

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(10)

O.A. No. 1207/92.

Date of decision

13/11/92

Rishi Pal & Others ... Applicants

V/s

Union of India & ... Respondents
Ors.

CORAM:

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

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

For the Applicant ... Shri V.S.R. Krishna, counsel

For the Respondents ... Ms. Jasvinder Kaur, counsel

(1) Whether Reporters of local papers may be
allowed to see the Judgement ?

✓(2) To be referred to the Reporter or not ?

Yes.

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Delivered by Hon'ble Mr. I.P. Gupta, Member (A) 7

In this application filed under Section 19
of the Administrative Tribunals Act, 1985, the appli-
cants, who are Group 'B' (non-gazetted) Assistants
and Stenographers Grade II in the Office of Border
Security Force (BSF) Headquarters, New Delhi, have
requested for issue of a direction to the respondents

to give effect to the office memorandum dated
31st July, 1990 of the Department of Personnel in respect
of the applicants ^{also} and to allow the applicants
the pay scale of Rs. 1640-60-2000-EB-75-2900 with
effect from 1st January, 1986 as has been done
in the case of Assistants and Stenographers in
the Central Secretariat Service and some other
organizations.

2. The Border Security Force was raised
during 1965. Border Security Force Headquarters
was participating in the Central Secretariat
Clerical Service (CSCS)/Central Secretariat
Stenographers Service (CSSS) upto 1975 as all
the posts sanctioned at Headquarters of BSF were
included in the authorised permanent strength of
the Ministry of Home Affairs and manned by personnel
of Ministry of Home Affairs. In 1975 BSF Headquarters
was excluded from the purview of CSCS/CSSS. At that
time, those who had opted for BSF cadre were retained
in BSF Headquarters with their original status , pay-
scales etc.

3. The pay scales and classification of posts of
Assistants and Stenos. in BSF in 1965 was similar to

the payscale of Assistants and Stenographers in the Central Secretariat or in other CPOs like ITBP, CISF, IB, SSP, SSF and RAW. The parity remained consequent upon the recommendations of the Third Pay Commission in 1973. The parity further continued consequent upon the recommendations of Fourth Pay Commission from 1986. However, the Ministry of Personnel issued an O.M. dated 31st July, 1990 (Annexure A-I) revising the pay-scales of Assistant of Central Secretariat Service and Grade 'C' Stenographers of Central Secretariat Stenographers Service. The same revised payscale was made applicable to Assistants and Stenographers in other Organizations like Ministry of External Affairs who were not participating in the Central Secretariat Service and Central Secretariat Stenographers Service but the posts were in comparable grades with same classification and pay-scales and the method of recruitment through open competitive examination was also the same. The revision was done from 1.1.1986.

4. The Learned Counsel for the applicant contended that the parity having continued upto 1986 should not be disturbed now in respect of Assistants and Grade II Stenographers when their pay-scales and classification remained the same and more so when other Organizations like CISF, SSB, ITBP etc. have given the revised scales of Rs. 1640-2900 to their Assistants and Grade 'C' Stenographers from 1.1.1986 on the analogy of the pay-scales revised by the Department of Personnel by Order dated 31st July 1990 (Annexure A-I).

5. The Learned Counsel for the applicant further contended that according to the note of Ministry of Home Affairs dated 13.5.1991, the Ministry itself has adjudged that the post of Assistant/Stenographer in the BSF Headquarters carried the same classification and duties and responsibilities as similarly placed posts in other para-military forces like ITBP and even in the Secretariat. Apart from the above, BSF have also pointed out that the Cabinet Secretariat have already allowed similar scales to their Assistants and Stenographers even though their method of recruitment

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is not through open competition.

6. The Learned Counsel for the respondents in their counter has admitted that even after the separation of posts from Ministry of Home Affairs cadre and inclusion in the Organization of the BSF the pay-scales of the said posts remained to be identical with those of the Ministry consequent upon revisions based on the recommendations of the 3rd Pay Commission and 4th Pay Commission. However, one of the vital criteria for applicability of the orders of revised scale was the same method of recruitment through open competitive exam. It was pointed out that in the BSF, as per statutory provisions of recruitment rules, there was no element of direct recruitment through open competition either for the post of Assistant or for the post of Stenographer Grade II. Accordingly, the posts of Assistant and Stenographer Grade II were to continue in the pay-scale of Rs. 1400-2600.

7. Analysing the case, we find that it has not been disputed that the nature of functions and duties and responsibilities of Assistant/Stenographer are not dissimilar to those in other para-military forces like ITBP

or CISF or SSB or even the Secretariat. It has also been pointed out that Cabinet Secretariat have allowed similar scales to their Assistants and Stenographers even though their method of recruitment is not through open competition. In the case of Bhagwan Dass & Ors. v/s State of Haryana & Ors. [1987 (2) ATJ 479], it was observed in para 9 that 'once the nature and functions and the work are ^{not} shown to be dissimilar the fact that ^{wh} 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 has also not been disputed that the qualifications for promotion in the BSF are not, in any way, more liberal than those obtaining in other CPOs. Even the promoters in other CPOs and in Ministry of Home Affairs are getting the revised scale of Rs. 1640-2900.

8. In the case of a Federation of All India Customs and Central Excise Stenographers (Recognized) and Others v/s Union of India [JT 1988 (2) SC 519] it was observed as follows in para 11 :-

"The problem about equal pay cannot always be translated into a mathematical formula. If it has a rational nexus with the object

to be sought for, as reiterated before, a certain amount of value judgement of the administrative authorities who are charged with fixing the pay scale has to be left with them and it cannot be interfered with by the Court unless it is demonstrated that either it is irrational or based on no basis or arrived mala fide, either in law or in fact".

9. To the vast majority of the people, the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay.

10. However, 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 the responsibilities of post. 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 was shown that it was made with extraneous consideration. In this case, however, we find that the Fourth Pay Commission have recommended parity of pay scales of

Assistants/Stenographers Grade II with those in

other CPOs and in the Central Secretariat. The

parity was disturbed by the Order dated 31st

July, 1990.

10. Having disturbed the parity and having not disputed that the classification and duties and responsibilities of Assistants/Stenographers in the BSF Headquarters are similar to those of similarly placed posts in other para-military forces, the respondents should consider the revision of pay-scales of Assistants/Stenographers Grade II in BSF to Rs. 1640-2900, more so, in view of the observations made in the case of Bhagwan Dass and Ors. (Supra).

11. So we direct the respondents to consider the revision of pay-scales of Assistants/Stenographers Grade II (Group 'B' - Non-Gazetted) in the BSF to Rs. 1640-2900 from 1st January, 1986, at least notionally from 1st January, 1986 and effectively from a date not later than 1st May, 1991 (one year prior to the date of filing of the application).

We say so in consideration of the fact that CPOs

like Central Industrial Security Force, SSB, ITBP

are said to have given effect to the revised scales for their Assistants/Stenographers with effect from 1st January, 1986 by order issued in 1990 or 1991 and keeping in view the difficulty in giving a direction for arrears over one year old on account of the limitation clause in the Administrative Tribunals Act. The above direction should be carried out within a period of four months from the date of communication of this order.

12. With the aforesaid direction and order, the case is disposed of with no order as to costs.

I.P. Gupta
I.P. Gupta 13/11/92
Member (A)

Ram Pal Singh
Ram Pal Singh
Vice-Chairman (J)