

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.985/92



New Delhi this the 17<sup>th</sup> day of April, 1998.

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. Delhi Administration Executive Staff

(Non-Gazetted) Welfare Association

(Regd.) through its General Secretary,

...Applicants  
and Others

(By Advocate Shri K.K. Rai)

-Versus-

Delhi Administration & Ors. .... Respondents

(By Advocate Shri Vijay Pandita)

1. To be referred to the Reporter or not? Yes

2. To be circulated to other Benches of the Tribunal? No

  
(Dr. A. Vedavalli)

Member (J)

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1. Delhi Administration Executive Staff (Non-Gazetted) Welfare Association (Regd.) through its General Secretary, Flat No.25, Akash Kunj, Plot No.14, Sector 8, Rohini, Delhi.
2. Delhi Administration Subordinate Grade II Welfar Association (Regd.), through its President Zia Sarai, New Delhi.
3. Sh. Narendra Passi, S/o Sh. K.N. Passi, B 10/5, Delhi Police Employees Society, Phase I, Mayur Vihar, Delhi.
4. Sh. Rakesh Chaudhary, S/o Sh. Mahendra Singh, 1/6318, Gali No.4, East Rohtas Nagar, Shahadra, Delhi.
5. Pradip Kumar, S/o Sh. B.O. Gupta, D 17, Ashok Vihar, Phase I, Delhi.
6. Sh. S.K. Walia, S/o late Sh. K.S. Ahluwalia, C-42, Shakti Nagar Ext., Ashok Vihar, Delhi.
7. Sh. R.K. Jain, S/o late Sh. M.K. Jain, S.U. 190, Pritam Pura, Delhi.
8. Sh. K.K. Anand, S/o late Sh. M.S. Anand, R/o A-88, Usman Pur, Delhi.
9. Sh. Suraj Mal, S/o Late Sh. Birdhi Chand, R/o 1495, Gulabi Bagh, Delhi.

...Applicants

(By Advocate Shri K.K. Rai)

-Versus-

1. Delhi Administration,  
through its Lieutenant Governor,  
Raj Niwas,  
Delhi.
2. Union of India,  
through its Secretary,  
Ministry of Home Affairs,  
New Delhi.
3. Union of India through  
its Secretary,  
Ministry of Personnel, Public Grievances  
and Pensions, Department of Personnel  
and Training, New Delhi.
4. Chief Secretary,  
Delhi Administration,  
5, Shamnath Marg,  
Delhi. .... Respondents

(By Advocate Shri Vijay Pandita)

O R D E R

HON'BLE DR. A. VEDAVALLI, MEMBER (J):

This O.A. has been filed by two registered associations representing the cause of Grade II officers of the Delhi Administration and seven individual officers belonging to the said Grade who are governed by the Delhi Administration Subordinate Service Rules, 1967 (DASS Rules in short). They are aggrieved by (i) an office memorandum dated 31.7.90 issued by respondent No.3 (Union of India through Secretary, Ministry of Personnel) revising the pay scales of Assistant Grade of the Central Secretariat Service (CSS in short) and Grade 'C' Stenographers of Central Secretariat Stenographer Service (CSSS in short) (Annexure B) and (ii) an order dated 4.11.91 passed by the Union of India through Secretary, Ministry of Home Affairs refusing permission to Delhi Administration through Lieutenant Governor (respondent No.1) to enhance their pay scale from Rs.1400-2300 to





Rs.1640-2900 on par with the pay scale of Assistants in the Central Government (Annexure E). The applicants have challenged the aforesaid orders in this OA.

2. The constitution of the service, to which the applicants belong, according to the provisions of Rule 3 of the aforesaid Rules is as under:-

"Constitution of service and its classification:-

2(1) "On and from the date of commencement of these rules, there shall be constituted one Central Civil Service, known as the subordinate service of the Delhi Admn."

(2) The service shall have four grades, namely:-

Grade-I  
Grade-II  
Grade-III  
Grade-IV

3(3) The posts in Grade-I shall be Central Civil posts Group 'B' (Gazetted) and those in Grades II, III and IV shall be Central Civil posts Group 'C' (Non-Gazetted).

(4) Members of the service shall, in the normal course, be eligible for appointment to various grades of the service to which they belong and not to the other service."

3. The scales of pay of the Assistants in the CSS vis-a-vis those of the Grade II officers of Delhi Administration as per the recommendations of the Second, Third and Fourth Central Pay Commission, as given in the OA, is as follows:

"4.11 The pay scale of the Assistants of Central Secretariat Services (CSS) has been kept at par with those of Grade II officers of Delhi Administration. The same would be borne out from the following facts:-

Pay Commission	Assistants in CSS	Grade II Officers.
2nd Pay Commission	210-530	210-425
3rd Pay Commission	425-800	425-700
4th Pay Commission	1400-2600	1400-2300"





4. While so, the Assistants belonging to the CSS filed an OA No.1538/87 before this Tribunal for enhancement of their pay scale which was disposed of by its order dated 23.5.89 (Central Secretariat Service directly recruited Assistant Association vs. Union of India & Ors., ATR 1991 (2) CAT, 487).

5. Pursuant to the aforesaid order the pre-revised pay scale of Assistants in the CSS was revised by the Government of India and their pre-revised scale of pay of Rs.425...800 was enhanced to Rs.1640...2900 w.e.f. 1.1.1986 by the first impugned order dated 31.7.90 (Annexure B). Inter alia, the said revised scale was made applicable to Assistants/Stenographers in other Organisations like Ministry of External Affairs which were not participating in the CSS and the CSSS where the posts are in a comparable grade with same classification and pay scale and the method of recruitment through open competitive examination also is the same. Thereafter, respondent No.1, it appears, took up with respondent No.2 the case of revision of pay scales of Assistants in the Union Territory of Delhi on par with the aforesaid revised pay scales given to Assistants in the Central Government which was rejected by a letter dated 6.2.91 (copy not filed with the OA). The matter was pursued by respondent No.1 again by letter dated 18.3.91 (Annexure C) followed by a reminder dated 21.5.91 (Annexure D). It was finally rejected by respondent No.2 by the second impugned order dated 4.11.91 (Annexure E).

6. The applicants have sought the following reliefs in this OA: -

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- (i) Declare the office memorandum dated 31.7.90 (Annexure B) void to the extent it seeks to exclude the Grade II officers who have not been recruited through the same source as in case of Assistants belonging to CSS (Central Secretariat Services).
- (ii) Declare the order dated 4.11.91 (Annexure E) issued by respondent NO.2 as arbitrary and therefore unsustainable and void.
- (iii) Direct the respondents to grant the pay scale of Rs.1640-60-200-EB-75-2900 to its Grade II officers as represented by the applicants with effect from 1.1.1986.
- (iv) Declare respondent No.1 to be competent to grant the pay scale of Rs.1640-60-2000-EB-75-2900.

And

- (v) Any other order this Hon'ble Tribunal deems fit and proper may also be passed."

7. The main grounds on which the aforesaid reliefs

are sought, briefly stated, are:

- i) Historically, there is a pay parity between the two services, viz. Grade II of Delhi Administration Subordinate Service (DASS) and Central Secretariat Service (CSS) and disturbance of the relativity between them is arbitrary and contrary to Articles 14 and 16 of the Constitution even if it is assumed that prior approval of respondent No.2 is essential for enhancement of pay scales of Grade II of DASS.

In both the services appointments are made partly by promotion and partly by direct recruitment through competitive examination and the minimum qualifications for both the services are the same and the first impugned OM dated 31.7.90 (Annexure B) is, therefore, arbitrary.

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Inspectors of Central Excise, Customs, Income Tax and Sub Inspectors of the Delhi Police who are appointed through the same examination who belong to Group 'C' have been given the scale of Rs.1640-2900 and this also shows the disturbance of internal relativity.

iii) Respondent No.1 is the employer and had the unfettered power to prescribe the duties and responsibilities of its employees and decide their pay scales including the enhancement of the said pay scales by amending the relevant Rule 27 of the Rules. There is no need to obtain prior approval of respondent No.2 in this regard and refusal of respondent No.1 to do the needful by the second impugned order dated 4.11.91 (Annexure E) is arbitrary and opposed to Articles 14 & 16 of the Constitution.

8. The OA has been contested by the respondents who have filed their counter reply, to which a rejoinder has been filed by the applicants. Reply to the said rejoinder has been filed by the respondents in view of the order of this Tribunal dated 4.4.97.

9. We have heard the learned counsel for both the parties and have gone through the pleadings and the material papers and documents placed on record. We have considered the matter carefully.

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10. Re the first ground urged by the applicants with reference to the disturbance of relativity between DASS and CSS etc. by the first impugned order dated 31.7.90, issued by respondent No.3 (Annexure B) the respondents in their reply have submitted that the said OM revising the pay scales of Assistants/Stenographers Grade 'C' in CSS/CSSS to Rs.1640-2900 made applicable to other organisations which are not participating in CSS/CSSS but where the posts are in comparable grades with same qualifications and pay scales and the methods of recruitment through open competitive examination is also the same. They have further submitted that the demand of the applicants to bring them on par with Assistants/Stenographers in CSS/CSSS cannot be acceded to due to the following reasons.

- i) The Executive Staff (Grade II Non-Gazetted) of Delhi Administration and the Assistants in CSS are not in the comparable grades with the same classification.
- ii) The mode of recruitment of these posts is not through the same open competitive examination as in the case of Assistants in CS: and
- iii) The Assistants in the CSSS are classified as Group "B" non-gazetted while Grade-II Officers non-gazetted of Delhi Administration are classified as Group 'C' only."

11. The respondents have also submitted that till the year 1985 open competitive examination for recruitment of Grade II officials of DASS was conducted alongwith the examination conducted for recruitment to Sub Inspectors (Executive) of Delhi Police by Staff Selection Commission. However, since the year 1986 examination of Grade II officers of DASS has been clubbed with by examination conducted for recruitment of Inspectors of Central Excise, Income Tax etc. But in both the cases Grade II officials of DASS were placed

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in a lower scale of pay than that of Sub Inspectors of Delhi Police or Inspectors of Central Excise and Income Tax etc. though the pattern of examination was the same. Moreover, Staff Selection Commission at present is conducting a separate examination for recruitment of Sub Inspectors of Delhi Police.

12. The learned counsel for the respondents Shri Vijay Pandita argued that in view of the above position it is obvious that there is no disturbance of relativity between the Grade II of DASS and the Assistants of CSS/CSSS, Inspectors of Central Excise etc., and the Sub Inspectors of Delhi Police and hence the aforesaid ground raised against the validity of the impugned OM is untenable and deserves to be rejected. Learned counsel for the respondents relied heavily on the decisions of the Hon'ble Supreme Court in (i) State of U.P. vs. J.P. Chaurasia (1989 (1) SCC 121); (ii) State of West Bengal & Ors. vs. Hari Narayan Bhowal & Ors. (1994 (4) SCC 78); (iii) Sher Singh and Ors. vs. Union of India & Ors. (1995 (6) SCC 515), (iv) Union of India vs. P.V. Hariharan (JT 1997 (3) SC 569) in support of his arguments in this connection.

13. The applicants in their rejoinder have broadly denied the above submissions and contentions of the respondents as being untenable and reiterated their averments made in the OA. The learned counsel for the applicant Sh. K.K. Rai has contended that the reasons given by the respondents for denying the revised pay scales to them has no nexus with the object sought to be achieved by the said discrimination between the two grades.

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14. We have given our utmost consideration to the aforesaid rival submissions and contentions of the parties regarding the aforesaid first ground. It is well settled as per the law laid down by the Hon'ble Supreme Court in a catena of judgements that to justify the claim for a parity in pay scale or 'equal pay for equal work' it is for the claimant to establish that not only the nature of work is identical but in all other respects they belong to the same class and there is no apparent reason to treat equals as unequals. In the case of Hari Narayan Bhowal (supra) it has been held by the Hon'ble Supreme Court, *inter alia*, thus:-

"Till the claimants satisfy on material produced, that they have not been treated as equals within the parameters of Article 14 courts should be reluctant to issue any writ or direction to treat them as equal, particularly when a body of experts has found them not to be equals."

15. In P.V. Hariharan's case it has been held, *inter alia*, thus:

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

16. In J.P. Chaurasia's case (supra) it was held thus:-

"More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. 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 any such determination by a Commission or Committee, the court should normally accept it. The court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration."

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17. Further, it was observed in Sher Singh's case (supra) by the Apex Court, *inter alia*, thus:

"The courts would be slow in interfering with matters of Government policy except where it is shown that the decision is unfair, *mala fide* or contrary to any statutory directions."

18. While so, in the present case before us the applicants have not been able to show as to how the classification of the concerned posts of Assistant in CSS/CSSS as Group B and Grade II officers in DASS as Group 'C' is discriminatory since CSS/CSSS and DASS are two different services/cadres. The pay scales of both the services cannot be said to be identical either since the maximum of pay scale of Assistants in CSS has been higher than that of Grade II officer of DASS as per the recommendations of the Second, Third and Fourth Central Pay Commissions as given in para 4.11 of the OA. The applicants have also not been able to prove any malafides, illegality or hostile discrimination etc. on the part of respondents in respect of the said classification and the non extension of the revised pay scales to Grade II officers in DASS. Moreover, the applicants have not indicated as to how they perform similar or identical duties and functions as those of the Inspectors in Central Excise and Income Tax etc. and Sub Inspectors (Executive) in Delhi Police even assuming that the educational qualifications required for all the posts are the same. On an examination of the above fact situation in the light of the well settled legal position discussed supra we find that the applicants have failed to establish any vested right with supporting material justifying their claim for pay parity or 'equal pay for equal work'. They have also not succeeded in proving that the impugned OM is vitiated by any malafides, illegality or hostile



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discrimination. We are, therefore, of the considered view that the first ground urged by the applicants is not valid or tenable in law. The said ground is, therefore, rejected.

19. Re the second ground urged by the applicant with reference to the power of respondent No.1 as an employer to enhance the pay scales of the employees including the power to amend the relevant rules etc. the respondents in their main reply have submitted that the Lieutenant Governor of Delhi (respondent No.1) has no power to prescribe and revise the pay scales of Grade II employees of DASS and he had never revised the pay scales of those officials by himself. However, it was not disputed that the pay scales of these officials are granted on the recommendations of the Pay Commission.

20. It was further submitted by the respondents that the matter was examined in consultation with the department of Personnel and Training and as per the provisions of the office memos No.27/59-Him (i) dated 13.7.1959, No.24/78/68-DH(S) dated 24.9.68 and dated 18.8.1970. The President in exercise of his powers under the proviso to Article 309 of the Constitution has empowered the Lieutenant Governor of Delhi (respondent No.1) and the Lieutenant of Pondicherry to make rules regarding the matters relating to method of recruitment to Central Civil Services and posts under their administrative control in connection with the affairs of the State regarding the method of recruitment, qualifications required, conditions of service with reference to probation, confirmation, seniority and promotion subject to certain conditions as to prior consultation with the UPSC/prior approval of Central

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Government etc. Moreover, it was clarified that the said delegation of rule making power to the Lieutenant Governor does not cover the power to fix the pay scales of various posts and that the said power vests with the Central Government only.

21. The applicants in rejoinder to the above submissions have broadly denied the same and have submitted that under Rule 27 of the DASS Rules the Lieutenant Governor (Respondent No.1) is empowered to revise the pay scale and the Central Government has no say in the same.

22. The respondents in their reply dated 8.7.97 to the rejoinder have submitted, inter alia, that as per the clarification given by the Associate Finance (General Department) the Lieutenant Governor though he has the power to create posts relating to 'A', 'B', 'C' and 'D' categories he has not been empowered to revise the pay scales and have referred to Rule 11 (1) (b) of Delegation of Financial Powers Rules. Copies of the said rules and the relevant notifications issued in 1959 have been annexed with the said reply.

23. We have given our anxious consideration to the aforesaid second ground also. It is noticed that the notification No.27/59-Him(i) dated 13.7.59 (Annexure B to the reply of the respondents to the rejoinder) is issued by the President in exercise of the powers conferred under the proviso to Article 309 of the Constitution directing, inter alia, that the administration of each of the Union Territories of Delhi, Himachal Pradesh, Manipur and Tripura shall exercise the power to make rules in regard to the matters relating to



the matters specified therein as to method of recruitment to the posts mentioned therein, the required qualifications for appointment to the said post and the conditions of service of persons appointed to such services and posts for the purposes of probation, confirmation, seniority and promotion. By another notification No.F-27/59-Him(iii) bearing the same date, i.e., 13.7.59 as the earlier notification noted supra (Annexure C to the reply to rejoinder) "the conditions of service of Union Territory employees Rules, 1959" were made by the President under proviso to Article 309 of the Constitution. Rule 2 of the aforesaid rules provides thus:

(2) They shall come into force at once.

Conditions of service of persons appointed to the Central Civil Services and posts under the administrative control of certain Administrators:

The conditions of service of persons appointed to the Central Civil Services and posts Class I, Class II, Class III and Class IV under the administrative control of the Administrators of the Union Territories of Delhi, Himachal Pradesh, Manipur and Tripura shall, subject to any other provisions made by the President, be the same as the conditions of service of person appointed to other corresponding Central Civil Services and posts and be governed by the same rules and orders as are for the time being applicable to the latter category of persons;"

24. The first proviso to the said rules runs thus:

"the scales of pay and dearness and other allowances granted to such employees shall, until any other provision is made in this behalf, continue to be governed by the orders in force immediately before the commencement of these rules;"

25. The second proviso to the aforesaid rules is as under:

"in the case of persons appointed to services and posts under the administrative control of the Administrator Himachal Pradesh, if they are drawing pay at the rates admissible to corresponding categories of employees of the Punjab Government, it shall be competent for the Administrator to revise their scales of pay from time to time so as to bring them on par with the scales of pay which



may be sanctioned by the Punjab Government from time to time for the corresponding categories of employees."

26. While so, as per the saving clause in the said rules it is provided as follows:

"Nothing contained in these rules shall apply to probation, confirmation, seniority and promotion in respect of persons in relation to whom the Administrators of the said Union Territories have been authorised under the notification of the Government of India in the Ministry of Home Affairs No.F.27/59-Him(i), dated 13th July, 1959 to make rules under the proviso to article 309 of the Constitution."

27. Thereafter it appears that in exercise of the powers conferred by the President under notification No.F-27/59 Him(i) dated 13.7.59 (supra) and all other powers enabling him in this behalf and with the previous approval of the Government of India the Administrator of Delhi made the Delhi Administration Subordinate Service Rules, 1967 DASS Rules Annexure G to the reply filed by the respondents to the rejoinder).

28. The said rules, inter alia, provide for the constitution of one Central Civil Service known as the 'Subordinate Service of Delhi Administration', strength of the service, method of recruitment, qualifications for appointment of the posts concerned, probation, training, promotion, seniority, scales of pay attached to the service etc.

29. The applicants have not been able to draw our attention to any provisions in the said rules which enable the Administrator/Lieutenant Governor to revise or enhance the pay scales by himself without prior approval by the Government of India. Neither have they been able to pin point any provisions in the two notifications dated 13.7.59 (supra) or any other prior/subsequent orders or rules which enable the Lieutenant Governor to do so, particularly in view of the

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first proviso to Rule 2 of the conditions of service of Union Territories employees Rules, 1959 and the saving clause extracted supra.

30. We are, therefore, of the view that the second ground urged by the applicants is not sustainable in law since they have failed to establish any legally enforceable right to justify the issue of direction as sought for in the OA. Hence the said ground is also rejected.

31. In the facts and circumstances of this case and in view of the foregoing discussion we are of the considered opinion, for the reasons stated supra, that the OA is devoid of any merit and the impugned orders do not warrant any judicial interference. The O.A. is, therefore, dismissed. No costs.

A. Vedavalli  
17/4/98

(DR. A. VEDAVALLI)  
MEMBER (J)

K. Muthukumar  
(K. MUTHUKUMAR)  
MEMBER (A)

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