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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.NO.2475/90
M.A.NO.3838/91

Hon'ble Shri P.T.Thiruvengadam, Member(A)
Hon'ble Mrs. Lakshmi Swaminathan, Member(J)

New Delhi this 7th day of March, 1995

Shri Manohar Khosla
s/o Late Shri Gauri Shanker Khosla
r/o Qr. No.668, Sector-2
Sadiq Nagar
New Delhi - 110 049.

Upper Division Clerk
Planning Commission
Accounts IV Branch
Yojna Bhawan
Sansad Marg
New Delhi.

Applicant

(By Shri B.B.Raval, Advocate)

Vs.

Union of India through

1. The Secretary
Planning Commission
Yojna Bhawan
Sansad Marg
New Delhi.

2. The Secretary
Department of Personnel and Training
North Block
New Delhi.

Respondents

(By Shri M.L.Verma, Advocate)

ORDER

Hon'ble Shri P.T.Thiruvengadam, Member(A)

At the time of filing of the OA, the applicant was functioning as Upper Division Clerk (UDC) in the Planning Commission. He had been holding this post in Planning Commission from 1984 and prior to this he was functioning as UDC in the Ministry of Petroleum and Chemicals and Fertilizers from February, 1982. Promotion from the post of Upper Division Clerk is to the post of Assistant. Assistants were initially granted scale of Rs.1400-2600

w.e.f. 1.1.1986. Subsequently, the scale of Assistants in Central Secretariate was changed to Rs.1640-2900 by the Memorandum of Ministry of Finance dated 30.7.1990. The revised scale of Rs.1640-2900 was made effective from 1.1.1986. This OA has been filed with a prayer that the scale of Upper Division Clerk (UDC) of Central Secretariat Clerical Service should be changed from Rs.1200-2040 to Rs.1400-2600 w.e.f. 1.1.86, the main ground being that the relative parity between UDCs and Assistants should be maintained.

2. The learned counsel for the applicant argued that traditionally the UDCs and Assistants were fixed in scales one above the other and for the first time the difference has been stretched by two standard scales, w.e.f. 1.1.1986. The difference in emoluments has consequently got widened. The reply of the respondents brings out that there is no provision in any law/rules/principles prescribing a ratio or proportion to be maintained between pay scales of different categories or posts. Any consideration shown to UDCs would escalate the situation with regard to parity and a large number of pay scales would have to be reviewed.

3. On this aspect we are of the view that pay scales are to be decided by a large number of factors like duties and responsibilities, qualifications, conditions of service, degree of skill, strain of work, experience involved, training required, mental and physical requirements, work and fatigue involved, nature of dealings with public, avenue of promotion available, horizontal and vertical relativity, the level at which the initial recruitment is made.

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Vertical relativity is only one of the very many factors. Horizontal relativity with other jobs in the same service or outside is a significant factor. We are thus not convinced that only because the post to which the applicant is eligible for consideration for promotion has been fitted with higher scale, the pay scale of the feeder post should be improved, as a corollary.

4. It was argued that the UDCs are discharging the same duties and responsibilities as Assistants and hence if not the higher scale of Rs.1640-2900, the erst while scale of assistants, namely Rs.1400-2600 should be granted to UDCs. In support of this arguments a few office orders by which the UDCs had been posted to sections where assistants were functioning earlier were referred to (Annexure 'A'-7 and 'A'-8). We, however, observe that these orders by themselves do not prove that the UDCs had been functioning as Assistants in every respect. In administrative exigencies when assistants are not available in a section, a UDC from another section may be temporarily transferred. It is not the case of the applicant that he had been posted as assistant and denied the pay of the assistant. It is nowhere established that the duties and responsibilities assigned to the post of UDCs and assistants are identical.

5. The learned counsel for the applicant then referred to the cases of Assistants/Stenographers and Inspectors of Police in whose cases the recommendations of Fourth Pay Commission were improved upon by conferment of higher scales. This has been explained by the respondents by stating that the subsequent specialist committees like Anomaly Committee recommended a few changes which were

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accepted by the Government. ⁽⁴⁾ Such changes were made based on the merits of the cases. We do not see how the action of the respondents in conferring higher scales to a few categories over and above the recommendations of the Fourth Pay Commission supports the case of the applicants so long as the merits for higher scale for the applicant are not accepted.

6. The following citations were relied upon:

1. JT 1992(2) S.C.27 - Secretary, Finance Department & Others Vs. The West Bengal Registration Service Association & Others.

7. Their lordships of the Supreme Court have observed that salary must reflect the nature of duties and responsibilities attached to the post.

8. The above citation relates to the case of the pay fixation of Sub-Registrars vis-a-vis Judicial Officers. The apex Court observed that Sub-registrars had been conferred Gazetted Status and included in State service. But, this would not entitle the sub-registrars to be placed in higher scale if the duties and responsibilities did not justify the same. In the face of this observation, this citation is not of assistance to the applicant.

ii) AIR 1987 SC 1149 Shr. Bhagwan Dass and Others Vs. State of Haryana and others.

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9. It has been held that equal pay cannot be denied so long as the nature and functions of two posts are same and also only because a person was appointed on temporary basis, he should not be denied the pay scale available to a regular person discharging the same duties. We have to observe that this citation is also not helpful to the applicant, in view of our discussion.

10. On the other hand, the learned counsel for the respondents referred to State of West Bengal and Others Vs. Harinarayan Bhowal and Others ((1994)27 ATC 524). Hon'ble Supreme Court in this case has held as under:

"Unless a very clear case is made out and the court is satisfied that the scale provided to a group of persons on the basis of the material produced before it amounts to discrimination without there being any justification, the court should not take upon itself the responsibility of fixation of scales of pay, especially when the different scales of pay have been fixed by Pay Commission or Pay Revision Committees, having persons as members who can be held to be experts in the field and after examining all the relevant material. It need not be emphasised that in the process undertaken by the court anomaly in different services may be introduced, of which the court may not be conscious, in the absence of all relevant materials being placed before it".

11. In view of the above observations of the a^{xx} Court and in the absence of material to support the plea of the applicant, we are convince' that no interreference is al^{ed} for.

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12. We are also aware that the Fifth Pay Commission is well on its way and it is expected that the applicant would have placed his case before the commission, if he had thought to fit to do so.

13. The applicant has also filed MA No.3838 of 1991 in this OA with prayers that he should be considered as assistant from the date he took over as UDC in the year 1982 and the consequential benefit of being considered for the post of Section Officer on completion of five years of service be extended to him. We note that the prayer in the MA is wider in scope than what was prayed in the main OA. On this ground, as well as on the ground that we are not entertaining the main OA, this MA is liable to be dismissed.

14. In the circumstances both the OA and MA are dismissed. No cos'.

Lakshmi Swaminathan
(Mrs. LAKSHMI SWAMINATHAN)
MEMBER(J)

P. J. Dharmar
(P.T. THIRUVENKADU)
MEMBER(A)

/RAO/