

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1538/87

198

T.A. No.

DATE OF DECISION 23.5.89.

Central Sectt. Service Direct Petitioner

Recruit Assistants Association

through its President Shri Varinder

Gupta, Assistant, M/O Finance, New Delhi.

Advocate for the Petitioner

Shyamla Pappu & KK Rai

Versus

UOI through Secy. Deptt. of Personne Respondents

& Trg, New Delhi & another

Mr NS Mehta

Advocate for the Respondent(s)

AM:

Mr. NV Krishnan, Administrative Member.

Hon'ble Mr. TS Oberoi, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal? ✓

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23/5/87

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Present

Hon'ble Shri N V Krishnan, Administrative Member
and
Hon'ble Shri TS Oberoi, Judicial Member

OA No.1538/87

Central Secretariat Service
Direct Recruit Assistants Association
(Recognised by the Govt. of India)
through its President
Shri Varinder Gupta, Assistant,
Room No.259, North Block
Central Secretariat
Ministry of Finance
Deptt. of Revenue, New Delhi-1

Applicant

Vs.

- 1 Union of India through
Secretary, Deptt. of Personnel
and Training, North Block,
New Delhi.
- 2 Secretary, Government of India
Ministry of Finance
Department of Expenditure
New Delhi.

Respondents

Mrs Shyamla Pappu & KK Rai

: Counsel for Applicant

Mr NS Mehta

: Counsel for Respondent

ORDER

Shri N V Krishnan, Administrative Member

In this application by the Central Secretariat
Service Direct Recruit Assistants Association, through
its President, Shri Varinder Gupta, the pay scale of

Rs 1400 - Rs 2600 notified by Respondent No.2 for the post of Assistant in the Central Secretariat Service, on the basis of the recommendations of the Fourth Central Pay Commission, has been challenged.

2 Before going into the merits of the case, it is necessary to dispose of a preliminary issue. In their reply to the application after its admission, the Respondents have contended that the applicant has no right or authority to file the application either on behalf of the Association, or singly in a representative capacity, without following the procedure laid down in the Code of Civil Procedure. It is noticed that an affidavit was thereupon filed by Shri Varinder Gupta, which meets this objection. A separate application has also been filed by him under Rule 4(5)(b) of the Central Administrative Tribunal (Procedure) Rules, 1987 seeking permission to treat the application already filed and admitted as an application filed by the Association in its representative capacity. In the circumstances, the application is treated as having been validly filed by the Association (representing directly recruited Assistants only) through its President.

3 It may be mentioned at the outset that the Government of India had appointed the Fourth Central Pay Commission- Commission, for short - to make

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recommendations on the emoluments and conditions of service of employees of the Central Government and certain other categories of employees. The Report of the Commission - Report, for short - was considered by the Respondents and revised scales of pay were notified for the various categories of posts under the Central Government in replacement of the earlier scales of pay, referred to hereinafter as the pre-revised scales of pay. The present application concerns a grievance in respect of the revised pay scale notified for the Assistants belonging to the Central Secretariat Service, Assistants, for short.

4 We have heard at length the arguments addressed to us by Mrs Shyamla Pappu, Senior Counsel and her junior colleague Mr KK Rai, on behalf of the applicants and by Mr NS Mehta, Senior Central Government Standing Counsel, for the respondents. We have also perused the records of the case, the Report of the Commission and certain papers filed during arguments.

5 The main grievance of the applicant is that, though the Assistants have been classified as Group-B (Non-Gazetted) under Rule-4 of the Central Civil Service (Classification, Control & Appeals) Rules, 1965 - hereinafter referred to as CCA Rules - the revised pay scale fixed for them (Rs 1400- Rs 2600) replacing

their pre-revised pay scale of Rs 425 -800 is not either commensurate or consistent with this classification. This pay scale is less than the lowest revised pay scale applicable to Group B Officers (i.e., Rs 1640-2900). As a matter of fact it is one of the pay scales applicable to Group C Officers. It is, therefore, contended that Articles 14 & 16, read with Article 39(d) of the Constitution, have been violated as un-equals have, without any rational basis, been treated as equals for purposes of fixing pay scales.

6 The second grievance is that relativities between pay scales in Group C have been seriously disturbed. A number of posts included in Group C, the pre-revised scales of pay of which were either the same as or lower than that of the Assistants, have been given better scales of pay (i.e. Rs 1640-2900 or Rs 1640-2660) on the basis of the Commission's recommendations. Examples of such posts are given in Annexure-A to the application.

7 It is alleged that this is the result of the Commission not having considered the pay scale applicable to Assistants separately, though this was warranted by certain significant features which distinguish them from other Group C Officers. These are mentioned in the application and have been stressed during arguments. In addition to the normal duties and responsibilities of

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Secretariat employees, Assistants make important contributions to the taking of policy decisions by Government, a function admittedly not discharged by other Group C employees. The respondents' averment that the responsibilities of Assistants have reduced considerably after the introduction of the desk officer system has been emphatically denied... In this connection, the applicant has filed, in Annexure-4 of ~~of~~ its rejoinder the minutes of the JCM meeting of the Deptt. of Personnel held on 4.8.87. It was agreed therein that "it would be ensured that the existing role of Assistant is not only maintained but enhanced to nurture their further development".

The application sets out some of the other important features (besides being classified as Group B Officers) which generally distinguish Assistants from Group C officials of which the following deserve notice:-

- (i) Assistants are appointed by the President of India, while Group C employees are appointed by officers of lesser rank.
- (ii) Assistants are selected by the Union Public Service Commission (UPSC), while the Group C posts are generally filled by officers selected by the Staff Selection Commission.
- (iii) Assistants are thus given greater security of tenure, because, in the matter of disciplinary proceedings, the UPSC has necessarily to be consulted, which is not the case with other group C officials.

(iv) They are liable to the submission of Annual Immovable Property Return under Rule 18 of the Central Civil Service Conduct Rules, 1964 like other Group B Officials, while the Group C Officials are not required to do so. The importance of this rule is the recognition that Group B employees would, perhaps, have larger incomes to acquire such property as they are placed on higher pay scales. Further, in view of the powers they exercise, it is necessary to keep a watch on their conduct in regard to acquisition of immovable property.

The Pay Commission has failed to consider the case of Assistants separately despite these distinguishing factors, and this has led to an injustice in fixing a low pay scale, which is arbitrary.

8 After the decisions of Government on the recommendations were made known, a letter dated 7.1.87 was sent by the Federation of Government & Public Sector Employees to the Prime Minister seeking some time to represent the matter personally, in continuation of an earlier representation dated 15.10.86 seeking parity of pay with Income Tax Inspectors. The Federation was informed by the Department of Personnel & Training on 1.4.87 (Annexure D) that the demand for higher replacement scale for the Assistants had been examined but not acceded to as there was little merit in the demand. By another letter dated 16.6.87 (Annexure-E), the Secretary General, Central Secretariat Assistants' Association was informed, in reply to

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his ~~xxxxxxx~~ representation dated 22.9.86, as follows:

"the revised scale of pay of Rs 1400-2600 for Assistants and Stenographers of the Central Secretariat was notified on the recommendations of the Fourth Pay Commission. The request made in your letter amounts to upgradation of this scale of pay to Rs 1640-2900. It is not the case of any anomaly. After the revision of pay scales on the recommendations of the 4th Pay Commission, the Government is not looking into proposals for upgradation of pay scales".

Hence this application, impugning both these letters.

9 Two reliefs have been claimed (a) the Assistants be put in a scale higher than those given to Group C employees (b) the Assistants be put in a grade higher than the highest grade given to Group C employees. These read together are not very specific and are ambiguous. However, the learned counsel for the applicant made it clear during arguments that the demand of the applicant is only for the pay scale of Rs 1640-2900, the lowest pay scale applicable to Group B posts. The learned counsel for the applicant claims the Assistants are entitled to a direction that their pay scale be fixed as Rs 1600-2900 on the authority of the principles laid down in the following two judgements.

(i) Randhir Singh Vs. Union of India 1982(1) SLR-756 and

(ii) P. Savita & others Vs. Union of India & others 1985(3) SLR-29.

10 Before going into the merits of the case, the learned counsel for the respondents pointed out, at the outset, that the issue raised by the applicant calls for an objective analysis of the duties and

responsibilities of Assistants and other posts to decide whether the revised pay scale already fixed is appropriate or not. He argued that this was not the function of a judicial forum like this Tribunal but is a matter to be considered by an expert body like the Pay Commission or by Government. The Fourth Pay Commission has already given its considered recommendations which have been accepted by the Respondents. Therefore, it would not be proper for this Tribunal, in these circumstances, to interfere with the decisions already taken.

11 On the merits of the case, he vehemently denies that the classification of a post under the CCA Rules has anything to do with the determination of its pay scale. That classification is primarily intended to govern matters of discipline in the civil services. The Rules do not refer to anything relating to fixation of pay or pay scales. The pay scale of a post is essentially determined by the duties and responsibilities attached to it. There may be several posts with different pay scales. It is only for the sake of convenience that the maximum of the pay scale has been used to classify them into four groups. The important point made by him is that it is the pay scale applicable to a post that normally (but not always) determines the class to which it belongs and not vice versa. This will be clear from the order dated 30th June, 1987 issued under Rule 6 of the CCA Rules

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(Annexure-I). There are exceptions to this general rule which have been referred to by the Commission in para 26.50 of its Report. For example, postmen, mail guards etc. who are in the pre-revised pay scale of Rs 210-270 relevant to Group D, have been classified as Group C, for which, normally, the prescribed pay scale has a maximum of over Rs 290/-. Similarly, foremen in the Ordnance Factories have a pre-revised scale of Rs 840-1040, which is appropriate for Group-B but they have been classified as Group C. There may be other exceptions also. Therefore, classification has no relevance, whatsoever, to determine the appropriate pay scale. In the case of Assistants, their classification as Class II Officers earlier and Group B Officers from 1975, is a historical legacy. He contended that, if at all the applicant has a grievance, it should be against classifying Assistants in Group B, instead of in Group C.

12 The learned counsel for the Respondents contend **the Commission** that the recommendations made by about the pay scales **taken by** of Assistants and the decisions the Respondents thereon, are after due consideration of all relevant factors. The Commission was aware that due to a reduction in the number of pay scales and broad banding, some may benefit more than others. The Commission has however, seen to it that the existing employees do not suffer. It has endeavoured to maintain, to the extent possible, the existing relativities between major

categories of posts while rationalizing the pay scales and where needed, adjustments have also been made. The Commission has clarified that the revised pay scales generally recommended in Chapter 8 of its Report shall apply to all posts other than those for which specific recommendations have been made in other chapters. The pay scales are based on the factors considered relevant as brought out in Chapter 7. As may be seen from para 9.19 and 9.28 of the Report, the Commission has also considered the representation made by the Confederation of Central Secretariat Service Association. This did not result in any change of pay scale recommended in Chapter-8 i.e., the pay scale of Rs 1400-2600 recommended by the Commission in para 8.44. This recommendation which was accepted by the Respondents does not, therefore, call for any change. He, therefore, submitted that this application deserves to be rejected.

13 After having heard the arguments we find that the following main issues arise for determination.

- (a) Whether the pay scale of a post is determined by the group in which it is included under Rule (6) of the CCA Rules?
- (b) Whether a prima facie case has been established that the recommendations of the Commission and the decisions of the Respondents regarding the pay scale of Assistants are arbitrary and violative ^{of} the principle of 'equal pay for equal work'?

- (c) Whether internal relativities concerning the Assistants have been disturbed seriously
- (d) Whether on the facts and in the circumstances of the case it would be proper for us to determine, if at all, the appropriate pay scale of Assistants ?
- (e) Lastly, what, if any, is the relief that may be granted to the applicant ?

14 The main attack in this application is based on the fact that Assistants, though classified as Group B Officers, have been given a revised pay scale (Rs 1400 - 2600) which is applicable to many Group C posts, instead of being given the lowest of the Group B scale i.e., Rs 1600- 2900. In support of her contention that the pay scale of a post is governed by its classification under the CCA Rules, the learned counsel for the applicant has cited two authorities. The first is a judgement of the High Court of Delhi in SK Srivasthava Vs. Union of India (1971 - SCR-453). The issue in that case was whether the transfer of the petitioner from the post of Director of Revenue Intelligence to the post of Collector of Customs amounted to a reduction in rank. It is in this connection, that the Court considered the content and meaning of the expression "rank". The learned counsel for the applicant has specifically drawn our attention to the following two passages

from paras 16 & 17 of the judgement.

"The word "rank" as used in Article 311(2) of the Constitution has not been defined. But it is well established that the words "dismissal, removal and reduction in rank" have a technical significance due to the special meanings attached to them historically from the very beginning. The meaning so attached to the word "rank" is that it is a class or a grade of service. The classes or the grades relevant for this purpose are those which are arranged in an ascending or a descending order, that is to say, they must be one above the other or one below the other. This is why the Central Civil Services (Classification, Control and Appeal) Rules, 1965 classified all the Central Civil Services and the Central Civil posts into four classes one below the other as Class I, Class II, Class III and Class IV vide rules 4 to 6".....

"17. The concept of "rank" being solely significant for the purposes of administration of services and the law relating to it, the Government has always applied the criterion of pay to distinguish one class or grade of service or post from another. In fixing the pay of a particular post or the scale of pay of a particular service, the Government considers the status and responsibility attached to a particular post or class of service".

15 The learned counsel for the applicant has laid emphasis on the underlined portions of the extracts, particularly in the second passage, to substantiate her claim. As pay is used to distinguish one class from another and as the Assistants are classified in Group B, the maximum of their revised pay scale should not be less than Rs 2900/- which is the hall mark distinguishing Group B from other groups. She also derives support from this passage for her claim that pay is also dependent on status, besides responsibility. Hence, classification as group B employees should have been reflected in the pay scale also.

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16 We are, however, unable to agree with this reading of the judgement. The real import of the judgement is that it is the pay that determines the class to which a post belongs. Considered in that light, the Assistants should really have been categorized as Group C officers only. Their categorization as Group B officers is for special reasons, as will be shown presently. That categorization was never intended to give them any other fiscal benefit. As regards the relevance of status it has to be noted that the pay scale is primarily determined by the duties and responsibilities attached to a post. Status is only a secondary factor and is taken into account only when it is specially relevant. For example, officers in taxation department could be given a special status so that they can face affluent and powerful members of the public with confidence and without any inferiority complex. This could be taken into account in determining their pay scale. That does not necessarily mean that the Assistants should have been given Group B pay scales on the only ground that they are classified as Group-B officers.

17 In fact, para 17 of the same judgement makes this clear in a later passage. The following extracts are relevant and underlines have been made to supply

emphasis.

"The pay itself is determined by the Government after taking into account the nature of the duties involved in the post. As the Government would have already taken into account the nature of duties, responsibilities and the status of different posts before classifying them and would have indicated the classification by the fixation of different salaries or pay scales, the Courts should be well advised in regarding the pay or the scale of pay of post as the principal criterion to determine the rank of the post ".....

"It would not be advisable, therefore, for the Courts to ignore the classification made by the Government as indicated by the emoluments fixed by the Government and try to determine afresh the rank of a particular post by having regard to considerations other than the pay, specially because these considerations have already been taken into account by the Government in fixing the pay or the pay scale of a particular post".

The phrases " would have indicated the classification by the fixation of different salaries or pay scales" and "the classification made by the Government as indicated by the emoluments fixed" clearly prove beyond doubt that rank or class should follow pay scale and not vice versa. It is true that in this case there is a mis-match between the two. That is not due to any wrong fixation of pay, but as will be shown presently, is due to classification based on historical reasons, as the learned counsel for the respondent has contended.

18 The other ruling relied upon by her is of the High Court of Orissa in Shri Kahnool Charan Sahu Vs. State of Orissa (1980(1) SLR-33). In Orissa, two services existed viz: Orissa Administrative Service Class II cadre (Deputy Collector) and Orissa Subordinate

Administrative Service Class III cadre (Sub Deputy Collector). By reorganisation, a new Orissa Administrative Service was formed with a Senior and a Junior Branch - by merging the Class II and Class III cadres referred to above. The Deputy Collectors were absorbed in the senior branch and the Sub Deputy Collectors were also absorbed as Deputy Collectors in the junior branch. The question that arose for ~~xxx~~ consideration related to the manner in which the pay of the petitioner, who was a Sub Deputy Collector of the erstwhile Orissa Subordinate Administrative Service, should be fixed, on his absorption into the Class II junior branch of the newly formed Orissa Administrative Service as a Deputy Collector. Should his pay be fixed by assuming, that he still continued to hold the post earlier held by him excepting that its pay has been enhanced or by, treating this as a case of promotion to a post carrying higher responsibilities? Considering the fact that the erstwhile service stood abolished and that the new post carried higher responsibilities, the High Court found that this was a case of promotion and directed fixation of pay to be done on that basis according to the relevant rules. This judgement is not helpful to the applicant. It is not to the effect that the pay should depend on the mere classification of a post but should be with reference to the duties actually involved.

19 The application also refers to the definition of 'pay' in Fundamental Rule 9(21) to draw a conclusion that pay and grade (i.e., classification) are linked. It is pointed out that pay has been defined to mean the pay sanctioned for a post held substantively or in an officiating capacity "or to to which he is entitled by reason of his position in the cadre". Relying on the underlined portion, it is claimed that the Assistants, being in the B group should get the pay scale appropriate to that group. This is not the correct meaning of the underlined portion, which is only that the pay will be reckoned on the assumption of a post being held, even if it is not physically held but an entitlement to hold it by virtue of seniority in the cadre exists.

20 It is necessary to mention here that after the implementation of the recommendations of the Third Pay Commission, the pay scale of Assistants - who were included in Group B Non-gazetted even then - was fixed at Rs 425-800 relevant to Group C posts as the maximum of the pay scale of the posts in this group was to be less than Rs 900/-. The point that needs emphasis is that Assistants have, in the past also, been fixed on pay scales appropriate to Group C posts though they were classified as Group B (Non Gazetted) officers. In other words, the mis-

match between classification and pay is not brought about by the recommendations of the Commission and their acceptance by Government.

21 The learned counsel for the respondents contended that a higher classification of Assistants is a historical legacy which has nothing to do with pecuniary benefits. In support of this contention he produced before us certain extracts from Home Department's File No.9/18-A/30-Estt. (copies of these were given to the counsel for applicant also) which have been kept on record. The extracts relate to the year 1930-31. The Finance Department raised objections to the inclusion of Assistants and Stenographers in Class II of the Central Services on the ground that it might give rise to claims to travelling allowances etc. based on the status proposed to be conferred. In the Home Department, it was pointed out that the "Assistants" formed part of the Imperial Secretariat Service, the status of which has been repeatedly admitted to be more or less equal to that of the Provincial Service. Hence, their inclusion in Class II Central Service was justified. Mr CW Gwynne, Joint Secretary of the Home Department allayed the fears of Finance Department as follows:

"As long as it is clear that classification in a particular class is not intended to raise any presumption in favour of equal treatment with others in the same class in any pecuniary matter, whether of pay, pension, passage or travelling allowance, I do not think any objection

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clinch the issue is a provision in Sub-rule 3 A of Rule 3 specifically clarifying that civilians in Defence Services, when made subject to the Army Act, 1950, Navy Act, 1957 and Air Force Act, 1950 would, nevertheless, for the purpose of discipline, continue to be governed by these Rules. This should be taken to explain the scope of the Rules and this does not lend any support to the view expressed by the applicant.

23 The linking of classification in the CCA Rules with the maximum of a pay scale comes about in an indirect way. The classification of the Civil Services of the Union into Group A, B, C & D is done by Rule 4 and as stated in Rule 5, the services and grades which constitute these services are given in the Schedule. Rule 6 thereafter requires that every civil post of the Union (except those held by persons to whom these rules do not apply) shall be classified by a general or special Order of the President into one of the four groups. It is in pursuance of this requirement that the posts were earlier generally classified in the manner indicated in para 26.49 of the Report. After the implementation of the recommendations of the Commission's recommendations a fresh general order dated 30th June, 1987 has been issued

* Sub-rule 3A was temporarily inserted on 5.4.72 and remained in force during the period of operation of the proclamation under Article 352(1) of the Constitution on 3rd December, 1971 and was revoked with effect from 27.3.1977. (Swamy's Compilation CCS(CCA) Rules - 17th Edition)

(Annexure I to Respondent's Reply). The factor used for classification has always been the maximum of the pay scale. The stipulation in respect of each group is either that the maximum of the pay scale shall not be less than or shall be more than a particular amount or, it shall be less than a particular amount but more than another particular amount. This yardstick has, perhaps, been chosen because it is the only factor which is common to all posts unlike other factors like educational qualification, method of recruitment etc. which vary widely. Further it is the pay scale which distinguishes each post in terms of its duties and responsibilities and facilitates an arrangement in a hierarchial order of the posts.

24 It is thus clear that classification follows the pay scale attached to a post on the basis of its duties and responsibilities and not vice versa. As it may not always be possible to classify all posts by a general order, Rule 6 makes provision for issue of special orders, which are obviously needed for special cases. Hence, the order issued under Rule 6 of the CCA Rules (Annexure-I) provides for making some exceptions. The case of the Assistants is such an exception which is fully explained as being a historical legacy.

25 For all the aforesaid reasons, we hold that the classification of posts under the CCA Rules is for the purposes of regulating discipline in the services. That classification may be used for other purposes also. But we reject the contention that the pay/pay scale of a post has to be determined on the basis of such classification. Merely because of the classification of the posts of Assistants as Group B (Non-Gazetted), they are not entitled, as of right, to the revised pay scale appropriate to Group B, because we also find that such higher classification itself has been made for historical reasons only and is not intended to give them any pecuniary benefit. Their pay scale has always been one that is relevant for Class III officers earlier or Group C Officers now. Therefore, their mere classification as Group B officers does not entitle them to the pay scale applicable to Group B. That being the case, the question of violation of Articles 14, 16 and 39(d) of the Constitution does not arise.

26 Before we proceed further, we find it necessary to mention briefly how the Commission made its recommendations regarding the revised pay scales. It has devoted a full chapter (Chapter-7) to an identification of the factors which have animated

its decisions. Some of them are as follows:-

- (i) The pay of a post should be such as to attract persons of the required qualifications and calibre to fill it.
- (ii) The salary structure should be coherent and should adequately reflect the substantial differences in the nature and responsibilities of the various posts.
- (iii) The pay scale has to be such that it may not give rise to a sense of deprivation or frustration in the employee on comparing his lot with his compeers.
- (iv) It is desirable to minimise the number of pay scales, for, that appears to be necessary to rationalise and simplify the pay structure as much as possible.
- (v) The Commission next refers to the historical importance attached to "internal relativities". After pointing out to the difficulties in maintaining such relativities, the Commission has observed as follows in para 7-62 of its Report:-

"Employees, it seems, are enamoured of initial relativities and have sometimes pressed for their pre-emptive consideration as a factor in pay determination. We are not convinced that this should be the foremost consideration. What we consider satisfactory is to give proper consideration to well established, rational and coherent internal relativities and to uphold them where necessary. We do not, however, think that where there are other important considerations, the relativities should be decisive of the scale of pay to which the employee will be entitled. It has to be appreciated that where an effort is made to reduce the scales of pay, it sometimes become inevitable that internal relativities should be affected, but we will like to maintain them as far as possible." (emphasis ours).

27 The Commission has, thereafter, outlined in Chapter-8 the proposed general pay structure of civilian employees in Group A, B, C & D posts. These recommendations

are meant to be applied to all posts, except those specified in Chapters 9 to 12 and Chapter 27 (i.e, certain posts in the Central Secretariat, in the Ministries and Departments, certain special categories of posts, posts in the All India Services and posts in the Union Territories) in regard to which separate specific recommendations are made in those chapters.

28 In so far as the Assistants of the Central Secretariat are concerned, their case has been considered by the Commission in para 8.41 to 8.44. It is seen that the Commission considered together the following five pre-revised pay scales i.e. Rs 425-800, 425-750, 440-750, 470-750 and 440-750, the two scales of Rs 440-750 having different rates of increments. It noted that the scale Rs 425-800 covered the posts of Assistants and Stenographers in the different Ministries/Departments and the Auditors of the Comptroller and Auditor General of India etc. Considering the duties and responsibilities of the posts covered by the five pay scales and the fact that promotions to these posts are made from more or less similar categories, the Commission recommended that these five pay scales could be grouped together and given the revised pay scale of Rs 1400-2600. Therefore, this is the revised scale recommended by the Commission for the post of Assistants

as well as for all posts covered by the five pre-revised scales of pay.

29 It only needs to be examined whether any other special recommendation has been made about Assistants. At the commencement of its work, the Commission had invited all associations, unions etc. to send their memoranda for its consideration. Modifications of the general recommendations made in Chapter-8 have been made in the subsequent chapters after considering such memoranda/representations. Chapter 9 of the Report, which specially deals with the Central Secretariat, makes a mention about various representations received in regard to the posts considered in that chapter. As far as Assistants are concerned, the Report mentions only about one representation in the following terms:

"9.10. The Confederation of Central Secretariat Service Association has stated that a large number of directly recruited assistants are stagnating at the maximum of the Section Officer's pay scale (i.e., Rs 650(710)- 1200). It has been suggested that the scale of pay of assistants should, therefore, be increased to Rs 650-1040, their designation be changed as Staff Officers and their status raised from Group 'B' non-gazetted that direct recruitment at Section Officers' level may be dispensed with and the quota should be merged with the promotion quota". (Clarification in brackets, ours).

to Group B gazetted.
They have also
suggested

In so far as the Assistants are concerned, the only recommendation specially made in this chapter (para 9.28) relates to increasing the special allowance given to 50 Assistants, engaged wholetime on Parliamentary work, from Rs 200/- to Rs 300/-. As regards other matters

(including the aforesaid representation), the Commission has observed that after careful consideration they could not find adequate reasons for accepting the other suggestions. The recommendations made in Chapter 8 not having been modified later, the pay scale finally recommended for the Assistants is Rs 1400-2600.

30 Before leaving this subject, an important allegation made in the application in regard to the representations made on behalf of Assistants needs to be noticed here. It is alleged that there was an assurance from Government that their representations seeking parity with the pay scale of Income-tax Inspectors (whose pay scales had been upgraded in 1983 to Rs 500-900 from 1.1.80) would be forwarded to the Commission for their consideration, but this was not done, as would be clear from the Report. This allegation (reproduced below) is made in para 1(5) of the letter dated 15.10.86 to the Prime Minister, which is an enclosure to Annexure D1 of the application.

"(5) Since the upgradation of the scale of pay of Inspectors (Income-tax) a number of representations (individual as well as from this Union) have been submitted to the Govt. from time to time but to no avail. The Govt. had been maintaining that since the 4th Pay Commission has started functioning, the representation shall be forwarded to it and it shall take into account the same while recommending the new scale of pay. But to the surprise of all, the 4th Pay Commission, like Govt. of India, did not take cognizance of the representation

and no mention about these representations has been reflected anywhere in its Report and, therefore, only recommended a scale of pay of Rs. 1400-2600 as against Rs. 1640-2900 recommended to Inspectors (Income Tax)".

The applicant's rejoinder to the respondents' reply also makes an allegation as follows:-

"The non-grant of pay commensurating (sic) with Group B Status is an exception (injustice) in respect of which, the Union of India had given an assurance that the Central Pay Commission would look into it (Annexure-3). But the Central Pay Commission did not consider this aspect at all".

31. As far as the allegation first made is considered, we have not been shown any proof in this regard. The allegation second made is based on the letter dated 13th March, 86 from the Minister of State in the Ministry of Personnel, Public Grievance and Pensions to Shri Ananda Pathak, Member of Parliament, which is one of the documents filed with Annexure 3 to the rejoinder. This is in reply to the latter's letter dated 27.2.86 (also filed with Annexure-3) wherein a reference has been made to the representation of the Assistants for parity with the pay scale of Income Tax Inspectors. The Minister's reply reads as follows:-

"Please refer to your letter dated the 27th February, 1986 regarding revision of the scale of pay of the Assistants of the CSS from Rs 425-800 to Rs 650-900.

2 You are aware that the 4th Pay Commission is presently considering the service conditions of employees, including the revision of pay scales of various posts in the Central Government. The Associations representing the Central Secretariat Services are reported to have already submitted their memoranda before the Commission. It will, therefore, be only appropriate that we should await the recommendations of the Commission which are likely to become available in the near future".

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It is clear from this reply that no assurance was given that Government would forward the representations to the pay Commission. In fact, the reply is on the

footing that the representations were already reported to have been directly submitted to the Commission. Hence, we do not find any substance in these allegations.

32 From the analysis given above, we are firmly of the view that the Commission cannot be faulted on recommending the pay scale of Rs 1400-2600 for Assistants. For, this is the general revised pay scale to replace the five pre-revised pay scales considered by the Commission in paras 8.41 to 8.44 of its Report and it applies to Assistants and others ~~Covered~~ by these five pre-revised pay scales unless some special recommendation has been made elsewhere in the Report.

33 We may now consider the next issue relating to disturbance of internal relativities. Pay scales higher than what was generally applicable (Rs1400-2600) in terms of para 8.44 of the Report has been recommended for certain posts, particulars of which are given in Annexure A of the application. We have, for reasons that will be stated presently, given in the Table below particulars of only those cases mentioned in Annexure-A, where, the pre-revised scale was one of the five scales considered in para 8.41 to

8.44 of the Report.

Name of the post	Pre-revised scale	Revised pay scale	Reasons & reference to recommendations of the Commission.
1 Inspector, Central Excise, Examiner/ Preventive Officer	Rs425-800	Rs 1600-2900	Representation by Association. Equated with Inspector of Income-tax - Para 10.202.
2 Inquiry Officer/ Technical Asstt. in Settlement Commission.	Rs425-750	Rs 1600-2900	Recommended by Deptt. of Revenue-Equated with Inspector of Income-tax. Para 10.218.
3 Nursing Sister	Rs470-750	Rs 1600-2900	On representation-Consequent upon improving the revised pay scale of Staff Nurse to compensate for delayed promotion chances (Pre-revised scale of Rs 425-640 and Rs 425-700 to Rs 1400-2600). Para 11.87.
4 Assistant Superintendent (National Sample Survey Organisation)	Rs425-750	Rs1600-2660	Based on a suggestion. Feeder post of investigator had a scale of Rs 425-700. (Para 10.361 to 10.362).
5 Regional Language Instructor, Lal Bahadur Shastri National Academy of Administration.	Rs440-750	Rs1640-2900	On representation, No promotional avenue and comparable with Hindi Instructor with higher scale of pay of Rs 550-900-para 10.348.

It may be noticed that these cases were taken for special consideration either because there was a representation from the employees or a recommendation for consideration from a Department of Government. The learned counsel for the Respondents pointed out that the only representation made on behalf of the Assistants is mentioned in para 9.19 of the Report as already noticed. which was not accepted. We notice that the said representation was not for seeking parity with Income-tax Inspectors, whose prescribed pay scales had been revised in 1983. Therefore, this aspect was not considered by the Commission.

34 The applicant's contention is that because of this upgradation, relativities within the same group have been disturbed. During the course of her arguments, the learned counsel for the applicant also brought to our notice another facet ^{of} ~~the~~ disturbance of internal relativities. She stated that the posts of Lower Division Clerk, Upper Division Clerk, Assistant, Section Officer, Under Secretary and Deputy Secretary represent the hierarchy of the Central Secretariat Service in an ascending order. It was claimed that, generally, the pre-revised pay scales of the ~~senior~~ posts in the hierarchy was such that the minimum of the pay scale of a senior post was higher than the maximum of the post two placed below it. We are only mentioning this argument ^{the} of ~~the~~ Assistants to buttress their case, without ^{ing} ~~express~~ any opinion thereon, for ~~that~~ would need detailed examination.

35 On perusal of the Report of the Commission, we find that it had given all employees a reasonable opportunity of presenting their representation. In respect of the Assistants, it would appear that only one representation was made which is extracted in para 29 supra. This was not found acceptable to the Commission. The recommendations made by the Commission further upgrading the pay scales of certain posts, as indicated in para 33 above, was after considering similar

...3

representations made by or on behalf of other employees. The Commission had thus given equal opportunities to all employees and it has disposed of all representations after considering their merits. Therefore, the recommendations of the Commission giving higher pay scales to certain categories of employees cannot be impugned on the ground that they are discriminatory, because the Commission had stated the specific reasons for these recommendations and these recommendations are all reasonable. This is also true of the Respondents, for they have only accepted these recommendations and implemented them.

36 It is to be noted that the Commission's Report was made available to the public only after Respondents had taken decisions thereon. Therefore, employees would have come to know about the implications of the various recommendations only after the publication of the Report. They could have filed representations only thereafter and Respondents alone could have remedied their genuine grievances. We have, therefore, to examine whether a prima facie grievance regarding disturbance of internal relativities has been made out.

37 In so far as the present case ^{is} concerned, the scale of Rs 1400-2600 is the general revised scale to replace the group of five pre-revised scales considered

in paras 8.41 to 8.44 of the Report. For some posts of the group, a further betterment has been made by special recommendations as shown in para 33 supra. We are of the view that the Assistants can allege a disturbance of internal relativity only in relation to such posts as are included in the same group and not in respect of all the posts mentioned in Annexure-A. For, Annexure-A also includes posts, the pre-revised scales of which are different from that of the group considered in paras 8.41 to 8.44 of the Report and hence, are not comparable with the posts of Assistants or the other posts covered by the group. Nevertheless, we feel that the Assistants have a prima-facie case to represent against the aforesaid disturbance of internal relativities for three reasons. Firstly, they were in the highest pre-revised pay scale of Rs 425-800 considered by the Commission in paras 8.41 to 8.44 of its Report. Secondly, they are the first rung of important functionaries in the Central Secretariat.

It cannot be denied that the note they record on files is an important aid to taking a policy decision, because that is generally a comprehensive note containing all facts, rules, precedents etc. In fact, that note may be compared to the paper book of cases placed before this Tribunal. Thirdly, the Assistants have contended that among the officials covered by the

Commission's recommendations in para 8.41 to 8.44 of its Report, they stand out separately as a group for the reasons given in para 7 supra. Therefore, their grievance need consideration.

38 Before proceeding further, it will be appropriate to recapitulate the conclusions reached so far-

(a) After detailed examination the Commission recommended the pay scale of Rs 1400-2600 for Assistants. The Respondents have, only accepted these recommendations. Therefore, they cannot be assailed as being arbitrary or violative of Articles 14, 16 & 39 (d) of the Constitution.

(b) The pay scales are not determined by the classification in CCA Rules, but vice-versa.

(c) No discrimination has been made by the Commission when it enhanced the pay scales of certain officials on the basis of representation made by them or on their behalf while rejecting a representation made on behalf of the Assistants.

(d) No discrimination can be attributed to the Respondents when they accepted and implemented these recommendations.

(e) Nevertheless, the disturbance of internal relativities is a legitimate grievance of the applicant, which has to be considered.

39 We may now notice the authorities cited by the learned counsel for the Respondent to contend that the issues raised in the application are not matters which could be decided by a judicial body like this Tribunal. He first referred to the judgement of the Supreme Court in Federation of All India Customs & Central Excise Stenographers (Recognised) and others Vs. Union of India (JT 1988 (2) SC 519) i.e., Stenographers' case, for short. In that case, Stenographers Grade I, when posted in the Secretariat with certain officers, were given a higher pay scales than when posted outside with Heads of Departments of equivalent rank. The validity of this classification and discrimination was in question. The relevant portion of the judgement to which our attention has been specially drawn is in para 11 reproduced below:

"The problem about equal pay cannot always be translated into a mathematical formula. If it has a rational nexus with the object to be sought for, as reiterated before, a certain amount of value judgement of the administrative authorities who are charged with fixing the pay scale has to be left with them and it cannot be interfered with by the Court unless it is demonstrated that either it is irrational or based on no basis or arrived mala fide, either in law or in fact".

40 The learned counsel for the Respondents next relied on a recent judgement of the Supreme Court in State of Uttar Pradesh & others Vs. JP Chaurasia & others (1989 (1) SCC- 121) i.e., Bench Secretaries, for short. In that case, the Bench Secretaries in

in the High Court of Allahabad were not treated as equals to Section Officers in the matter of pay scales. Further, Bench Secretaries Grade I and Bench Secretaries Grade II were given different pay scales though the same duties and responsibilities were attached to both grades.

41. The learned counsel for the Respondent relies on para 18 of the judgement reproduced below:

" The first question regarding entitlement to the pay scale admissible to Section Officers should not detain us longer. The answer to the question depends upon several factors. It does not just depend upon either the nature of work or volume of work done by Bench Secretaries. 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 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".

(sidelined by us for emphasis)

42 The learned counsel for the applicant, on the other hand, contends that unreasonable discrimination is writ large in this case and the Tribunal itself can fix the appropriate pay scale for the Assistants. She heavily relies on the judgement of the Supreme Court in Randhir Singh Vs. Union of India & others (1982/1/SLR-756). In that case, the complaint of the

petitioner, a driver in the Delhi Police Force, was that the scale of pay of his post was less than that of drivers in the Railway Protection Force, non-secretariat officers in Delhi, etc. The Supreme Court found that the drivers in the Delhi Police Force performed the same functions and duties as other drivers in the service of Delhi Administration and the Central Government. Finding no basis for the classification or discrimination the Supreme Court allowed the petition. The learned counsel for the applicant has drawn our attention to the following passages of that judgement:

" Article 39(d) of the Constitution proclaims "equal pay for equal work for both men and women" as a Directive Principle of State Policy. "Equal pay for equal work for both men and women" means equal pay for equal work for everyone and as between the sexes. Directive principles, as has been pointed out in some of the judgements of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law of the equal protection of the laws and Art. 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of Constitution must mean something to every one. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay".

" Construing Arts. 14 and 16 in the light of the Preamble and Art. 39(d), we are of the view that the principle "Equal Pay for Equal work" is deducible from those Articles and may be properly applied to cases of 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".

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"There cannot be the slightest doubt that the drivers in the Delhi Police Force perform the same functions and duties as other drivers in service of the Delhi Administration and the Central Government. If anything, by reason of their investiture with the "powers, functions and privileges of police officer," their duties and responsibilities are more arduous. In answer to the allegation in the petition that the driver-constables of the Delhi Police Force perform no less arduous duties than drivers in other departments, it was admitted by the respondents in their counter that the duties of the driver constables of the Delhi Police Force were onerous. What then is the reason for giving them a lower scale of pay than others? There is none. The only answer of the respondents is that the drivers of the Delhi Police Force and the other drivers belong to different departments and that the principle of equal pay for equal work is not a principle which the Courts may recognise and act upon. We have shown that the answer is unsound. The classification is irrational. We, therefore, allow the writ petition and direct the respondents to fix the scale of pay of the petitioner and the drivers-constables of the Delhi Police Force at least on a par with that of the drivers of the Railway Protection Force. The scale of pay shall be effective from 1st January, 1973, the date from which the recommendations of the Pay Commission were given effect".

43 It is thus clear that if there is an unreasonable classification resulting in transparent discrimination, and the relief claimed does not require any further detailed examination, Courts themselves have given the necessary relief. We have no hesitation at all in straightaway declaring that, whatever be the allegation of discrimination made by the applicant in this case, it is just not comparable with the discrimination noticed in Randhir Singh's case supra. The discrimination in that case was self evident and transparent and was between two categories of officials performing the same duties. The situation

here is totally different. In this case we have already found that the pay scale for Assistants as determined by the Commission in paras 8.41 to 8.44 of its Report is neither arbitrary nor violative of any constitutional provisions. We have also held that the recommendation of the Commission to give better pay scales to certain categories and the acceptance thereof by the Respondents is not discriminatory in nature. We have only found that, prima facie, the applicant has a grievance relating to the disturbance of internal relativities in relation to the post of Assistant vis-a-vis certain other categories who have been given better pay scales. We do not agree with the Respondents that the application deserves to be rejected because this grievance arises out of the Report and can now be considered only by the Respondents. At the same time we are quite clear that as the grievance requires detailed examination, we cannot grant any of the reliefs prayed for by the applicant. We, therefore, now proceed to examine what direction should be issued in this case.

44 In reply to a specific query from us, the learned counsel for the respondent stated that institutional arrangements have since been made for the consideration of anomalies. He produced a copy of OM No. 19/2/87-JCA dated 25th January, 1988 of the

Department of Personnel & Training, a copy of which has been kept on record. This memorandum defines an anomaly and states that there will be two levels of Anomalies Committee - National and Departmental - consisting of representatives of the official side and the staff side of the National Council and Departmental Council respectively. The scope of anomaly is as follows:-

"The anomalies which could be discussed in the Anomalies Committees (both National and Departmental) are those which arise out of fixation of pay in the revised scale, date of increment, exercise of option, fixation of pay of employees who elect the revised scales from the date later than the prescribed date of 1.1.86, stagnation increment, junior/senior problems, cases of loss in existing emoluments after re-fixation etc.

Requests for modifications of the scales of pay recommended by the Pay Commission and accepted by Government on grounds of anomalies based on inter-job and inter-departmental comparisons would normally be outside the purview of the Anomalies Committees. The Anomalies Committee would examine such cases and refer them to the Ministry of Finance for disposal".

45 We were also informed by both sides that this matter is before the Anomalies Committee of the Departmental Council (JCM) of the Department of Personnel & Training, (Anomaly Committee for short) which was set up on 1.8.88. The Committee is chaired by the Joint Secretary (Admn.) of the Department of Personnel & Training and has a Deputy Secretary from the same Department as its Member Secretary. There are four other official members of the rank of Joint Secretary, of whom one is from the Department of Expenditure and the others are from the Department of

Personnel & Training. There are also 9 Members from the staff side. The Anomalies Committee will, after examination of such cases, refer them to the Finance Ministry for disposal.

46 It may be noticed that the general orders constituting such Committees were issued on 25th January, 88 i.e., after this application was filed and admitted. Therefore, if the anomaly referred to that Committee, as stated above, is substantially the same as the subject matter of this application, no action would be taken in this matter by that Committee, keeping in view the provisions of Section 19(4) of the Administrative Tribunals Act, 1985. This provision is to the effect that if an application has been admitted by the Tribunal, no appeal or representation in relation to the subject matter of such application shall thereafter be entertained under any service rules as to the redressal of grievances, except as otherwise directed by the Tribunal.

47 We are satisfied that the Respondents cannot refuse to entertain any representation regarding the subject matter of this case on the grounds stated in the reply dated 16.6.87 (Annexure-E). In fact, the OM dated 25.1.88, which was issued later by Respondent No.1, envisages that there could be anomalies based on facts, circumstances and considerations as in the present case. That OM only ordains

that such anomalies would, normally, be outside the purview of the Anomalies Committee. However, it also provides that exceptional cases of this nature may be brought before that Committee. That being the case, we find that even under the arrangements made by Respondent No.1, scope has been left for the consideration of such exceptional anomalies.

48 In this case, we have come to the conclusion that, prima facie, there is an anomaly which can be properly considered by the Respondents as it requires detailed examination. We would normally have quashed the impugned letters dated 1/2 April, 1987 (Annexure-D) and 16th June, 1987 (Annexure-E) but ^{refrain ourselves} from doing so only because the persons to whom these letters have been addressed have not been impleaded in this case. Nevertheless, we direct the Respondents to consider this anomaly.

49 We direct that the anomaly identified in para 37 supra shall be referred by Respondent No.1 to the "Anomaly Committee", referred to in para 45, for disposal in accordance with the procedure laid down in the D.M. dated 25.1.88. That Anomaly Committee may also, similarly, dispose of any anomaly on this subject matter that may be pending before it, as stated in para 45 supra. We also issue the following further directions in this behalf.

(i) The applicant in this case may be given an opportunity to be heard.

(ii) The representations to which the impugned letters dated 1/2 April, 87 and 16th June, 87 (Annexure D & E) are replies may, to the extent they refer to the aforesaid anomaly or have a bearing thereon, be considered.

(iii) Notwithstanding the directions at (i) and (ii), no person may refer to the revision in 1983 of the pay scale of Income-tax Inspectors to Rs 500-900 from 1.1.80 as an issue relevant for the consideration of this anomaly, unless he either satisfies the Anomaly Committee that a representation seeking parity of pay scale with Inspectors of Income-tax on the aforesaid ground was submitted to the Commission for its consideration or the Anomaly Committee itself specially permits him to do so, even otherwise.

(iv) It is also made clear that the directions in this order obliges the Respondents to consider only the anomaly in respect of the revised pay scale of Assistants.

(v) Taking note of the time taken by the Respondents in considering the Report and taking decisions on the recommendations therein, we direct that, within a period of four months from the receipt of this order, Respondents shall pass final orders on the anomaly after considering the recommendations

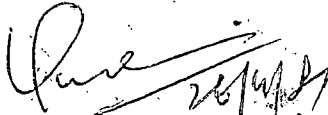
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of the Anomaly Committee and for this purpose,
Respondent No.1 may issue suitable directions to
the Anomaly Committee to ensure that its recommendation
is made available to the Respondents sufficiently well
in time to comply with this direction.

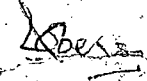
50 The application is disposed of with the
above directions. In the circumstance, there will
be no order as to costs.

Order corrected and signed by me at Ernakulam
this twentysixth day of April, 1989.


(NV Krishnan)
Administrative Member

I agree.

Pronounced by me in open court in the Principal
Bench at New Delhi this 23rd day of May
1989.


(TS Oberoi)
Judicial Member