

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

O.A.No./T.A.No.

Date of decision 28th August '98

Dr. B.C. Sikronia & others Applicant(s)

C/A Shri Anil Prasad Singh Adv. COUNSEL for the
Shri S.K. Agrawal Applicant(s)

Versus

Union of India & others Respondent(s)

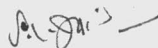
Shri Ashwalekar Adv. Counsel for the
Respondent(s)

C O R A M

Hon'ble Mr. S. Dayal V.C./Member(A)

Hon'ble Mr. S.L. Jain Member (J)

1. Whether Reporters of local papers may be allowed to see the judgment? yes
2. To be referred to the Reporters or not ? yes
3. Whether their Lordship wish to see the fair copy of the judgment ? No.
4. Whether to be circulated to all Benches ? No



(SIGNATURE)

MANISH/

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

DATED: THE 28 TH DAY OF AUGUST 1998

CORAM : HON'BLE MR. S.DAYAL, A.M..
HON'BLE MR. S.L.JAIN, J.M..

ORIGINAL APPLICATION NO.57 OF 1992

1. Dr. B.C. Sikroria S/o Shri B.N. Saxena
R/o 117/181 Block Kakadev, Kanpur.
2. R.P. Chaudhary S/o Shri K.L. Chaudhary
R/o House No. 1/47-W1 Block Saket Nagar,
Kanpur.
3. Mohammad Idris S/o Sri Mohd. Wasi
Resident of House No. 90/257 Purwa Hiranagar,
Kanpur.
4. Sri I. Alam S/o Sri Sajjad Hasan
R/o House No. 88/354 Chamanganj, Kanpur.
5. Sri A.K. Banerji son of Sri K. Banerji
R/o House No. 117/K/93 R.S. Purnam,
Sarvodaya Nagar, Kanpur.
6. Sri R.K. Prakash son of Sri R.C. Bajpai
Resident of 124/1 N.H.C. Kidwai Nagar,
Kanpur.
7. Dr. R.B. Misra S/o Sri R.B. Misra,
Resident of 67 Kendranchal Naubasta, Kanpur.
8. Sri K.N. Dwivedi S/o Sri K.N. Dwivedi
399/6 Shastri Nagar, Kanpur.
9. Sri A.P. Tripathi S/o Sri S.B. Tripathi
197/M Block Kirti Nagar Kakadev, Kanpur.

All the applicants are posted as
Small Industry Promotion Officers
Small Industries Service Institute
107 Industrial Estate, Kalpi Road,
Kanpur.

..... Applicants

C/A Shri A.B.L. Srivastava, Advocate
Shri Sudhir Agrawal, Advocate.

Versus

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1. Union of India through Secretary Ministry of Industries, Industries Department, S.A. & R.I. Deptt. of Small Agro Rural Government of India Udyog Bhawan, New Delhi..
2. The Development Commissioner, Small Scale Industries, Nirman Bhawan 7th Floor, Maulana Azad Road, New Delhi.

.... Respondents

C/R Shri Amit St halekar, Advocate.

ORDER

BY HON'BLE MR. S.L.JAIN, J.M.-

This is an application under section 19 of the Tribunal Act 1985 for a declaration that the fixation of pay of Small Industries Promotion Officer (which is later referred as SIPO) at Rs.1640 - 2900 under IV Central Pay Commission is wholly arbitrary and discriminatory, He is liable to quash government order dated 17th December 1987 (Annexure-1), for a mandamus directing the respondents to keep the applicant at par with the other category of employees who were under the pay scale of Rs.550-900 under the IIIrd Central Pay Commission scale and have now been placed in the scale of Rs.2000 - 3200 or Rs.2000 - 3500 with a direction for all consequential benefits.

2. Respondents have stated in respect of application paras 4(1) to 4(13) that need no reply, being matter of record. About para 4(15), 4(17) and para 6 and 7 of the application need no reply. The ~~plea~~ applicants' case in brief is that while implementing the scale provided by IV Central Pay Commission, the Government of India made certain modification and a number of posts in the pay scale of Rs.550 - 900 were given pay scale of Rs.2000 - 3500 without there being any change or alteration or addition in the existing structures during III and IV Pay Commission. The Government

By Mr. /

of India vide its order dated 17th December 1986 implemented the recommendation of IV Pay Commission in respect of the employees of Department of SSI and revised the scale of the applicants to Rs. 1640-2900. The said revision of pay is wholly unjustified, inasmuch as, the IV Central Pay Commission has^r not considered at all. The case of Small Industries Promotion Officers that it was a non gazetted group -B post and considering qualifications, mode of recruitment and other service conditions it was entitled to be placed at par with a number of other posts which were given Rs. 2000 - 3200 in place of Rs. 1640 - 2900 against their pre-revised pay scale of Rs. 550 - 900 and in the circumstances the applicant no. 7 made representation dated 30th March 1987 and a collective representation by all the applicants on the same date. The respondents did not pay any heed to the representations and reminders, the last being 8th April 1991. The other cadres which were similar to SIFOs under IIIⁿ Pay Commission have been allowed higher pay scale of Rs. 2000 - 3500 as in respect of Assistant Regional Directors, Assistant Marketing Officer, Inspector of Factories, Assistant Supervisors Special Welfare, Personal Assistant Income-tax Tribunal and Rs. 2000 - 3200 in respect of accounted^{ant}, stenographers Grade-I, nursing staff (supervisor), nurses (teaching staff), Assistant Intelligence Officer Grade-I, Inspector C.B.I. and Inspector R.F.F. The scale provided Rs. 2000 - 3200 or Rs. 2000 - 3500 is wholly arbitrary and discriminatory, inasmuch as, there has been no change or alteration. In the circumstances since III and IV Pay Commission recommendation had been adopted creating disparity which is equally arbitrary and discriminatory, hence this petition.

JWS /

3. The respondents have denied the allegations levelled against them and stated that the Pay scales for the various categories have been prescribed as per recommendations of the IVth Pay Commission taking into consideration the nature of the job and several other job factors. The representation of the applicants were considered and a decision was taken not to upgrade the pay scale of the SPOs. The recommendations of the IVth Pay Commission is binding^{on} the respondents. The recommendation of the IVth Central Pay Commission were given in 1986, were promulgated in 1987, while the present writ was filed in the year 1992 which is barred by limitation.

4. In para 4(ii) the applicants have alleged that when IIIrd Pay Commission considered the pay revision and fixation ^{of pay} ~~of pay~~ scale of Accountant, Stenographer Grade-I, Nursing Staff (Supervisory) Nurses (Teaching Staff), Assistant Regional Director, Assistant Central Intelligence Officer Grade-I, Assistant Marketing Officer Inspector C.B.I., Inspector of factories, Assistant Supervisor Special Welfare, Personal Assistant Income-tax Tribunal and Inspector R.P.F. were provided the pay scale of Rs. 550-900. On perusal of Central Civil Services (Revised Pay Rules 1986) it is clear that all posts grading present scales specified in column no.3 i.e. Rs. 550-25-750-EB-30-900 in Group C & B were provided a new scale of Rs. 1640-60-2600-EB-75-2900, in Part B Stenographer Grade-I was provided two scales (i) Rs. 1640-60-2600-EB-75-2900 (ii) Rs. 2000-60-2300-WV-75-3200 (for the post of stenographers attached to officers of Senior Administrative Grade equivalent posts, Nursing staff and teaching side nurses (teaching staff) who were earlier in grade of Rs. 550-900 were provided a new scale of Rs. 2000-60-2300-75-3200.

Done

5. Thus it is apparent that the applicants are provided with a grade of Rs. 1640-2900 while the other officials mentioned were provided a different grade which is mentioned above while all were in same grade in IIIrd Pay Commission..

6. About other officials holding post of Accountant, Assistant Regional Directors, Assistant Central Intelligence Officers Grade-I, Assistant Marketing Officer, Inspector, Inspector of factories, Assistant Supervisor Special Welfare Personal Assistant, Income-tax Tribunal and Inspector R.P.F. at different rate than the applicants is provided for which there is no dispute between the parties as application 4(1) to 4(13) are said to be being matter of record, no reply..

7. Thus a higher pay scale after the recommendation of IV Pay Commission was provided in respect of the post stated above vide order dated 17th March 1997 it was specifically asked and ordered to the respondents to file supplementary C.A. to meet the averments of supplementary affidavit indicating while officers mentioned in para 21 of the O.A. have been treated differently and given higher scale of pay vis-a-vis the applicants who were in the same scale of pay earlier. On 12th May 1997 the learned counsel for the respondents stated before this Tribunal that he has not been able to receive instructions to file supplementary C.A. and requested further three weeks time but no supplementary affidavit filed till hearing of the case. (1979) All India Service Law Journal 156 Chandra Shekhar Mth v. State of Karnatak and another, It has been held that once the State Government itself has evaluated the nature of duties or responsibilities of the post and had extended equal pay scales from 1.1.61 to 23.8.73 and has extended a Commission Pay Scale from 1.1.71 also there was absolutely no cause on which the Assistant

M. M. -

Geologist could be subject to discrimination in the matter of pay scale between 23.8.73 to 1.1.77. The proposition following the above referred authority (1979) All India Service Law Journal 156, the Karnatak High Court in 1980(1) Service Law Reporter 38 in case of B.N.Chandra Shekhar v. State of Karnatak and another has held that equation of duties and responsibilities of Assistant Chemist and Assistant Zoologist in the department of Mines and Geology as equal for the purposes of pay throughout, Difference in pay brought about for an intervening period, such difference is hit by Article 14 and 16 of the Constitution and on account of the fact that the posts are not inter-changeable, there is no ground for upholding the discrimination..

8. In A.I.R. 1984 SC 1221 Delhi Veterinary Association v. Union of India and others, it has been held that in addition to the principle of equal pay for equal work, the pay structure of the employees of the Government should reflect many other social values. Apart from being a Government employer, the Government is also expected to be a model employer. It has therefore to follow various principles in fixing the pay scales of various posts and cadres in the Government service. It has been further held that Veterinary Assistant Surgeons working in the office of Development Commissioner, Delhi, disparity between their pay scale and pay scale of similar persons in employment of Central Government and Union territory of Chandigarh claiming for equal pay, prima-facie legitimate.

8. Though the said Supreme Court authority relates to equal work for equal pay but on adopting the same ~~the~~ principle with other posts were kept in similar pay scale and later on by a Government decision a higher pay scale is given to some posts and the said benefit is denied to other posts, it is violating of Articles 14 and 16 of the Constitution of India.

Sd/-

In A.I.R. 1972 (Cal.) 174 Radha Kanto Chatterji v. State of West Bengal and others, it has been held that an order fixing employees, similarly circumstanced and enjoying similar scales of pay, indifferent scales of pay is discriminatory and violative of Article 14 and 16 of the Constitution. The said authority has followed the principles of law laid down in A.I.R. 1962 SC 1139 Kishori Lal Mohan Lal Bakshi v. Union of India and 1969 Service Law Reporter 210 Union of India v. Shanti Swarup.

9. In (1996) 34 ATC, 544 V.R.Panchal and others v. Union of India and others decided by Principal Bench, it has been held as under:-

"The court should mutually accept the decision taken on the basis of recommendation of the Pay Commission which is an expert body to determine pay scales. However, if it is found that for extenuous consideration, by a subsequent State action or inaction, favourable treatment has been given to some, resulting in unfair treatment to others, the court may sometime feel it necessary for the purpose of proving justice to interfere with the orders issued by the executive. Some such situations amongst others are as below:-

- (i) the Pay Commission ~~omitted~~ omitted to consider the pay scale of some posts of any particular service, or
- (ii) the Pay Commission recommended certain scales based on the classification or irrational classification, or
- (iii) after recommendation of the Pay Commission is accepted by the Government, there is unjust treatment by subsequent arbitrary State action. In other words the subsequent State action/inaction results in favourable to some and under treatment to others.

In the case of all the above three situations, court's interference is absolutely necessary to undo injustice. Aggrieved employees have a right and the courts have jurisdiction to remedy the unjust treatment meted by arbitrary State Action or inaction."

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10. The case of the applicant is fully covered by the said authority for the reason that after recommendation of the Pay Commission is accepted by the Government, there is unjust treatment by subsequent arbitrary action.

11. In A.T.R. 1988 (2) CAT 44 Rajendra Kumar Rawat and others v. Principal, Punjab Engineering College, Chandigarh, it has been held that normally a court cannot constitute itself as a Pay Commission, but it can interfere and even direct revision of pay scales when a case of discrimination was made and there was infringement of rights of any individual or individuals under Articles 14 and 16 of the Constitution. It has been further laid down that a classification has to be a rational nexus to the object to be achieved.

12. The point of limitation is not ^{/pressed} during the course of arguments and rightly not raised so for the reason that is a recurring cause of action in respect of pay every month arises in view of (1994) 26 ATC 187 E. S. Subramaniam and others v. Union of India and others.

13. We find that the applicants and the other officials named accountant, Steno Grade-I, Nursing Staff (Supervisory) Nurses (attaching staff) Assistant Regional Director, Assistant Central Intelligence Officer Grade-I, Assistant Marketing Officer, Inspector C.B.I., Inspector of factories, Assistant Supervisor, Personal Assistant, Income-tax Tribunal and Inspector, R.P.F. who were in III Pay Commission in the scale of Rs. 550-900 out of which the applicants are provided a scale of Rs. 1640 - 2900 while Stenographer Grade-I, Nursing Staff Supervisory, Nurses (attaching staff), Inspector C.B.I. Inspector R.P.F. and accountant has been given a scale of Rs. 2000-3200 and Assistant Regional Director, Assistant

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Marketing Officer, Inspector of Factories, Personal Assistant Income-tax Tribunal, Assistant Supervisor Special Welfare has been given a scale of Rs. 2000 - 3500 after the recommendations of the IV Pay Commission by the action of the Central Government. In such circumstances it is a case of violating of Article 14 and 16 of the Constitution of India, hence we direct that the Central Government should appoint a Committee to consider the grievances of the cadre of SIPOs keeping in mind the representations filed by them before the IV Pay Commission and the terms and conditions mentioned for IV Pay Commission which are attached to this order as mentioned by the applicant in para 12 of the application. ^{as Annexure - 1 and pay fixed of other officials in higher grade, in} The said Committee shall decide the matter within six months from the date of communication of the order to the Central Government. The applicants shall be entitled to the relief as per recommendation of the said Committee and costs of this petition amounting to Rs. 650/- (Rs. 500/- as legal practitioner's fee plus Rs. 150/- as other expenses).

S. S. S.
MEMBER (J)

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MEMBER (A)

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Annexure - 1

12) That the Central Government 4th Pay Commission headed by Justice P N Singhal came into existence on 1.9.83 and its term of reference was obviously not so comprehensive as will be apparent from the followings:-

"(1) To examine the present structure of emoluments and conditions of service taking into account the total packet of benefits, including death cum retirement benefits available to the following categories of Govt. employees and to suggest changes which may be desirable and feasible -

- (i) Central Govt. Employees-Industrial & Non-Industrial
- (ii) Personnel belonging to the All India Services
- (iii) Employees of the Union Territories.

(2) To examine the present structure of emoluments taking into account the total packet of benefits in cash and kind including death cum retirement benefits available to Armed Forces Personnel and to suggest changes which may be desirable and feasible having regard to their terms and conditions of service.

(3) To examine the variety of allowances and benefits in kind that are presently available to the employees in addition to pay and to suggest rationalisation and simplification thereof with a view to promoting efficiency in Administration.

(4) To make recommendations on the above having regard among other relevant factors to the prevailing pay structure under the Public Sector Undertakings, State Governments etc. economic conditions in the country, the resources of the Central Govt. and the demands thereon such as those on account of developmental planning defence and national security.

"2A) To examine with a view to having a proper pension structure for pensioners- both past and future - the existing pension structure including death cum retirement benefits and make recommendations which may be desirable and feasible having regard, among other relevant factors, to the retirement benefits available to employees of the Public Sector Undertaking State Governments etc. economic conditions in the country the resources of the Central Govt. and the demands thereon such as those on account of developmental planning defence and national security".


MEMBER (J)


MEMBER (A)