

7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A. No. 2802/1991

Date of decision 12.1.96.

Hon'ble Smt. Lakshmi Swaminathan, Member (J)  
Hon'ble Shri R.K.Ahooja, Member (A)

1. Shri R.P.Lamba,  
S/o Late Shri Ram Swaroop Lamba,  
t/o 1430, Lodhi Complex,  
New Delhi.
2. Shri J.S. Arya,  
s/o Shri K.L.Upadhyay,  
r/o C-66, Sector-21,  
Jal Vayu Vihar, NOIDA-201301

..Applicants

(By Advocate Shri M.K.Sawhney )

Vs.

1. Union of India, through  
Cabinet Secretary,  
Cabinet Secretariat,  
Rashtrapati Bhawan, New Delhi
2. Secretary,  
Cabinet Secretariat,  
(Special Wing) Room No. 8 B,  
South Block, New Delhi

..Respondents

(By Advocate Shri M.K.Gupta)

O R D E R

Hon'ble Smt.Lakshmi Swaminathan, M(J) 7

This application has been filed under  
Section 19 of the Administrative Tribunals Act,  
1985 by the two applicants who are working as  
Caretakers with respondent No.2. They are aggrieved  
by the rejection of their claim for over time  
allowance for extra duties performed, vide memo.dated  
28.8.91(Annexure-C). In this memo., the respondents

...

have stated that the Caretakers are governed by the conditions prescribed in Office Memo. No. 2/AO-Misc./85(32)-

625 dated 20-2-1989 (Annexure R-III) which prescribes the duty hours and hence no O.T.A. is admissible.

2. The brief facts of the case are that the applicants are employed as Caretakers — applicant No.1 with effect from 3.8.71 and applicant No.2 from 7.5.76 with respondents. They claim that their pay should have been increased from the pay scale of 380-640 to Rs 550-900 based on the recommendations of the SIU report dated 5-7-1987 (Annexure-E). According to them, this report was not implemented by the respondents prior to the 4th Pay Commission and subsequently the Caretakers had not been considered adequately and there is no specific recommendation made with regard to their pay scale. As a result of the general recommendations of the Fourth Pay Commission, their pay has been revised from Rs 380-640 to Rs 1350-2200. They have compared their scale of pay with DFO's who were in the pre-revised scale of Rs 425-600. Their grievance is that the DFO's pay scales which were lower earlier have now been revised to Rs 1640-2900. As against this, in their case their pay scales have only been revised to Rs 1350-2200.

3. One of the applicants, Shri R.P. Lamba, also states that while he was on deputation with the Department

of Electronics w.e.f. 16.8.1991, his pay was fixed at Rs 2060/- . The plea taken by the applicant is that the pay scale of Caretakers in other Departments are higher than those of the applicants. They, therefore, state that this is discriminatory and violative of Articles 14 and 16 of the Constitution.

4. The applicants are aggrieved that they are not having any promotional chance inspite of long service record. They claim that AFO(GD) who also performs the duties of Caretakers and are junior to the applicants get their promotion as DFO/SFO in accordance with the rules whereas the Caretakers do not have any opportunity for promotion and advancement in their career.

5. Applicants had made the representations to the respondents regarding the revision of pay scale and for promotional avenues to be given on 27.12.1990 and 22.10.1990 (Annexure A and B) to which they say that no final orders have been issued by the respondents. Hence this O.A.

6. Respondents have filed a reply denying the above claims and praying that the OA may be dismissed.

7. Applicants have also filed another OA 2801/91 in which they have claimed O.T. Allowance for the extra ✓ duties performed by them beyond 48 hours a week. Therefore,

their claims for O.T. Allowance has not been dealt with in this application and will be separately taken up in OA 2801/91.

8. Regarding the other claims raised in this application, respondents have stated that/nature of work of Caretakers differs from one department to another and the comparison of duties of Caretakers with LDCs, who may be employed as Caretakers, is not relevant. They state that with regard to the duties performed by Caretakers in their department, the security duty is performed by another unit in the office. At the entrance, outer as well as inner, there are guards and Caretakers are not to be employed for this purpose. They state that there is another Branch in this office to deal with internal security matter. They have also clarified that the post of DFOs belong to a different cadre and therefore, the comparison of their duties with those of Caretakers is also not relevant.

9. With regard to the revision of pay scale, they have stated that they have sent a proposal to the Government on 22.1.1992(Annexure R-V) recommending the pay scale of Rs 1640-2900/who have done one year's service after stagnation at the maximum of the scale, <sup>for those</sup> on the basis of Ministry of Finance O.M. No.10(1)E-III/

✓

88 dated 13-9-91 (Annexure-IV). They have submitted that in accordance with the recommendations of the IVth Pay Commission, the revised pay scale of Rs 1750-2200 has been sanctioned to the Caretakers.

10. With regard to the higher salary of Shri R.P. Lamba, applicant No.1, while he was on deputation in the Department of Electronics, the respondents have not stated that he was/only a Caretaker in the scale of Rs 1640-2900 but he was Supervisor-Cum-Caretaker. These Respondents, therefore, submit that Caretakers cannot claim equation of their pay scale with the pay of officials in other cadres or in other Departments.

11. Shri Sawhney, learned counsel for the applicants lays stress on the recommendations of the SIU report 1985 which deals, inter-alia, with the position of the Caretakers, their job functions, night duty etc. and recommendation of the pay scale. His point was that SIU has correctly recommended the pay scale depending on the level of responsibilities in the job performed by the Caretakers which vary from working station of posting, floor area of the building, the status of the office etc. They had recommended three scales of pay, namely, 550-900, 425-800 and 380-640 in case of Caretakers in Secretariat Offices. According to him the respondents have failed to follow the SIU

*V8*

report inspite of floor area of building, status of office which according to him have large number of Senior Officers, including Secretary, /two Special Secretaries. Further, he submits that the recommendations of the respondents to give higher scale of pay/<sup>of</sup> 1640-2900 is only confined to those Caretakers who have already completed one year's service after stagnation at the maximum of the pay scale. According to the learned counsel, these recommendations will not give any benefit to the applicants who have yet to reach the maximum in the pay scale, as they are both ex-servicemen. He also contends that reply of the respondents regarding floor area to be covered by one Caretaker does not give full details.

12. Shri M.K.Gupta, learned counsel for the respondents submits that the report of the SIU relied upon by the applicant has dealt in detail with the position of the Caretakers in other Ministries/ Departments/Offices which are listed in para 4 and does not include the respondents. In this case, he further submits that after the SIU report of 1985, that matter was reviewed by the Cadre Committee and it had been decided to give pay scale to the applicants of rs 1400-2600 in 1992. He further states that vide order dated 22-1-92 the respondents have taken a decision in

accordance with the Ministry of Finance O.M. dated 13.9.91 adopting the pay scale of Rs 1640-2900 only for those Caretakers who have done one year's service after stagnation at the maximum of the pay scale. He further submits that the matter of adopting the pay scale as a service condition is a matter of policy and

*13*  
the judiciary should not exercise such powers which are within the jurisdiction of the executive. It should only exercise the power of judicial review. He relies on the observations of the Supreme Court in Asif Ahmed and Ors v. State of Jammu and Kashmir and Ors. (1989(Supp.2) page 365) wherein the Supreme Court has held that "judiciary has no power over sword or the purse."

14. We have carefully considered the arguments of both the learned counsel for the parties and perused the records in this case.

15. It is settled law that it is for the administration to decide the question of pay scale of different categories of persons depending /evaluation of duties and responsibilities of the respective posts, functions and volume of work. In State of U.P. & Ors v. J.P. Chaurasia and Ors. (AIR 1989 SC 19), the Supreme Court has held that the question whether two posts should be equated depending on nature of duties and responsibilities

etc. should <sup>be</sup> be determined by expert bodies like the Pay Commission and normally the court should accept its recommendations. The Supreme Court further held as under :-

\* 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 the 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."

(Emphasis added)

16. In this case, the main grievance of the applicants is that the respondents have not accepted the SIU Report dated 5-7-1985, but have accepted the general recommendations of the 10th Pay Commission in revising their pay from Rs 380-640 to Rs 1350-2200, instead of granting them the pay scale of Rs 1640-2900. A mere perusal of the SIU report shows that they have not considered the position of the Caretakers working with the respondents i.e. the Cabinet Secretariat. This itself would, therefore, negative the stand taken by the applicants that the recommendations automatically of the SIU Report should also be applied to their case. Apart, from this, they have compared themselves to other persons like DFO's who were in the pre revised scale of Rs 425-600 and so this cannot be accepted.

It is for the petitioners to establish their right to equal pay, or the plea of discrimination, as the case may be. In State of M.P. & Anr. v. Premod Bhartiya & Ors. (JT 1992(5) SC 683 ), the Supreme Court has stated that although equal pay for equal work is a fundamental right, whether two sets of lecturers in M.P. are entitled to get equal pay would significantly depend upon whether they are discharging similar duties, functions and responsibilities. In this case, the Supreme Court has held that there is a conspicuous absence of any clear allegation and / or material suggesting that duties functions and responsibilities of both the categories of lecturers are similar. The Court also held that not only the respondents failed to establish that their duties, responsibilities and functions are similar <sup>to the</sup> ~~to~~ those of non-technical lecturers in Technical Colleges, but they have also failed to establish that the distinction between their pay scales is irrational or without any basis or malafides In the circumstances the order of the Tribunal was set aside and the SLP filed by the State of MP was allowed.

17. In the instant case, the applicants have also failed to place on record any material to show that

P.

their work, duties and responsibilities, qualifications etc. are similar to those of Caretakers in the Departments dealt with by the SIU Report. Apart from this, the respondents have also stated that for the purpose of security, duty is performed by another unit in the office and Caretakers are not employed for this purpose. The fact that the applicant No.1 was getting higher scale of pay while he was deputed to the Department of Electronics does not also justify giving him the higher scale in the Cabinet Secretariat as it is not possible to say from the materials on record that the nature of work and responsibilities of Caretakers with the respondents is identical to that in the other Department or that the different pay scales are irrational or malafides or without any basis which justifies any interference in the matter. The respondents have also afforded promotion to a higher pay scale of Rs 1640-2900 in accordance with the general Government policy and we, therefore, see no reason to interfere with this also.

18. It is also significant to note that the Government has already constituted the Vth Pay Commission which is seized of the matter regarding revision of pay scales of various categories of persons employed in Govt. In the circumstances and having regard to the

*Yours*

aforesaid observations of the Supreme Court, we  
find no good grounds justifying any interference  
in the matter. The O.A. is dismissed. No order  
as to costs.

Reddy  
(R.K. Ahoja)  
Member (A) 12/1/96

Lakshmi  
(Smt. Lakshmi Swaminathan)  
Member (J) 12/1/96

sk