

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 539/90
T. A. No. ~~199~~

DATE OF DECISION 9.9.1991

~~K.M.Rajan and 15 others~~ Applicant (s)

Mr.M.Girijavallabhan Advocate for the Applicant (s)

Versus

The Union of India , represented by Secretary
Ministry of Defence, New Delhi &
2 Others Respondent (s)

Mr.C.Kochunni Nair,ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. N.DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? ☒
2. To be referred to the Reporter or not? ☒
3. Whether their Lordships wish to see the fair copy of the Judgement? ☒
4. To be circulated to all Benches of the Tribunal? ☒

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this joint application dated 29.6.1990 the sixteen applicants who have been working as Stenographer Grade III (Rs.330-560/Rs.1200-2040(Revised)) under the Southern Naval Command, Cochin have prayed that they should be declared to be entitled to the benefit of the higher pay scale of Rs.425-700/Rs.1400-2300(Revised) with retrospective effect in accordance with the orders dated 6.1.77 and 23.2.89 at Annexures-A and L respectively along with arrears of pay and allowances. They have also prayed that non-implementation of the aforesaid two orders in respect of the applicants should be declared as discriminatory in violation of Articles 14 and 16 of the Constitution. The brief facts of the case are as follows.

2. According to the applicants, they have put in 22 to 28 years of service and have been working as Stenographer Grade III in the scale of Rs.330-560 revised to Rs.1200-2040 in the office of respondent No.3. Their claim is based on the order issued by the Govt. of India on 6.1.77 at Annexure-A in para 4 of which it was decided that to the "Stenographers attached to officers in the Subordinate Offices drawing pay in the scale of Rs.1500-60-1800-100-2000 and above" may be given the scale of Rs.425-700 which is the revised scale of pay of Stenographers in the scale of Rs.210-425. The same order also provided the scale of Rs.425-640 for Stenographers Grade III in the scale of Rs.330-560 with effect from 1.11.73. The grievance of the applicants is that even though they have been working with officers drawing pay in the pre-revised scale of Rs.1500-2000 and above, they have not been given the benefit of the higher scale of Rs.425-700(Rs.1400-2300 (Revised)) as enjoined in the aforesaid order at Annexure-A. On the other hand in the sister organisation of Defence Research and Development Organisation, 220 posts of Stenographers in the scale of Rs.425-700 were sanctioned in implementation of the Annexure-A order. The sanction is at Annexure-C. They had filed an earlier O.A 21/89 before the Tribunal which was disposed of with the direction to dispose of their representations. In obedience of that order of the Tribunal, the third respondent has now passed the impugned order dated 17th January 1990 stating that the matter "is still under their consideration and is likely to take sometime. Government letter when issued will be forwarded".

They have alleged that the respondents had made a false statement in their counter affidavit in reply to their earlier application OA 21/89 in which they had stated that the order dated 6th January 1977 had not been received by them when actually the Naval Headquarters in New Delhi vide Annexure-F dated 9th January 1977 had forwarded the aforesaid order along with the Ministry of Defence's U.O of 18th March 1977. The contention of the applicants is that the Naval Headquarters have no right to deny the benefits of Annexure-A order granted by the Government. The applicants have also referred to the communication of the Ministry of Personnel dated 6th February 1989 reiterating the benefits given in Annexure-A order and stated that the benefits of Annexure-L order also have not been extended to the applicants when the D.R.D.O has implemented that order also. They have stated that the applicants were all working with officers in the pre-revised scale of Rs.1500-2000 and above now drawing Rs.3700-5000 and above and therefore, the applicants are entitled to the revised scale of Rs.1400-2300 in accordance with the order at Annexure-L.

3. In the counter affidavit the respondents have conceded that the Government of India had accorded sanction for the following:-

- (a) Selection Grade to Stenographer Gr.III with effect from 1.11.1973.
- (b) Scale of pay of Rs.425-700 for Stenographers attached to officers in the Subordinate Offices drawing pay scale of Rs.1500-60-1800-100-2000 and above.

R

.4.

According to them while (a) above has been implemented vide Annexure R1 , implementation of (b) is to be governed by the Department of Personnel's letter dated 9th February, 1990 at Annexure R2 in accordance with which creation and upgradation of posts of Stenographers is not automatic but is to be on the basis of quantum of work handled by the officers. They have also referred to the availability of posts of Stenographers of various grades as recommended by the Naval Standing Establishment Committee. On the basis of the norms recommended by that Committee Government has been approached for creation of nine posts of Stenographer Grade II in the Navy and the matter is pending with the Government. They have further argued that Annexure-A order is only a guideline and the additional posts of Stenographers Grade II are to be created based on the norms applicable to the Navy and the sanction of the Government. The applicants could not be given the Selection Grade of Rs.425-640 with effect from 1.11.73 as they were far junior and not eligible.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. From the Department of Personnel's O.M of 6th January 1977 at Annexure-A it is clear that on the basis of the recommendations of the Third Pay Commission six pay scales of Stenographers were replaced by two revised scales namely Stenographer Grade III in the scale of Rs.330-560 and Stenographer Grade II in the scale of Rs.425-700. Though the Third Pay Commission did not

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recommend a Selection Grade in between Grade III and Grade II, "keeping in view the meagre promotional prospects in departments other than the Railways" the Government decided that a Selection Grade of Rs.425-640 be provided to Grade III with effect from 1.11.73. The number of such posts would be 10% of the permanent posts in the Ordinary Grade. Para 4 of the O.M. with which this case is principally concerned, reads as follows:-

" 4. According to the Department of Personnel & Adm.Reform's O.M No.1/8/72-Estt(D) dated the 29th June, 1972, Stenographers in the pre-revised scale of Rs.210-425 were to be provided for officers whose status was higher than that of a Deputy Secretary to the Government of India. This provision came up for consideration in the meeting of the National Council (JCM) held on the 3rd August, 1973, and the Staff side felt that Stenographers in this grade should be allowed to officers of and above the level of Deputy Secretary to the Government. This demand has been examined carefully and it has been decided that the scale of Rs.425-700 (the revised scale of pay for Stenographers in the scale of Rs.210-425) may be allotted to posts of Stenographers attached to officers in the Subordinate Offices drawing pay in the scale of Rs.1500-60-1800-100-2000 and above."(emphasis added)

From the above it is clear that provision of Grade II scale of Rs.425-700 for the posts of Stenographers attached to officers in Subordinate offices drawing pay of Rs.1500-2000 and above was not a guideline but a decision of the Government applicable to all Subordinate offices including those in the Naval Commands. The Defence Ministry authorised upgradation of 220 posts of Stenographers from Grade III scale of Rs.330-560 to Grade II scale of Rs.425-700 in the Defence Research and Development Organisation at Annexure-C in implementation of the order at Annexure-A. The directions of the Ministry of Defence and the Govt. of India cannot

by stymied by the Naval formations on the plea that the norms of the Naval Standing Establishment Committee will have to be followed and that Annexure-A order is only a guideline. The order of the Ministry of Defence is applicable to all the three wings of the Armed Forces and to their regional formations. The implementation of the order at Annexure-A dated 6.1.1977 cannot be governed by the orders issued thirteen years later in February and August 1990 in the context of the Fourth Pay Commission. Para 4 of the O.M. of 6th January, 1977 is clear. It unequivocally states that a decision has been taken to upgrade the posts of Stenographers attached to officers drawing the pay of Rs.1500-2000 and above, to the scale of Rs.425-700. It presupposes that posts of Stenographers had been attached to some officers in the scale of Rs.1500-2000 and above for good reasons and taking into account the nature of work discharged by such officers and the norms on the basis of which such officers were given stenographic assistance. Given the posts of Stenographers attached to such officers, the decision was to allot the pay scale of Rs.425-700 to such posts. The question of any conditionality or norms etc. does not arise. However, this does not mean that whosoever Stenographer happens to be attached to that category of officers he would automatically get the higher pay scale of Rs.425-700. It is the posts which are upgraded and not the incumbent of the posts. The entitlement of the Stenographer to the higher grade will be determined by his merit and seniority in the cadre of Stenographer Grade III including

those who are in the Selection Grade of Rs.425-640.


5. The impugned order at Annexure-K and the counter affidavit indicate that the question of providing Stenographers in terms of the order dated 6.1.77 and in accordance with the prescribed norms of the Navy is under consideration of the Government. As stated earlier the prescribed norms have nothing to do with upgradation of the pay scale of Stenographers involved in this case. The learned counsel for the respondents indicated that subsequent to the issue of the impugned communication dated 17.1.90 at Annexure-K, some posts in the Selection Grade of Stenographers have been created and nothing more is pending consideration of the Government in this case.

6. In the facts and circumstances we allow this application to the extent of setting aside the impugned order at Annexure-K and directing the respondents to implement the orders at Annexure-A dated 6.1.77 and at Annexure-L dated 23.2.89 in respect of upgrading the posts of civilian Stenographers attached to officers drawing pay in the scale of Rs.1500-2000 and above as on 6th January 1977 in the offices under respondent No.3 to the scale of Rs.425-700 and to consider the applicants along with other eligible Stenographers for promotion to the upgraded posts in accordance with the Recruitment Rules applicable to the post of Stenographer Grade II (Rs.425-700(revised)/Rs. 210-425(pre-revised) as on 6th January, 1977 and relevant instructions and

orders valid on that date, with all consequential benefits. Action on the above lines should be completed within a period of three months from the date of communication of this order. There will be no order as to costs.


9.9.91

(N.Dharmadan)
Judicial Member


9.9.91

(S.P.Mukerji)
Vice Chairman

n.j.j

Recd 2 copies of

C.P (C) 154/92

24.11.92

Mr. Girijavallabhan-for applicant
Mr. Poly Mathai rep. George CP Tharakan

We have heard the learned counsel for both the parties and regret to note the utter indifference with which the respondents have treated the implementation of the judgment of this Tribunal dated 9.9.91 in O.A.539/90. By that judgment the respondents were given three month's time for implementation. When CCP 84/91 was filed for the non-implementation of the aforesaid judgment, on 17.3.92 we passed the order that the judgment should be implemented by 9.6.92 failing which Respondent No.2 (Flag Officer-Commanding-in-Chief, Southern Naval Command, Cochin) shall appear before us in person and explain why action under the Contempt of Courts Act be not initiated against him. Though the respondents promised the petitioners a few days before 9.6.92 the consequential benefits were not given to them. Accordingly when the petitioners moved this Tribunal again, we allowed one month's time to Shri NN Sugunapalan, SCGSC (counsel for the respondents) to get the aforesaid judgment implemented "with particular reference to the payment of arrears of pay and allowances with consequential benefits". This order was passed on 15.7.92. Thereafter the original respondents sought extension of time and by our further order dated 27.8.92 we allowed further time of three months from 13.8.92 for full implementation of the judgment. That period expired on 12.11.92. The petitioners again have come up before us stating that the respondents have not taken any further action in implementation of the judgment even though the extension was given.

From the above facts it is abundantly clear that the respondents are not at all serious about proper implementation of the aforesaid judgment of the Tribunal.

2 SCGSC

24/11/92

Copy reviewed

(19)

Copy of this order be given to the learned
counsel for respondents by hand.

(N.Dharmadan)
J.M.

24.11.92

(SP Mukerji)
V.C.

SPM dv i)

Mr. M. Gijigavallabhan
SCCSE by Pm

Learned counsel for respondents produced before us orders issued in full compliance of the orders of this Tribunal including payment of arrears. He requested for some time to file detailed statement about the implementation. He may do so within a week with a copy to learned counsel for the petitioner. List for further direction on 17.12.92. The question of appearance of the ^{alleged} ~~contemner~~ shall be taken on that date. M.P.1762/92 may also be taken on that date.

Copy by hand.

(N.Dharmadan) (S.P. Mukerji)
Judicial Member Vice Chairman
8.12.92

76
24/11 Recd at 4.30
M 25/11

Order ^{issued} closed
1/12/92

Statement of
petitioners filed

9/12/22
m Bun

order received.
②
Ayd. 6/8/11.

18-1-93
(23)

-3-

CP(C)-154/92 in
OA-539/90

Mr Girijavallabhan for petitioner
Mr Poly Mathai for SCGSC

The learned counsel for the original respondents seeks 2 days' time to get clarification on the rebutted statement filed by the original applicants, alleging that the judgement has not been fully implemented.

Accordingly, list for further direction on the CP(C) on 21.1.93. We make it clear that in case the original respondents are not able to satisfy us about full implementation of the judgement, the Flag Officer Commanding-in-Chief, Headquarters, Southern Naval Command, Cochin will have to be called for explaining why action under the Contempt of Courts Act be not initiated against him. M.P-1762/92 will also be taken up on that day.

Copy by hand.

(AV Haridasan)
J.M.

(SP Mukerji)
V.C.

18-1-93

21-1-93 Mr. Girijavallabhan
(22) Mr. Poly Mathai

At the request of the
learned counsel for the respondents,
list for further direction on

27.1.93

(CAVH)

(SPM)

21-1-93

Mr. B.M.
I.O. issued
21/1/93

27.1.93
(27)

Mr. Girajavallabhan
Mr. ACP Pharakas

At the request of the
learned counsel for the petitioner,
but for further directions on 3.3.93

(AVH)

SPM
(SPM)

Mr

(27.1.93)

3-3-93
(33)

Mr Girajavallabhan
Mr George CP Tharakan

We have heard the learned counsel for the parties on the CP(C). The learned counsel for the original respondents Shri George Tharakan is directed to furnish a detailed statement indicating the various posts of officers both uniformed as well as non-uniformed categories with the pay scales. The statement shall also indicate whether any Stenographer has been attached each to these posts or not and if so, what was his original pay scales before the judgement was delivered and what is the pay scale after the judgement was delivered and whether the pay scale was upgraded after the judgement was delivered. He is also directed to file an additional statement in reply to the statement filed by the petitioner.

List for further direction on 26.3.93

M.P. for extension of time will also be listed on that date. Copy by hand.

(AV Haridasan)
J.M.

(SP Mukerji)
V.C.

3-3-93

Adm. Statement
for respondents
filed on 27.1.93

Adm. Statement
by petitioner
filed on 26.3.93

4/3
mB

Order issued
29/3/93

26.3.93

Comp 154/92
O.A. 537/90

(13)

Mr. Girijavallabhan-for applicant
Mr. Poly Mathai for SCGSC

A statement has been filed by the learned counsel for the respondent with copy to the learned counsel for the petitioner. List for further hearing on 6.4.93.

AVH

26.3.93

SPM

SPM & ND

Mr. M. Girijavallabhan
SCGSC

Heard learned counsel for both parties. Learned counsel for respondents has produced a statement filed by the respondents stating that the respondents have fully complied with the judgment dated 9.9.91 and order dated 5.6.92 by this Tribunal and given the applicants all benefits that were due to them under Annexure-A and L w.e.f. 6.1.77 to which learned counsel for applicants submitted that no payment even to these Stenographers attached to ~~xxxxxxx~~ Civilian Officers has been received on the basis of their retrospective promotion w.e.f. 6.1.77. Learned counsel for respondents is therefore directed to file an affidavit by the third respondent indicating the list of Stenographers who have been retrospectively promoted w.e.f. 6.1.77, arrears of salary ^{paid till today} accrued to them on the basis of the retrospective promotion. He is also directed to indicate on what basis Stenographers attached to Uniformed Officers and drawing pay scale Rs.1500-2000 and above have not been given similar retrospective promotion. The affidavit shall be filed within a period of two weeks with a copy to learned counsel for petitioners. List for further direction on 22.4.93.

copy be given by hand.

(N. HARMADAN)
J.M.

(S.P. MIKERJI)
V.C.

Order issued
24/4/93

(22) M. Girijavallabhan
SCGSC for respondents

Reply to addl.
statement of
original appen-
tins.

Mr George CP Tharakan, SCGSC prays that a week further time be granted to the respondents to file an affidavit as directed on 6.4.93. He says that for want of certain clarifications from the Naval Headquarters he could not do so. He prays that some more details are required to file the affidavit. Accordingly, we grant a week further time to file an affidavit with copy to the applicant.

List for further directions on 11.5.93.

RR

AVH

22.4.93

SPM & ND

Mr. M. Girijavallabhan
SCGSC

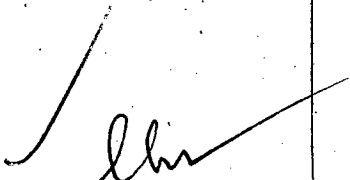
We have heard learned counsel for both parties on the CCP. Since the question of admissibility of higher pay scale to Stenographers attached to uniformed officers involves a substantial question of interpretation of the orders and instructions, we refrain from deciding the issue. In accordance with the statement filed by the learned counsel for respondents, they have implemented the judgment of this Tribunal in O.A. 539/90. The petitioners are at liberty to move original applications, if they are so advised,

in accordance with law, if they are aggrieved by the manner in which the aforesaid judgment has been implemented. The CEC is closed and the notice on contempt discharged.


(N. DHARMADAN)
JUDICIAL MEMBER


11.5.93.
(S.P. MUKERJI)
VICE CHAIRMAN

11.5.93


R
12/5
or BGP

18

SPM & ND

Mr. M. Girija Vallabhan
Mr. C. Kochunni Nair, ACGSC by proxy

The learned counsel for the respondents is directed to file reply to the CCP within 2 weeks with a copy to the learned counsel for the petitioner. List for further direction on the CCP on 20.1.92.

The M.P. for extension of time if any, will also be considered on that date.

2.1.92

20-1-92
(21)

SPM & AVH

Mr Girijavallabhan
Mr Kochunni Nair

The learned counsel for the respondents stated that he has separately filed an application seeking extension of time even though the petition itself has been filed after expiry of the period given for implementation of the judgement dated 9.9.91 in OA-539/90. However, to avoid further adjournments and delay, we allow two months time from today for implementation of the afrosaid judgement.

List the CCP for further direction on 17.3.92

20-1-92

17.3.92

Mr. Girijavallabhan
Mr. Kochunni Nair

Heard the learned counsel for both the parties. The learned counsel for the original respondents seeks three months time for implementation of the judgment of this Tribunal dated 9.9.91 in O.A.539/90. Accordingly we direct that the CCP be listed for further directions on 9.6.92. In case there is no implementation by that date, respondent No.2 (Flag Officer-Commanding-in-Chief, Southern Naval Command, Cochin) shall appear before us in person and explain why action under the Contempt of Court Act be not initiated against him.

Copy of the above order may be given to the learned counsel for respondents byhand.

ND

SPM

17.3.92

Received at
1.45pm
today
12/1/92

m RED

I.O. issued on 19/3/92

20/3

9/6/12 Mr. Girijavallabhan.

Mr. NN Sugunapalan SSC.

Mr. NN Sugunapalan will be appearing

for the Comptroller. The learned Counsel for the respondents States that the order dated 9.9.91 in OA-539/90 has been implemented and the copy of the implementation order has been communicated to the applicants. The learned Counsel for the respondents is directed to file a statement on implementation within a week with copy to the learned Counsel

for the petitioner list on 22.6.12

AD 9/6 SPM 9/6

22.6.92. Mr. Girijavallabhan
Mr. NN Sugunapalan

At the request of the learned counsel for the petitioner, list for further directions on 15.7.92.

AVH 22.6.9.2 SPM

15.7.92. Mr. Girijavallabhan
Mr. NN Sugunapalan

We have heard the learned counsel for both the parties on the CCP. A statement has been filed by the respondents indicating that the post of Stenographer in the pre-revised scale of Rs. 330-560 has been upgraded to the scale of Rs. 425-700 (pre-revised) and the applicants have been considered and given promotion to the upgraded pay scale of Rs. 1400-2600 (revised). The applicants' grievance is that the upgradation and the benefits flowing therefrom have been accorded to the applicants with only prospective effect.

contd...

Statement Submitted by the respondent on 22/6/92


(contd from P.P.)


We have carefully gone through the judgment of this Tribunal dated 9.9.91 in O.A.539/90 and we are convinced that the upgradation was to be given effect to from 6.1.1977 and the applicants were to be given benefits of higher pay with retrospective effect, if they ^{have been} ~~were~~ considered fit for promotion and if they ^{pre-} were attached to officers drawing the pay in the ^{pre-} revised scale of Rs.1500-2000 and above.

The learned counsel for the respondents (Shri NN Sugunapalan, Sr. Central Govt. Standing Counsel) seeks one month's time to get the aforesaid judgment of this Tribunal implemented with particular reference to the payment of arrears of pay and allowances as consequential benefits.

Accordingly list for further directions on the CCP on 17th August, 1992.

A copy of the above order be given to the learned counsel for the respondents (Shri NN Sugunapalan, SOGSC) by hand.


(AV Haridasan)
J.M.


(SP Mukerji)
V.C.


15.7.92.

PSHM & ND

Mr. M. Girejvalleha
Mr. E. Kochumman, Secy. to P.W.

Post the c.p. on 20/8/92 A/W MP filed by Respondents in O.A. 539/90 for extension of time.

ND


PSHM

17/8/92

✓
A
15/7/92

order issued
on 16.7.92

(23)

20/8

- 4 - C.E.P. 84/91

PSHM & MD

⑧ Mr. M. Gorgevalletham
M.E.K. van, Bepe by Pamy.

It is submitted there is change of
Council for the respondents which
necessitates revision of Vakalat.
Accordingly, post the C.E.P. to M.P.
on 27/8/92.

MD

PSHM

20/8/92

20/8