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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 2865/91.

Date of decision 4/2/93

&
O.A.No. 529/92

S.R. DHEER & ORS. ... Applicants
K.L. Sharma & Ors.

Versus

Union of India ... Respondents
and
Another

CORAM:

The Hon'ble Mr. Justice Ram Pal Singh,
Vice-Chairman (J)

The Hon'ble Member Mr. I.P. Gupta,
Member (A)

For the Applicant ... Dr.D.C.Vehra,counsel

For the Respondents .. Sh.P.H.Ramchandani,
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*

J U D G E M E N T

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[Delivered by Hon'ble Sh.I.P.Gupta, Member(A)]

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These cases relate to revision of payscales of Assistants and Stenographers Grade 'C' in the Central Administrative Tribunal. Presently, they are in the scale of Rs. 1400-2600. The Counsel for the applicant has sought the relief that they may be granted the payscale of Rs. 1640-2900 with effect from 1st January, 1986 in terms of O.A. dated 31st July, 1990 till 25th October, 1987 and the payscale of Rs. 2000-3200 with effect from 26th October, 1987 in terms of notification dated 26th October, 1987. It has further been prayed that they be paid arrears on account of revision of salary.

/ on the analogy of payscales granted to their counterparts in the Central Govt./ Union Territory of Delhi and the High Court of Delhi.

2. The Learned Counsel for the applicants drew attention to the Central Administrative Tribunal (Staff) (Conditions of Service) Amendment, Rules 1987 where it was mentioned that the 'scales of pay correspond to similar scales under the Central Government'. He said that Assistants/Stenographers Grade 'C' had parity of scale with their counterparts in the Central Sectt. Service and C.S.S.S. prior to the recommendations of Fourth Pay Commission. They were all in the scale of Rs. 425-800. The scale was revised to Rs. 1400-2600 for the above categories of staff of the Central Government including

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the applicants but later by order dated 31st July, 1990 (Annexure 'G') the pay scales of Assistants/Stenographers Grade 'C' in the CSS & CSSS was revised to Rs. 1640-2900. This revision was effected from 1.1.1986. An extract from the said letter of 31st July, 1990 is given below :-

" The President is now pleased to prescribe the revised scale of Rs. 1640-60-2600-EB-75-2900 for the pre-revised scale of Rs. 425-15-500-EB-15-560-20-700-EB-75-800 for duty posts included in the Assistant Grade of Central Secretariat Service and Grade 'C' Stenographers of Central Stenographers Service with effect from 1.1.1986. The same revised pay scale, will also be applicable to Assistants and Stenographers in other Organizations like Ministry of External Affairs which are not participating in the Central Secretariat Service and Central Secretariat Stenographers Service but where the posts are in comparable grades with same classification and pay scales and the method of recruitment through Open Competitive Examination is also the same."

3. The Learned Counsel for the applicants said that the aforesaid order stipulated that the revised pay-scale would be applicable to Assistants and

Stenographers in other organizations which are not participating in the Central Secretariat Service and Central Secretariat Stenographers Service but where posts are in comparable grades with the same classification and pay scales and the method of recruitment through open competitive exam. is also the same. The Learned Counsel for the applicants added that the posts of Assistants/Stenographers Grade 'C' have all along been in comparable grades with the same classification. There is an element of direct recruitment also to the extent of 50 per cent, in case of Stenographers Grade 'C' but there is no direct recruitment element in respect of posts of Assistants. For promotions a High Powered DPC headed by a Member of the Tribunal nominated by the Chairman exists.

4. The Learned Counsel for the applicants argued that all relevant considerations being the same, persons holding identical posts should not be treated differentially in the matter of pay merely because the applicants are serving in the Central Administrative Tribunal and when parity

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had been maintained all along prior to the issue of the order dated 31st July, 1990. He quoted the case of State of Madhya Pradesh and Others versus Pramod Bhartiya [1992 (2) SCALE 177] to stress the principle of equal pay for equal work.

5. The Learned Counsel for the respondents argued that the case for any parity with the High Court could not be justified in view of the observations made in the case of M.V. Majumdar v/s Union of India [1991 (14) ATC(SC) 904], where the Apex Court said that the assumption that the Tribunal is equated with High Court in all respects is fallacious. There can be no parity of conditions of service of Central Administrative Tribunal employees with the conditions of service of the employees of Delhi High Court moreso, since the educational qualifications prescribed for the posts are not the same. Even in the Central Administrative Tribunal the post of Registrar in the Principal Bench carries the payscale which is higher than the payscale of Registrars of other Benches. As such the legal maxim NIHIL SIMILEST IDEM (nothing similar is identical) would apply and the matter of

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equivalence should be left to the sound judgement of expert bodies like the Pay Commission. Further, the matter relates to administrative policy of the Government and is subject to the constraints of budgetary grounds. He went on to say that there is no uniformity in the pay scales of various posts in the different High Courts whereas in the case of Central Administrative Employees the scales are same irrespective of the location of the Bench (except in the case of Registrar as already mentioned).

6. The Learned Counsel for the respondents contended that the relief as sought for in the O.A. which was amended on 18.12.1992, is not maintainable in view of its very nature. What has been sought is a direction to the respondents to grant to the applicant the pay scale of Rs.1640-2900 with effect from 1.1.1986 in terms of O.M. dated 31st July, 1990 till 25th October, 1987 and the pay scale of Rs. 2000-3200 with effect from 26th October, 1987 as the applicants are working with the Chairman/Vice-Chairmen/Members who are in the

super-time payscales of Rs. 9000/8000/7300-7600 respectively which has been granted to their counterparts in the Central Government/Union Territory of Delhi as well as in the High Court of Delhi.

7. We shall deal with the aforesaid technical objection first. While we agree with the contention of the Learned Counsel for the respondents, as stated in para 5, that the parity with the High Court is not established, we do not see much force in his arguments that if parity with High Court is not established the relief sought is not maintainable. The Learned Counsel for the respondents had stated that parity could be claimed with one but not with both i.e. the Central Secretariat and the High Court. If parity with High Court is not justified, the relief sought is technically faulted. This is too technical a plea to take. Suppose 'A' claims equality to 'B' & 'C' and 'A' is not equal to 'C', it does not follow that he cannot claim equality to 'B' either and if he is equal to 'B' upto a certain period, the equality cannot automatically be denied thereafter without an intervening

factor.

8. The Learned Counsel for the respondents further argued that Rule 3 of the Central Administrative Tribunal (Staff) (Conditions of Service) Rules, 1985 provided that the nature and categories of the officers and other employees of the Tribunal and the scale of pay attached thereto shall be as specified in the Schedule. The Schedule gives the scale of Rs 425-800 for Assistants, Stenographers and Court Masters. He said that it was this scale that was revised to Rs 1400-2600 on Pay Commission's recommendations. It was only later that the pay-scales of Assistants and Grade 'C' Stenographers was raised by order dated 31st July, 1990 with effect from 1.1.1986 in consideration of the directions of the Central Administrative Tribunal in O.A. No. 1538/87 decided on 23rd May, 1989. The higher scales for Assistants and Stenographers Grade 'C' in the and the CSSS Central Secretariat were given because of the legitimate grievance of the officials in regard to disturbance of internal relativity. The Tribunal had observed that 'first, they were in the higher 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 the important functionaries in the Central Secretariat. It cannot be denied that the notes 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 this 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 reasons given in para 7 (Supra). Therefore, their grievance need consideration.' The above was the observation of the Tribunal in respect of the Assistants. The Learned Counsel for the respondents said that Stenographers Grade 'C' have been historically equated with Assistants in the Central Secretariat in regard to pay scales and, therefore, both the Assistants and Stenographers Grade 'C' of the Central Secretariat Service and Central Secretariat Stenographers Service respectively were given higher scales of Rs. 1640-2900 from 1.1.1986 by order dated 31st July, 1990. The pay scales of Assistants and Stenographers Grade 'C' of the Tribunal cannot

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be equated to their counter-parts in the Central Secretariat Service and Central Secretariat Stenographers Service. The mention of the fact that scales of pay (in Central Administrative Tribunal) correspond to similar scales under the Central Government, should not entitle the Assistants/Stenographers Grade 'C' in Central Administrative Tribunal to corresponding scales of their counter-parts in the Central Secretariat Service or Central Secretariat Stenographers' Service. The correspondence was with reference to employees under the Central Government and not Central Secretariat. He further argued that there was qualitative difference in regard to nature of work done in the two organizations. He cited the case of Federation of All India Customs and Central Excise Stenographers and Others versus Union of India & Ors. [1988 (7) ATC 591] where the petitioners were Personal Assistants and Stenographers attached to the Heads of Departments in the Customs and Central Excise Department of the Ministry of Finance. They had asserted in that petition that they had been and were discriminated vis-a-vis Personal Assistants and Stenographers attached to



the Joint Secretaries and officials above them in the Ministries. While dismissing the writ petition the Apex Court had observed that equal pay must depend upon the nature of work done. It could not be judged by the mere volume of work. There might be qualitative difference as regards the reliability and responsibility. The functions might be the same but the responsibilities made a difference. The same amount of physical work might entail different quality of work, some more sensitive, some requiring more tact, some less - it varies from nature and culture of employment. 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 bonafide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation would not amount to discrimination. The Learned Counsel for the respondents added that the ^{duties} and responsibilities of Assistants and Stenographers Grade 'C' in the Central Secretariat and in the Tribunal would not be comparable. The comparison had to be done not by the Bench but by those who were charged with the administration in fixing the scales of pay. He drew attention of the Bench to

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the specific condition in the letter of 31st July, 1940 to the effect that the higher payscale of Rs. 1640-2900 was to be given only to such posts of Assistants/Stenographers Grade 'C' as had a method of open competitive exam. for filling direct recruitment quota. He said that this open competitive exam. for Assistants/Stenographers Grade 'C' in the Central Secretariat was conducted by the Staff Selection Commission. He said that in the case of Tribunal the posts of Assistants were filled 100% by promotion without any open competitive examination. There was no direct recruitment element in the recruitment. Even in the case of Stenographers Grade 'C' while there was direct recruitment quota to the extent of 50 per cent, the posts were filled by the Tribunal and not on the recommendations of the Staff Selection Commission.

9. Analysing the facts and arguments in this case, we observe that there is weight in the arguments of the Learned Counsel for the respondents that the equation of pay must be left to the executive Government. It must be determined by expert body like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of the post. If there

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is any such determination by a Commission or Committee the court should normally accept it. In this case, however, we find that the Fourth Pay Commission recommended parity of pay scales of Assistants/Stenographers Grade 'C' with those in the Central Secretariat Services and the Central Secretariat Stenographers Service. The parity was disturbed by the order dated 31st July, 1990. We find from the order dated 31st July, 1990 that the scale of Rs.1640-2900 can be made applicable to Assistants and Stenographers Grade 'C' in other organizations which are not participating in the Central Secretariat Service and the Central Secretariat Stenographers Service but where the posts are in comparable grades with same classifications and pay scales and the method of recruitment through open competitive examination is also the same. The Assistants/Stenographers Grade 'C' in the Tribunal were in comparable grades prior to the order of 31st July, 1990. They had the same classification (Group 'B') and pay scale prior to 1990. The recruitment qualifications of Assistants/Stenographers Grade 'C' in the Tribunal are the same as those of their counter-parts in the Central Secretariat Service and Central Secretariat Stenographers Service.

The feeder posts from which they are promoted have the same qualifications. The recruitment qualifications for feeder posts are also the same. Similar scales exist for superior posts also. The differentiation that the Learned Counsel for the respondents stressed strenuously was that there was an element of direct recruitment in regard to posts of Assistants/Stenographers Grade 'C' in the Central Secretariat Service and Central Secretariat Stenographers Service and this direct recruitment was done through Staff Selection Commission. This was clarified in the Department of Personnel's O.M. dated 3rd January, 1991 where it was said that the revised scales were available in cases of posts where direct recruitment was made through the same open competitive examination through the Assistants Grade Examination and Stenographers Grade 'C' examination conducted by the Staff Selection Commission. In this regard we observe that the law is well-settled on the point that equal pay cannot be denied on the ground that mode of recruitment was different. [Bhagwan Dass & Others (AIR 1987 SC 2049)]. In that case the counter-affidavit

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filed on behalf of the respondents raised the following:-

" It is absolutely incorrect that the petitioners are similarly placed as the employees under the Social Education Scheme as alleged. The latter are whole-time employees selected by the subordinate services Selection Board after competing with candidates from any part of the country. In the case of petitioners, normally the selection at best is limited to the candidates from the cluster of a few villages only. The contention made by the Petitioners has no justifiable basis!"

The Apex Court made the following observations in regard to the above contention of the learned counsel for the respondents in that case:-

"We need not enter into the merits of the respective modes of selection. Assuming that the selection of the petitioners has been limited to the cluster of a few villages, whereas respondents 2 to 6 were selected by another mode wherein they had faced competition from candidates from all over the country, we need not examine the merits of these modes for the

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very good reason that once the nature and functions and the work are not shown to be dissimilar the fact that the recruitment was made in one way or the other would hardly be relevant from the point of view of "equal pay for equal work" doctrine . It was open to the State to resort to a selection process whereat candidates from all over the country might have competed if they so desired. If however they deliberately chose to limit the selection of the candidates from a cluster of a few villages it will not absolve the State from treating such candidates in a discriminatory manner to the disadvantage of the selectees once they are appointed provided the work done by the candidates so selected is similar in nature.

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10. The foundation for establishing the parity

would, therefore, lie in the nature and functions

and the work of the two groups of persons, one in the

Secretariat and the other in the Tribunal. As observed

earlier in this order we find that there was not any

disparity in pay scales in the said group prior to

Fourth Pay Commission. / We do not find any additional

duties and responsibilities which have been entrusted

to the Assistants/Stenographers Grade 'C' thereafter in the

Secretariat so as to make a distinction. The argu-

ment of the Learned Counsel for the respondents

that there is rational basis for discrimination in

the pay scales because the Assistants/Stenographers

Grade 'C' stand as a class apart because of element

of direct recruitment through Staff Selection Commission

has no rational basis in our view, because of the law ^{having been} ~~stands~~

settled on the subject in the case of Bhagwan Dass (Supra).

It would have been a different matter if the differen-

tiation in the scale was made on the basis of value

judgement by those who were charged with administration

in fixing the scales of pay and other conditions of

service. This has not been so in this particular case.

The order dated 31st July, 1990 enables the extension

/ which recomm-
ended the same
scale for the
said groups
in recognition
of similarity
in nature of
functions.

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of the revised scale to other organizations where the posts were in comparable grades with same classification and payscales. Whether the recruitment was made in one way or the other would hardly be relevant from the point of view of equal pay for equal work.

11. In view of the aforesaid analysis of the facts and arguments of the case we direct the respondents to consider the revision of payscales of Assistants/Stenographers Grade 'C' in the Tribunal to Rs. 1640-2900 from 1st January, 1986, atleast notionally from 1.1.1986 and effectively from a date not later than 1st January, 1992 (one year prior to the date of filing of the amended application).

12. The above directions should be carried out within a period of four months from the date of communication of this order. After the respondents have taken the decision in regard to revision, the Schedule to the Central Administrative Tribunal (Staff)(Conditions of Service) Rules, 1985 will also have to be suitably modified and this would not be inconsistent with the spirit of the rules which

states that scales of pay in the Central Administrative Tribunal correspond to similar scales under the Central Government.

13. With the aforesaid directions and orders, the case ^{is} disposed of with no order as to costs.

I.P. Gupta
Member (A)

L.D.R.

Ram Pal Singh
Vice-Chairman (J)

True Copy.

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