

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 1241/91 199
T.A. No.

DATE OF DECISION 10-4-97

Shri R.P. Panwar Petitioner

Shri D.R. Gupta Advocate for the Petitioner(s)

Versus

UOI & Ors Respondent

Sh. Madhav Panikar through Advocate for the Respondent(s)
~~proxy counsel Shri C. Hari Shanker.~~

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Shri K. Muthukumar, Member (A)

1. To be referred to the Reporter or not? *yes*

2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)

Member (J)

(25)

Central Administrative Tribunal
Principal Bench.

O.A. 1241/91

New Delhi this the 10th day of April, 1997

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Hon'ble Shri K. Muthukumar, Member(A).

Shri R.P. Panwar,
S/o late Shri Ram Sarup,
R/o 76-MS, Type-III,
Timarpur,
Delhi.

...Applicant.

By Advocate Shri D.R. Gupta.

Versus

1. Union of India through
the Secretary, Ministry of
Finance, Department of Revenue,
North Block,
New Delhi.

2. The Director General,
Directorate of Revenue Intelligence,
D-Block, Indra Prastha Bhawan,
I.P. Estate,
New Delhi.

...Respondents.

By Advocate Shri Hari Shanker, proxy counsel for Shri Madhav Panikar, Advocate.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the orders dated 11.5.1990 and 12.7.1989 by which his request for pay revision from Rs.425-800 to Rs.500-900 was denied.

2. The brief facts of the case are that the applicant, who was working as Stenographer Grade-III in the Directorate of Revenue Intelligence (DRI) was promoted as Examiner of Customs (OG) vide Establishment Order dated 18.1.1978 of DRI. By the order dated 25.5.1979 circulated by letter dated 6.6.1979, the posts of Examiners of Customs/Preventive Officers/Inspectors of Central Excise working in the DRI in the scale of Rs.425-800, were redesignated as Intelligence Officers. Accordingly, the applicant, who was appointed

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as Examiner of Customs was also redesignated as Intelligence Officer. Thereafter, he was confirmed in that post by order dated 7.10.1988. The respondents revised the pay scales of Inspectors of Central Excise from Rs.425-800 to Rs.500-900 w.e.f. 1.1.1980. The applicant has submitted that he was asked to exercise an option whether he would like to be refixed in the revised scale of Rs.500-900 vide letter dated 17.9.1987 to which he had agreed and requested that his pay may be fixed in the new scale w.e.f. 1.1.1980. According to the applicant, the Inspectors of Central Excise, Examiners of Customs and Preventive Officers, who were working on deputation or transfer, were paid their arrears on account of revision of pay from the grade of Rs.425-800 to Rs.500-900 sometime in the year 1989-90. However, the applicant and other similarly situated persons were not paid any arrears. While he says that Respondent 2 had strongly recommended their cases also for revision of pay, Respondent 1 had not agreed to the same. The learned counsel for the applicant has submitted that the action of the respondents is, therefore, discriminatory and against the law as similarly situated persons have been treated differently causing loss to the applicant. The learned counsel has strenuously argued that since there was no difference of duties and job assigned and performed between Intelligence Officers and other Examiners of Customs/ Preventive Officers/Inspectors of Central Excise, there are no reasons why the respondents should not grant the same benefits to the applicant and other similarly situated persons by giving them the revised pay scale of Rs.500-900 w.e.f. 1.1.1980. He has also submitted that all the

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Intelligence Officers whether recruited on deputation, transfer or promotion, carry^{out} the same type of job and had been admittedly drawing the same pay in the past prior to the present anomaly of giving certain persons a higher revised pay scale while denying to the applicant, the other set of Intelligence Officers who are also performing the same type of duties are, therefore, entitled to the revised pay scale. The recruitment to the post of Examiner of Customs/Preventive Officers/Inspectors of Central Excise working in the DRI is on the basis of 80% by deputation, 10% on transfer, 10% on promotion, failing which by deputation or transfer. The learned counsel, therefore, submits that whether these officers who were later redesignated as Intelligence Officers after 1979¹⁸, who were or any other method working in DRI come by way of deputation/ since they perform identical functions and duties i.e. conducting investigations, collection of intelligence, making inquiries, etc.^{they} should be entitled to the same pay scale. Therefore, Shri D.R. Gupta, learned counsel, has very strenuously argued that the respondents should be directed to grant the applicants the revised pay scale of Rs.500-900 in place of Rs.425-800 as done in the case of other Intelligence Officers with all consequential benefits, including arrears of pay with interest and quash the impugned orders dated 12.7.1989 and 11.5.1990. The learned counsel has relied on the following judgements of the Supreme Court and the Tribunal:

- (a) **M.P. Singh Vs. Union of India** (ATC Vol.III,p-41)
- (b) **Union of India & Ors. Vs. Debashis Kar & Ors.**, (SLJ 1995(3) SC 177),
- (c) **V.R. Panchal & Ors. Vs. Union of India**, (1996(2) SLJ-CAT-689),
- (d) **Central Excise & Customs Non-Gazetted Officers' Association & Anr. Vs. Union of India & Others**, (1987(4) ATC 446).

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submitted that while Inspectors and other officers having three years service in the grade are considered for selection as Intelligence Officer in DRI on deputation basis, the non-deputationists of DRI are filled up 100% by promotion and there is no prescription of qualifying physical fitness tests. The revision of pay of ~~Inspector~~^{B.} Inspectors of Central Excise from Rs.425-800 to Rs.500-900 w.e.f. 1.1.1980 had been done in pursuance of the judgement of this Tribunal and these benefits were also extended to Preventive Officers and Examiners of Customs Departments, as according to the respondents, their method of recruitment and nature of duties are identical. They have also submitted that the IVth Pay Commission, after taking into account all the relevant facts, did not make any recommendations in the case of Intelligence Officers of DRI, as done in the case of Inspectors of Central Excise/Preventive Officers/Examiners/Inspectors of Income Tax who were recommended the scale of Rs.1640-2900. As such, the Intelligence Officers of DRI only got replacement scales. They have, therefore, submitted that the deputationists in DRI are drawing higher scale of pay as they are entitled to higher scale of pay and not due to their deputation. Regarding the options asked for from the applicant for coming on to the higher pay scale relied upon by the applicant, they have clarified that Respondent 2 wrongly interpreted the orders dated 29.1.1989 which has not been agreed to by Respondent 1 as the revision of pay scales of Preventive^{ve} Officers/Examiners were not applicable in the case of Intelligence Officers and hence the option exercised by the applicant is a nullity. Shri Hari Shanker, learned proxy counsel, has also submitted that the principle of equal pay for equal work can be attracted only if the various conditions laid down in a catena of judgements of the Supreme Court are satisfied, for example, the method of recruitment,

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duties and responsibilities, ~~recruitment~~ qualifications and comparable pay scales previously. The respondents have relied on a number of the judgements of the Supreme Court and the Tribunal given below:

- (a) State of Andhra Pradesh Vs. G. Sreenivasa Rao, (1989(2) SCC 290);
- (b) State of West Bengal Vs. Hari Narayan Bhowal, (1994(4) SCC 78);
- (c) D.G.O.F. Stenographers Association Vs. Union of India, (1996(32) ATC 466 (FB);
- (d) State of U.P. Vs. J.P. Chaurasia, (1989(1)SCC 121.

5. We have carefully considered the pleadings and the submissions made by the learned counsel for both the parties.

6. The Supreme Court in a catena of judgements (see for example State of West Bengal Vs. Hari Narayan Bhowal's case and J.P. Chaurasia's case (supra)), ^{have} held that it is for the administration to decide the question whether the two posts which very often may appear to be the same or similar should carry equal pay, ^{18.} ~~and~~ it is not for the court or the Tribunal to interfere, ^{18.} ~~and~~ that such matters should be left to expert bodies like the Pay Commission and that the Court should not normally issue directions in these matters. This position has been reiterated in a recent decision of the Supreme Court in Union of India & Anr. Vs. P.V. Hariharan & Anr. (Civil Appeal No. 7127 of 1993), decided on 12.3.1997 in which the court has held as follows:

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"..We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission which goes into the problem at great length and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is also being misunderstood and misapplied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales."

In the present case, it is seen that the method of recruitment of Intelligence Officers (DRI) is different from the method of recruitment of Inspectors of Central Excise/Preventive Officers/Examiners on deputation to DRI, which is one of the criteria to be examined to ensure that they are identical before the plea of 'equal pay for equal work' can be acceded to. The Inspectors of Central Excise/Preventive Officers/Examiners, were granted higher grade of 550-900 and such of those Inspectors of Central Excise/Preventive Officers/Examiners ^{who were} on deputation (as Intelligence Officers) with DRI, were allowed their higher grade pay of the parent cadre, although the posts of Intelligence Officers in the DRI remained in the grade of 425-800. We do not agree with the contention of the learned counsel for the applicant that this was an anomalous position. As they were on deputation, they are entitled to get the grade pay of their parent department, as this had been upgraded. In any case, the applicant, who belong to DRI's own cadre, cannot claim higher grade as is applicable to the deputationists. The mere fact that all these officers

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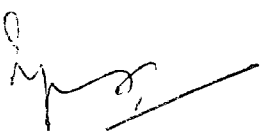
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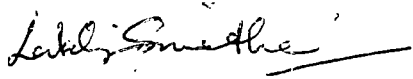
does not entitle them are redesignated as Intelligence Officers/to get the higher pay scale as applicable to the other officers who come on deputation. We, therefore, also do not find that the decision of the Tribunal in Central Excise & Customs Non-Gazetted Officers' Association & Anr. Vs. Union of India & Ors.(Supra) relied upon by the applicant can be of any assistance to him. It is also relevant to note that the IVth Pay Commission which had looked into the matters had not recommended the higher pay scale to the Intelligence Officers of DRI and the action of the respondents cannot, therefore, be faulted in giving them only the replacement scales. From the facts of the case, therefore, it is noted that not only the method of recruitment of Intelligence Officers (DRI), to which category the applicant belongs, is different from the method of recruitment of Examiners of Customs/Preventive Officers/Inspectors of Central Excise, the pay scale has also been fixed in accordance with the rules and we do not think that there is any justification for interference in the matter. In the facts of the case, we, therefore, do not think that the judgement of the Central Excise and Customs Non-Gazetted Officers' Association & Anr. (supra) heavily relied upon by the applicant will assist him as in the present case, besides comparing ^{the} nature of duties and responsibilities of the two posts as laid by the Supreme Court in the cases referred to above, there are also other criteria which are relevant, for example, parity in the method of recruitment which is not satisfied in this case. The decision of the Supreme Court in State of Andhra Pradesh & Others Vs. G. Sreenivasa Rao & Ors., 1989 (2) SCC 290, is relevant wherein it has been held as follows:

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"Equal pay for equal work" does not mean that all the members of a cadre must receive the same pay packet irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service. When a single running pay scale is provided in a cadre the constitutional mandate of equal pay for equal work is satisfied. Ordinarily grant of higher pay to a junior would ex facie be arbitrary but if there are justifiable grounds in doing so the seniors cannot invoke the equality doctrine. To illustrate, when pay fixation is done under valid statutory rules/executive instructions, when persons recruited from different sources are given pay protection, when promotee from lower cadre or a transferee from another cadre is given pay protection, when a senior is stopped at efficiency bar, when advance increments are given for experience/passing a test/acquiring higher qualifications or as incentive for efficiency; are some of the eventualities when a junior may be drawing higher pay than his seniors without violating the mandate of equal pay for equal work. The differentia on these grounds would be based on intelligible criteria which has rational nexus with the object sought to be achieved". (Emphasis added)

7. Having carefully considered the facts and circumstances of the case, therefore, and the judgements of the Supreme Court referred to above, we do not think that sufficient materials have been placed on record to show that there has been any ^{hostile} discrimination against the applicant or any justification for interfering in the fixation of his pay ^{which has been} raised on the principle of equal pay for equal work. O.A. is accordingly dismissed. No order as to costs.


(K. Muthukumar)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)