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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1067/2004

New Delhi, this the 6th day of January, 2005

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)**

1. Smt. M.B.Sahoo
W/o Sh. A.K.Sahoo
R/o 140/8 Sector-I Pushp Vihar
New Delhi.
 2. K.K.Satija
S/o Sh. R.D.Satija
R/o D-93 Mansarover Garden
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 3. R.C.Kesarwani
S/o Late Sh. S.N.Prasad
R/o Q.No.889, Delhi Admn. Flats
Gulabi Bagh
Delhi.
 4. J.S.Bhatia
S/o Sh. D.S.Bhatia
R/o C-17 Sudarshan Park
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 5. Dharam Pal
S/o late Hari Chand
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Dharampura, Gandhi Nagar
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 6. Radhe Shyam Samaria
S/o Shri S.R.Samariya
R/o 16/399-E, Bapa Nagar
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New Delhi.
 7. Miss Promila Madan
D/o Sh. C.L.Madan
R/o A-306, Sector 19
Noida.
 8. Sabir Ali
S/o Sh. Mohd. Saddiq
R/o 2/3 Sadiq Nagar
Meerut City.
- ... Applicants

(By Advocate: Sh. Deepak Verma)

Versus

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Government of NCT of Delhi/Union of India
Through

1. The Secretary (Planning)
Planning Department
Government of NCT of Delhi
1, Kirpa Narain Marg
Delhi - 110 054.
2. The Secretary
Dept. of Expenditure
Ministry of Finance, Govt. of India
North Block, New Delhi.
3. The Joint Secretary (UT)
Ministry of Home Affairs(MHA)
Government of India
North Block
New Delhi. ... Respondents

(By Advocate: Sh. R.N.Singh proxy for Sh. R.V.Sinha)

ORDER

By Mr. Justice V.S.Aggarwal:

Applicants are working as Research Officers/Analysts in the Govt. of National Capital Territory of Delhi in the pre-revised scale of Rs.1640-2900 and were given the scale of Rs.5500-9000 after the recommendations of the 5th Central Pay Commission.

2. Their claim is that they should have been awarded the scale of Rs.6500-10500 from 1.1.1996.

3. The applicants contend that their claim had wrongly been rejected on the following grounds:

- (1) The 5th Central Pay Commission, which specifically considered the demand of the applicants, did not recommend any upgradation in the scale of pay of these posts.
- (2) The posts are not strictly comparable with the posts in the DASS Grade-I in terms of their duties and responsibilities.



- (3) So far as the comparison of these posts with Statistical posts is concerned, the posts of Research Officer/Analysts are filled by direct recruitment only to the extent of 25%. The 5th Central Pay Commission, on the other hand, specifically recommended that the higher pay scale of Rs.2000-3500 should be extended to the posts of Senior Statistical Investigators/Assistants only when 50% of the posts are filled by direct recruitment of Post Graduates.
- (4) The next promotion post of Research Officer/Analysit in the Government of NCT of Delhi is that of Statistical Officer in the pre-revised scale of Rs.2000-3500. If the same pay scale is extended to the Research Officer, it would disturb the existing vertical relatives; and
- (5) The higher pay scale for the post of Statistical Investigator Grade-I was to be extended only if departments concerned are agreed to merge these posts into Subordinate Statistical Services. However, it will not possible to merge the posts of Research Officer/Analysts existing in the Government of NCT, Delhi.

4. Aggrieved by the same, the applicants had filed OA 1610/2001. On 9.4.2002, this Tribunal had quashed the said order of 12.1.2001 and directed the respondents to consider the claim of the applicants favourably in the light of the findings to which we shall refer to hereinafter.

5. Respondents had filed Civil Writ Petition No.5939/2002. The Delhi High Court on 28.1.2003, directed that the order of the Tribunal shall be complied with ignoring the word '**favourably**'

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appearing in Paragraph 19 of the order. Thereafter, the impugned order has been passed again rejecting the claim of the applicants recording (a) the revision of pay scale is primarily and exclusively a function which is to be left to be decided by the Executive; (b) the recruitment rules were amended in August, 1996. It provided that not only direct recruitment to the post of Research Officer/Analyst has been completely done away with under the amended Recruitment Rules but the minimum qualification laid down for promotion to the post also is only Graduation in Statistics/Operation Research. While 5th Central Pay Commission had specifically recommended that the higher pay scale should be extended to the posts of Senior Statistical Investigators Gr.I only when 50% of these posts were filled by recruitment of Post Graduates, it was further recorded:

“(iii) There is no justification in upgrading the pay scale of the Research Assistant/Analyst to Rs.2000-3500 (pre-revised) on the ground that the said pay scale has been extended to the post of Delhi Administration Subordinate Service (DASS) Grade-I in respect of which also the mode of recruitment excluded direct recruitment. These are two separate categories of posts with separate character of functions and responsibilities, hierarchical structure, source of recruitment etc. and are not, therefore, comparable. Further, even though the scale of pay of the post of Research Officer/Analyst, prior to the implementation of the recommendations of the Fifth Central Pay Commission, was similar as extended to Delhi Administration Subordinate Service (DASS) Grade-I, it does not imply that the scale of pay of the former category of posts should have also been upgraded without any functional justification. It is relevant to mention that the scale of pay of DASS Grade-I had, in fact, been upgraded by Government to Rs.2000-3200/- (pre-revised) even before the Fifth Central Pay Commission submitted its report.

(iv) The fact that the Ministry of Home Affairs is the nodal Ministry for administration of



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the affairs of the Union Territories and that the Govt. of NCT of Delhi is not competent to decide about the pay scales without the approval of the Central Government has been questioned on the ground that the Govt. of NCT of Delhi had in a Writ Petition No.5976/2001 pending before the High Court of Delhi taken the stand that it was not under obligation to follow the directives of the Government of India with regard to enhancement of pay scales of Assistant Programmers and Data Processing Supervisors. The said position taken by the Govt. of NCT of Delhi was untenable in law, as in accordance with the provisions contained in the Delegation of Financial Power Rules, the authority to decide the scales of pay for various categories of posts vests entirely with the Central Government and has not been delegated to any Union Territory Administration.

(v) The Fifth Central Pay Commission had specifically taken the oral evidence of the Association representing these posts i.e. Delhi Government Planning & Statistical Cadre Officers Welfare Association (Sl/No.393/P.33 Vol.I Fifth Central Pay Commission Reports refers). Thus, it is clear that the Fifth CPC have carefully heard and considered the issues relating to these posts and did not find it necessary to upgrade the scale of pay of these posts and, therefore, did not make any separate recommendation in the report. Further, it has earlier been clearly explained that a parallel can not be drawn between these posts in Delhi and the Statistical posts in the Central Government. The Fifth CPC had made specific recommendations, these posts are not covered under any of the common categories mentioned by the Fifth CPC vide para 104.6-104.17 of their report. These posts are also not included in any of the common categories mentioned by the Fifth CPC vide chapter 55 of their report. The scale of pay of the post of Research Officers/Analysts has already been duly revised from Rs.1640-2900 (pre-revised) to Rs.5500-9000 (Revised) in terms of Part 'A', first Schedule of Revised Pay Rules, 1997, which are based on the recommendations of the Fifth Central Pay Commission.

2. It was accordingly been decided by the Government that there is no justification in revising the scale of pay of the posts of Research Officers/Analysts working under the Planning Department of the Govt. of NCT of Delhi from Rs.5500-9000/- to Rs.6500-10500/-."



6. By virtue of the present application, the applicants seek quashing of the order that has now been passed dated 17.11.2003 and to direct the respondents to grant the scale of Rs. 6500-10500 from 1.1.1996 to them.

7. Respondents contest the application. It has been pleaded that as per the recruitment rules for the post of Superintendent in the Field Operations Division, NSSO, under Ministry of Statistics and Programme Implementation, the essential educational qualifications are Masters Degree with two years experience and mode of recruitment is by deputation or by promotion. In the case of Statistical Assistants/Inspector, under the Government of NCT of Delhi, the essential qualification is a Degree and the mode of recruitment is by promotion. It is denied that the applicants have been discriminated or that they are entitled to claim the higher scale.

8. We have heard the parties' counsel and have seen the relevant record.

9. The learned counsel for the applicants had urged that in the earlier litigation to which we have referred to above, the findings had been recorded which have totally been ignored. In that view of the matter, according to the learned counsel, the impugned order cannot be sustained. The learned counsel took pain to read to us different paragraphs of the earlier order passed by this Tribunal. As against this, the respondents' contention was that permission had been granted to reconsider the matter and they indeed had reconsidered in accordance with law. It is the executive function to fix the pay and scales. This Tribunal,



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therefore, should not interfere, when the scales as referred to above have been prescribed.

10. In the earlier order passed by this Tribunal between the parties, the Tribunal recorded that the claim of the applicant had been omitted to be considered by the 5th Central Pay Commission. The pay scales of DASS Grade-I and that of the applicants were earlier the same. The pay scales of DASS Gr.I had been upgraded but this benefit had not been given to the applicants. Thereafter, the Tribunal recorded that the earlier order that was passed rejecting the claim of the applicants was based on incorrect facts and the ground taken for rejecting the claim, therefore, was not tenable. It was in this backdrop that this Tribunal had quashed the order with further direction to pass a reasoned and speaking order in this regard. The precise reasoning of the earlier order is:

"14. It is not in dispute that R-1 in his letter to R-2 had admitted that the case of applicants was omitted by Fifth CPC in its report and that it is a clear case of omission. It is also not in dispute that the pay scale of DASS Gr.I and that of applicants, both under R-1, were the same till 19.3.96, but while the pay scale of DASS Gr.I was upgraded to Rs.2000-3200 by R-1, this benefit was not given to the applicants, which amounts to discrimination. The contention of the respondents that the posts of Research Officers/Analysts are filled by direct recruitment only to the extent of 25% is totally wrong and is, therefore, not tenable. The respondents are well aware that the posts are to be filled 100% by promotion as per the Recruitment Rules amended on 27.8.96 (Annexure J4 to the rejoinder) and, therefore, the ground taken by the respondents in rejecting the claim of the applicants vide their letter dated 12.1.2001 cannot be accepted. Apart from this, the other grounds taken by the R-1 for rejecting the higher pay scales to the applicants vide their aforesaid letter dated 12.1.2001 are wrong and are not tenable. It shows that there is no application of mind by the respondents while disallowing the revised higher scale of pay to the applicants. We also do not find any specific



denial with supporting document on behalf of the respondents with regard to para 4.12 of the OA in which the applicants have referred to para 168.3 of Fifth CPC report (supra).

15. It is interesting to note that the respondents in their reply in para 4.27 have stated that "In fact, the Ministry of Home Affairs is the nodal Ministry for administration of the affairs of the Union Territories. On the other hand, as already stated, the Govt. of NCT Delhi is not competent to decide on the pay scales without the approval of the Central Government". But in a case involving similar subject (CWP 5976/2001) pending before the High Court they have stated that "... Merely because the Govt. of India had suggested the grant of revised pay scale to the Asstt. Programmer & Data Processing Supervisors on the basis of OM dated 11.9.89, which dealt with the rationalization of pay scale structure of EDP staff, it did not mean that Govt. of NCT was under the obligation to follow the directive of the Govt. of India with regard to enhancement of the pay scale of Asst. Programmer & Data Processing Supervisor".

16. We are also informed that in GNCTD the pay scale of feeder post of DASS Gr.I as well as its promotional post i.e. DANICS are identical i.e. Rs.6500-10500 w.e.f. 1.1.96 which is not specifically denied by the counsel for the respondents. Therefore the plea taken by the respondents that if same scale is allowed to applicants it will disturb vertical relativities is not tenable and needs to be rejected."

11. It is obvious from the above that though in the first blush one would be swayed by the fact that this Tribunal had recorded certain findings but on closer scrutiny it is found that it was only observed that the respondents have rejected the claim of the applicants without application of mind but there was no finding given that applicants in fact were entitled to the scales claimed. Resultantly, the respondents, therefore, could consider the facts afresh.

12. Keeping in view the aforesaid also, this Tribunal can also consider the totality of the facts and circumstances.



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13. The Supreme Court has, more often than once, held that this is a fact which falls within the domain of the Expert Body and unless there is hostile discrimination, the Court/Tribunal should not interfere. The quality of work performed by different sets of persons holding different jobs will have to be evaluated. This was highlighted by the Supreme Court in the case of **STATE OF HARYANA & OTHERS v. JASMER SINGH & ORS.**, JT 1996(10) SC 876. In the cited case, persons working on daily wages were granted the same scales with those holding regular posts on principle of '**equal pay for equal work**'. The decision of the **Punjab and Haryana High Court** was set aside and it was held:

"8. It is, therefore, clear that the quality of work performed by different sets of persons holding different jobs will have to be evaluated. There may be differences in educational or technical qualifications which may have a bearing on the skills which the holders bring to their job although the designation of the job may be the same. There may also be other considerations which have relevance to efficiency in service which may justify differences in pay-scales on the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that good performance can be elicited from persons who have reached the top of the pay scale. There may be various other similar considerations which may have a bearing on efficient performance in a job. This Court has repeatedly observed that evaluation of such jobs for the purposes of pay-scale must be left to expert bodies and, unless there are any mala fides, its evaluation should be accepted."

14. Similarly, in the case of **SHYAM BABU VERMA AND OTHERS v. UNION OF INDIA AND OTHERS**, (1994) 2 SCC 521, the Supreme Court held that the nature of work may be more or less the same but scale of pay may vary based on academic qualification or experience which justifies classification. The findings of the Supreme Court are:



"The nature of work may be more or less the same but scale of pay may vary based on academic qualification or experience which justifies classification. The principle of 'equal pay for equal work' should not be applied in a mechanical or casual manner. Classification made by a body of experts after full study and analysis of the work should not be disturbed except for strong reasons which indicate the classification made to be unreasonable. Inequality of the men in different groups excludes applicability of the principle of 'equal pay for equal work' to them. The principle of 'equal pay for equal work' has been examined in State of M.P. v. Pramod Bhartiya [(1993) 1 SCC 539] by this Court. Before any direction is issued by the Court, the claimants have to establish that there was no reasonable basis to treat them separately in matters of payment of wages or salary. Then only it can be held that there has been a discrimination, within the meaning of Article 14 of the Constitution."

15. In the case of **UNION OF INDIA AND OTHERS** v. **PRADIP KUMAR DEY**, 2001 SCC (L&S) 56, the Supreme Court held that for applying the principle of 'equal pay for equal work', there should be sufficient material before the Court for comparison. In absence of the same, the Court should not interfere and the petition as such could not have been so allowed. It was reiterated that it was the function of the Government which normally acts on the recommendations of the Pay Commission. Change of pay scale of a category has a cascading effect.

16. Similarly, in the case of **STATE BANK OF INDIA & ANR.** v. **M.R. GANESH BABU & ORS.**, JT 2002 (4) SC 129, the Supreme Court held that functions may be same but responsibilities make a difference. One cannot deny that often the difference is a matter of degree. The Supreme Court held:

"16. The principle of equal pay for equal work has been considered and applied in many reported decisions of this Court. The principle has been adequately explained and crystalised and sufficiently reiterated in a catena of

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decisions of this Court. It is well settled that equal pay must depend upon the nature of work done. It cannot be judged by the mere volume of work, there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgement is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. The principle is not always easy to apply as there are inherent difficulties in comparing and evaluating the work done by different persons in different organizations, or even in the same organization. Differentiation in pay scales of persons holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. The judgment of administrative authorities concerning the responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgement of the authorities concerned which, if arrived at bona fide, reasonably and rationally, was not open to interference by the court."

17. In fact, at this stage, we deem it necessary to refer to other decisions of the Supreme Court wherein earlier though there was pay parity which was disturbed, the Supreme Court held that the question of interference would not arise. In the case of **SHER SINGH & ORS. v. UNION OF INDIA & ORS.**, JT 1995 (8) 323, it held that Courts should not interfere in matters of Govt. policy except where it is unfair, mala fide or contrary to law. From the facts, it appears that earlier there was pay parity to the library staff with the teaching staff. The University appointed a Committee. It recommended continuance of the pay parity. The library staff found that their pay parity had been disturbed and the teaching staff was given benefit from retrospective date. The same question



of 'equal pay for equal work' came into consideration. The Supreme Court held that in such matters, the Courts will not interfere.

18. More close to the facts of the present case is the decision of the Supreme Court in the case of **STATE OF HARYANA & ANR. v. HARYANA CIVIL SECRETARIAT PERSONAL STAFF ASSOCIATION.** JT 2002 (5) SC 189. In the cited case, prior to 1986, the PAs in the Civil Secretariat, Haryana were enjoying higher pay scale than PAs in the Central Secretariat. When the Fourth Central Pay Commission gave its report, the scales of the PAs was revised to Rs.2000-3500 from 1.1.1986. The Haryana Government had accepted the recommendations but in regard to the PAs in the Civil Secretariat, the revision was made to the Rs.1640-2900 with some special pay. Their grievance was that parity of the pay scale with their counterparts in the Central Government had been disturbed. The Punjab and Haryana High Court had allowed the petition. The Supreme Court set aside the said order and held:

"8. While making copious reference to the principle of equal pay for equal work and equality in the matter of pay, the High Court overlooked the position that the parity sought by the petitioner in the case was with employees having only the same designation under the central government. Such comparison by a section of employees of state government with employees of central government based merely on designation of the posts was misconceived. The High Court also fell into error in assuming that the averment regarding similarity of duties and responsibilities made in the writ petition was unrebutted. The appellants in their counter affidavit have taken the specific stand that no comparison between the two sections of employees is possible since the qualifications prescribed for the P.As. in the central secretariat are different from the P.As in the state civil secretariat. Even assuming that there was no

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specific rebuttal of the averment in the writ petition that could not form the basis for grant of parity of scale of pay as claimed by the respondent. The High Court has not made any comparison of the nature of duties and responsibilities, the qualifications for recruitment to the posts of P.As in the state civil secretariat with those of P.As of the central secretariat."

19. From the aforesaid, it is clear that it is within the domain of the Executive or the expert body like Central Pay Commission to go into the said facts. The Tribunal would be slow to interfere unless there is hostile discrimination.

20. Strong reliance was placed on the fact that Ministry of Statistics and Programme Implementation which is the nodal agency for Statistical matters, had directed that the Statistical posts in pay scales of Rs.1640-2900 should be upgraded to Rs.2000-3500.

21. At best, it would be a recommendation that had been made by the Ministry of Statistics and Programme Implementation but the ultimate decision has to be taken by the Home Ministry which is the Ministry concerned.

22. In that event, further reliance was placed on the fact that the applicants had the same scales as that of Grade-I of the DASS in the 2nd, 3rd and 4th Central Pay Comissions. The scales of Grade-I DASS was upgraded to Rs.2000-3200 prior to submission of the 5th Central Pay Commission and, therefore, the applicants deserve the claim of upgraded pay scale of Rs.2000-35000.

23. So far as this particular contention is concerned, indeed the pay scales have to be fixed in accordance with duties that are performed. If at one time there was parity of pay scale, the same can be disturbed subsequently. We have already referred to above

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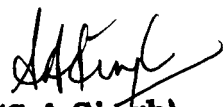
the decision in the case of **Sher Singh (supra)** and also in the case of **State of Haryana and Others v. Haryana Central Secretariat Personal Staff Association**. It clearly provides the answer that once earlier there was parity of pay scales, it is not necessary that the same must be maintained forever.


24. Yet another submission made was that posts held by the applicants were comparable to Superintendent in Filed Operation Division of NSSO and Senior Investigators of Central Secretariate Organisation and, therefore, the applicants should be granted the scale of Rs.2000-3500.

25. Even on this count, the applicants have not provided sufficient material that their duties are identical and in the absence of the same, it is difficult to hold that the parity of pay scales had to be maintained. On the contrary, the respondents point out that some difference in the duties because the applicants are confined to be posted in the Govt. of NCT of Delhi. When there is no enough material that duties and responsibilities are the same and all other ingredients of hostile discrimination was not available, on that ground, this Tribunal find difficult to accept the said contention.

26. No other arguments had been advanced.

27. For these reasons, the Original Application being without merit must fail and is dismissed.


(S.A.Singh)
Member (A)


(V.S.Aggarwal)
Chairman

/NSN/