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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.**

O.A./~~XXXX~~ No. 2370/1991

Decided on: 8/10/97

The All India Railways Ministerial Applicant(s)
Staff Association & Others

(By Shri B.B. Raval Advocate)

Versus

U.O.I. & Others Respondent(s)

(By Shri P.H. Ramchandani Advocate)

CORAM:

THE HON'BLE ~~SIR~~ MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter *yes*

2. Whether to be circulated to the other Benches of the Tribunal?

[Signature]
(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 2370 of 1991

New Delhi this the 8th day of October, 1997

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HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

1. The All India Railways Ministerial Staff Association, (Regn. No.1832/Patna)., Central Office, 437-11-33, Hill Colony, Dhanbad.
2. Shri Chandra Mouli Singh
S/o Shri (Late) Basudev Singh,
R/o Railway Quarter No.437-II/33,
Hill Colony,
Dhanbad.
3. Shri Jamal Uddin,
S/o Shri Allah Uddin
R/o C-16/L, Railway Colony,
Lajpat Nagar,
New Delhi.Applicants

By Advocate Shri B.B. Raval

Versus

1. Union of India
through the Chairman,
Railway Board,
Rail Bhavan,
New Delhi.
2. The Secretary,
Ministry of Finance,
Government of India,
North Block,
New Delhi.
3. The Secretary,
Department of Personnel & Training,
Ministry of Home Affairs,
Government of India,
North Block,
New Delhi.Respondents

By Advocate Shri P.H. Ramchandani

ORDER

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

The applicants are All India Railway

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Ministerial Staff Association with two others, who are members of the Association. They seek a direction in this application that the respondents should remove the disparity in the pay scale and status of the ministerial staff of the rank of Head Clerk, Office Superintendent/Superintendent and to bring them on par with their corresponding counter-parts of Assistants in the Central Secretariat Service w.e.f. 1.1.1986 and grant them the difference in pay and allowances along with arrears with interest. It is stated that these ministerial staff in the post of Head Clerk, Office Superintendent and Superintendent belong to the Ministerial staff of the Zonal Railways and their duties and responsibilities are comparable with their counter-parts in the Ministries/Departments of the Central Secretariat Service. It is stated that although there is practically no difference in the job performed by them with that of Assistants in the Ministries/Departments of the Central Secretariat Service, there is a glaring disparity in the pay scales made applicable to them. It is, therefore, contended that this is violative of Articles 14 and 16 of the Constitution.

2. On the basis of the recommendations of the successive Pay Commissions right upto the 4th Pay Commission, complete parity was maintained in the pay scales of Clerks and Senior Clerks in the Zonal Railways with the scales of pay of LDCs and UDCs in the Ministries/Departments under the Central Secretariat Clerical Service. In the case of Head Clerks in the Zonal Railways, there were three grades in the First

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Y Pay Commission, namely, Rs.160-250, Rs.200-300 and Rs.260-350 as compared to the scale of Rs.160-450 in the scale of Assistants in the Ministries/Departments. After the Second, Third and Fourth Pay Commissions, the scales were Rs.210-380, Rs.452-700 and Rs.1400-2300 respectively. As compared to this, corresponding scales of Assistants in the Ministries/Departments were Rs.210-530, Rs.425-800 and Rs.1400-2600 (changed to Rs.1640-2900). Thus although there was near parity in the pay scales of Head Clerks in the Zonal Railways with that of Assistants in the Central Secretariat Service (CSS for short) except a slight difference in the maximum of scale, the Government unilaterally brought about a discrimination by revising the scales of Assistants to Rs.1640-2900 which, by all intents and purposes, amounts to hostile discrimination against the Head Clerks similarly placed in the Zonal Railways. It is stated that following the recommendations of the Fourth Central Pay Commission in respect of Sub-Inspectors of Delhi Police, the Assistants in the Central Secretariat felt aggrieved and the Central Secretariat Service Direct Recruits Assistants Association filed a petition in the Principal Bench of this Tribunal - O.A. 1538 of 1987. Disposing this petition, the Tribunal directed the respondents to consider and remove the anomaly in respect of pay scales of Assistants of the C.S.S. In the light of this direction given in the said case, the Union of India revised the pay scales of Assistants of the C.S.S. and also Grade 'C' Stenographers of the Central Secretariat Stenographers Service (CSSS for short) to the new scale of Rs.1640-2900 w.e.f. 1.1.1986 as

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against Rs.1400-2600 recommended by the Fourth Pay Commission. Following this order, the respondents vide order dated 7.8.1990, the scales of pay of Assistants of Railway Board Secretariat Service and Railway Board Stenographers Service were also revised to Rs.1640-2900. The applicants case is that by these revisions in respect of Assistants of the C.S.S. as well as of Railway Board Secretariat Service and the Grade 'C' Stenographers of C.S.S. and Railway Board Secretariat Stenographers Service, the respondents have completely disturbed the parity that existed between the Head Clerks of the Railway Zonal office and the Assistants of the C.S.S. significantly and to their disadvantage.

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3. In the reply filed by the respondents it is stated that it is not within the competence of this Tribunal to interfere with the appropriateness or otherwise of the pay scales of the different categories of Government employees and the law is well settled in this regard. It has been contended that the revision of pay scales of Assistants Grade in the Railway Board Secretariat Service and Grade 'C' of Railway Board Secretariat Stenographers Service with effect from 1.1.1986 was necessitated following the revision of scales of Assistants in the C.S.S. and Grade 'C' Stenographers of C.S.S.S. and it was provided in the orders in that behalf that the same revised pay scales would be applicable to Assistants and Stenographers Grade 'C' in the departments which are participating in the C.S.S. and C.S.S.S. but where the posts were in comparable grades with the same classification and pay

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scales and where the method of recruitment through open competitive exam is also the same. This was, therefore, accordingly extended to the Assistants of the Railway Board Secretariat Service and Grade 'C' Railway Board Secretariat Stenographers Service as they were completely on par both with reference to the pay scales as well as method of recruitment and the nature of duties with Assistants of C.S.S. However, these orders were not made applicable to the Ministerial staff of the Railways, namely, Zonal Railways as their pay scales were different, and the classification and method of filling up the posts were not on the same footing and there was no element of direct recruitment through open competitive exam in the category of Head Clerks in the Zonal Railways. The respondents assert that the Head Clerks of the Zonal Railways are not equivalent to that of Assistants of the C.S.S. or Railway Board Secretariat Service and their duties and responsibilities and pay scales are different from the beginning. The Head Clerks are classified as Group 'C' whereas Assistants are Group 'B' Non-Gazetted and the post of Assistants in the Railway Board Secretariat Service are also filled up by promotion of UDC to the extent of 50% and remaining 50% by direct recruitment of graduates from open market through Staff Selection Commission whereas the Head Clerk is a promotional post filled in by Senior Clerks with no element of direct recruitment. On this, it was made out that the recruitment procedure itself was basically different in these two categories and, therefore, there was no question of any parity in the pay scales.

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The learned counsel for the applicant pointed out that the respondents have not demonstrated any intelligible differentia in the classification between the Head Clerks of the Zonal Railways and the Railway Assistants of the C.S.S./Board Secretariat Service. On the other hand, the posts of Head Clerks are comparable to that of Assistants in the Railway Board as they perform more or less similar duties. By an order dated 23.5.89 in O.A. No.1538 of 1987, the Tribunal had interfered in the matter and the Tribunal as a Judicial Body has a overriding judicial power beyond the Expert Committee's recommendations. The hostile discrimination is evident from the fact that the respondent-Railway Board have mechanically extended the revised scales of pay of the Assistants of the C.S.S. to Railway Board Secretariat Service and that of Stenographers Grade 'C' of the C.S.S.S. to Railway Board Secretariat Stenographers Service without going into the questing of the existing parity between the ministerial staff such as Head Clerks of the Zonal Railways with those of Assistants in the Railway Board Secretariat Service and has deliberately disturbed the parity that was existing even after the 4th Pay Commission's recommendations.

5. The learned counsel brought to our attention the arbitrary manner in which the respondents purporting to act on the basis of the decision of the Tribunal in Direct Recruit Assistants Association case surreptitiously extended the benefit to Grade 'C' Stenographers in the C.S.S.S. also in the scale of Rs.1640-2900 and the Railway Board followed the same

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Pattern without independently looking into the existing parity between the Head Clerks and Office Superintendent Grade-II/Chief Clerk and Superintendent Grade-I. While there was an existing parity between the Assistants of the Railway Board Secretariat Service and the Head Clerks of the Ministerial Cadre of the Zonal Railways except for a small difference in the maximum of the pay scale, the respondents have disturbed the parity by allowing the Assistants of the C.S.S. scale of Rs.1640-2900 thereby making their grades even higher than that of the Chief Clerks of the Railways which is a promotional post from the level of Head Clerks. He maintained that this is a deliberate and hostile discrimination purported against the Railway Ministerial Staff at the level of Head Clerks and Office Superintendent Grade-II.

6. The learned counsel for the respondents on the other hand referred to the important nature of work of Assistants and relies on para 37 of the judgment in the case of Central Secretariat Service Direct Recruit Assistants Association Vs. Union of India and another, 1991 (16) ATC 891. Referring to the relevant chapter 46 of the 5th Pay Commission report, he pointed out that the Assistant in the Central Secretariat have been given special status as they have been holders of Group 'B' posts and have always had a higher pay scale as compared to the others in the non-secretariat organisation even though difference is limited to a higher maximum. He has also referred to the significantly higher proportion, namely, 50% of the direct recruitment of Assistants through open

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competitive examination and, therefore, all along the Assistants of the Central Secretariat have had an edge over the Head Clerks in the Railway offices.

7. We have heard the learned counsel for the parties and have carefully perused the various documents placed before us including the documents referred to by either side.

8. We are conscious that in the matter of adjudication on the scales of pay, Courts and Tribunals have to tread on our path cautiously. In the recent judgment of the Supreme Court in Union of India and Another Vs. P.V. Hariharan and Another, the Apex Court made the following observations:-

" Before parting with this appeal, we feel impelled to make a few observations. Over the past few weeks, we have come across several matters decided by Administrative Tribunals on the question of pay scales. We have noticed that quite often the Tribunal 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 depth 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."

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9. The learned counsel for the applicants argued that discrimination in this case was brought about by an executive action on the supposed implementation of the judgment in Central Secretariat Service Direct Recruit Assistants Association Vs. U.O.I. & Another, 1991(1) ATC. While it is true that even on the basis of the 4th Pay Commissions recommendations, the scales of pay of the two categories, namely, Head Clerks in the Zonal Railways and Assistants in the C.S.S. or Railway Board Secretariat Service were not identical, it is an admitted position that the difference was limited to the maximum of the scales. Even so, in a claim for parity in scales, one has to necessarily look into the factors which should be on all fours for consideration for such parity. One of the important factors for consideration is the mode of recruitment and classification of the post. In a Full Bench Judgment of this Tribunal in DGOF Stenographers' Association Vs. U.O.I. & Others, the Full Bench answered the following questions as indicated below:-

"Question (i) Whether a difference in the procedure or mode of recruitment and classification would be reasonable justification for fixing different pay scales for posts carrying more or less the same duties and responsibilities; or, whether mere equality in respect of work alone can be the sole criterion to determine the pay scale?

Answer: (i) Yes. Difference in the procedure or mode of recruitment can be a valid ground for denying identical pay scales to those performing more or less same duties and responsibilities; mere equality in respect of work cannot be the sole criterion to determine the pay scales.

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Question (ii) Whether fixation of different pay scales in such a case could be held to be discriminatory being violative of the principle of equal pay for equal work?

The answer to question No.(ii) is contained in the reply to the question No.(i)."

10. In the present case except for the assertion of the applicants that they have performed the similar duties, there is no material on record to indicate that they perform similar duties and share the same level of responsibilities. In the matter of recruitment also it is brought before us that while in the case of Assistants in the Central Secretariat and the Railway Board Secretariat Service, recruitment is made to the extent of 50% by direct recruitment through an open competitive examination and 50% by promotion from among UDCs with a minimum of 5 years of service in the grade. In the case of Head Clerks in the Railways of the Ministerial category of Railways other than Accounts department, the posts are filled up from senior clerks in the grade of Rs.1200-2040 (equivalent to UDCs), on the basis of seniority and there is no requirement for passing any examination as such. This by itself bring to the fore consideration of different scales of pay based on intelligible differentia. The grievance of the applicants is not so much due to the difference in the maximum of the scale of these two categories that existed prior to the O.M. dated 31.7.1990, but by the aforesaid O.M. itself, the scale of Assistants and the Grade 'C' Stenographers of the Central Secretariat was revised with effect from 1.1.1986 to that of Rs.1640-2900 on the basis of the decision of the Central Administrative Tribunal in O.A. 1538 of 1987 (Supra). In our view, the applicants have

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not made out an independent case of parity with the Assistants as revised by the aforesaid order of 31.7.1990 as adopted by the Railway Board Secretariat Service as well as Railway Board Stenographers Service. In this connection, it is worth pointing out that even for the level of Office Superintendent Grade-II/Chief Clerk, which is a promotional post of Head Clerks in the Railways, there is no provision for any direct recruitment as in the case of Assistants in CSS.

11. We refer to the recommendations of the 4th and 5th Pay Commissions recommendations. The 4th Pay Commission observed as follows:-

"11.33. Recruitment in these organisation is mostly at the level of lower division clerk (LDC). There is no direct recruitment at higher levels except in a few organisations where upper division clerks (UDC) are recruited directly. The pay scales of the LDC and UDC are common for all offices. There are about 26000 clerical supervisory posts in 15 designations and 16 different pay scales. The posts in these organisations are generally classified as group 'C' non-gazetted. In the Central Secretariat the clerical supervisor post is at the level of Section Officer. It has been suggested that pay scales at Supervisory levels of clerical staff should be the same in all offices of Government of India. We find that there is considerable difference in educational qualifications, levels of recruitment and methods, duties and responsibilities of the posts between these organisations. While we do not find it possible to recommend parity in the pay scales, we are of the opinion that there is need for bringing some uniformity in the scales of pay below the level Rs.650-1200 and also in the designations of supervisory level posts in offices outside the central secretariat. Government may review the position keeping in view the present levels, duties and responsibilities of the posts in supervisory level and other relevant factors. The three standard levels of supervisory posts may be in scales of Rs.1400-2300, Rs.1640-2900 and Rs.2000-3200 with suitable designations. Until then, the scales of pay recommended in

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chapter 8 may apply. The Supervisory accounts staff in these organisations are dealt with separately.

11.34. There are about 41000 stenographers mainly in the three scales of pay viz. Rs.330-560 (grade-III), Rs.425-700 (grade-II) and Rs.550-900 (grade-I) in these offices. It has been pointed out that as the post of stenographer is linked with the status of the officer concerned and since the number of posts of officers in subordinate offices is small, there is stagnation in the grades of stenographers. We find that the promotion prospects of the stenographers in these organisations need some improvement. We are therefore in favour of introducing a higher level of post of stenographers in these organisations, for being attached to officers of senior administrative grade and equivalent posts. We recommend that these posts may be created in the scale of Rs.2000-3200 by suitably upgrading the required number of posts of stenographers from the lower grades."

12. Thus the Commission went into the question of work handled by the subordinate staff and the work done in the Central Secretariat and held them to be different, for the reasons mentioned above.

13. In regard to the claim for parity with the secretariat pay scales, the Vth Pay Commission observed as follows:-

"46.8. There is already a complete parity in the scales of pay of LDCs and UDCs in the Secretariat and Non-Secretariat Organisations.....".

"46.9. In the case of Assistant in the Secretariat, the position is entirely different. Assistants in the Secretariat have been given a special status as they have been holders of Group 'B' posts. They have always had a higher pay scale as compared to Assistants in Non-Secretariat Organisations, even though the difference was limited to a higher maximum. There has been a significant element (50%) of direct recruitment with the higher

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educational qualification of graduation in the case of Assistants in the Secretariat, as compared to their counter-parts in subordinate offices, who are promoted from the post of UDCs for which the prescribed minimum qualification is matric only. Assistants in Secretariat performed more complex duties inasmuch as they are involved in analysing issues which have policy implications in comparison to their counter-parts in subordinate offices, where the nature of work is confined to routine matters related to establishment, personnel and general administration only. Assistants in the Secretariat also submit cases directly to the decision making level of Under Secretary/Deputy Secretary, under the scheme of level jumping. Taking all these factors into consideration, we are of the definite view that the pay scale of Assistants in the Non-Secretariat organisations should slightly be lower as compared to the pay scale of Assistants in the Secretariat. Assistants in subordinate offices may, therefore, be placed in the pay scale of Rs.1600-2660".

14. Thus, the Pay Commission has gone into this question in detail and has made the aforesaid recommendation and the above recommendations are under examination of the Government and, therefore, it will not be proper for us to look into the issues any further. It is, therefore, trite to argue at this stage that the Head Clerks and Office Superintendents-Grade II will be entitled to the same scale as was recommended to the Assistants of the Central Secretariat and the Railway Board Secretariat Service, in view of the obvious difference in the mode of recruitment and level of responsibility and nature of duties, between these categories of posts.

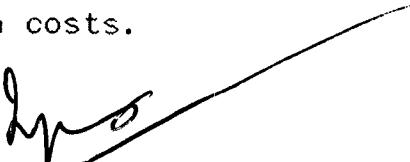
15. From the foregoing, it is fairly clear that the Assistants in the C.S.S. and the Railway Board Secretariat Service and the Head Clerks working in the Zonal Railway Offices cannot be said to perform similar duties nor are they governed by the same mode of

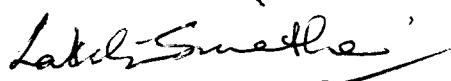
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recruitment. Thus on both the grounds, the applicants have not made out the case for parity in the pay scales. In the light of this, we are also not convinced that there has been any hostile discrimination against the applicants in particular.

16. In the conspectus of the above discussion, we do not find adequate grounds to issue any directions to the respondents for the revision of scales of pay as claimed in this application. The application is, therefore, dismissed leaving the parties to bear their own costs.


(K. MUTHUKUMAR)
MEMBER (A)


(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

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