

13

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. No. 2004/91

Date of Decision 10.8.92

Shri D.K. Jain & Ors. ... Applicants

V/s

Union of India & Ors. ... Respondents

CORAM:

Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J)

Hon'ble Member Shri I.P. Gupta, Member (A)

For the Applicant ... Smt. Shymala Pappu with
Shri G. Venkatesh Rao,
Advocate.

For the Respondents ... Shri P.H. Ramchandani,
Advocate

1. Whether Reporters of local papers may be
allowed to see the Judgement ?

✓ 2. To be referred to the Reporter or not ? Yes.

J_U_D_G_E_M_E_N_T

✓ Delivered by Hon'ble Shri I.P. Gupta, Member (A) 7

In this application filed under Section 19 of the Administrative Tribunal Act, the applicants are aggrieved by the order dated 18th April, 1990 which gives them revised payscales w.e.f. 18th April 1990, while the same benefits were given to the Audit Wing of Indian Audit and Accounts Department w.e.f. 1.1.1986, while the accounts staff of various departments in the Organized Accounts cadre have been given the benefits w.e.f. 1.4.1987.

2. The applicants are employees of the Office of Director of Accounts, Cabinet Secretariat. They claim that they have been performing the same functions as the staff of various Organized Accounts cadres and even some of the functions of the Audit

Department. Therefore, giving the benefits of Fourth Pay Commission, in revision of payscales w.e.f. 18th April, 1990 is violative of Article 14 of the Constitution and the principle doctrine of equal pay for equal work which flows from it.

3. The applicants have sought for the relief that directions should be issued to the respondents to make the introduction of higher functional rates w.e.f. 1.1.1986 as was done in the case of Audit Wing of the Indian Audit and Accounts Department and as was date on which the Fourth Pay Commission's recommendations in regard to revision of various payscales were given effect to.

4. The Learned Counsel for the applicants contended that -

- (i) The apparent reason for giving the benefits from 18th April 1990 seems to be that the respondents have taken shelter behind a technicality of declaring the Directorate of Accounts, Cabinet Secretariat (DACS) as an Organized Accounts cadre w.e.f. that date only, though the petitioners have been making numerous representations from September 1, 1987 for implementation of the Fourth Pay Commission's Report. The Third Pay Commission's Report was carried out in toto in the Office of DACS. After the formation of the permanent cadre in 1975, new staff were recruited on the lines of AGCR and PAO. Earlier, some staff were taken on deputation from AGCR and PAO. Permanent cadre rules were also framed for DACS in consultation with C&AG. The Government of India had also framed what is known as Directorate of Accounts (Cabinet Secretariat) Service Rules, 1975 under Article 309 of the Constitution and

16

grade requiring promotion as per normal procedure. The proposed scale of 2000-3200 of section officer may also be treated as a functional grade. With the proposed scales, there will be no selection for any of the posts. As regards the number of posts in the functional scales of Rs. 1400-2000 and Rs. 2000-3200, we note that about 53 per cent of the total posts of junior/senior auditor and 66 per cent of the total posts of ordinary and selection grade of section officer in IA & AD are in the respective higher scales. Govt. may decide the number of posts to be placed in the scales of (i) 1400-2600 and (ii) Rs. 2000-3200 in the other organised accounts cadres taking this factor into consideration. All other accounts post may be given the scales recommended in Chap. 8."

The aforesaid recommendations were accepted by the Government. Based on such acceptance, the restructuring of accounts staff in organized accounts cadre was ordered from 1.4.87 by an office memorandum of Ministry of Finance dated 12th June, 1987. Since the DACS stood as organized cadre by virtue of recruitment rules of 1975 etc. the office memorandum of 12th June, 1987 (Annexure D) should have covered the cases of the applicants or should have been followed by a similar order giving effect to the restructuring from 1.4.1987. Though, in fact, similar orders issued on 18.4.1990 in regard to restructuring of accounts staff in DACS the date of effect was from 18.4.1990 itself and not 1.4.1987. This is discriminatory. The delay in issue of the order should not have worked to the disadvantage of the applicant.

(iii) In the case of Union of India and Others v/s Secretary, Madras Civil Audit & Accounts Association and Anr. etc. [1992 (2) SC 17] the Hon'ble Supreme Court had observed that it emerged from the Fourth Pay Commission's recommendation that -

(a) that there should be parity in pay scales of staff in IA & AD and other accounts organisations

and accordingly the scales should be revised; and

- (b) certain revised scales in the Accounts Wing should be treated as functional grades requiring promotions as per normal procedures and number of posts to be placed in those scales be decided by Government.

The first part of the recommendation was given effect to from 1st January, 1986 while the second part of the recommendation was given effect to from April 1, 1987 in the Accounts Wing of IA & AD while on the Audit side the effectual date was 1.1.1986. In view of the parity referred to above, revised scales in the office of DACS should have been made effective atleast from 1.4.1987 if not from 1.1.1986.

- (iv) The Ministry of Home Affairs issued a letter to the Secretary, Finance Department, Delhi Administration extending benefits of restructuring envisaged in the Ministry of Finance O.M. dated 12th June, 1987 from 1st April, 1987. This is evident from their letter of 20th February 1989 read with Delhi Administration's letter of 27th March 1989. Therefore though the orders for restructuring were issued in 1989 in regard to accounts staff of Delhi Administration the effect of the order was made retrospective from 1.4.1987. Therefore even in case of DACS the benefit should have been given from 1.4.1987 even if the orders were made later.

- (v) The restructuring of accounts staff in the organized accounts cadre was issued by the Deputy Controller General of Accounts vide their O.M. of 31st August 1987 and a copy of this order was also endorsed to DACS, New Delhi and therefore it can be inferred that these orders were intended to have been extended to DACS

these rules regulated the method of recruitment to Class I, Class II, Class III and Class IV of DACS. The rules were notified on 18th August, 1975. These rules were framed on the pattern obtaining in AGCR and PAO and the working conditions were similar. The benefits as obtaining in the office of AGCR and PAO were also allowed to the applicants without prejudice. Therefore, the applicants were in Organized cadre right from 1975 when the recruitment rules were framed and the cadre rules were also constituted. Therefore, the respondents should not take the technicality that the higher revised scales recommended by the Fourth Pay Commission were for Organized Accounts cadre and the DACS became an organized accounts cadre only from 18th April, 1990.

(ii) The Fourth Pay Commission in para 11.38 of its Report made the following recommendations :-

"We have considered the matter. There has all along been parity between the staff in the IA & AD and accounts staff of other departments, which has been disturbed by restructuring the IA & AD into two separate cadres, viz. audit cadre and accounts and establishment cadre and giving higher pay scales to a major portion of the staff on the audit side. The audit and accounts functions are complementary to each other and are generally performed in many Govt. offices in an integrated manner which is necessary for their effective functioning. The staff in these offices perform functions of internal check and audit suited to the requirements of each organisation which are equally important. There is direct recruitment in the scale of 330-560 in all the audit and accounts cadres through Staff Selection Commn./Rly. Recruitment Board from amongst university graduates. We are therefore of the view that there should be broad parity in the pay scales of the staff in IA & AD and other accounts organisations. Accordingly we recommend that the posts in the scale of Rs. 425-700 in the organised accounts cadres may be given the scale of 1400-2600. In the Railways this will apply to the post of sub-head in both the ordinary and selection grades. We also recommend that this should be treated in future as a functional

also and the revision made effective from 1.4.1987 itself, moreso when the accounts cadre in DACS was an organised cadre as pointed out earlier and as observed by C&AG in his U.O. dated 15.10.1957 which reads as follows :-

" Office of the DACS is presently discharging accounting functions which appear parallel to those assigned to other organised Accounting Organisations set up after departmentalisation of Accounts of Union Government in 1976. We have no objection to the continuance of DACS Organisation as at present constituted ".

5. The Learned Counsel for the respondents contended that -

- (1) Posts were to be identified and brought into the functional grades; *Therefore* the higher scales of pay cannot be made applicable retrospectively. It cannot be said that on that date the posts identified subsequently were also in existence in higher scales;
- (2) The implementation of the recommendations of the Pay Commission's Report, according to terms thereof itself involves the exercise of creation of posts in higher scales. The number of posts to be placed in the higher scales were to be identified by the Government.
- (3) The Department of Personnel and Training agreed to constitute accounts service for the accounts staff of Director of Accounts, Cabinet Secretariat subject to compliance of the conditions laid down in their U.O. dated 29th March 1990 issued in consultation with the Ministry of Finance.

19

Accordingly, the Cabinet Secretariat, after compliance of the conditions laid down by the Department of Personnel & Training issued orders on 18.4.1990 giving effect to restructuring of accounts cadre of DACS from that date. The revised recruitment rules were also issued on 23rd August, 1990. These rules were called the Directorate of Accounts (Cabinet Secretariat) Service (Amendments) Rules, 1990 which were made operative from 18.4.1990 vide clause 1(2) of the notification (Annexure C). The date 18.4.1990 referred to in the amendment rules was based on the order when the higher payscales with percentages of posts were prescribed by order dated 18th April 1990.

- (4) The judgement of Hon'ble Supreme Court in the case of Union of India and Others versus Secretary, Madras Civil Audit and Accounts Association and Others (Supra) is clear enough to indicate that in regard to higher payscales of 1400-2000 and 2000-3200 it was for the Government to decide the number of posts to be placed in these scales and even in the case of Audit & Accounts Department the higher payscales were given effect to from 1.1.1986 and 1.4.1987 respectively and it was held by the Apex Court that the conferment of benefit from a later date to the Accounts Department did not violate provisions of Articles 14 and 16 of the Constitution or the principle of equal pay for equal work.

6. Let us analyse the facts and arguments in this case. As observed by the Apex Court in the case referred to, the Pay Commission can be said to have made two recommendations i.e. -

"(i) There should be broad parity in the payscales of staff in the IA & AD and other Accounts Organizations;

(ii) the scales of pay of Rs. 1400-2000 and Rs. 2000-3200 should be treated as functional (grades) requiring promotion as per normal procedure. The number of posts to be placed in these scales to be decided by the Govt."

The Pay Commission also observed that in respect of other recommendations the Government will have to take a specific decision to give effect from a suitable date keeping in view all the relevant aspects.

7. The recommendation at (ii) above would seem to fall under the category of 'other recommendations'. It is true that the decision to place the number of posts in the higher scales in DACS was to be decided by the respondents and this decision was taken only on 18.4.1990. The point for consideration is whether the decision taken on 18.4.1990 was required to be given effect to from 1.4.1987 in view of Pay Commission's recommendation and the Ministry of Finance's O.M. dated 12.6.1987 restructuring accounts staff in organised cadres.

8. The recommendations of the Pay Commission incorporated the following sentences -

As regards the number of posts in the functional scales of Rs. 1400-2600 and Rs. 2000-3200, we note that about 53 per cent of the total posts of junior/senior auditor and 66 per cent of the total posts of ordinary and selection grade of section officer in IA & AD are in the respective higher scales. Government may decide the number of posts to be placed in the scales of (i) Rs. 1400-2600 and (ii) Rs. 2000-3200 in the other organised accounts cadres taking this factor into consideration. All other accounts posts may be given the scales recommended in Chapter 8.

Thus, even in 'other organised' accounts cadres, the decision regarding the number of posts in the higher scales had to be taken specifically keeping in view

21

the total number of posts of junior/senior auditors and ordinary and selection grades section officers. It will be observed from the conditions laid down by the Department of Personnel and Training on 29.3.1990 in respect of constitution of organised accounts cadre in DACS (Annexure 1 to counter) that in DACS there was no post in scale of Rs. 2000-3200 and the selection grade of auditors carried the scale of Rs. 1400-2300 instead of Rs 1400-2600 prior to the issue of the orders dated 18.4.1990. In any case, the totality of factors had to be taken into reckoning by the respondents while prescribing the percentages for section officer (functional) and auditors (functional). The same annexure also said that the recruitment rules would have to be amended and the cadre would have the benefit of Ministry of Finance O.M. dated 12.6.1987 from that date. The recruitment rules were amended on 23.8.1990 with retrospective effect from 18.4.1990. It is these recruitment rules that incorporated the number of posts of senior section officers and senior auditors which were to be given the higher scales. Again it is the recruitment rules of 23rd August 1990 which prescribed the method of promotion of section officers as senior section officers and of auditors as senior auditors.

9. It may be another matter that the percentages fixed for the posts of senior section officers and senior auditors by DACS were the same as that adopted by the Ministry of Finance in their O.M. dated 12th June 1987 but it cannot be inferred that the said O.M. of 12th June 1987 would be applicable per se to the accounts staff in DACS. A reading of the O.M. of 12th June 1987 would indicate that it was made applicable to the accounts staff in organised accounts cadre under the Controller General of Defence Accounts, Controller General of Accounts,

Department of Posts and Tele-communications and also in the Accounts Wing of the Indian Audit and Accounts Department. The respective cadre controlling authorities were advised to take necessary action to prescribe criteria for appointment to the higher functional grades. This O.M. was not endorsed to DACS or to the Secretary, Department of Cabinet Affairs who was the Controlling Authority in respect of DACS. The O.M. of 31st August 1987 consequentially was issued by the Ministry of Finance in respect of the Accounts cadre under the Controller General of Accounts. This order again did not cover DACS for which the cadre controlling authority was the Secretary, Department of Cabinet Affairs and where the senior-most post is designated as Director of Accounts and not as Chief Controller of Accounts or Controller of Accounts, as referred to in para 2 of the O.M. of 31st August 1987. The mere endorsement of a copy of the O.M. of 31st August 1987 to DACS would not imply that the orders would be applicable to them also when no advice or instructions in this letter were issued either to DACS or to the controlling authority of DACS nor was any reference made to the accounts staff of DACS in the said O.M. In the above view of the matter, we cannot bound the respondents to give effect to the higher revised scales from 1.1.1986 or 1.4.1987. An administrative action is subject to control by judicial review on grounds of illegality, irrationality or procedural impropriety. We do not find any such ground for issue of a direction to the respondents to make the introduction of higher functional grades in DACS effective from 1.1.1986. This is also not a case where a harmonious group is being treated differently. The accounts staff of DACS had had separate Recruitment Rules right from 1975. Even on audit and accounts sides of IA & AD, the Pay Commission had unequivocally observed that there had been parity and the audit and accounts

23

functions were complementary. Nevertheless the two sides gave the higher functional grades from different dates 1.1.1986 and 1.4.1987 in their respective Wings. This was upheld by the Apex Court. In the above view of the matter we refrain from giving a mandatory direction to the respondents on the relief prayed for in the O.A., since a judicial interference is not supported by the facts of the case. However, it would lie within the wisdom of the respondents themselves to consider whether the retrospectivity of their order of 18.4.1990 should be given keeping in view what other organised accounts cadres including that of Delhi Administration have done.

10. With the above observations, the case is disposed of with no order as to costs.

I.P. Gupta
I.P. Gupta
Member (A) 10/8/92

Ram Pal Singh
Ram Pal Singh
Vice-Chairman (J) 10.8.92