

CENTRAL ADMINISTRATIVE TRIBUNAL, ADDL. BENCH
ALLAHABAD

DATED: THE 23 DAY OF APRIL 1997

CORAM: Hon'ble Mr. S.Das Gupta, A.M.
Hon'ble Mr. T.L.Verma, J.M.

ORIGINAL APPLICATION NO. 1554 OF 1993

Assistant of the Lal Bahadur Shastri
National Academy of Administration, through
Shri Nanak Chand, President, Non Gazetted
Officers, Association, Lal Bahadur Shastri
National Academy of Administration, Mussoorie...... Applicant
C/A Shri S.D.Singh.

Versus

1. Union of India through the
Department of Personnel & Training,
Ministry of Personnel and Training,
New Delhi.
2. Director, Lal Bahadur Shastri
National Academy of Administration,
Mussoorie.

.... Respondents

C/R Shri Satish Chaturvedi.

ORDERBY HON'BLE MR. S.DAS GUPTA, A.M.-

This Original Application has been filed by the
Assistant of Lal Bahadur Shastri National Academy of
Administration (hereinafter referred to as Academy)
through Shri Nanak Chand, President, Non-Gazetted Officers

Association, Academy seeking a direction to the respondent no. 1 to grant to the applicants a revised pay scale of Rs. 1640 - 2900 at par with the Assistants of the Central Secretariat with effect from 31.7.1990. An alternative prayer is that the respondent no. 1 be directed to grant the applicants a pay scale having Rs. 1640/- as its minimum, the maximum of scale being 88% of Rs. 2900/-. The applicant's case is that the Assistants of the Central Secretariat and those of the academy belonged to common cadre till 1960 and the pay scale of the categories were also the same. The second Pay Commission granted both of them a pay scale of Rs. 210 - 530. The Third Pay Commission, however, granted to the Assistants of Central Secretariat the pay scale of ;,425 - 800 and also to the present incumbents at the Academy. A lower pay scale of Rs. 425 - 640 was, however, given for incumbents promoted after 1.1.1973 while those who have already been promoted, were granted the same scale of pay as the Assistants in the Central Secretariat. The 4th Pay Commission granted a pay scale of Rs. 1400 - 2600 to the Assistants of the Central Secretariat, who subsequently represented that they should be granted a pay scale of Rs. 1640 - 2900 and following a decision by the Principal Bench of the Tribunal on an application filed by such Assistants, the respondent no. 1 granted higher pay scale of Rs. 1640 - 2900 to the Assistants of the Central Secretariat. The applicants who were granted pay scale of Rs. 1400 - 2300 submitted a representation before the respondent nos. 1 and 2 for similar revision of their pay scales at par with that of the Assistants of the Central Secretariat. On 24.2.1993 the respondents had passed an order by which the applicants were granted a revised pay scale of Rs. 1640 - 2900 with effect from 1.1.1986 but the said order was withdrawn by subsequent order dated 17.5.1993.

W.L.

2. The applicants have stated that although there was a differential introduced by the 3rd Pay Commission between pay scale granted to the Assistants of Central Secretariat and those of the Academy, both the pay scales had the same starting pay and the maximum of the pay scale given to the latter was as high as 80% of the maximum of the pay scale granted to the former. In the pay scales recommended by the 4th Pay Commission also, the minimum for both the categories was the same whereas the maximum of the pay scale granted for the assistants of the Academy was 80% of the maximum of the pay scale granted to the Central Secretariat Assistants. This relativity has been disturbed while granting Secretariat Assistants, the pay scale of Rs. 1640 - 2900 which is an improvement on the pay scale recommended by the 4th Pay Commission. The applicants have argued that they should have also been granted similar pay scale as they performed similar work as the Assistants in the Central Secretariat. They have further stated that the ground on which they have been denied the scale of pay which is that there is no direct recruitment in their cadre whereas the Assistants in the Central Secretariat are directly recruited, is not valid.

3. The respondents have filed a written statement in which a preliminary objection has been taken to the maintainability of this application on the ground that it has not been filed by those who are claiming the relief but has been filed on behalf of the Association. As regards the merit of the case they have stated that the Assistants of the case they have stated that the Assistants of the Academy and those of the Central Secretariat do not constitute the same class, since all the Assistants in the Academy are promotees whereas the Assistants of Central Secretariat

10

are direct recruits from open competition. As regards the nature of the work performed by the Assistants of the Central Secretariat and those of the Academy, it is stated that the former at the middle and lower management of the Administrative machinery are responsible for assisting in the formulation and implementation of policy concerning subjects which are the responsibility of the Centre, this is not the nature of work performed by the latter. It has been stated that the pay scales of the two categories had never been a par right from the acceptance of the report of the Third Pay Commission with effect from 1.1.1973 and, therefore, the Assistants of the Academy have no right to claim of parity on this point of time. The respondents have further stated that a higher pay scale of Rs. 1629 - 2900 was granted to the Central Graduate Assistants on several grounds. These were that -

- (a) the relativities between the pay scale in Group 'C' had been seriously disturbed,
- (b) The Assistants in Central Secretariat make important contribution in taking of policy decision by the Government which is not made by other Group 'C' employees;
- (c) They are appointed by the President of India while Group 'C' employees are appointed by officer of lower rank.
- (d) Assistants are directly recruited through competitive examination.
- (e) They are given greater security of tenure in the matter of disciplinary proceedings and
- (f) They are liable for submission of annual immovable property return which the others Group 'C' officer are not required to do so.

It is stated that all these considerations did apply to the assistants of cadamey and hence there cannot be any question of parity in the pay scales.

4. The applicants have filed a rejoinder in which it has been stated that the total strength of Assistants in the Central Secretariat is 4653 on 1.1.1989 whereas the total strength of Assistants in Academy is only 10. As a large number of vacancies arose in the Central Secretariat there was need for direct recruitment in addition to filing of vacancy by promotion. No such need exists in respect of the cadre of academy, which is of a very small size. They have further stated that their claim for parity in pay scale is wholly dependent on the principle of equal pay for equal work as the nature of their work, it has been reiterated, is similar to the nature of work performed by the Central Secretariat Assistants. They have further stated that although only 50% of vacancies of Central Secretariat Assistants ~~are~~ ^{are} filled by direct recruitment and the remaining 50% by promotion, the higher pay scale is granted to those who are directly recruited as well as those who are promoted from the lower categories and, therefore, the method of recruitment should not come in the way in granting the higher pay scale to the Assistants of the Academy, merely on the ground that all the vacancies were filled by promotion.

5. We have heard the learned counsel for both the parties and perused the pleadings on record.

6. The main ground taken by the applicants which was also stressed upon by the learned counsel for the applicant during the course of the arguments is that the applicants

should be granted parity in pay scale with reference to the Assistants of the Central Secretariat on the basis of the principle of equal pay for equal work. It is their case that this principle could transcend the difference in the method of filing of vacancies. They sought reliance on the decision of Hon'ble Supreme Court in the case of Bhagwan Das v. State of Haryana, A.I.R. 1987 SC 2049 and Jaipal v. State of Haryana A.I.R. 1988 SC 1504.

&. There is no doubt, that the principle of equal pay for equal work is wellrecognised in Service Jurisprudence. If two groups of persons are found to be performing similar nature of duties, any differential in pay scales granted to them would be considered to be violative of the principles of equality. The question, however, still remaining as to who would assess the nature of work performed by the two groups of persons. It has been repeatedly held by the Hon'ble Supreme Court that such a comparative assessment of work can best be performed not by courts or Tribunals but by the expert body like Pay Commission. Admittedly two successive Pay Commissions, viz., the Third and the 4th Pay Commissions have done such an assessment and granted to the Central Secretariat Assistants. Although the applicants have argued that the minimum of the pay scale was the same, it cannot be gainsaid that the pay scale granted to the Central Secretariat Assistants was higher. Thus the successive Pay Commissions have assessed the work of the Assistants of the Central Secretariat as not of a similar nature as compared to that performed by the Assistants of the Academy. In the case of Shyam Babu Verma 1994 SC (L & S) 683, the Hon'ble Supreme Court has cautioned that a comparative assessment of work should be done very carefully before allowing parity in pay scale.

In a recent case of Union of India v. P.V. Hariharan and others in Civil Appeal No.7127/1993 their Lordships in the Supreme Court have set aside a decision of the Tribunal granting higher pay scale to the Assistants in the integrated Fisheries Project. While deciding this appeal by order dated 12.3.1987 their Lordships have made the following 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 with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government, 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 happens to have a full picture between it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is also being misunderstood and misapplied, 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."

16

15

8. In the case before us, in the first place there is no material on record to make a comparative assessment of duties performed by the two groups of assistants. The applicants have made a bald statement that they perform the same nature of work as the Assistants of the Central Secretariat, while the respondents have stated that the nature of their work is different, inasmuch as, the Assistants in the Central Secretariat contributed to the policy making decisions of the Government. On the basis of such scanty material we cannot come to any definitive conclusion. We are not convinced that any case of hostile discrimination has been made out on the basis of the pleadings on record and thus we find no justification to interfere in the fixation of pay scale of the applicants. As the case deserves to be dismissed on merit, we see no reason to enter into the question of maintainability to which a preliminary objection has been taken by the respondents.

9. In view of the foregoing, this application is dismissed. The parties shall bear their own costs.

Fathima
MEMBER (J)

W
MEMBER (A)

Gcs