

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 3313/92

New Delhi, this the 4th day of December, 1998

(2)

HON'BLE SHRI K.MUTHUKUMAR, MEMBER (A)
HON'BLE SHRI T.N. BHAT, MEMBER (J)

In the matter of:

A.B.Tandon
Retired Director of Prosecution,
Delhi Administration,
R/o 13, Park Street,
New Delhi-1.
(By Advocate: Sh. R.K.Kamal)

.... Applicant

Vs.

Union of India through

1. The Secretary,
Ministry of Home Affairs,
Government of India,
North Block,
New Delhi-1.
2. The Secretary,
Ministry of Finance,
Dept. of Expenditure,
Government of India,
North Block,
New Delhi-1.
3. The Chief Secretary,
Govt. of National Territory,
Capital Delhi,
Old Secretariat, Delhi. Respondents
(By Advocate: Sh. K.C.D.Gangwani and
Sh. K.R.Sachdeva)

O R D E R

delivered by Hon'ble Shri T.N.Bhat, Member (J)

We have heard at length the arguments of the learned counsel for the parties. The learned counsel for the respondents have also produced for our perusal the departmental records which we have perused.

2. The applicant in this OA is working as Director of Prosecution in NCT of Delhi and he has come to the Tribunal assailing the decision of the respondents not

hjm
4.12.98.

to accept the recommendations of the High Powered Committee (hereinafter to be referred as HPC, for short) appointed by the Government for upgradation of the pay scales of Prosecutors in the Delhi Administration. The decision was conveyed to the applicant by the letter dated 9.11.92, as at Annexure A-1 to the OA, and in this letter it is stated that the recommendations of the HPC have not been accepted by the Govt. of India.

(3)

3. The essential facts leading to the filing of this OA are no longer disputed. The applicant had been making repeated representations for upgradation of his pay scale. As a matter of fact, the Prosecutors working in NCT of Delhi had made several representations and it was at their request that the Delhi Administration appointed a HPC which gave its report strongly recommending upward revision of pay scales of the Prosecutors and also for grant of book allowance for "effective functioning of the Directorate of Prosecution in Delhi".

4. The applicant assails the decision of the Govt. of India not to accept the recommendations of the HPC on the ground that the decision is arbitrary. According to the applicant mere financial considerations cannot be allowed to stand in the way of grant of a revised pay scale to the applicant.

5. The respondents have resisted the claim of the applicant with the averment that in pursuance to the directions of the Tribunal in OA-2305/91, which had been filed by the applicant earlier, the respondents have considered the recommendations of the HPC and after proper

W.W.

application of mind a decision has been taken not to accept the recommendations. The contention of the respondents is that there are no grounds for the Tribunal to interfere in this matter, particularly so in view of the fact that the 4th Central Pay Commission had not allowed grant of better pay scales to the Prosecutors working in Delhi Administration.

AK

6. During the course of his arguments, the learned counsel for the applicant urged before us that the order/decision of the respondents is arbitrary as no reasons have been given or communicated to the applicant for the decision. He has strenuously argued that there was no justification for the respondents to have disregarded the recommendations of the HPC.

7. In reply, the learned counsel for the respondents contended that the recommendations made by the HPC were not binding and that the power to take a final decision vested in the Govt. of India who have exercised this power after due application of mind.

8. Before we proceed to give our finding on the merits of this OA we may refer to some of the observations made by the Tribunal in its judgment dated 18.9.92 in OA-2305/91 which, as already mentioned, was filed by the applicant earlier seeking the same relief as has been sought in the instant OA. On the question whether the post of Director of Prosecution in Delhi should be brought at par with the posts of Directors of Prosecution in other States like U.P., Rajasthan, etc. or with the post of Legal Advisors in other States the

Suban

(5)

Tribunal held, on the strength of the observations made by the Hon'ble Supreme Court in State of U.P. vs. J.P. Chaurasia and Others (AIR 1989 SC 19) that the equation of posts or equation of pay must be left to the Executive Government and such questions must be left to be determined by expert bodies like the Pay Commission who would be the best judge to evaluate the nature of duties and responsibilities of posts."

It was further held that in this case the contention of the respondents that the Director of Prosecution in Delhi Administration is not the Legal Advisor to the Police Department and that the Commissioner of Police has a Legal Advisor of his own cannot be overlooked. Reference was further made to the Apex Court judgment in Harbans Lal and Others vs. State of Himachal Pradesh and Others [JT 1989 (3) SC 296] in which it was held that the principle of equal pay for equal work does not apply if the managements are different and the posts are in different geographical locations even though they are under the same owner or the nomenclature and the volume of work is the same. The Tribunal refrained from giving any finding on the question of equation of the post of Director of Prosecution with the equivalent posts in the Police Department or the Director of Prosecution in other States or Organisations. The reason given was that this question had been raised before the 4th Central Pay Commission specifically but the Commission had not made any specific recommendations about a higher pay scale to be given to the post of Director of Prosecution.

W.M.

9. During the course of his arguments the learned counsel for the applicant raised identical questions and in view of the fact that the Tribunal had earlier also examined these questions and had rejected the contentions regarding equation of the post of Director of Prosecution in Delhi Administration with some other posts we cannot agree with the contentions raised before us by the learned counsel for the applicant on these questions.

(b)

10. However, since the Govt. of India had appointed a HPC to consider the question of proper pay scales to be attached to the officers of the Directorate of Prosecution it was only for this reason that the Tribunal in its judgment (supra) partly allowed the OA and directed the respondents to take a decision on the report of the aforesaid HPC in so far as the post of Director of Prosecution, Delhi Administration held by the applicant is concerned and to inform the applicant through the Chief Secretary, Delhi Administration about the decision so taken. The decision, as already indicated, was conveyed to the applicant by the impugned letter dated 9.11.92 wherein it is stated that Govt. of India has not accepted the recommendations of the HPC.

11. As mentioned above, the learned counsel for the applicant vehemently argues that the decision of the Govt. of India and Delhi Administration not to accept the recommendations of the HPC is arbitrary and that the impugned letter does not give any reasons for non-acceptance of the recommendations. For this purpose we summoned the records pertaining to the decision and have examined the same. We find that some reasons have

h.s.m.

been given by the Govt. of India for not accepting the recommendations. The main reason is that the expert body like the 4th Central Pay Commission had not recommended any higher pay scales for the Director of Prosecution even though the question had been referred to that Commission which had considered the matter. Secondly, it is stated that if higher pay scales are granted to the Prosecutors the employees belonging to other departments will also raise a similar claim. Yet another reason given is that the Pay Commission had not recommended any parity in pay scales between Delhi Judiciary and the posts in the Directorate of Prosecution which is one of the points raised by the applicant. As regards parity between officers of the Police Force in the Union Territory with the Prosecutors the Govt. of India held that the officers belonging to the Police force fell into a distinct class dealing with security, law and order and they could not be compared with other civil posts. In our considered view the reasons given for non-acceptance of the recommendations of the HPC are valid, though these may not be entirely convincing. Our powers of judicial review in such matters being of a limited nature this Tribunal cannot sit in judgment over such decisions taken by the Govt.

12. We may also state that during the pendency of this OA the 5th Central Pay Commission also gave its recommendations which have been accepted by the Govt. The learned counsel for the parties have not given to us the details regarding the recommendations of the 5th Central Pay Commission in relation to the posts of Prosecutors in Delhi Administration but we are sure that this matter must

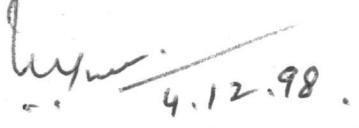
(1)

hmv

have been placed before the 5th Central Pay Commission also and the Commission must have considered the matter. In these circumstances also this Tribunal should not interfere.

(8)

13. In view of the above, we are convinced that there is no merit in this OA. The OA is accordingly dismissed, leaving the parties to bear their own costs.


4.12.98.

(T.N. BHAT)
Member (J)


(K. MUTHUKUMAR)
Member (A)

'sd'