

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 487 of 1992

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New Delhi, dated this the 15th APRIL 1997

HON'BLE MR. JUSTICE K.M.AGARWAL, CHAIRMAN
HON'BLE MR. S.R. ADIGE, MEMBER (A)

1. Northern Railway Stenographers' Association, New Delhi, Affiliated to Indian Railway Stenographers' Association (Regd.) D-11, Anand Vihar, New Delhi through the Secretary, Shri R.J. Howell, C.A., Northern Railway, Headquarters, Baroda House, New Delhi for self and on behalf of members
 2. Shri R.K. Bali, C.A., N. Railway, Headquarters, Baroda House, New Delhi.
 3. Shri P.L. Mittal, C.A./Confdl., N. Rly., State Entry Road, New Delhi.
 4. Shri Mohinder Kumar, C.A./General Branch, N. Rly., Baroda House, New Delhi.
- .. APPLICANTS

(By Advocate: Shri S.K.Sawhney)

VERSUS

1. Union of India through Secretary, Railway Board, Ministry of Railways, New Delhi.
 2. General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi.
- ... RESPONDENTS

(By Advocate: Shri R.L.Dhawan)

J U D G M E N T

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

Applicants who are the Northern Railway Stenographers Association, New Delhi and three others seek a direction to respondents to extend to them the benefits of

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letter dated 31.7.90 (Ann. A-2) whereby Stenographers Grade C of Central Secretariat Stenographers Service have been granted the pay scale of Rs.1640-2900 with consequential benefits, and also to direct respondents to remove the disparity in the next promotion post of Rs.2000-3200 (RPS) so as to bring them at par with Stenographers Grade 'C' in Railway Board on the basis of equal pay for equal work.

2. From Paragraph 176, IREM Vol.I (1989 Edition) it would appear that at the entry level the Stenographers Cadre in the Zonal Railways to which applicant Association belongs, commences at the entry level pay scale of Rs.1200-2040 (RPS), ^{and} is filled up (i) 25% by selection of short hand knowing clerks (ii) 50% by promotion by selection of short hand knowing typists and (iii) 25% by direct recruitment through Railway Recruitment Boards. For direct recruitment, qualifications are

- i) Educational: Matriculation till replaced by Higher Secondary
- ii) Age: Between 18 and 25 years
- iii) Professional

<u>Hindi</u>		
<u>Speed</u>	<u>Duration (Minutes)</u>	<u>Transcription Time (Minutes)</u>
80 WPM	10	42
100 WPM	7	40
120 WPM	5	37

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ENGLISH

<u>Speed</u>	<u>Duration (Minutes)</u>	<u>Transcription Time (Minutes)</u>
80 WPM	10	37
100 WPM	7	35
120 WPM	5	32

3. On the other hand, in the Railway Board, as per Rule 13 Railway Board Secretariat Stenographers Service Rules, 1971, recruitment at entry level Grade D (pay scale of Rs.1200-2040) is through a competitive examination held by the Railway Ministry and limited to Members of the Railway Board Secretariat Service. Thus at the outset we notice that right at the entry level itself the mode and method of recruitment to the Zonal Railways and the Railway Board is different, and while those recruited to the latter from a part of a regularly constituted service, the former do not.

4. From the scale of Rs.1200-2040, the next promotion level for stenographers in Zonal Railways is to that of Stenographers Gr.II in pay scale of Rs.1400-2300 which is to be filled by 100% by promotion. However, by Railway Board's letter dated 26.6.90 (Ann. A-3) as a result of an arbitration award the scale of Rs.1400-2300 was raised to Rs.1400-2600 w.e.f. 1.1.86. In regard to the Railway Board on the other hand the next level is to that of Grade C in the Railway Board Secretariat Stenos. Service also in the pay scale of Rs.1400-2600, subsequently raised by letter dated 31.7.90 to Rs.1640-2900 but only 25% vacancies are filled by promotion from Grade D and the balance 75% vacancies are filled through an open competitive^{exam.}/conducted

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by the Staff Selection Commission in which besides having 1 paper^{each} in General English (Objective Type) and General Knowledge (Objective Type), and an Essay Paper, each candidate has to take a short hand test details of which are as follows:

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<u>Speed</u>	<u>Duration</u>	<u>Transcription Time</u>
120 WPM	7 minutes	60 minutes
100 WPM	10 minutes	65 minutes

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120 WPM	7 minutes	45 minutes
100 WPM	10 minutes	50 minutes

5. It is thus clear that apart from the difference in the mode and method of recruitment, the level of proficiency required at the level of Stenograher Grade 'C' in Railway Board with which applicants as Stenographers Gr.II are seeking parity is of a different order as compared to Stenographers Grade II in Zonal Railways.

6. In the Zonal Railways the next level from the Grade of Rs.1400-2300 (now Rs.1400-2600) is by promotion to Rs.1600-2660; and then promotion to Rs.2000-3200. On the other hand in the Railway Board the next level from Grade 'C' (Rs.1640-2900) is to Grade B and A (Merged) in the pay scale of Rs.2000-3500. Straightaway we notice that the grant of the scale of Rs.1640-2900 to applicant association as prayed for, will in effect place them above the next promotion level of Rs.1600-2660 and will consequently disrupt the pay relativities, apart from causing juniors to draw more pay than their seniors.

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7. The main line of argument advanced by the applicants is that they as well as Stenographers Grade 'C' in the Railway Board are performing similar duties and are working for the same employer namely the Govt. of India, and as a result of the arbitration award, they were drawing the same scale of pay as Stenographers Grade 'C' in the Railway Board, namely Rs.1400-2300. The raising of the pay scale of the latter to Rs.1640-2900 w.e.f. 1.1.86 by order dated 31.7.90 entitles them to an identical increase and denial of the same would be violative of Article 14, 16 and 39 of the Constitution.

8. In so far as the applicants' performing identical duties and functions as Stenographers Grade 'C' in the Railway Board are concerned, no materials have been filed by the applicants to establish the same. On the other hand Respondents have filed extracts of the Manual of Office Procedure issued by the Railway Ministry containing the duty list of Stenographers of the Railway Board, which states that Stenographers are of four grades namely -

- (a) Grade 'A' attached to Chairman, Railway Board and other Members of the Board;
- (b) Grade 'B' attached to Advisers/Directors General and Executive Directors;
- (c) Grade 'C' attached to Directors, Jt. Directors and Dy. Directors; and

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It is further stated that Stenographers are to take dictation of notes, memoranda, drafts etc. and type them on behalf of the officers with whom they are deputed. Their other responsibilities include being in attendance near their officers for rendering assistance in their official work, maintaining registers for movement of files and letters passing through the officers; maintaining the codes, manuals and other rule books up-to-date; fixing up official engagements, tours, etc. and making arrangements for official meetings on behalf of the officers; ensuring safe custody and disposal of classified documents and other articles provided by the Administration. It needs no reiteration that the onus rests on the applicants to establish that they are performing each of the functions listed above, but as stated above no materials have been furnished by them on this score. In this connection the Hon'ble Supreme Court in Federation of A.I.C. & C.E. Stenographers (Recognised) Vs. U.O.I. AIR 1988 SC 1291 have held that for doctrine of equal pay for equal work to be attracted the equal pay must depend upon the nature of the work done, and 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. Again in State of M.P. & Anr. Vs. P.K.Bhartiya and others JT 1992 (5) 683 the Hon'ble

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Supreme Court has held as follows:

"..... Whether two sets of lecturers in Madhya Pradesh, one in the Higher Secondary School and the other in the Technical School having similarity in the qualification, service conditions and status of the school be paid equal pay would significantly depend upon whether they are discharging similar duties, functions and responsibilities. In the instant case, there is a conspicuous absence of any clear allegation and/or material suggesting that functions and responsibilities of both the categories of lecturers are similar.

It is not enough to say that the qualifications are same nor is it enough to say that the schools are of the same status. It is also not sufficient to say that the service conditions are similar. What is more important and crucial is whether they discharge similar duties, functions and responsibilities."

9. We note that in the present case there is conspicuous absence of material suggesting that functions and responsibilities of both categories of Stenographers are similar.
10. In this connection following extracts from the recommendations of the Third Pay Commission are relevant.

" As a general statement, it is correct to say that the basic nature of a Stenographer's work remains by and large the same whether he is working with an officer in the Secretariat or with an officer in a Subordinate Office. We feel, however, that the position needs to be examined a little more critically because the size of a Stenographer's job is very much dependent upon the nature of the work entrusted to that officer. It would not be correct,

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therefore, to go merely by status in these matters and disregard the functional requirements. By the very nature of Secretariat working, the volume of dictation and typing work can be expected to be heavier than in a Subordinate Office; also the requirements of secrecy even in the civil offices of the Secretariat can be very stringent. Considering the differences in hierarchical structures and in the type of work transacted in the Secretariat and in the subordinate offices, we are not in favour of adopting a uniform pattern. Once the functional requirements are seen to be different for the Secretariat and the Subordinate Offices, it will not be worthwhile to aim for absolute parity in the pay scales of Stenographers working on the two sides."

11. No doubt the Fourth Pay Commission in Para 9.42 of its report observed that there were stenographers working in other organisations which were not participating in the Central Secretariat Stenographers' Scheme but where the posts were in comparable grades and pay scales and the method of their recruitment through open competitive examination was also the same, it was recommended that stenographers in these organisations like Dept. of Railways, Ministry of External Affairs, may be placed in the same grades of pay as have been recommended for CSSS, but the 5th Pay Commission whose report was made available as recently as January, 1997, has recommended as follows:

" We have given our careful consideration to the suggestions made by the Associations representing Stenographers in offices outside the Secretariat in the light of the observations made by the Third C.P.C.

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.....Considering the differences in the hierarchical structures and in the type of work transacted in the secretariat and in the subordinate offices, the Commission was not in favour of adopting a uniform pattern in respect of matters listed in the preceding paragraph. To our mind, the observations of the Third CPC are as relevant today as they were at that point of time and we are not inclined to overlook them totally. In view of the above mentioned distinguishable features, we do not concede the demand for absolute parity in regard to pay scales between stenographers in offices outside the secretariat and in the secretariat notwithstanding the fact that some petitioner stenographers Grade II have got the benefit of parity in pay scale through courts."

12. In this connection the Hon'ble Supreme Court in State of U.P. Vs. J.P. Chaurasia AIR 1989 SC 121 have held as follows:

".....It is for the administration to decide the question whether two posts which very often may appear to be the same or similar should carry equal pay, the answer to which depends upon several factors, namely, evaluation of duties and responsibilities of the respective posts and its determination should be left to expert bodies like the Pay Commission. The court should normally accept the recommendations of Pay Commission."

13. Again as recently as 12.3.1997 the Hon'ble Supreme Court in Civil Appeal No. 7127 of 1993 U.O.I. & Anr. Vs. P.V. Hariharan & Anr. have observed as follows:

" 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

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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, 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. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales."

14. In the background of above observations of the Hon'ble Supreme Court, when the 5th Pay Commission as recently as January, 1997 has not conceded the demand for absolute parity in regard to pay scales between Stenographers in offices outside the Secretariat, such as the applicants and those in the Secretariat, such the Stenographers Grade 'C' in the Railway Board we find it difficult to grant the applicants the relief they seek.

15. It may be argued that the applicants are seeking parity from 1.1.86 itself i.e. w.e.f. the date of application of 4th Pay Commission recommendations, but if this argument were to be accepted we would in effect be going against the findings of 5th Pay Commission which was an expert body, with all the available resources and expertise at

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its command, and has given its considered conclusions that the differences in the hierarchical structures and in the type of work transacted in the subordinate offices, is not comparable with what prevails inside the Secretariat. That apart, we would also be preempting the decision of the Union of India on those recommendations which would also be arbitrary on our part at this juncture.

16. Applicants' counsel Shri Sawhney has relied heavily upon the Tribunal's judgment dated 19.1.96 in O.A. No. 144A/93 V.R.Panchal & Others Vs. U.O.I. & Ors. and connected cases. In those three O.As, the applicants were Assistants and Stenographers Grade 'C' in (i) the C.B.I., an attached office of Ministry of Personnel; (ii) the Office of Director General of Income Tax, an attached office of the CBDT, Ministry of Finance; and (iii) the Directorate of Field Publicity of the Ministry of Information & Broadcasting. Those applicants had sought a parity in the pay scale given to their counter parts in the Central Secretariat. Holding that the principle of equal pay for equal work is applicable when the employees in the same rank perform similar functions and discharge similar duties and responsibilities, the Tribunal observed that courts should normally accept the recommendations of Pay Commission, and emphasised that the 4th Pay Commission had itself observed in para 7.12 of its report that "in the absence of any distinguishing features employees of the Central Govt., in different branches should be paid equally, if their work was adjudged to be of equal value."

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As regards the applicants working in the CBI, the Tribunal had noted that prior to 1967 all the ministerial posts in the CBI, which was an attached office of the Personnel Ministry, were manned by the personnel of the CSS and CSSS cadres it is only by Home Ministry's letter dated 24.11.67 that the posts of Assistants in the CBI was redesignated as Crime Assistants, and Stenographers as P.A's, but even there, a specific mention was mentioned that "the redesignated posts would carry the same scale of pay and allowances as before and would also be no change in their classification". In that O.A. the official Respondents had also not denied that the qualitative and nature of work, as well functions, duties and responsibilities of S.Os, vis-a-vis Crime Assistants, and Grade 'C' Stenographers vis-a-vis PAs in CBI were identical and similar in all respects. No such concession has been made by the official Respondents in the O.A. presently before us.

17. Similarly as regards the Assistants in the Office of the Directorate General of Income Tax, which is an attached office of the CBDT, Ministry of Finance, the Tribunal in its judgment dated 19.1.96 had observed that the Assistants in the attached office of the CBDT were ever since in the 1st Pay Commission itself, maintaining parity with Assistants of the Central Secretariat Service, and ^{that} parity had been disturbed by O.M. dated 31.7.90 by which Assistants in the

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CSS were given pay scale of Rs.1640-2900 in place of Rs.1400-2600. That factor amongst others weighed heavily with the Tribunal in allowing the prayer of the Assistants in the office of that Director General of Income Tax, the pay scale of Rs.1640-2900 w.e.f. 1.1.86. In the case before us manifestly, there was no such parity since 1st Pay Commission ^{in regard to} the pay scale between the applicants and the Stenographers Grade 'C' in the Railway Board, and it is only by the order dated 26.6.90 as a result of implementation of an arbitration award raising the pay scale of Stenographers Gr.II in subordinate offices from Rs.1400-2300 to Rs.1400-2600 w.e.f. 1.1.86, ^{that} ~~they were~~ ^{brought} ~~on~~ par with Stenographers Grade 'C' in the Railway Board.

18. As regards, the Stenographers Gr. II and Assistants in the Directorate of Field Publicity who were the third set of applicants covered by the judgment dated 19.1.96 in Panchal's case (Supra), the Tribunal had noted that both sets of posts belonged to the General Central Services Non-Gazetted ministerial category, and in fact the Directorate of Field Publicity was a participating office in the CSS/CSSS from its very inception and the posts sanctioned for the DFP were included in the authorised permanent strength of the Ministry of I&B and were manned by the personnel of that Ministry

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right upto 1975 and it is only thereafter that DFP was excluded from the purview of CSS/CSSS but even then those who opted for the DFP were retained in the DFP with their original status, pay scale, etc. None of those conditions operate in the present case before us, because manifestly, the applicants before us, belong to the Northern Zonal Railway which is a subordinate office of the Railway Board and at no stage were included within the purview of the CSS/CSSS.

19. Under the circumstances although by judgment dated 19.1.96 in V.R.Panchal's case and other connected cases (Supra) the scale of Rs.1640-2900 was allowed to those applicants w.e.f. 1.1.86, with payment of arrears limited to one year prior to the date of filing their respective O.As, and the challenge to that judgment in SLP No. CC 2835 /96 was dismissed on merits by the Hon'ble Supreme Court on 11.7.96, we hold that the said judgment is distinguishable on facts from the case before us and hence is of no help to the applicants.

20. Before concluding we must also note that the prescription and revision of pay scales including the introduction of new pay scales is the concern of the Finance Ministry, but Finance Ministry have nowhere been impleaded as a party in this O.A.

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In fact the Finance Secretary's letter dated 21.6.90 a copy of which has been shown to us by the Respondents which is taken on record, makes it clear that any decision on matters relating to prescription and revision of pay scales in respect of one organisation in the Govt. of India has its repercussion in other organisations also and as such it is necessary for the nodal Ministry viz the Finance Ministry to have the matter examined on an overall perspective from all angles before any decision is taken in the matter. The Hon'ble Supreme Court, in Hariharan's case (Supra) has also observed that change of pay of a category has cascading effect. Under the circumstances we hold that the Finance Ministry was a proper as well as a necessary party in this O.A., and the failure of the applicants to implead them is fatal to the O.A. on account of non-joinder of proper and necessary parties.

21. As mentioned earlier, ^{as} the 5th Pay Commission has submitted its report and the same is under examination of Govt. we do not consider it appropriate to say anything, more on the merits of applicants' claims at this stage, lest it prejudices their claims during examination by Govt. of the 5th Pay Commission's Report. Instead we dispose of this O.A. sanguine that the U.O.I. will take a final decision on the 5th Pay Commission's recommendations as expeditiously as possible. No costs.

K.M.

(K.M. AGARWAL)
Chairman

S.R. Adige

(S.R. ADIGE)
Member (A)