

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

OA No.226/92

Date of decision:5.2.93

Shri K.H.N.Kanojia & ors. ... Applicants

versus

Union of India through  
Secretary,  
Government of India,  
Ministry of Human Resource Development  
& anr.

CORAM:THE HON'BLE MR.JUSTICE RAM PAL SINGH,VICE-CHAIRMAN(J)  
THE HON'BLE MR.P.C.JAIN, MEMBER(A)

For the Applicants .. Sh.T.K.Sinha,Counsel.

For the Respondents .. Sh.Om Prakash Sehrawat,  
Counsel.

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes.*
2. To be referred to the Reporter or not? *yes.*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No.*
4. Whether it be circulated to other Benches of the Tribunal? *No.*

*P.C.*  
(P.C.JAIN)  
MEMBER(A)

*Ram Pal Singh*  
(RAM PAL SINGH)  
VICE-CHAIRMAN(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

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Date of decision: February 5, 1993

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Applicants

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JUDGEMENT

HON'BLE SHRI P.C.JAIN, MEMBER(A):-

All the 10 applicants in this OA under Section 19 of the Administrative Tribunals Act, 1985, are stated to be working as Assistant in the National Archives of India, New Delhi (for short, N.A.I.) in the scale of Rs.1400-2600. They have assailed N.A.I.'s order dated 29.8.91 (Annexure I) by which the request of applicant No.1, Shri K.H.N.Kanojia made in his application dated 4.12.90 for revision of scale of Rs.1400-2600 to Rs.1640-2900 i.e. at par with the Assistants Grade of the Central Secretariat Service and Grade 'C' Stenographers of Central Secretariat Stenographers Service was rejected. They have prayed for a direction to revise their scale of pay to Rs.1640-2900 with effect from 1.1.86.

2. The respondents have contested the OA by filing their reply to which a rejoinder has also

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been filed by the applicants. As the pleadings in this case were complete, the OA is being finally disposed of at the admission stage itself. We have accordingly perused the material on record and also heard the learned counsel for the applicants. No oral submissions were made on behalf of the respondents.

3. The main contention of the applicants is that the quality and nature of duties performed by the Assistants in the N.A.I are in no way less than the Assistants in the Central Secretariat Service cadre and it is for this reason that the Secretariat work relating to the Indian Historical Records Commission which until very recently was dealt with by the Department of Culture, Government of India was transferred to the N.A.I. It is further contended that the Assistants of N.A.I. are required to prepare memoranda for departmental promotion committee as well as correspondence with U.P.S.C./S.S.C as is done in the Secretariat of the Ministry of Human Resource Development, Department of Culture and that those working in the Budget Section perform same and similar type of work as is done by the Assistants in the Central Secretariat and that they also prepare briefs for Budget proposals, <sup>Cult-</sup> motions, financial memoranda and other connected work. It is further contended that in consideration

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of the fact that Assistants in the N.A.I perform identical and the same nature of duties as performed by the Assistants in the Central Secretariat Service and other offices under the Central Government, the Government of India, Department of Culture vide their letter dated 6.4.76 upgraded the scale of pay of the Assistants in the N.A.I. to Rs.425-800 on par with the Assistants Grade of the Central Secretariat Service, the Railway Board Secretariat Service, Armed Forces Headquarters Service and other similar services in the Central Government on that date. However, while the pay scales of the Assistants Grade of the Central Secretariat Service was revised, by the Department of Personnel & Training vide OM dated 31.7.90 to Rs.1640-2900 for the pre-revised scale of Rs.425-800 with effect from 1.1.86 yet the applicants were treated differently and they were denied the same revised scale in disregard to the doctrine of 'equal pay for equal work'. It is also contended that the Department of Personnel & Training vide their OM dated 3.1.91 had given an arbitrary, grossly erroneous, distorted and discriminatory clarification to their OM dated 31.7.90 to the effect that the newly revised scale will not be applicable to the posts of Assistant in the Ministries/Departments and those attached/subordinate offices where the posts are not filled by direct recruitment through open

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competitive examination. This is an unreasonable clarification resulting in transparent discrimination.

As such, the action of the respondents is stated to be arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution.

4. In the counter reply which has been filed on behalf of the respondents by Shri R.K.Perti, Director General of Archives, it is stated that "the quality and nature of duties performed by Assistants in the National Archives of India are in no way less than in the Central Secretariat Service." It is also stated that the work relating to Indian Historical Records Commission <sup>was</sup> transferred to the NAI long back and not recently.

In reply to para 4.7 it is stated that there was a proposal for amendment of the recruitment rules and that in a meeting it was decided that since Assistants in the Central Government were having Group 'B' status and the Government has not agreed to upgrade the status of Assistants in N.A.I, the method of recruitment should be 100% by promotion. It is further stated that as there was an anomaly in the scale of pay as recommended by the Fourth Central Pay Commission for the posts of Assistant in the Central Secretariat and in respect of Stenographers Grade 'C' of the Central Secretariat Stenographers Service as held by the Tribunal in

OA No.1538/87 between Varinder Gupta Vs.Union of India and it was decided to set right the same and the scale of pay of Assistants in the Central Secretariat Service and the Stenographers of the Central Secretariat Stenographers Service was revised vide order dated 31.7.90 but the revised pay scales were not applicable to subordinate offices and for autonomous bodies as there was no such anomaly in respect of pay scales of Assistants and Stenographers in these offices/autonomous bodies. It is further stated that OM dated 3.1.91 was issued by the Department of Personnel & Training by way of clarification of the Memorandum dated 30.7.90. In this clarification, it was stated that the revised scale of pay of Rs.1540-2900 is not applicable to posts in Attached/Subordinate offices and autonomous bodies where the posts are not in comparable grade and with the same classification and pay scale of Assistants of CSS and Stenographers Grade 'C' of CSSS and where the mode of direct recruitment is not through the same, open competitive examination i.e. the Assistants Grade Examination and Stenographers Grade 'C' Examination conducted by the S.S.C(earlier conducted by the U.P.S.C). The allegations of arbitrariness, discrimination and violation of Articles 14 &16 of the Constitution have been denied.

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5. In the rejoinder filed by the applicants, it is stated that the qualification has nothing to with determination of the pay scales and that the method of recruitment has scant relevance in the matter of 'equal pay for equal work'. It is also stated that 50% of the posts of Assistant in the Central Secretariat are by promotion and the pre-revised scale for them as well as for the Assistants in the N.A.I was the same.

6. We have given our careful consideration to the rival contentions of the parties. The case of the applicants, briefly stated, is that the quality and nature of duties performed by them are no way less than the Assistants in the Central Secretariat; that <sup>C.</sup> ~~one~~ the scale of pay for the post of Assistant-cum-Cashier in the N.A.I has been upgraded to that on par with the scale of Assistant in the C.S.S by an order issued in April 1976 (Annexure II), this parity has to be maintained; and that since the scale recommended by the Fourth Pay

Commission has since been revised with retrospective effect from Rs.1400-2600 to Rs.1640-2900 in the case of Assistants in the C.S.S, the denial of the same to the applicants is arbitrary, violative of the doctrine of 'equal pay for equal work' and also discriminatory and thus violative of the provisions of Articles 14 & 16 of the Constitution of India. Before issue of order in April 1976,

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the scale of pay of the post of Assistant<sup>C. and Assistant-</sup>/Cum-Cashier in the N.A.I was Rs.425-640 while the scale of Assistants in the C.S.S cadre was Rs.425-800. By the orders issued in April 1976, the sanction of the President to the upgrading of the scale of Rs.425-640 to Rs.425-800 was issued but it was subject to the condition "that in future the method of recruitment of these posts of Assistant and Assitant-Cum-Cashier should be same as prescribed for the Central Secretariat Service." These conditions are not fulfilled in the case of the applicants who work in the N.A.I inasmuch as the recruitment to the post of Assistant in the N.A.I is 100% by promotion while for the post of Assistant in the C.S.S<sup>C. a-</sup> is partly by direct recruitment and partly by promotion. The posts of Assistant in the C.S.S are classified as Group 'B' posts whereas similar posts in the N.A.I. are classified as Group 'C' posts. The method of recruitment has relevance to the applicability of the doctrine of 'equal pay for equal work'. Though it is necessary that for applicability of this doctrine duties and responsibilities of the two posts should be the same or identical or essentially similar, yet this alone is not sufficient. What is required is that all relevant considerations should be the same. Their lordship of the Supreme Court in the case of Randhir Singh Vs.Union of India (AIR 1982 SC 879),

observed as below:-

".....that where all things are equal that is where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments".

In the case of V.Markendeya & ors.Vs.State of Andhra Pradesh and ors.(AIR 1989 SC 1308), the apex court observed as below:-

" If on an analysis of the relevant rules, orders, nature of duties, functions, measure of responsibility, and educational qualifications required for the relevant posts, the Court finds that the classification made by the State in giving different treatment to the two class of employees is founded on rational basis having nexus with the objects sought to be achieved, the classification must be upheld."

Similary, in one of the latest judgements of the Supreme Court in the case of State of Madhya Pradesh and Anr.Vs.Pramod Bhartiya and Ors.(JT 1992(5) S.C.683) even though the <sup>C. quid</sup> ~~classification~~ prescribed for the Lecturers in the Higher Secondary Schools and non-technical Lecturers in Technical Schools were the same; the service conditions of both the Lecturers were the same, the status of the schools was also the same, the claim for 'equal pay for equal work' was not found to be justified. It is true that if the recruitment rules for the posts of Assistant and Assistant-cum-Cashier in the N.A.I were not amended to bring on par with those applicable to the Assitants in the C.S.S, the applicants cannot be blamed. At the same time, the applicants cannot claim

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that their recruitment rules should be in a particular form. It is the prerogative of the executive to decide the policy issues such as the method of recruitment, <sup>qual</sup> ~~classification~~ to be prescribed and so on so forth. What is relevant is as what are the recruitment rules which are applicable to a particular cadre and if the basis of upgradation of their posts was to be parity in the method of recruitment, the upgradation is conditional and not automatic.

7. We may now briefly deal with the background in which the scale of Assistants of the C.S.S has been revised upward by OM NO.2/1/90-CS(IV) dated 31.7.90(Annexure III) after judgement of the Tribunal in OA 1538/87 was delivered on 23.5.89 when Central Secretariat Service Direct Recruit Assistants Association(Recognised by the Govt.of India) through Shri Varinder Gupta, Assistant approached the Tribunal challenging the pay scale of Rs.1640-2900 notified for the post of Assistant in the Central Secretariat Service on the basis of the recommendations of the Fourth Central Pay Commission. One of the contentions of the applicants therein was that though the Assistants were classified as Group 'B' (non-gazetted), yet the pay scale of Rs.1400-2600 fixed for them replacing the pre-revised pay scale of Rs.425-800 was neither commensurate <sup>c.</sup> nor consistent with this classification and it it was less than

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the lowest revised pay scale of Rs.1640-2900 applicable to Group 'B' officers. The second contention was that relativities between pay scales in Group 'C' have been seriously disturbed inasmuch as a number of posts included in Group 'C', the pre-revised scales of pay of which were either the same as or lower than that of the Assistants, have been given better scales of pay i.e. Rs.1640-2900 or Rs.1640-2660 on the basis of the Commission's recommendations. Apart from the contention that the Assistants of the C.S.S make important contributions to the taking of policy decisions by Government, the following special features were also highlighted:-

- (i) Assistants are appointed by the President of India, while Group 'C' employees are appointed by officers of lesser rank.
- (ii) Assistants are selected by the Union Public Service Commission, while the Group 'C' posts are generally filled by officers selected by the Staff Selection Commission.
- (iii) Assistants are given greater security of tenure, because, in the matter of disciplinary proceedings, the UPSC has necessarily to be consulted, which is not the case with other Group 'C' officials.
- (iv) They are liable to the submission of Annual Immovable Property Return under Rule 18 of the Central Civil Service Conduct Rules, 1984 while other Group C officials are not required to do so.

The Tribunal in that case held that categorisation of the Assistants as Group 'B' officers was

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never intended to <sup>be</sup> ~~be~~ given to them any fiscal benefit as such. It was further held that the classification in the Central Civil Services Rules is for the purpose of regulating disciplinary proceedings and not for determining the pay scales of posts; and that classification follows the pay scale attached to a post on the basis of the duties and responsibilities and not vice versa. The Tribunal also came to the conclusion that "we feel that the Assistants have a prima facie case to represent against the aforesaid disturbance of internal relativities for three reasons. Firstly, they were in the highest pre-revised pay scale of Rs.425-800 considered by the Commission in paras 8.41 to 8.44 of its Report. Secondly, they are the first rung of important functionaries in the Central Secretariat. It cannot be denied that the note they record on the files is an important aid to taking a policy decision, because that is generally a comprehensive note containing all facts, rules, precedents etc. In fact, that note may be compared to the paper book of cases placed before the Tribunal. Thirdly, the Assistants have contended that among the officials covered by the Commission's recommendations in paras 8.41 to 8.44 of its Report, they stand out separately as a group for the reasons given in para 7 supra. Therefore, their grievance need consideration." The Tribunal in OA 1538/87

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also held as below:-

" 48. In this case, we have come to the ~~come to~~ conclusion that, prima facie, there is an anomaly which can be properly considered by the Respondents as it requires detailed examination. We would normally have quashed the impugned letters dated 1/2 April, 1987(Annexure -D) and 16th June, 1987(Annexure-E) but refrain ourselves from doing so only because the persons to whom these letters have been addressed have not been impleaded in this case. Nevertheless, we direct the Respondents to consider this anomaly."

We have already referred to above, the anomaly identified in the judgement. Therefore, the Tribunal directed that the anomaly shall be referred by Respondent No.1 to the "Anomaly Committee" for disposal in accordance with the procedure laid down in the OM dated 25.1.88. It was made clear that the directions in the order obliges the Respondents to consider only the anomaly in respect of the revised pay scale of Assistants.

8 From the above narration, it is clear that it was an anomaly on the basis of which a direction was given to the respondents to reconsider the scale of pay given to the Assistants of the C.S.S in pursuance of the recommendations of the Fourth Central Pay Commission and it was after the consideration of the same, the scale of the Assistants of C.S.S. was revised to Rs.1640-2900. No such anomaly has been brought about in the case before us. In fact, the basis of the anomaly were the factors which do not exist in the case before us.

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Thus, merely because the Assistants of the C.S.S cadre have been allowed the higher scale of Rs.1640-2900 in itself is not a ground for granting the same scale to the Assistants of the N.A.I.

9. Now we may refer to the judgement of the Supreme Court in the case of Federation of All India Customs and Central Excise Stenographers (Recognised) and ors, Petitioners v. Union of India and others, Respondents( AIR 1988 SC 1291). In that case, the petition was filed in a representative capacity on behalf of Stenographers(Grade I) who were attached with officers in the pay scale of Rs.2500-2750 (Level I) seeking parity with the pay scale of Stenographers attached to the Joint Secretaries and officers above that rank . It was noticed that to man the various stenographic posts in the Headquarters, the Government constituted the Central Secretariat Stenographers Service which also caters to the needs of such posts in several attached offices which are known as participating offices. According to the respondents none of the attached offices of the Department of Revenue was participating offices and therefore, keeping in view the importance and the nature and the type of the work performed in the Ministries/Departments of the Government of India vis-a-vis those in the attached and subordinate offices and consequently the nature of stenographic assistance required,

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the Third Pay Commission recommended different scales of pay for Stenographers in CSSS and those in the non-participating attached and subordinate offices. The respondents therein had also emphasised that though the duties and work were identical between the petitioners and their counterparts attached to the Secretaries in the CSS their functions are not identical with regard to their duties and responsibilities inasmuch as the Stenographers attached with the officers in the Secretariat formed a distinguishable class as they have to assist the officers in the discharge of their duties and high responsibilities which according to the respondents are of a much higher nature than in the attached and subordinate offices. It was also the case of the respondents that the Joint Secretaries and Directors in the Central Secretariat performed functions and duties of higher responsibilities than those performed by the Head of Departments although they <sup>are</sup> borne on identical scales of pay. The Supreme Court in para 7 of the judgement held as below:-

" 7. Equal pay for equal work is a fundamental right . But equal pay must depend upon the nature of the 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 judgement 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. It is important to emphasise that equal pay for equal work is concomitant of Article 14 of the Constitution. But it follows naturally that equal pay for unequal work will be a negation of that right."

Reference has also been made in that judgement to the judgement of the Supreme Court in the case of Delhi Veterinary Association Vs. Union of India (AIR 1984 SC 1221) in which it was held that:-

" The question of discrimination cannot be decided in isolation. This Court reiterated that in addition to the principle of 'equal pay for equal work' the pay structure of the employees of the Government should reflect many other social values."

Then in para 11 their lordships of the Supreme Court held as below:-

"11. In this case the differentiation has been sought to be justified in view of the nature and the types of the work done, that is, on intelligible basis. The same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less- it varies from nature and culture of employment. The problem about equal pay cannot always be translated into a mathematical formula. If it has a rational nexus with the object to be sought for, as reiterated before a certain amount of value judgment of the administrative authorities who are charged with fixing the pay scale has to be left with them and it cannot be interfered with by the Court unless it is demonstrated that either it is irrational or based on no basis or arrived at mala fide either in law or in fact. In the light of the averments made and in the facts mentioned before, it is not possible to say that the differentiation is based on no rational nexus with the object sought for to be achieved. In that view of the matter this application must fail and it is accordingly dismissed without any order as to costs."

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It can perhaps hardly be disputed by those who have experience of working both in policy making organisations as well as in the subordinate/attached offices that input which is expected even of an Assistant in a policy making organisation is qualitatively much different than in the subordinate/attached offices. Thus, prescribing different scales of pay for the post of Assistant in the C.S.S. and the participating offices for which there is different method of recruitment than for the post of Assistant in the subordinate/attached offices where method of recruitment is also different, cannot be said to be arbitrary inasmuch as the classification is based on intelligible criterion <sup>C. which has a nexus</sup> as also <sup>C.</sup> an access to the objectives <sup>C.</sup> sought to be achieved. As such, <sup>C.</sup> the classification which has been consistently <sup>C.</sup> upheld by the apex court, cannot be said to be violative of the principles of equality enshrined in Article 14 of the Constitution. Further, it may be stated that, as held by the Supreme Court in the case of State of U.P & ors. Vs. J.P. Chaurasia & ors. (1989(1) SCC 121) " the equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is such determination by a Commission or Committee, the court should normally

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accept it. The court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration." It was also held in this case that the quantum of work may, <sup>be</sup> the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. Even in the case of Randhir Singh (supra), the Supreme Court held as under:-

" We concede that equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like Pay Commission and not for Courts....."

The clarification issued by the Department of Personnel in their OM dated 3.1.91 to the OM dated 31.7.90 by which the scale of pay of the Assistants of the C.S.S. was revised upwards, it is stated as below:-

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" ..... It is clarified that the Central Administrative Tribunal, Princlal Bench, New Delhi held that, prima facie, there was an anomaly in the scale of pay for the posts of Assistants in the Central Sectt. The Government, after taking into account the observation of the Hon'ble Tribunal, decided to remove the anomaly, vide O.M. dated 31st July, 1990 by revising the scale of pay of of Assistants of the Central Secretariat Service and Grade 'C' Stenographers of Central Secretariat Service.

It has been clarified in the said OM that the revised scale is also available in cases of posts where direct recruitment is made through the same open Competitive Examination, i.e. Indian Foreign Service (B), Railway Board Secretariat Service, Armed Forces Head Quarters Civil Services, Election Commission, Central Vigilance Commission, Ministry of Parliamentary Affairs etc. where the method of recruitment is direct recruitment through the Assistants' Grade Examination and Stenographers' Grade 'C' Examination respectively conducted by the Staff Selection Commission (earlier conducted by the Union Public Service Commission).

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There has been no anomaly in case of posts of Assistants and Stenographers or other posts in the pre-revised scale of Rs.425-800 where the method of recruitment is not through the same open Competitive Examination as in case of service covered above. Accordingly, these orders are not applicable to such posts in the Ministries/ Departments and those attached/subordinate offices including autonomous bodies etc. which do not come within the purview of the services/posts referred to in paras 1 and 2 above."

From this also it is clear that there is a rational basis for classification and the basis has a relevance to the objective sought to be achieved.

10. In the light of the foregoing discussion, we are of the considered view that the OA is devoid of merit and the same is accordingly dismissed leaving the parties to bear their own costs.

(P.C.JAIN)  
MEMBER(A)

(RAM PAL SINGH)  
VICE-CHAIRMAN(J)

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