

Open Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.
.....

Original Application No. 1039 of 1993
this the 22nd day of November 2002.

HON'BLE MR. S. DAYAL, MEMBER (A)
HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

N.E. Railway Mazdoor Union through Sri S.M. Ali, Branch
Secretary, N.E. Railway, Gorakhpur.

Applicant.

By Advocate : Sri S.K. Om.

Versus.

1. Union of India through Secretary, Railway Board,
New Delhi.
2. Secretary, Ministry of Finance, New Delhi.

Respondents.

By Advocate : Sri Lalji Sinha.

ORDER

MRS. MEERA CHHIBBER, MEMBER (J)

This O.A. has been filed by North Eastern Railway
Mazdoor Union challenging the order dated 10/13.12.1991
whereby grant of pay-scale of Rs. 1640-2900 and Rs. 2375-3500/-
to the Law Assistant and Chief Law Assistant has been
rejected from 1.1.1986.

2. It is the case of the applicants that there is a
separate legal cell in Railways under commercial branch
which consists of Law Assistants and Chief Law Assistants
(In short L.A. and C.L.A. respectively) recruited through
R.R.B. and departmentally on percentage basis. The requisite
qualification for initial recruitment is Degree in Law
and three years of practice in Bar as a lawyer or working
as a Special Railway Magistrate or 5 years service in any
department of Railways. It is submitted by them that they
give their legal opinion and guidance pertaining to the
litigation apart from drafting, scrutinising and vetting
the complaints, written statement in Civil Courts, RTS and

High Court and other courts of law. They have been given the scale of Rs. 1600-2660/- and Rs. 2000-3200/- by IVth pay Commission, while the Chief Reservation Inspector and Commercial Inspector who ~~are~~ also graduate are given the scale of Rs. 2375-3500/-. Similarly, the L.As and C.L.As in Ministry of Railways and Law & Justice have been given higher scale, while denying the same to L.As and C.L.As of Railways even though the mode of recruitment of L.A. is exactly same as that of L.As in Ministry of Railways.

3. It is submitted by them that IVth pay Commission did not give any specific recommendation for the revision of pay of L.As and C.L.As, but only merged various pay-scales of L.As and C.L.As from Rs. 550-750 to Rs. 1600-2660 and Rs. 700-900 to Rs. 2000-3200 respectively, whereas recommended Rs. 1640-2900 and 2375-3500 for L.As and C.L.As in Ministry of Law. Therefore, being aggrieved the Association took up the matter with Anamoly Committee (Annexure A-1) and also raised the issue before JCM vide item 37 wherein it was held introduction of higher scales can only be considered by Ministry of Finance, who ultimately rejected the claim which was conveyed by Railway Board vide its letter dated 13.12.90 (Annexure II). Being aggrieved, they filed this O.A. At the time of arguments, the applicant's counsel informed us that in the Vth pay Commission brought them at par with theirs inasmuch as they have been given Rs. 6500-10500 from Rs. 1600-2660 and Rs. 7450-11500 from Rs. 2000-3200. It is, thus, submitted by counsel that once the pay Commission has also agreed that they were at par, there is no justification to deny them the same pay-scale of Rs. 1640-2900 w.e.f. 1.1.1986.

4. The O.A. is opposed by the respondents, who have submitted the law is well settled by now that pay-scales are not to be determined by the Tribunal as this is to be decided by the expert bodies taking into consideration all relevant factors viz. nature of duties, method of recruitment, qualification, avenues of promotion etc. They have relied

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on AIR 1989 SC 19 in re. State of U.P. Vs. T.P. Chaurasia & others, which for ready reference reads as under :

"The answer to the question whether two posts are equal or should carry equal pay depends upon several factors. It does not just depend upon either the nature of work or volume of work done. Primarily, it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degree in the performance. The quantity of work may be the same, but quality may be different and that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts of equation of pay must be left to the Executive Govt. The Court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration. "Again in the verdict of the Punjab & Haryana High Court in the case of Shiv Dayal Vs. State of Haryana & Others (1972 SLR 35) it was held that "Revision of pay scales is the discretion of the Govt. Court had no jurisdiction to direct the Govt. in what manner the revised scales should be fixed."

5. They have further submitted that L.As and C.L.As cannot compare themselves with another branch of officers in commercial side as their duties are absolutely different and their mode of appointment and avenues of promotion is also absolutely different. The educational qualification is not the sole criteria for determining the pay-scales. They have also explained that there are no posts of L.As in the Ministry of Railways (Railway Board). There is only one post of C.L.A. and one post of Supdt. (Legal) in the Legal Cell of Ministry of Railways (Railway Board). The C.L.A. and Supdt.(Legal) in the Ministry of Railways (Railway Board) deal with the work relating to empanelment of the Advocates fee, terms library and general, to assist the Advisors in the discharge of their duties. The advice on matters, referred to Legal Cell, is given by the Legal Advisors i.e. Asstt. Legal Advisor of Railways (Railway Board). It is stated that the Legal Staff on the Railways mostly deal with court cases relating the compensation claims as well as establishment matters, disciplinary proceedings, purchasing and sale contractors etc. However, in the case of Assistant (Legal) and Supdt.(Legal) in the Ministry of Law & Justice, the nature of duties are to put up precedents on matters regarding legislative drafting, general and secretarial assistance

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to officers in the Legislative Department in vetting statutory Rules, orders etc. and supervisory duties usually exercised by Supdt. assisting senior officer in the Legislative Department in vetting CSPOS etc. respectively. They have also explained other aspects of the matter and submitted that higher scales of pay as allotted to Asstt.(Legal) and Supdt.(Legal) in Ministry of Law were based on the specific recommendations made by the Central pay Commission, while there was no such recommendation for L.As and C.L.As, therefore, they could not have been allotted the similar scales by Ministry of Railways. The matter was taken up with the Ministry of Finance, but they rejected the same on the ground that method of recruitment and structure in Railways is not similar to that of legal Asstts in Ministry of Law. They have also submitted that federations Unions and Associations had given oral evidence before the Commission, but in spite of considering every aspect, the IVth pay Commission did not recommend the higher scales for them, ^{therefore} the Ministry could not have granted it on their own (Annexure 1 to the Counter), nor can it be said that the respondents have acted in any arbitrary or discriminatory manner. Subsequently, the respondents filed M.A. No. 867/98 stating therein that since Vth pay Commission has recommended the higher pay-scales for L.As w.e.f. 1.1.96, which has been accepted by the Railway Ministry, therefore, this O.A. has become infructuous. They have ^{annexed} ~~averred~~ their letter dated 16.1.98 to show that the pay-scales of L.As have been revised to Rs. 6500-10500 from 1600-2660 and for C.L.As for Rs. 7450-11500 from 2000-3200. They have also shown that some of the persons had approached the Calcutta Bench, wherein the matter was referred to Vth Pay Commission.

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6. The respondents also brought to our notice the orders passed by the Hon'ble Supreme Court in Civil Appeal No. 2268/98 which was filed by the Union of India against the judgment passed by Lucknow Bench as the Tribunal had granted the relief to L.As and C.L.As ^{of Railway &} at par with presenting officers ^{as they also} ~~who~~ claimed to be presenting officers within the meaning of Section 19(2) of Railway Claims Tribunal Act, 1980.

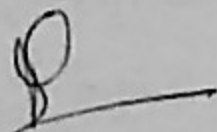
7. The Hon'ble Supreme Court referred to ^{the Hon'ble S.C. judgment already decided in} Union of India Vs. P.V. Hariharan's case reported in 1997 (3) SCC 568 wherein it was observed that courts or Tribunals ought not to interfere with pay-scales without proper reasons and without being conscious of the fact that fixation of pay is not their function as change of a pay-scale a category has cascading effect. They further referred to 1997 (11) SCC 182 in re. Union of India Vs. Makhan Chandra Roy, wherein it was reiterated that equation of post or pay must be left to the Executive Govt. and must be determined by expert bodies like Pay Commission. The Courts should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration. They also referred to State of Maharashtra Vs. Chandrakant Anant Kulkarni reported in 1981 (4) SCC 130 and State of U.P. Vs. J.P. Chaurasia 1989 (1) SCC 121. Then referring to the provisions the Hon'ble Supreme Court observed as under :

"On the overall consideration of the matter, we do not think that the Tribunal was justified in giving the directions as aforesaid, particularly in the light of the law to which we have adverted to in relation to equation of posts or drawing a parity in the pay scales. Hence this appeal stands allowed, the order of the Tribunal is set-aside and the application filed by the respondents before the Tribunal stand dismissed. No costs."

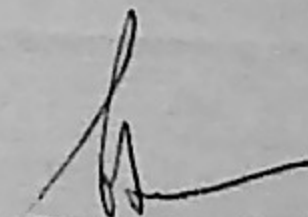
8. A perusal of this judgment shows that L.As and C.L.As of Railways have been trying to claim higher scales by filing different O.As before different Benches and by taking different stands. A perusal of Vth Pay Commission report itself shows that similar matter was filed by L.As and C.L.As before Calcutta Bench as well, who had directed the matter to be

placed before the Vth pay Commission. Accordingly, the matter was placed before the Vth pay Commission who recommended to give them higher pay-scale w.e.f. 1.1.1996. Since similar matter was decided by Calcutta Bench by referring the matter to Vth pay Commission and they have already been paid the higher scales w.e.f. 1.1.96, we cannot pass any orders contrary to that. More-over the Hon'ble Supreme Court had repeatedly held that it is not for the Tribunals to decide the question of pay-scales and it should be left to the expert bodies. It is seen that the IVth pay Commission had not recommended the higher scales for them, while it was recommended for other classes. The respondents had given higher scales to the persons in Ministry as it was recommended by Pay Commission, therefore, it cannot be said that the respondents had acted in an arbitrary manner. After all, they are also bound by the recommendations of Pay Commission and the approval of Govt. In the instant case, they did refer the matter to the Ministry of Finance, but the same was rejected. We, therefore, do not find any illegality in the orders passed by the respondents. Their grievance has already been looked into by the Vth pay Commission and relief granted so they should be contented with that.

9. In view of the above discussion, no further orders can be passed by this Tribunal and since the Govt. has already granted them the relief w.e.f. 1.1.1996, this O.A. is disposed off as having become infructuous. No order as to costs



MEMBER (J)



MEMBER (A)

GIRISH/-