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

O.A. NO. 392/2004

NEW DELHI THIS THE^{31st}.....DAY OF May 2005

**HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A. SINGH, MEMBER (A)**

1. Canteen Mazdoor Sabha (Regd) Through its working President
Sh., Surendar Prasad Khugsal, 132P, Sector -4, Pushp Vihar,
M B Road, New Delhi 110017
2. Bhagwan Singh (Halwai)'S/o Sh. Jai Singh
R/o H No. 183, Gali No. 11, Vishwas Park, Pappankala,
New Delhi
3. Arun Kumar (Cashier), S/o Sh. Dukh Mochan Thakur,
R/o 235, Aliganj, Kotla Mubarakpur, New Delhi
4. Kundan Singh ,Asstt. Manager – cum – Storekeeper
S/o Sh. Madho Singh,R/o D-11, Manas Apartment, Mayur Vihar,
Phase-I, Delhi
5. Matber Singh (Accountant),S/o Late Sh. Pratap Singh,
21/2, Andrews Ganj, New Delhi – 110049
6. Nandan Singh Rawat, (Manager Grade –II)
S/o Sh. Dhyam Singh Rawat,
R/o Qr No. 1201, Sector VII, R K Puram, New Delhi

.....Applicants

(By Advocate: Shri Shyam Babu)

VERSUS

1. Union of India through its
Secretary, Ministry of Personnel, Public Grievances and
Pensions, Govt. of India, North Block, New Delhi
2. The Secretary, Ministry of Finance Department of Expenditure,
North Block, New Delhi
3. Director of Canteens, Ministry of Personnel, Public Grievances &
Pension,
Department of personnel and Training, Lok Nayak Bhawan,
Khan Market New Delhi

.....Respondents

(By Advocate: Shri B K Barera)

ORDER

BY HON'BLE SHRI S.A. SINGH, MEMBER (A)

This OA has been filed by the Canteen Mazdoor Sabha and
five others seeking higher pay scales for Cashier, Halwai, Assistant
Manager cum Store Keeper, Manager Grade – II and Accountants.

(11)

The Association impugned respondents' order dated 11.4.2001, which was passed in compliance with Tribunal's order dated 14.2.2001 in OA No. 338/2001. The applicants have prayed that:

- i) Cashiers, Halwai, Assistant Manager - cum - Store Keeper who are in the pay scale of Rs. 3200- 4900/- should be granted the pay scale of Rs.4, 000/- to 6,000/;
- ii) Manager and Accountants who are presently in the pay scale of Rs. 4000 – 6000/- should be placed in the scale of Rs.5000-8000/-.

2. According to the applicants an anomaly was created when Halwai and Assistant Halwai were both put in the scale of Rs.3050- 4590/- by the 5th CPC. To remove this anomaly the respondents placed, Halwai, Cashier, Assistant Manager in the pay scale of Rs. 3200-4900/- instead of placing them in the scale of Rs.4000 – 6000/-. The applicants seek placement in the pay scale of Rs. 4000 – 6000/- for Halwai, Cashier and Assistant Manager on the ground that Assistant Halwai has been placed in the scale of Rs.3050-4590/-, which is equivalent to that of LDC. The next promotion of LDC is to that of UDC and UDCs are in the scale of Rs. 4000 – 6000/-. The promotion to Halwais is from Assistant Halwais. Assistant Halwais have been put in the scale to that of LDC so Halwai should have been logically put in the scale of UDC. By not doing so, respondents have shown hostile discrimination.

3. The applicants are also aggrieved by the impugned order with regard to scales granted to Manager Grade II and Accountants pleading that in the order it has been indicated that the replacement scale of Rs. 4000 – 6000/- has been given after upgrading the existing scale of Rs. 1200 – 1800 to 1320 – 2040/-. According to the applicants this is misleading and incorrect for the reason that three pay scales namely 1200 – 1800, 1200-2040/- and 1320-2040/- have been replaced by a common pay scale of Rs.4000 – 6000/-. As such there is no question of upgrading of pay scale of Rs.1200 – 1800 to Rs.1320 – 2040/- when both are replaced by the same scale of Rs.4000 – 6000/-.

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12

-3-

4. The applicants pleaded that they have reasons to believe that respondent No. 1 had proposed the pay scale of Rs.1600-2660/- for Manager Grade-II as well as for Accountants. The replacement scale for this scale is Rs. 5000 – 8000/-, hence their placement in the scale of Rs.4000 – 6000/- is arbitrary. Moreover, the duties of the applicants are more onerous and responsible than those of LDC, UDC and Assistant of the Government; hence, they are entitled to the pay scales prayed for.

5. The respondents have vehemently contested the pleadings of the applicants. The respondents pleaded that OA is without merit and is not maintainable at the outset because some sections of canteen staff have sought the revision of the wage structure prescribed by the DoPT OM dated 24.9.98 and 21.10.98 by filing Writ Petition No. 510/2003 before the Hon'ble Supreme Court. The court has ordered vide order-dated 22.3.2004 that the respondents to place before the Court whatever decision Government takes on the SIU Report. The matter is still under consideration of the Hon'ble Supreme Court on this ground alone, the respondents feel that the present OA was not maintainable as the outcome of the writ petition should be awaited. Further, the applicants are well aware of the fact that some sections of the canteen staff had earlier also petitioned ~~the~~ before the Principal Bench of the CAT seeking same or similar relief namely revision of their pay structure prescribed by the Government w.e.f. 1.1.1996 based on the recommendations of the 5th CPC. This OA 778/1999 was disposed of by the judgement dated 7.4.1999 directing the respondents to dispose of the representations dated 24.7.98 and 29.10.98. In OA 2042/99 the speaking order, dated 30.7.199 was challenged, which had been passed in compliance with directions given in OA 778/1999. This OA was dismissed vide Tribunal's order dated 18.7.2000. In speaking order, the wage structure was examined on merit. OA No.338/2001 was disposed of without notice being issued to the respondents by the Principal Bench of CAT by its order-dated 14.2.2001 directing the respondents to dispose of the representation-dated 11.5.1999. Accordingly, a speaking order was passed on 11.4.2001. In this speaking order, the

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13

respondents clearly spelt out the position in regard to the claims made by the applicants. It had also been clarified that all the points raised by them were considered before orders for the revised pay scales were issued.

6. The applicants had sent their written submissions on their claims to the 5th CPC and the canteen staff were also given personal hearing in the matter by the 5th CPC and the Government. The Commission and the Government decided the revised pay structure after due consideration of the demands/claims of the applicants, job contents and other related aspects.

7. The respondents relied upon the decisions in the case of apex court rulings in 1993(1) SCC 539, 1997 SCC (L&S) 210 where it was held as under:

“...we are of the view that the question like appropriate scale of pay for a post or cadre taking into account the duties and responsibilities attached to it and relativity of pay scales and question of any parity between the various groups of Central Government employees etc. are questions which should be best considered by an expert body like Central Pay Commission...”

And in the case of Civil Appeal No.7127 of 1993 filed in the Hon'ble Supreme Court it was observed that:

“...Over the past few weeks, we have come across several matters decided by the Administrative Tribunal on the question of pay scales. We have noticed that quite often, the Tribunals are interfering with the 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 the Pay Commission...The Commission, which goes into the problems of the employees and happens to have a full picture before it, is a proper authority to decide upon this issue. We hope and trust that the Tribunals will exercise due restraint in the matter.”

8. The respondents urged that in view of the law laid down by the apex court that it is not the function of the Tribunals to interfere with the pay scales without proper reason as this is within the purview of the government and

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- 5 -

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14

expert body like Pay Commission the Tribunal has a limited role in the matter of fixation of pay scales.

9. The respondents pleaded that no discrimination has been done to the canteen staff and that the pay scales of the applicants cannot be compared with secretarial staff like LDC, UDC or Assistants as the job of the canteen staff is not akin to the job of secretarial staff. The Canteen staff have been treated as a distinct category of employees from the very beginning as the nature of their work is not comparable with the work performed by the secretarial staff hence it is not correct to draw analogy between the Secretariat jobs/posts like LDC, UDC/Assistants and job/posts in the Canteen. The 5th CPC had also examined this matter and did not concede merger of Canteen Staff in the Group 'C' and 'D' of the respective Ministries/Departments or give canteen staff a promotional channel in that cadre.

10. We have heard the counsels for the parties and gone through the documents placed on record.

11. In the impugned order dated 11.4.2001, respondents have given the reasoning behind the revised pay structure of the canteen staff. For Cashier, Halwai and Assistant Manager cum Storekeeper they have given the following logic:

| Post | Pre-revised Scale as on 31.12.95 | Scale by FPC w.e.f. 1.1.96 | scale granted recommended by Govt. w.e.f. 1.1.96 |
|---|--|----------------------------------|---|
| Dy. General Manager/ Manager Gr.II/ Accountant | 1200-1800 | 4000-6000 | 4000-6000 |

Remarks: This replacement scale has been given after upgrading the scale of Rs.1200-1800 to Rs. 1320-2040.

| | | | |
|--|----------|-----------|-----------|
| Cashier/ Storekeeper Asstt. Manager- Cum- Storekeeper | 950-1500 | 3050-4590 | 3200-4900 |
|--|----------|-----------|-----------|

Remarks: Both these posts are in line of promotion to clerks who have also been given the same replacement scale vis Rs 3050-4590. Hence this post has been given the higher pay scale of Rs 3200-4900, which is corresponding to pre-revised scale of Rs 975-1660.

| | | | |
|--------|----------|--|-----------|
| Halwai | 950-1600 | No specific Recommendation Made. | 3200-4900 |
|--------|----------|--|-----------|

Remarks: The normal replacement scale of Rs.3050-4590 for the pay scale of Rs.950-1500 cannot be given since it has been given to Asstt. Halwai / Cook which are the feeder grade post for Halwai. Hence, the pay scale of Rs.3200-4900, which is corresponding to the scale of Rs.975-1660, has been given to this post.

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-6 ✓

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|-------------------------|----------|-----------|-----------|
| Asstt. Halwai/ Cook. | 825-1200 | 3050-4590 | 3050-4590 |
|-------------------------|----------|-----------|-----------|

Remarks: This replacement scale has been given after upgrading the scale of Rs.825-1200 to Rs.950-1500.

12. From perusal of the above, it is apparent that the respondents have upgraded the scale of Manager Grade II and Accountant, from Rs.1200-1800 to Rs.1300 – 2040/-. For Cashier and Assistant Manager-cum-store keeper the scale has been upgraded from Rs 975-1500 to Rs 975-1600. For Halwais no specific recommendations were made by the 5th CPC. The existing pay scale of Rs.950-1500 was upgraded to Rs.975-1660/-. The anomaly in the pay scales of Halwais and Assistant Halwais was taken care of by placing Halwais in a higher pay scale. We can see no infirmity in this.

13. We also cannot agree with the contention of the applicants that the respondents have not upgraded the scales of Manager Gr.II and Accountant. They have. It just so happens that 5th CPC has recommended a common replacement scale of Rs.4000-6000 for the three pay scales of Rs.1200-1800, Rs.1200 – 2040 and Rs.1320-2040.

14. We cannot agree with the contention of the applicants that halwais should be placed in the scale of UDCs, just because assistant halwais are in the scale of LDCs. Hon'ble Supreme Court in the case of State of West Bengal Vs Hari Narayan Oval 1994 (27) ATC 524 SC has held that it is not for the courts to fix the pay scales; it is to be left to expert bodies like Pay Commission. Respondents have based their decisions after taking into consideration recommendations of the V CPC. It is fortuitous that the pay scale given to assistant halwais is the same as that of LDCs. This does not necessarily lead to the conclusion that the duties are comparable. Only expert bodies can determine such questions.

15. In the case of Apparel Export Promotion Council Vs A K Chopra (JT 1999(1) SC 61 the apex court has held as under:

“The Court while exercising the power of Judicial Review must remain conscious of the fact that if the decision has been arrived at by the Administrative Authority after


-7-
following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the Court cannot substitute its judgment for that of the Administrative Authority on a matter which fell squarely within the sphere of jurisdiction of that authority."

16. The law is clear; in questions of pay scales and related matters, the court cannot substitute its judgement. These are matters best considered by an expert body like Pay Commission. The applicants have not been able to place before us any evidence, which shows that the decisions of the respondents were arrived at in an unfair or illegal manner.

17. In view of the foregoing, we find the OA is without merit and is accordingly dismissed. No costs.


(S.A. Singh)
Member (A)

Patwal/


(V.S. Aggarwal)
Chairman