

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

O.A.No.2711/92

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New Delhi, this the ^{25th day of February, 1999}

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER(J)
HON'BLE SHRI N. SAHU, MEMBER(A)

K.N. Virmani,
S/o late Shri Sohan Lal Virmani,
P.S. to Chairman
M.R.T.P. Commission,
Kota House Annexe, Shahjahan Road,Applicant
New Delhi-110 011.

(By Advocate: Shri R. Ranganathaswamy)

Versus

1. The Union of India through
The Secretary,
Department of Company Affairs,
Udyog Bhawan, New Delhi
2. The Secretary,
Ministry of Finance,
Department of Expenditure,
North Block, New Delhi.
3. The Secretary,
M.R.T.P. Commission,
Kota House Annexe, Shahjahan Road, Respondents
New Delhi-110011.

(By Advocate: Shri K.R. Sachdeva)

ORDER

HON'BLE SHRI N. SAHU, MEMBER(A)

The O.A. is directed against the order dated 1.5.92 rejecting the proposal for upgradation of the post of Private Secretary to the Chairman, M.R.T.P. Commission from Rs.2000-3500/- to the pay-scale of Rs.3000-4500/-. The reason for rejection of the claim is that the conditions stipulated in paragraphs 9.39 and 9.42 of the Pay Commission's report are not fulfilled in the applicant's case. Consequent on the recommendation of the 4th Pay Commission, the post of Private Secretary to the Secretaries to the Government of India and equivalent officers are upgraded and given the scale of Rs.3000-4500 by the order of Ministry of Finance notification dated

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13.3.87. The Ministry of Personnel by its Office Memorandum dated 7.10.87 decided that in the C.S.S.S., the posts of P.S. to the Secretary be filled up by ad-hoc promotion after departmental screening. Thereafter, the sanction of the President was obtained to upgrade the post of P.S. to the Chief Justice of India and the Judges of the Supreme Court.

2. The applicant's case is that qualification for the post of Chairman, M.R.T.P. Commission is virtually same as that of a Judge of the Supreme Court. The post of Private Secretary to the Chairman of this Commission also deserves to be elevated to the higher grade of pay of Rs.3000-4500. A reference was made to the judgement of the Delhi High Court dated 7.5.91 in Civil Writ Petition No.289/91 in which it has been held that all the Private Secretaries attached to the Judges of the Delhi High Court have to be given the scale of pay of Rs.3000-4500 with effect from 1.1.86. The applicant's case is that the duties to be performed by the Private Secretary to the Chairman, M.R.T.P. Commission are in no way less onerous or arduous than the duties performed either by the P.S. to the Judges of the High Court or Secretaries to the Govt. of India. He, therefore, pleads that on the principle of equal pay for equal work, he is entitled to the similar scale of pay as is given to the P.S. to the High Court Judge or the Supreme Court Judge or to the Secretaries to the Govt. of India. The applicant being the seniormost P.S. in the Commission working continuously with Chairman in the M.R.T.P. Commission, he prays that his post may be

upgraded in the pay scale of Rs.3000-4500 with effect from 1.1.86. He has put in 11 years of service as P.S. in the Commission.

3. The recommendation of the 4th Pay Commission is that stenographers in other organisations which are not participating in CSSS with comparable posts and grades and where the method of recruitment is through open competitive examination e.g. the stenographers in those organisations like the Department of Railways, Ministry of External Affairs etc. may be placed in the same grade of pay as has been recommended for CSSS. The argument of the respondents is that the recruitment to the post of P.S. to Chairman, M.R.T.P. Commission is not through open competitive examination and, therefore, the question of upgrading it to scale of Rs.3000-4500 is not agreed to. The method of recruitment of P.S. in M.R.T.P. Commission is : 2/3rd posts are to be filled by promotion of stenographers grade II in the Commission with 14 years regular service in the grade and 1/3rd posts are to be filled by transfer on deputation from officials belonging to selection grade of CSSS. As the mode of recruitment is dissimilar, the respondents state that the applicant's case cannot be considered parimateria with the scales given to the P.S. to the Secretaries to the Govt. of India or to the P.S. to the High Court and Supreme Court Judges.

4. Learned counsel for the respondents states that the stenographers in the CSSS are a separate cadre. He referred to the decision of a Division Bench of this Tribunal in the case of Dr. Vijay Kumar Aggarwal vs. Union of India and ors. Shri Aggarwal, in that case, working as

Court Master in the M.R.T.P. Commission claimed the revision of the pay scale in the grade of Rs.2000-3500 on the ground that he was similarly placed as the Court Masters of the High Court and the Supreme Court. After extensively discussing the rival contentions, this Tribunal held that the petitioner should approach the respondents once again with a representation, who shall consider the same and communicate the decision to the petitioner within three months. The Tribunal made the point that there might be similarity in the functioning of the Court Master of M.R.T.P. Commission with the Court Masters of the High Court and the Supreme Court but it is not possible to equate one post with the other and it is not the function of a court to examine and assess similarities of the duties of functionaries in one organisation with the other. The court, however, felt that there was no hostile discrimination involved and accordingly dismissed the claim.

5. We have carefully considered the submissions and we are of the view that there is no merit in this O.A. The Chairman,MRTP Commission may be drawing the same scale of pay as the Secretary to the Govt. of India. His qualifications as the Chairman,MRTP Commission might be as that of a Judge of the Supreme Court or the High Court. Those similarities only give strength to a possible claim that the Chairman,MRTP Commission should be treated in all respects as eligible as far as privileges are concerned to that of either the Secretary to the Govt. of India or to the Judges of the higher judiciary. That does not ipso-facto make the P.S. to the Chairman,M.R.T.P.Commission equivalent to the P.S. to the

Secretary to the Govt. of India or to the P.S. to the Judges of the High Court and the Supreme Court. The Hon'ble Supreme Court has stated that in order to determine equivalence, a number of factors have to be taken into account. It is not only the nature and the sensitivity of the job but the method of recruitment, the manner of training, nature of duties and also the responsibilities involved are to be compared. The Supreme Court also cautioned the judiciary from entering into any exercise of assessing the similarities of job between two different streams of work. Such a matter is to be left to expert bodies like the Pay Commission. The judiciary is ill-equipped to examine and assess relativities and establish equivalence.

6. There are a large number of Supreme Court decisions stating the above prepositions. It is sufficient if two or three cases are mentioned for this purpose. It is clearly laid down in two Constitution Bench judgements in the case of State of Mysore vs. P.Narasing Rao - AIR 1968 SC 349 and Mohammad Shujat Ali vs. Union of India - 1974 SCC (L&S) 454 that any differentiation made in the matter of pay scales between graduate and non-graduate employees would not fall foul of the touchstone of Articles 14 and 16 of the Constitution. Hostile discrimination should be clearly established. In the case of State of Tamil Nadu vs. M.R.Alagappan - (1997) 4 SCC 401, there was substantial similarity in duties and responsibilities between Deputy Agricultural Officers and Agricultural Officers. In fact, the posts were interchangeable. The Hon'ble Supreme Court held that this does not necessarily attract the principle of equal pay for equal work when

there are other distinguishing features like educational qualifications for appointment, mode of recruitment, status, special assignments entrusted to one category only and different seniority lists. As the method of recruitment to the post of P.S. to Chairman, M.R.T.P. Commission is not through open competitive examination and as the quality, content, sensitivity and other aspects of the performance of a P.S. to the Chairman, M.R.T.P. Commission are not exactly similar to those of a P.S. to the Secretary to the Govt. of India or a P.S. to the Judge of a High Court or Supreme Court, we are satisfied that this court cannot interfere in the impugned order dated 1.5.92 issued by respondent 3. It is left open to respondent 3 to espouse the case of either the applicant or persons similarly placed like the applicant before an expert body like the Pay Commission or through respondent 2 and seek re-consideration.

7. We find no merit in this O.A. It is, therefore, dismissed. No costs.

Narasimha,
(N. SAHU)
MEMBER(A)

Lakshmi Swaminathan,
(SMT. LAKSHMI SWAMINATHAN)
MEMBER(J)

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