay Commission's recommendations incorporating the revised pay scales on 13.9.86 (Annexure-R1) and on 22.9.86 (Annexure-R4). There is an amendment to the rules which was notified on 13.3.87 (Annexure-R4). The revised pay scales for various posts are contained in the First Schedule and in Part A of the said Schedule, it has been stated that the revised pay scales would apply to the various posts unless for any specific post, a separate pay is notified. Part C of the First Schedule indicates those scales for each Ministry/department which are different from the standard replacement scales indicated in Part A of the Schedule. The post of Superintendents of Police in the CBI is not included therein and hence the normal replacement scales have been made applicable to them.

9. Having said that it must, however, be noted that the applicants were not merely in the old scale of Rs.1200-1700/- but they drew a special pay of Rs.100/- p.m. also. The applicants have shown us a copy of the Department of Personnel's letter dated 14.11.79 sanctioning the special pay of Rs.100/- p.m. w.e.f. 1978 to the non-deputationist, non-IPS Superintendents of Police in the CBI who have been working in the posts in the branch of CBI which when held by the IPS Officers carry a special pay of Rs.300/- p.m. It is their contention that all the applicants are receiving the special pay of Rs.100/- p.m. and the above letter lends substance to this contention. That being the position,

when all the posts in the various CPOs which carried an identical pay scale of Rs.1200-1700/- with a special pay of Rs.100/- p.m. have been given a replacement pay scale of Rs.4100-5300/-, it is not clear on what basis the applicants have been fitted in the general replacement scale of Rs.3000-4500/- with their special pay doubled to Rs.200/- .

10. No doubt, the respondents have stated that this scale has been granted to the applicants because they are to be treated not on par with the Commandants in the CPOs, but on par with their counterparts in the Intelligence Bureau and the Delhi Police. This presupposes that the respondents have made a careful comparative analysis of work, duties and responsibilities of the Superintendents of Police with the Commandants of the CPOs on the one hand and their counterparts in the IB/Delhi Police on the other and after such analysis have taken a conscious decision to differ with the recommendations of the Fourth Pay Commission. It is well settled that the equation of the posts and equation of the pay can be done satisfactorily by expert bodies like the Pay Commission who have necessary materials, expertise etc. to go into the question. Hence, any departure from the recommendations of the expert body must be based upon sound and cogent reasons. In 'State of U.P. & other Vs. J.P. Chaurasia & others' (1989(1)SCC 121, the Hon'ble Supreme Court said as much where it was pleased to observe that;

"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".

extraneous consideration".

11. No doubt, the Government is entitled to differ from, or modify any recommendation of the Pay Commission, but it is expected that they will do so only after a careful analysis and adduce sound and cogent reasons in support of their decision.

12. Shri Khurana, learned counsel for the respondents has argued that the hierarchical structure in the CBI is different from the hierarchical structure in the other CPOs and the recruitment rules of the various posts existing in the two hierarchies are different and hence the posts of Superintendents of Police in the CBI cannot be equated with the posts of Commandants in the CPOs. He has urged that for instance it takes 8 years of service as Deputy S.P. to be promoted to as S.Ps in the CBI, whereas it takes 14 years of the Officer equivalent to the rank of S.P. in the CPOs. While this might well be so, it still does not explain how the post of S.Ps in the CBI is comparable to the posts of S.Ps in the IB/Delhi Police in terms of duties, responsibilities etc. particularly when the Fourth Pay Commission has specifically recommended that the pay structures in the CBI are comparable to those in the CPOs. Secondly, it has been argued by Shri Khurana that the CPOs are para-military Organisations whose nature of duties, responsibilities etc. are quite different from the CBI, which are basically involved/investigation, etc. which is more akin to collection of intelligence etc. If so, it is very difficult to reconcile with the duties of S.Ps in the Delhi Police, which concern themselves not only with investigation and collection of intelligence but also with maintenance of law and order within their jurisdiction. In this connection,

we had asked Shri Khurana to produce before us for our perusal the relevant file of the respondents in which the decision had been taken to equate the posts of S.Ps in the CBI with their counterparts in the IB/Delhi Police, to satisfy ourselves that this decision is based upon a proper examination of their duties, functions, responsibilities etc., and application of their mind before taking a decision to differ from the recommendations of the Fourth Pay Commission. Shri Khurana has produced before us only the copies of certain notings made in the file of the Ministry of Finance, Department of Finance, Implementation Cell. From a copy of notings of the Deputy Secretary (IC), Department of Expenditure, Ministry of Finance dated 29.1.87, it appears that mention has been made of the fact that the Pay Commission's recommendations regarding pay scales of CPOs would apply to the CBI, but it has further been stated that the recommendations were not accepted by the Government on the ground that the CBI pay scales are analogous to those prevailing in the IB and Civil Police and not with the CPOs and it was on this basis that the pay scales of the posts at the level of Constable, Sub-Inspector and Inspector in the CBI were revised to the same level as the pay scales of the corresponding functionaries in the IB and Delhi Police. It has been stated that the grant of the CPOs scales to the CBI/IB would have repercussion on the Central Secretariat and would have also repercussion on the senior time scale of senior Grade A^{11 posts}. Incidentally, it may be mentioned here that the Pay Commission itself did

make any specific recommendation in respect of the IB. stated in that They have/ Para 10.253 of the report/as the Government had issued orders in January and May, 1986 revising the pay scale, deputation allowances, special pay and other allowances of a large number of posts in the IB, the Commission did not make any recommendations in their favour.

13. Shri Khurana ~~xxx~~ also submitted for our perusal a copy of the judgment dated 4.10.91 in O.A.No.1515 of 1987 'Shri V.M.Pandit & others Vs. Director, CBI & others' in which the Deputy S.Ps of the CBI had agitated their grievance of putting them in a lower scale (Rs.2000-3500/-) as compared to ^{the} Asstt. Commandants S.Ps. in CPOs who upon the Pay Commission's report have been sanctioned a pay scale of Rs.2200-4000/-. The applicants in that O.A. had, inter alia, taken the plea of 'equal pay for equal work' vis-a-vis- their counterparts in the CPOs. The Tribunal in its judgment dated 4.10.91 has noted the stand taken by the respondents that having regard to the nature of duties, it cannot be said that the Dy.S.Ps in CBI were on equal footing with their counterparts in the CPOs and that maintaining the parity that existed earlier, the Government had taken a policy decision that the pay scales in the IB, CBI and Delhi Police would be on par with each other. The Tribunal further noted the averment of the respondents that ~~xxx~~ disturbance of this parity would have serious implication in other Police organisations. As such, *prima facie*, the decision of the Government in not accepting the Pay Commission's recommendations could not be said to be arbitrary or capricious so as to warrant judicial review. While dismissing the application the Tribunal further noted that a perusal of the concerned file of the second respondent revealed that

the matter was also discussed in the High Power Committee and a conscious decision had been taken that the ^{new} pay scales of the Officers in the CBI should be on par with the Officers in the IB and Delhi Police rather than with the CPOs which had their own pay structure dictated by the operational requirements.

13. From what has been stated above, it is clear that the applicants' claim for parity in scales with the Commandants in the CPOs is based on the principle of 'equal pay for equal work' which has been upheld in a numerous judgments of this Tribunal as well as those of the Hon'ble Supreme Court. The Fourth Pay Commission, which was an Expert Body, had held that the posts in the CBI are comparable with the posts in the CPOs and had recommended that the pay scales of the CPOs should apply to the CBI also. If their recommendations are accepted, the applicants who were drawing a pre-revised scale of Rs.1200-1700/- plus Rs.100/- p.m. as special pay, would be entitled to placement in the scale of Rs.4100-5300/-. No doubt, it is the prerogative of the Central Government to accept, modify or reject the Pay Commission's recommendations. As the IV th Pay Commission, an expert body, has made a recommendation in favour of the CBI, it is for the Govt. to justify deviation. This can be done by proper application of mind to all the relevant factors. In the absence of such consideration, the decision of the Govt. has to be categorised as arbitrary and thus violative of Article 14 of the Constitution. We have perused the materials placed before us to show how the question has been dealt with. The consideration is superficial. There is no comparative evaluation of duties, responsibilities and functions etc. That the IB and Delhi Police have not been given the benefit of

higher scale, is not by itself adequate justification to deviate from the opinion of the IVth Pay Commission. The materials placed before us do not satisfy us that there was proper consideration by the Govt. before rejecting the recommendation of the IVth Pay Commission. We would not be justified in ourselves undertaking this task. It has to be left to the Govt. to take a proper decision after applying their mind to all the relevant factors and the recommendations of the Pay Commission. The impugned decision is arbitrary and violative of Article 14.

14. Under the circumstances, we direct the respondents to set up a Committee of ~~the~~ Senior Officers to go into the entire question afresh of grant of the revised 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 our above discussion and to take a proper decision in the light of their recommendation. If a decision to accord higher pay scale is taken it shall be given effect to, from the date of our judgment. The examination by the Committee and the decision thereon by the respondents should be taken within six months from the date of receipt of copy of this order.

15. This application is disposed of accordingly, in terms of the above directions. No costs.

Arulraj
(S.R.ADLI)
MEMBER(A)

Malimath
(V.S.MALIMATH)
CHAIRMAN.