

Central Administrative Tribunal
Principal Bench

New Delhi, dated the 9th July, 1997

HON BLE MR. S.R. ADIGE, MEMBER (A)
HON BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

O.A. No.1629 of 1992

Shri Vijay Kumar,
S/o Shri C.R. Gulati,
106/4, Marla, Gurgaon,
Haryana

... Applicant

Versus

1. U.O.I. through the
Secretary,
Ministry of Industry,
New Delhi.
2. Secretary,
Ministry of Personnel, Public Grievances & Pensions,
Dept. of Personnel & Training,
New Delhi.
3. The Secretary,
Ministry of Finance,
Dept. of Expenditure,
New Delhi.

... Respondents

O.A. No. 1630 of 1992

Shri S.P. Madan,
S/o Shri Thakur Dass Madan,
C-7/42A, Lawrence Road,
Delhi-35.

... Applicant

Versus

1. U.O.I. through
the Secretary,
M/o Industry, New Delhi.
2. The Secretary,
M/o Personnel, Public Grievances & Pension,
Dept. of Personnel & Training,
New Delhi.
3. The Secretary,
M/o Finance,
Dept. of Expenditure,
New Delhi.

... Respondents

O.A. No.1631 of 1992

Shri S.K. Nigam,
S/o Shri G.P. Nigam,
House No. 1884, Kacha Chellan,
Khaori Baoli,
Delhi-110006.

... Applicant

Versus

1. U.O.I. through
the Secretary,
M/o Industry, New Delhi
 2. The Secretary,
M/o Personnel, Public Grievances & Pensions,
Dept. of Personnel & Training,
New Delhi.
 3. The Secretary,
M/o Finance,
Dept. of Expenditure,
New Delhi.
- ... Respondents

O.A. No. 1632 of 1992

Shri Kamlesh Lala,
S/o Shri P.C. Lala,
R/o I-F/20, Lajpat Nagar I,
New Delhi.

... Applicant

Versus

1. U.O.I. through the
Secretary,
M/o Industry,
New Delhi.
 2. The Secretary,
Dept. of Personnel & Training,
New Delhi.
 3. The Secretary,
Ministry of Finance,
Dept. of Expenditure,
New Delhi.
- Respondents

O.A. No.1633 of 1992

Ms. Saroj Saini,
D/o Shri O.P. Saini,
R/o G-204, Naraina Vihar,
New Delhi-110028.

... Applicant

Versus

1. U.O.I. through
the Secretary,
M/o Industry,
New Delhi.
 2. The Secretary,
Ministry of Personnel, Public Grievances & Pensions
Dept. of Personnel & Training,
New Delhi.
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3. The Secretary,
M/o Finance,
Dept. of Expenditure,
New Delhi.

... Respondents

O.A. No.1634 of 1992

Shri Sukhdev Singh,
S/o Shri Piara Singh,
F-73, Prashant Vihar,
Rohini, Sector 14,
Delhi-110085.

... Applicant

Versus

1. U.O.I. through
the Secretary,
M/o Industry,
New Delhi.

2. The Secretary,
M/o Personnel, Public Grievances & Pensions,
Dept. of Personnel & Training,
New Delhi.

3. The Secretary,
M/o Finance,
Dept. of Expenditure,
New Delhi.

... Respondents

None for the applicants in all the above OAs
None for the Respondents

ORDER (Oral)

HON'BLE MR. S.R. ADIGE, MEMBER (A)

As all these cases involve common questions of law and fact, they are being disposed of by this common judgment.

2. Applicants seek a direction to Respondents to revise their pay scales from Rs.1400 - 2600 to Rs.1640 - 2900 w.e.f. 1.1.86 with all consequential benefits in terms of DOPT's O.M. dated 31.7.90.

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3. Applicants are working in the Office of the Development Commissioner for Cement Industry and were appointed as Assistants, in the pre-revised scale of Rs.425 - 800 which was later revised to Rs.1400 - 2600 on the recommendations of IV Pay Commission.

4. They state that the revised pay scale was applicable to all Assistants serving in the Central Secretariat Service as well as non-participating and attached offices including the office of the DCCI. This revised pay scale for Assistants working anywhere in the Central Govt. offices was made applicable to all the Assistants in the CSS as well as in the attached offices. They state that subsequently the pay scale of Assistants has been revised to Rs.1640 - 2900 for posts included in the CSS w.e.f. 1.1.86 vide DOPT O.M. dated 31.7.90 (Ann. B) and contend that they are therefore entitled to the above pay scale of Rs.1640 - 2900, but the same has been denied to them illegally and arbitrarily. They state that despite the clarification issued in DOPT O.M. dated 3.1.91 (Ann. C) this revised pay scale has been denied to them which is violative of Art. 14 and 16 of the Constitution being discriminatory and illegal. In this connection it is also averred that right from 2nd Pay Commission onwards, their pay scale is on par with those Assistants in the CSS cadre.

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5. None appeared for applicants when this case was called out and none appeared for respondents either. As these are very old cases, we are proceeding to dispose them of on the basis of available materials on record.

6. Respondents in their reply state that the scale of Rs.1640-2900 has been rightly denied to the applicants, because the post of Assistant in DCCI does not have the same classification as Assistants in the CSS and the method of recruitment through open competitive examination is also not the same. It is contended that in the case of Assistants in DCCI prior to 1988, 50% posts were filled by promotion and the remaining 50% by transfer/deputation/direct recruitment, but in 1988 the Recruitment Rules were modified such that the posts were to be filled 33 1/3% by promotion, 33 1/3% by direct recruitment and 33 1/3% by deputation failing which direct recruitment, whereas recruitment to the post of Assistants in CSS and other services to whom the scale of Rs.1640-2900 has been sanctioned the method of recruitment is 50% by direct recruitment and 50% by promotion. Further more they contend that as per Recruitment rules, for the post of Asst. in DCCI it is not specified that recruitment to the post is to be made through open competitive exam. i.e. Assistants Grade Exam. conducted by SSC. They contend that applicants cannot, therefore claim equality merely on the basis of same pay scale in the pre-revised grade, unless it is comparable with same classification and pay scales of Assistants in CSS and the method of recruitment through open competitive exam. is also the same. Since it does not satisfy all the three tests, the question of protection provided under Constitution of India does not arise.

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7. Applicants in their rejoinder themselves aver that it is settled law that where all things are equal, and persons holding identical and similar functions and duties under the same employer they should not be treated differently in matters of pay.

In the present cases however we notice that the applicants themselves do not deny that the quotas available for appointment as Assistants in DCCI ~~is~~ is different from that available for appointment as Assistants under CSS. Hence on applicants' own showing it cannot be said that all things are equal.

Further more no materials are on record to support the applicants' stand that they perform duties and functions identical with those of Assistants in CSS working in different Ministries/Departments of Govt. of India to whom the scale of Rs.1640-2900 has been granted.

8. In this connection the following extracts from the Hon'ble Supreme Court's judgment in State of West Bengal & Ors. Vs. H.N. Bhowal & Ors. (1994) 27 ATC 524 is relevant.

The principle of "equal pay for equal work" can be enforced only after the persons claiming satisfy the court that not only the nature of work is identical but in all other respects they belong to the same class and there is no apparent reason to treat equals as unequals. Unless a very clear case is made out and the court is satisfied that the scale provided to a group of persons on the basis of the material produced before it amounts to discrimination without there being any

justification, the court should not take upon itself the responsibility of fixation of scales of pay, especially when the different scales of pay have been fixed by Pay Commission or Pay Revision Committees, having persons as members who can be held to be experts in the field and after examining all the relevant material. It need not be emphasised that in the process undertaken by the court an anomaly in different services may be introduced, of which the court may not be conscious, in the absence of all the relevant materials being before it. Till the claimants satisfy on material produced, that they have not been treated as equals within the parameters of Article 14, courts should be reluctant to issue any writ or direction to treat them equal, particularly when a body of experts has found them not to be equal."

In this connection the very recent judgment dated 12.3.97 of the Hon'ble Supreme Court in U.O.I. & Anr. Vs. P.V. Hariharan CA No.7127/93 is also relevant, extracts of which are reproduced below:

" Before parting with this appeal, we feel impelled to make a few observations. Over the past few weeks, we have come across several matters decided by Administrative Tribunals on the question of pay scales. We have noticed that quite often the Tribunals are interfering with 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 govt. which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated,

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as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is also being mis-understood and mis-applied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter."

9. In this connection it is also important to note that while these O.As were awaiting adjudication, the Vth Pay Commission which had been set up by Govt has submitted its report, which is presently under the active consideration of Govt. We are not aware whether the applicants had made any representations to the Vth Pay Commission for consideration before the Commission submitted its report.

10. In the light of the above discussion, we dispose of these applications ^{holding} that they do not warrant any judicial interference at this stage. No costs.

11. Copy of this order be placed in all the case records concerned.

Lakshmi Swaminathan
(Mrs. LAKSHMI SWAMINATHAN)
Member (J)

/GK/

S.R. Adige
(S.R. ADIGE)
Member (A)