

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-1976/2004

New Delhi this the 28th day of February, 2005.

Hon'ble Sh. Shanker Raju, Member(J)
Hon'ble Sh. S.K. Malhotra, Member(A)

1. G.V.S. Rao,
R/o Q.No. EF-647,
Sarojini Nagar,
New Delhi.
 2. Sh. S.V. Rao,
R/o Q.No. 233,
Sector-I,
R.K. Puram,
New Delhi.
 3. Sh. S.C. Karmaker,
R/o Q.No. 39, Arunodya Co-opt.
Group Housing Society,
Vikas Puri, New Delhi-18.
 4. Sh. R.N. Bhardwaj,
R/o Q.No. 134, Arunodya Co-opt.
Group Housing Society,
Vikas Puri, New Delhi-18.
 5. Sh. R.P. Sharma,
R/o Q.No. 61-R, CBI Colony,
Vasant Vihar,
New Delhi-57.
 6. Sh. R.K. Gupta,
R/o Q.No. 58-G, CBI Colony,
Vasant Vihar, New Delhi-57.
- Applicants

(through Sh. VSR Krishna, Advocate)

Versus

1. The Secretary,
Ministry of Personnel,
Public Grievance & Pension,
DP&T, North Block,
New Delhi.
2. The Cabinet Secretary,
Government of India,
Rashtrapati Bhawan,
New Delhi.
3. The Secretary,

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Ministry of Finance,
Department of Expenditure,
Government of India,
North Block, New Delhi.

4. The Director,
Central Bureau of Investigation,
CGO Complex, Lodhi Road,
New Delhi.

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Respondents

(through Sh. Rajesh Katyal, Advocate)

Order (Oral)

Hon'ble Sh. Shanker Raju, Member, (J)

Applicants impugn respondents' order dated 3.2.2004 rejecting their request for extension of pay scale of Rs. 8000-13500 to the post of Office Superintendent in CBI at par with their counterparts of Section Officers in Central Secretariat.

2. Briefly stated, applicants are Office Superintendent in CBI. Earlier OA No. 760/1980 filed by the Assistants was disposed of on 27.3.1989 directing grant of pay scale at par with CSS as the applicants were Crime Assistants in CBI. This has been implemented by the government vide letter dated 16.5.1989.

3. Later applicants approached this Tribunal in OA No. 144-A/1993 for parity with CSS and the matter was implemented on 14.3.1996 revising the pay scale of Crime Assistants and Stenographer Grade-C of CBI in the pay scale of Rs. 1640-2900. In the above backdrop, it is stated that whereas a high level committee on restructuring of CSS has introduced intermediate pay scale of Rs. 8000-13500 to the Section Officers in CSS after completion of 4 years service to mitigate stagnation, the same has not been followed in the case of applicants who worked on an isolated post of Office Superintendent and have no promotional avenues.

4. On the strength of earlier treatment meted out to them at par with Section Officers in CSS, it is stated that the aforesaid decision of respondents smacks of discrimination.

5. Learned counsel states that both Section Officers in CSS and Office Superintendents in CBI are performing same functions, duties and equal pay for equal work demands to bring them at par.

6. On the other hand, respondents' counsel vehemently opposed the same and stated that although there may be similar functions and duties performed by both the categories but the two categories are differentially situated. In this backdrop, it is stated that Office Superintendent in CBI is an isolated post and Section Officer in the Ministries is a part and parcel of CSS. Post of Office Superintendent in CBI is a group-C post whereas Section Officer is Group-B gazetted. Appointing authorities are different. It is also stated that recruitment rules for these posts are different. Promotion in CSS of Section Officer is Under Secretary, Deputy Secretary and Director as well as further avenues in central staffing scheme. Grant of non-functional pay scale to the Section Officers in CSS after completion of 4 years of service is for better service conditions which cannot be claimed as a right by Office Superintendent in CBI..

7. We have carefully considered the rival contentions of the parties and perused the material placed on record.

8. In our considered view in the matter of equation of posts and parity of pay scale in judicial review, this Tribunal is precluded from exercising its jurisdiction and this task has to be left to the expert bodies of the Government. However, unequal treatment to the equals is an anti thesis to principles of equality enshrined under Article 14 of the Constitution of India. To decide equal pay for equal work two categories must be identical in all respects.


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9. From the past, we have seen that Crime Assistants have been treated at par with Assistants of CSS as well as Office Superintendent in CBI with Section Officers of CSS. It is also not disputed that both these categories perform identical duties and functions. While considering the request of the applicants, Government vide Ministry of Finance order dated 3.2.2004 rejected the proposal on the ground that though parity in fixation of pay has been accorded to Crime Assistants and the post of Office Superintendent in the line of Section Officers in CSS, yet the non-functional pay scale was accorded to the Section Officers in CSS on the basis of recommendations of high level Committee for restructuring of CSS which was ultimately approved by the Government

10. The reasons recorded in the impugned order are at variance with the justification tendered in the counter reply. In the light of decision of the Apex Court in M.S. Gill Vs. Chief Election Commissioner, New Delhi & Ors. (1978 (1)SCC 405), these supplementary reasons beyond the order are not sustainable.

11. Be that as it may, if the Office Superintendents having been treated at par with Section Officers and parity of same duties, functions and there is no promotional avenues and also for want of any provision to ameliorate the grievance, the matter requires reconsideration for removal of stagnation in the case of Office Superintendent in CBI as well. The order passed by the respondents denies the pay scale not on the ground of equality but on the report of high level Committee approved by the Cabinet. It is trite law that discrimination to the similarly situated cannot be countenanced and without any reasonable basis and also without a reasonable and intelligible differentia persons situated identically cannot be imparted different treatment in the light of decision of the Apex Court in D.S. Nakara Vs. U.O.I (1983 SCC (L&S) 145).

12. The Apex Court in Dy. Director General of Geological Survey of India and Anr. Vs. R. Yadaiah and Ors. (2001(10)SCC 563) held that ordinarily Courts or Tribunal should not go into question of fitment of officers in a particular group or pay scale attached thereto. The matter should be left to the discretion and expertise of expert body like Pay Commission unless the court finds on material produced that there is some apparent error. Accordingly, OA is partly allowed for the reasons recorded above. Impugned order is set aside. Respondents are directed to re-examine the claim of the applicant for parity for non-functional pay scale of the applicants in the light of stagnation in the matter of further promotion. This shall be done by a detailed and speaking order to be passed within three months from the date of receipt of a copy of this order. No costs.


(S.K. Malhotra)
Member(A)


(Shanker Raju)
Member(J)

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