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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.2308/2004
MA No.39/2006

New Delhi, this the 31 May, 2006

Hon'ble Mr. Justice B. Panigrahi, Chairman
Hon'ble Mr.N.D.Dayal, Member (A)

1. Central Revenue Chemical Service Association through its General Secretary Sh. L.M. Aggarwal, H.O. Central Revenues Control Laboratory, Hill SideRoad, Pusa Campus, New Delhi.
2. Ms. Prem Lata, Assistant Chemical Examiner, Central Revenues Control Laboratory, Hill SideRoad, Pusa Campus, New Delhi.
3. Ms. Meenakshi Gupta, Assistant Chemical Examiner, Central Revenues Control Laboratory, Hill SideRoad, Pusa Campus, New Delhi.
4. Mr.V.P.Bahuguna, Chemical Assistant, Gr.I, Central Revenues Control Laboratory, Hill SideRoad, Pusa Campus, New Delhi.
5. Mr.S.P.Singh, Chemical Assistant, Gr.I, Central Revenues Control Laboratory, Hill SideRoad, Pusa Campus, New Delhi.
6. Mr. Bharatveer Singh, Chemical Assistant, Gr.II, Central Revenues Control Laboratory, Hill SideRoad, Pusa Campus, New Delhi.
7. Mr. P.R.Meena, Chemical Assistant, Gr.II, Central Revenues Control Laboratory, Hill SideRoad, Pusa Campus, New Delhi. ...Applicants.

(By advocate: Shri Shrigopal Aggarwal)

Versus

Union of India Through

1. Secretary Revenue
Department of Revenue,
Ministry of Finance, North Block,
New Delhi.
 2. Chairman
Central Board of Excise & Customs
Ministry of Finance, Deptt. Of Revenue
North Block, New Delhi.
 3. Director (RL)
Central Revenues Control Laboratories
Department of Revenue, Ministry of Finance,
Central Board of Excise & Customs
Pusa Campus, New Delhi-110012.
 4. Secretary,
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Central Board of Excise & Customs
Ministry of Finance, Deptt. Of Revenue
North Block, New Delhi.

... Respondents.

(By Advocate: Shri R.R.Bharti)

ORDER

By Mr. N.D. Dayal Member (A):

The applicants herein are Central Revenue Chemical Association, which through its General Secretary and two representatives of each cadre have filed this application on behalf of its members who are working in the post of Chemical Assistant Grade-I (Gr. 'C'); Chemical Assistant Grade-II (Gr. 'C') and Assistant Chemical Examiner(ACE) (Grade 'B') complaining of discrimination in fixation of pay scale as against the similarly situated officials working in other Government Departments such as National Test House, Ministry of Commerce, GOI etc. inspite of the fact that their duties and responsibilities are in no way less than them. They have therefore sought the following relief:

"In view of the facts and circumstances in para 4 and ground stated in para 5 the applicants pray that the Hon'ble Tribunal may graciously pleased to:

- (a) direct the respondents to rectify the anomalies in the recommendations of the 5th CPC by granting a scale of Rs.7500-12000 to Asstt. Chemical Examiner and Rs.6500-10500 to Chemical Assistant Gr.I & II w.e.f. 1.1.96."
- (b) pass any other order / direction as may be deemed fit and proper in the circumstances of the case and in the interest of justice."

2. The respondents have opposed the claim of the applicants by their counter reply to which a rejoinder has been filed by the applicants.

3. During the hearing of this matter on 13.7.2005, the Tribunal disposed of the OA with the following directions:

"3. Accordingly we appoint Sh. A.P.Nagrath, Additional Member, (Staff) Railway Board (since retired) as the sole Arbitrator to go into the controversy of pay scales of the applicants. It would be highly appreciated if the report is submitted preferably within four months of the receipt of the certified copy of the present order. OA is disposed of."

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4. However, these directions were the subject matter of WPC 1267-70/06 before the Hon'ble High Court of Delhi and by its order 2.3.2006, the directions of the Tribunal dated 13.7.2005 were set aside and the parties were asked to appear before the Tribunal which would take up the matter and dispose of the same on merits in accordance with law.

5. The applicants had, however, filed MA 905/2006 on 17.5.2006 seeking directions upon the respondents for appointment of an Arbitrator which was found to be misconceived and dismissed with costs of Rs.2000/- by order of the Tribunal dated 18.5.2006.

6. We have heard the learned counsel for both sides and perused the pleadings. It has been submitted that the Central Revenue Chemical Service (CRCS) is a department under CBEC, Ministry of Finance. It has 18 Laboratories all over the country. The Chemical Assistants Grade I and II as well as the ACE together account for well over 300 posts. The counsel for the applicants has pointed out that on the one hand in paras 43.15 and 43.16 of the 5th CPC report the merged scale of Rs.2000-3500 (pre-revised) corresponding to Rs.6500-10500 (revised) has been identified as direct entry grade for Degree holders in Engineering and Law as well as Postgraduates in other subjects etc. But in paras 66.158 to 66.166 the 5th CPC has declined to recommend the merger of Chemical Assistant Grade I and II who are both in group 'C' and directly supervised by the ACE, who is in Group 'B' and recommended the pay scale of Rs.1600-2660 and Rs.1640-2990 even though the minimum qualification at entry level for the Chemical Assistants I and II is Masters Degree in Chemistry. The scale recommended for ACE is Rs.2000-3500. This has resulted in an anomaly in the pay scales granted to the applicants.

7. By a comparative chart the disparity in pay scale has been further illustrated at page 23 of the OA which is reproduced below:

S. No.	Name of the posts	Prior to 3 rd CPC	After 3 rd CPC	After IV th CPC	After V th CPC	After issue the aforesaid
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						order.
1.	Inspectors of Income Tax	210-485	425-800	1640-2900	5500-9000	6500-10500
2.	Examiner (Ordinary Grade)	210-485	425-800	1640-2900	5500-9000	6500-10500
3.	Preventive Officer Grade-I (Ordinary Grade)	210-485	425-800	1640-2900	5500-9000	6500-10500
4.	Inspector (Ordinary Grade)	210-485	425-800	1640-2900	5500-9000	6500-10500
5.	Appraiser/Supdt			2000-3500	6500-10500	7500-12000
6.	Chemical Asstt.- II	210-485	425-800	1400-2300	5000-8000	
7.	Chemical Asstt. I	325-575	550-900	1640-2900	5500-9000	
8.	ACE			2000-3500	6500-10500	

8. The above shows various posts such as Inspectors of Income tax, Examiner, Preventive Officer having the same pay scale as Assistant Chemical Assistant Grade I before and after the 3rd CPC but which was downgraded after the recommendations of the 4th CPC as well as 5th CPC vis-à-vis the others. In fact the scale of pay of the other posts were further increased by the Government over and above the recommendations of the 5th CPC. The pay scale of Chemical Assistant Grade I was higher ~~on~~ which changed after the 4th and 5th CPC. It is submitted by the applicants that at the time of implementation of the 5th CPC recommendations, out of 63 ACEs 49 were stagnating at the maximum of the pay scale but this ~~factor fixation~~ was ignored by the Pay Commission.

8A. The counsel for the applicants contends that the Department of Supply increased the scale of pay for Scientific Assistant and Scientific Officer from Rs.5500-9000/- to Rs.6500-10500/- and Rs.6500-10500/- to Rs.7500-12000/- respectively, by order dated 5.6.98 in the National Test House after re-consideration by the Government in the light of the general principle of pay determination followed by the 5th CPC. Attention has been drawn to a comparative chart study of the work and duties annexed with the rejoinder by the applicants. This shows that the various duties of the

officers of CRCS and NTH are almost entirely the same. The counsel for the applicants has therefore vehemently argued that the applicants have been unfairly treated and the anomaly has arisen due to arbitrary recommendations of pay scale by the 5th CPC in their case which were accepted by the Government. They have relied upon the judgement in MCD Vs. Workman (Mates) and anr. decided by the Delhi High Court on 29.5.2003 and reported in 2003 (4) SCT 805 as well as judgement of Hon'ble Supreme Court in Randhir Singh vs. Union of India AIR 1992 SC 879 to claim that where all relevant considerations are same those holding identical posts be not treated differently in the matter of pay only because they belong to different Departments.

9. The applicants have submitted that the anomaly due to disparity in their pay scales with reference to similarly situated employees in other Government Departments had been taken up by them with the Empowered Committee of Secretaries & Fast Track Group by repeated representations as well as with the National Anomaly Committee set up by Government in August, 1999. However, the matter could not be sorted out and disagreement was finally recorded in the meeting of National Anomaly Committee in September 2000 and an Arbitrator had been appointed earlier in 2002 but he also could not commence hearing of the matter due to retirement.

10. It has been mentioned that the Expert Committee on Modernization and Upgradation of Central Revenue Laboratories gave a report in 1994 and recommended merger of Chemical Assistants Grade I and Grade II and their redesignation as Junior Scientific Officer in the pay scale of Rs. 2000-3500. This was done inter alia keeping in view their hazardous nature of work but the recommendations were not taken seriously as in the case of Scientific Assistant and Scientific Officer in National Test House, where the anomaly was removed by letter of 5.6.1998 revising their pay scales. The Department of Company Affairs also upgraded the pay scale of Senior Technical Assistant and Investigating Officer in view of their Post

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Graduate educational qualification to Rs. 6500-10500 in keeping with general recommendations of 5th CPC. Similarly pay scales were upgraded in the Preventive Wing of the Central Board of Excise & Custom, Ministry of Finance but the applicants who fall under the Analysis Wing under the same Ministry were ignored. In this background, the applicants have submitted that the relief prayed for should be granted.

11. In their counter reply, the respondents have stated that the demands of the applicants were earlier examined by the respondents but were not found acceptable. The matter was also discussed in the JCM and finally disagreement was recorded on the issue. As pay and allowances is an arbitrable item under the JCM Scheme in which the dispute can be referred for compulsory Arbitration, the dispute was referred to the Board of Arbitration for a decision which would be binding on both the sides. However, the applicants claim to have unilaterally withdrawn the case from the Arbitration by a letter dated 7.7.2004 addressed to the Secretary, JCM (Staff side) and have preferred the instant O.A. in the Tribunal. Once a dispute on an arbitrable ~~the~~ issue has, after recording disagreement, been referred to the Board of arbitration, both sides are bound by its verdict and none can withdrawn from it. The action taken by the applicants would appear to be violative of JCM Scheme and cannot be sustained.

12. The respondents argued that the Hon'ble Supreme Court has held in the case of Union of India vs. Tarit Ranjan Das (2003) 11 SCC 658 that it is not open for any court to sit in judgement on appeal over the conclusions of the Commission (in the context 5th Pay Commission). The prayer of applicant for modification of the recommendations of the 5th Pay Commission on pay scale of CRCS staff is, therefore, beyond the jurisdiction of the Tribunal. In a similar case it has been held by the Madras Bench of this Hon'ble Tribunal vide their judgement dated 22.11.2002 in OA 1247/2001 (copy annexed as Annexure-R.4) that:

"7. We gave our careful consideration to the plea of the applicant. We find that the applicants had sufficient opportunity to present their cases before the Pay

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Commission at the appropriate time. If they were not able to impress upon the Pay Commission about their case it is not for us to play the role of an expert body like the Pay Commission. The Supreme Court had held in a catena of decisions, the recent one being reported in 2000 (2) SCC 580 that normally Courts and Tribunals should not interfere with the pay scales structure. These are matters to be decided by expert bodies like the Pay Commission. Therefore, we do not agree with the argument put forward by the learned counsel for the applicants stating that the Pay Commission had come to certain conclusions on irrational classification

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9. We further find that being a policy matter relating to pay scales, we do not want to express any opinion in this regard. We make it clear that the applicants are at liberty to approach the relevant forum for examining their grievance and seek redressal of their grievance."

13. In the rejoinder while reiterating the stand taken in the OA the applicants have sought to distinguish the case of Tarit Ranjan Das (supra) stating that it is not only the designation which is similar. Besides, there was no arbitration award. It is submitted that as per the judgment in State of Haryana vs. Haryana Civil Secretariat Personal Staff Association 2002 (6) SCC 72, the jurisdiction of the court cannot be taken away even if matters of pay fixation lie within the domain of expert bodies, when employees become victim of discriminatory action or inaction. Such anomaly cannot be regarded as time barred as it relates to fixation of pay scale. It is stated that the applicants are entitled to relief keeping in view also the judgement of the Hon'ble High Court of Delhi in Bureau of Indian Standard Laboratory Employees vs. Union of India and anr. CW 3925/91 etc. decided on 18.9.2002 but it is not shown in what manner this judgement supports their case. In their representations dated 25.2.2005 and 19.4.2005, the applicants have advanced various grounds in support of the relief claimed by them.

14. It is well settled that interference by the court in matters relating to pay fixation and equality in pay scales etc. has been discouraged in view of the special qualifications and expertise of the pay commission in this matter as well as possibility of upsetting the horizontal and vertical

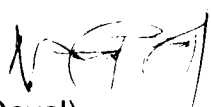
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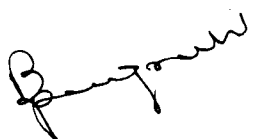
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relativities if any intervention is made to change the pay scales or fix the pay of any particular set of employees.

15. In view of the above discussion, we are not inclined to give any directions upon the higher pay scale that the applicants are seeking in this OA. However, we do feel that in view of the specific recommendations of the Expert Committee on Modernization and Upgradation of Central Revenues Laboratories contained in their report of August 1994 with regard to merger and upgradation of the pay scales of the applicants the matter deserves re-consideration at the level of the competent authority in Government for referring the proposal suitably to the 6th Central Pay Commission for consideration as and when the same is notified keeping in view the developments on the subject since implementation of the recommendations of the 5th CPC. The application is disposed of accordingly. No costs.


(N.D. Dayal)
Member (A)


(B. Panigrahi)
Chairman

/kdr/