

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 491/2003

WEDNESDAY THIS THE 11th DAY OF JANUARY, 2006

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

- 1 PJ Paul
Syrang of Lascar, Coast Guards
District Head Quarters NO.4
Cochin-1
- 2 N.R. Chandran
Syrang of Lascar, Coast Guards
District Head Quarters NO.4
Cochin-1
- 3 I.C. Josey
Formerly working as Syrang of Lascar
Coast Guards
District Head Quarters NO.4
Cochin-1 and now working as Oil Tanker Master
in Naval Ship Repair Yard, Kochi
- 4 E. Abdulla Kutty
Syrang of Lascar, Coast Guards
District Head Quarters NO.4
Cochin-1
- 5 Joseph Sartho
Lascar Ist Class, Coast Guards
District Head Quarters NO.4
Cochin-1
- 6 PK Sukumaran
Lascar Ist Class, ,Coast Guards
District Head Quarters NO.4
Cochin-1
- 7 VS Pushkaran
Lascar Ist Class, Coast Guards
District Head Quarters NO.4
Cochin-1
- 8 KK Ajayakumar
Lascar Ist Class, Coast Guards
District Head Quarters NO.4
Cochin-1
- 9 KD Udayakumar
Lascar Ist Class ,Coast Guards
District Head Quarters NO.4
Cochin-1

Applicants

By Advocate Mr.MM Saidu Muhammed

Vs

- 1 Union of India represented by Secretary to Government Ministry of Defence New Delhi.
- 2 The Director General Coast Guard Head Quarter's National Stadium Complex New Delhi-110001.
- 3 The Commander Coast Guard; Region (w) Golfadevi Temple Road, Prabhadevi PO, Worli Mumbai-25
- 4 The Commander Coast Guards District Head Quarters No.4 Kochi-1

Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicants in this case are working as Syrang of Lascar and Lascar 1st Class in the Coast Guard Head Quarters District No. 4 under the 4th respondent and are claiming parity of pay scales with their counterparts in the Indian Navy. This is the third round of litigation Aggrieved by the considerable difference in their pay scales the applicants had made repeated representations to the respondents during the last several years. Since there was no favourable reply they filed O.A. 852/99 and this Tribunal by its order dated 4.8.1999 disposed of the OA directing the respondents 1 & 2 to take appropriate decision on their representations in the light of the recommendations made by the fourth respondent therein and also taking into account the relevant facts, in the facts and circumstances of the case. Pursuant to the above, the respondents after considering the matter furnished the replies to the applicants in identical communications produced here as Annexure A-4. The applicants then filed OA 785/2000 which was disposed of by order at Annexure A5 directing the first respondent to give appropriate reply to the applicants in consultation with the the 2nd respondent by passing a speaking order. The

applicants had then approached the Hon'ble High Court of Kerala in OP N0. 28670/2002 dated 14.11.2002/ The Hon'ble High Court in the light of the decision of the Hon'ble Supreme Court in State of Haryana Vs. Civil Secretariat Personal Staff Association (2002 (3)KLT SN 51) held that no further relief could be granted in the OP other than what was granted by the Tribunal. Pursuant to Annexure A-5 the Government has passed an order declining to grant parity of pay by Annexure A-7 order which has now been challenged in this O.A.

2 The ground for challenge is that Annexure A7 order is against the finding of the Tribunal in Annexure A5 order and that 'equal pay for equal work' doctrine enshrined in Article 14 and 16 of the Constitution has been ignored by the respondents thereby discriminating them against the employees in the Indian Navy who are discharging similar functions and duties. Therefore it is the contention of the applicants that the impugned order is unsustainable in law and the respondents cannot deny them the higher pay scales applicable to Indian Navy personnel.

3 Reply statement has been filed by the respondents. It is submitted that the post of Lascar I class and Syrang of Lascar had been in lower scales of pay even prior to the Vth CPC and there was no parity in the scales of pay of personnel holding similar position in the Navy and Coast Guard. The issue in respect of parity in scales of pay between personnel of Coast Guard and Navy, has been considered by successive Pay Commissions. The Vth CPC after examining the duties and responsibilities of Coast Guard personnel had recommended that existing correspondence in the matter of pay scales between the Coast Guard officers and the officers in other Central Police Organizations should continue. The Vth CPC have also considered this aspect and in Para 63.104 of the Report recommended that the existing parities of Coast Guard personnel in terms of pay scales and allowances should continue thereby implying that the pay scale of Coast Guard personnel should continue to be compared with those of similarly placed personnel in CPOs and not with those working in the Indian Navy. Thus the claim of the applicants to compare themselves with their counterparts in the Navy is incorrect. A conscious decision had to be taken on the issue keeping in mind the fact that if the desired

parity is agreed to, the same would have to be accepted in respect of all other categories as well with all its attendance adverse consequences. The comparison of the applicants with respect to parity in scales of pay of MTDs, LDCs and UDCs working in the Navy and Coast Guard is not relevant to the issue under consideration.

4 It is further submitted that the Govt. has taken into account all aspects of the case for granting the applicants the scale of pay applicable to the persons working in the Navy and it has not been found feasible to grant the same since the Coast Guard personnel should continue to be compared with similarly placed personnel in the CPOs and not in the Navy. Any variation in the existing scale would give rise to such demands from other set of employees. The issue of fixation of pay scale and related matters have to be considered by expert bodies like the Pay Commission and recommendations are made by them keeping in view various factors. They have also denied that the scales of pay of other posts except these posts in the Coast Guard are carrying same scale of pay and point out that the service conditions governing various posts differs at various levels.

5 We have heard the learned counsel on both sides. The main argument advanced on behalf of the applicants is that the impugned orders in Annexure A-7 are not issued in observance of this Tribunal's order at Annexure A-5. Our attention was invited to para 13 of the said judgment stating the following:

"considering the entire evidence and aspects of the case, we are of the view that there is great force in the contention of the applicants. Since the duties and responsibilities of the two cadres are one and the same and comparable, we are of the view that the applicants cannot be denied their legitimate claim of parity in the scales of pay.

6 It was further urged that the Tribunal even after making the above observation had only directed the respondents to consider the matter with due application of mind giving appropriate relief to the applicants. None of the reasons now advanced by the respondents in Annexure A7 order can be independently sustainable and therefore it is incumbent upon the Tribunal to give specific direction to the respondents in the light of the observations and the conclusion in the order.

7 The counsel for the respondents on the other hand relied on the decision of the Apex Court in State of Haryana and another Vs. Haryana Civil Secretariat Personal Staff Association [(2002) 6 SCC 72] and argued that the issue of fixation of pay scale and parity in pay, is beyond the scope of judicial review hence the main prayer of the applicants cannot be granted.

8 From the facts before us we observe that the post of Syrang of Lascar and Lascar first class had been in lower scales of pay vis-a-vis similarly placed posts in the Indian Navy even before the recommendations of the 5th CPC. It is not that the question of parity of pay scale which has been agitated had not been considered at all. It had been considered by successive Pay Commissions and the 4th CPC after examining the duties and responsibilities of Coast Guard personnel had recommended that existing correspondence in the matter of pay scales between the Coast Guard and the Central Police Organisations should continue. The 5th CPC also considered the question and recommended that the existing parity will continue. Unfortunately the question of parity pay scales of Boat crew for which corresponding posts do not exist in the Central Police Organisations and those working in Indian Navy was not placed before the 5th CPC as admitted by the respondents themselves. The applicants had also taken up the matter only after the Pay Commission recommendations were accepted. It was taken up as an anomaly by forwarding the representation submitted by the applicants addressed to the authorities. The Govt. have thereafter considered the matter and are of the view that the question of parity with the Indian Navy will generate serious repercussions for the Government and would give rise to such demand from other set of employees. Precisely to avoid such situations, the Hon'ble Supreme Court has settled the law in this regard in the judgment referred to by the respondent and followed by the Hon'ble High Court of Kerala in the OP filed by the applicants, holding that the Courts should interfere with administrative decisions pertaining to pay fixation and pay parity only when they find such a decision to be patently irrational, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors. Moreover, where the order fixing the pay scale is found unsustainable, it has been held, instead of granting a particular pay

scale, ordinarily the court should direct the authority concerned to reconsider the matter. The Court should avoid giving a declaration of granting a particular scale and compelling the government to implement the same. Hence grant of parity in pay to State Civil Secretariat PAs with Central Secretariat PAs by High Court merely because the designation was same, without comparing the nature of their duties and responsibilities and qualifications for recruitment and without considering the relevant rules regulations and executive instructions issued by the employer and governing the cadre concerned was held improper. Therefore the main contention by the applicants that the nature of their work is the same as their counterparts in the Navy is not sufficient to recommend a parity in pay scales as a pay structure is evolved keeping in mind several factors and it is necessary to exercise due caution so that any interference should not throw up more anomalies.

9 It was the contention of the learned counsel for the applicants that the Tribunal had already considered the issue as per their observation and arrived at a conclusion in para 13 reproduced supra. The Tribunal had only made its observations with regard to the difference in pay scales of the three Pay Commissions and a reading of the full judgment would show that they had not gone into any detailed comparative analysis of their duties, responsibilities and risk factors. Fixation of pay is a complex matter. It is for the executive to discharge such functions and even the executive has now entrusted this responsibility to expert bodies like Pay Commission, since the Governments have to balance the conflicting demands of various categories and also taking into account the financial position. The mere fact that the concerned Head of the Department had recommended pay scale parity cannot be a basis for a final decision in the case. The Apex Court in the case of Secretary, Finance Department, State of West Bengal Vs. West Bengal Registration Service Association (1993 Supp(1) SCC 153) has dealt with the issue and observed categorically that

“There can, therefore, be no doubt that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post and and court's interference is absolutely necessary to undo the injustice.”

Therefore we are of the view that this Tribunal would not like to venture on the task of a comparing the nature of duties and responsibilities of the posts held by the applicant with their counterparts in the Indian Navy.

10 It was urged by the learned counsel for the applicant that the above pronouncements of the Hon'ble Supreme Court have to be viewed in an ordinary situation and as the Tribunal had already given such an order to the Department for consideration which has not been done. The extra ordinary situation has now arisen warranting interference by the Tribunal. We are unable to subscribe to this view as the following factual position would show. There was no parity between the pay scales of the applicants with their counterparts in the Navy as would be seen from the following table:

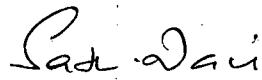
Lascar Ist Class	Syrang of Lascar	Engine Driver
<u>Prior to Vth Commission:</u>		
Navy 800-15-1010-EB-20-1150	1320-30-1560EB-40-2040	1200-30-1440EB-30-1800
Coast 775-12-955EB-14-1025 Guard	1150-25-1500	-do
Difference	Rs.25	Rs. 170/-
		Nil
<u>Present Scales</u>		
Navy 2650-65-3300-70-4000	4000-100-6000	4000-100-6000
Coast 2610-60-3150-65-3540 Guard	3050-75-4590	4000-100-6000
Difference	Rs. 45	Rs. 950
		Nil

Hence it is not a case where there has been any patently irrational decision taken causing great prejudice to the applicants. These settled principles of law had been upheld by the Hon'ble High Court of Kerala while declining to interfere with the orders of this Tribunal directing the respondents to consider the matter and have also been followed by other Benches of this Tribunal in similar cases.

11 In the result, taking note of the well settled principles of law, we are unable to grant the prayer of the applicants. The only solution for the applicants is to take up the matter with the subsequent Pay Commission as and when it is constituted at the right time. We hope that the respondents shall ensure that their case does not go by default next time. The OA is dismissed. No costs.

Dated 11th January, 2006


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

knn