

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No. 259/2001.

Monday, this the 3rd day of February, 2003.

CORAM:

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

K.X. Xavier,
Son of Shri K.M. Xavier,
Supervisor Grade-III,
Industrial Canteen,
Naval Ship Repair Yard,
Southern Naval Command,
Kochi - 682 004

..Applicant

[By Advocate Mr. E.M. Joseph.)

Versus

1. Union of India, represented by
The Secretary,
Ministry of Defence,
New Delhi - 1.
2. Director of Canteens,
Ministry of Personnel,
Public Grievances and Pension,
Dept. of Personnel,
Public Grievances and Pension,
Department of Personnel & Training,
New Delhi - 1.
3. The Flag Officer Commanding-in-Chief,
Southern Naval Command,
Kochi - 682 004. ..Respondents

[By Advocate C. Rajendran, SCGSC.]

The application having been heard on 19.12.2002, the
Tribunal on 03.02.2003 delivered the following:

O R D E R

HON'BLE MR.K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant is working as Supervisor Grade III in the
pay scale of Rs.3050-4590 in the Industrial Canteen attached to
the Naval Ship Repair Yard (NSRY for short) under the 3rd
respondent. The total number of employees in the establishment
is 1138 and the type of canteen is Grade III and the canteen
employees are only 12. It is averred in the O.A. that the

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first respondent accepting the recommendations of the Vth Pay Commission in para 55.30 and 55.31, has decided to remove the disparities in the pay scales between the non-statutory canteen employees in general and the statutory canteen employees in defence establishments. A copy of the said order dated 5.4.98 is A-1. The applicant was fixed in the pay scale of Rs.950-1500 after the IVth Pay Commission and after the Vth Pay commission the applicant was fixed in the present pay scale of Rs.3050-4590. This fixation is erroneous and is in gross violation of the order dated 19.3.1998 of the Ist respondent directing to remove the disparities in the pay scale between the non-statutory canteen employees in general and the statutory canteen employees in Defence Establishment. It is averred that the persons attached to non-statutory canteen under the Ministry of Defence doing similar type of job and same responsibilities are placed in a higher pay scale than that of the applicant. The applicant's representation dated 17.11.94 was rejected by the respondents by order dated 27.7.1995, on the ground that employees of statutory and non-statutory canteen are not comparable to each other. Since the position was changed after the Vth Pay Commission and also that there was a direction for restructuring of Supervisor Cadre, it is incumbent upon the respondent to implement their own orders and directions in favour of the applicant. The applicant ought to have been fixed in the pay scale of Rs.4000-6000 considering the type of canteen and the number of employees in the establishment compared to the non-statutory canteen of INS Venduruthy under the 3rd respondent. Therefore, under the same employer the disparity exists in the type of canteen and the scale of pay. At least the scale of pay ought to have been fixed at Rs. 3200-85-4900 w.e.f. 1.1.1996. The applicant submitted a representation dated 3.3.99(A2) after Vth Central Pay Commission through proper channel before the 3rd



respondent requesting for removal of disparity in pay scale of the applicant. The 3rd respondent rejected applicant's representation by order dated 1.5.1999, which was challenged before this Tribunal in O.A. 93/2000. That O.A. was dismissed on the ground that there was no sufficient pleadings and that order of the Tribunal was challenged before the Hon'ble High Court of Kerala in O.P.No.10455 of 2000. The Hon'ble High Court by its judgement dated 10.10.2000 directed the 3rd respondent to consider and dispose of the applicant's representation afresh. The true copy of the judgement is A-3. Consequently the 3rd respondent vide order dated 6.12.2000(A4) rejected the representation of the applicant. The order passed on 6.12.2000 by the 3rd respondent is only a repetition of its earlier order dated 1.5.1999 rejecting the representation dated 3.3.99. The 3rd respondent did not consider the crux of the issue. It should have been with reference to the para 55.28 to para 55.31 of the recommendation of the Vth Central Pay Commission. The Vth Central Pay Commission has discussed in para 55.29 that due to lack of promotional avenues the canteen staff in statutory canteens are stagnating. In para 55.30, it is discussed that there is no discernible difference in the job contents of canteen employees whether they are working in statutory canteens or non-statutory canteens. Aggrieved by the said rejection order (A4) the applicant filed this O.A. seeking the following reliefs.

"1. To call for the records leading upto Annexure A4 order No. C.S.2695/43/910 dt.6.12.2000 issued by the 3rd respondent and quash the same as arbitrary and not in accordance with law.

2. To direct the 3rd respondent to remove the disparity in the pay scale of the applicant and to fix him in the scale of pay of Rs.4000-6000 w.e.f.1.1.1996, as fixed for the similar staff in the other canteens under the 3rd respondent.

3. Direct the 3rd respondent to revise the type of NSRY Canteen to higher grade in accordance with law.



or

Direct the 3rd respondent to remove the disparity in the pay scale of the applicant and to fix him in the pay scale of Rs.3200-4900 w.e.f.1.1.1996 as fixed for the similar staff in the non-statutory canteens.

or

4. To direct the 3rd respondent to grant the reliefs sought for in the representation dated 3.3.1999 produced as Annexure A2 in accordance with the directions contained in the judgement dated 10.10.2000 of the Hon'ble High Court of Kerala, produced as Annexure A-3.

5. Grant such other and further reliefs as this Hon'ble Tribunal may deem fit to grant in the circumstances of the case.

6. Cost of the application."

2. The respondents have filed a detailed reply statement contending that the relief sought by the applicant will not stand for good and the O.A. is not maintainable as this Tribunal has already dismissed the O.A.93/00 on the ground that equation of posts or equation of pay must be left to the Executive Government. The Government would be the best Judge to evaluate the nature of duties and responsibilities of posts. In pursuance of the Hon'ble High Court's order in O.P.No.10455/00, the representation has been considered and a reasoned order(A4) has been served on the applicant. The impleadment of Director of Canteen as one of the parties was wrong. The Director of Canteen deals with the canteen staff of non-statutory canteen and has no concern with the canteen staff of statutory canteens. Therefore, the O.A. is to be dismissed on the grounds of misjoinder of parties.

3. It is stated by the respondents that the applicant was working as Supervisor Grade III in statutory canteen of NSRY, Kochi. The Vth Central Pay Commission had recommended that the disparities that exist in the pay scale, recruitment qualifications and promotion avenues between canteen employees of statutory and non-statutory should be completely removed.

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Accordingly, the Vth Pay commission very carefully made their recommendation vide paragraph 55.31 for canteen staff in Ministry of Defence. Accepting the recommendation at paragraph 55.30 and 55.31, the Ministry of Defence revised the pay scales as per order No.11(15)/97/D(Civ-1) dated 26.3.1998 (Annexure R-3(A) the same as Annexure A-1 produced by the applicant). In compliance to Annexure R-3(A), the 3rd respondent has fixed applicant's pay in the scale of Rs.3050-4590 and the Department of Personnel and Training also issued orders revising the pay scale to the common category of non-statutory/departmental canteen employees/staff in various offices of the Government of India. It is very clear from Annexure R3(A) and Annexure R3(B), that Government had issued separate orders with regard to the pay scales of canteen staff in statutory canteen and non-statutory canteen. It is submitted that the order passed by Director of Canteen are not suo motu applicable to Canteen staff in statutory canteen and only Annexure R-3(A) is rightly applicable to the applicant as it relates to the revised pay scale of respective categories of canteen staff in statutory canteen in Defence Establishments. The applicant had not challenged the Government order but claimed higher pay scales without any valid grounds. A-1 does not indicate higher pay scale for the applicant. The Vth Central Pay Commission constituted by the Government has examined the non-statutory and statutory canteens with its members and total various types of employees and then nature of duties in each canteen. The Commission had examined the pay scale, cadre structure, recruitment qualification etc. of various categories of canteen staff and recommended for restructuring as at paragraph 55.22 of their report. Though the Commission recommended that disparities that existed in the pay scale, recruitment qualification and promotion avenues between canteen employees of statutory and non-statutory should be completely reviewed and they have carefully made their recommendation and

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accepting the recommendation at paragraph 55.30 and 55.31, the Ministry of Defence has revised their pay scale as per order Annexure A-1. The pay scale provided by the IVth Central Pay Commission had also taken into account by the Vth Central Pay Commission and made their recommendations accordingly. The order Annexure R-3(B) are not suo motu applicable to statutory canteen employees. The applicant has failed to produce any evidence/proof to establish that the Supervisor Grade III in the Statutory canteen and Manager Grade III in the non-statutory canteen are one and the same cadre, rank and equal post and therefore, that contention cannot be acceded to. It is further contended that in O.A.93/2000, this Tribunal has considered all aspects while giving a reasoned speaking order. It was dismissed on the ground of failure of the applicant to produce any statutory evidence of equal work and equal pay. The employees of statutory canteens in NSRY and non-statutory canteens in INS Venduruthy and the pay scales thereof cannot be compared as separate orders for revised pay scale have been issued at Annexure R-3(A) and R-3(B) by the Government of India based on the recommendation of the Vth Central Pay Commission. Under these circumstances, the respondents contended that the O.A. has no merit and it is to be dismissed.

4. The applicant has filed a rejoinder contending that Annexure R3(A) and R3(B) are orders of similar nature and it is squarely applicable to the applicant. A tabular statement (A7) has produced along with the rejoinder for a comparison of staff pattern in different canteens under the 3rd respondent. The applicant reiterated that the pay scale will have to be fixed at Rs.4000-6000 or at Rs.3200-4900 w.e.f.1.1.1996.

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5. We have heard the learned counsel of the applicant and that of the respondents. Shri E.M.Joseph, learned counsel appeared for the applicant and Shri C. Rajendran SCGSC appeared for the respondents and advanced their arguments reiterating the pleadings and contentions raised in the O.A. and that of the reply statement. The learned counsel for the applicant submitted that this is a discrimination under Article 14 and 16 of the Constitution in so far as the disparity in the pay scale between non-statutory canteen and other employees and that of the statutory canteen employees in the Defence establishment and therefore, the applicant is entitled to get the pay fixed as claimed in the O.A.

6. Learned counsel for the respondents on the other hand submitted that since the supervisory staff in the statutory canteen and that of the Manager in the non-statutory canteen are not comparable as their responsibility, risk and qualification/ recruitment process, etc. are on a different footing and therefore, they cannot be equated each other. This is the spirit of the recommendations of the Vth Central Pay commission and that of the Hon'ble High Court, therefore, a suitable speaking order considering all these points have been given to the applicant vide A-4 which in any way cannot be found fault with and therefore, the O.A. has to be dismissed.

7. We have given anxious consideration to the arguments advanced by both the counsel and perused the pleadings and material placed on record.

8. The applicant in this O.A. approached this Tribunal earlier in O.A.93/2000, which was dismissed. Thereafter, the applicant took up the matter before the Hon'ble High Court and the Hon'ble High Court in its judgement in O.P.No.10455/00 dated



10.10.2000 directed the 3rd respondent to consider and dispose of applicant's representation dated 3.3.99 and accordingly, it was disposed of by the respondents vide A-4 rejecting the contentions raised in the representation, which is now being challenged through this O.A. A-4 is a detailed order considering the various aspects of employment, difference in the employees of both statutory and non-statutory canteens and it also dealt with the Vth Pay Commission Report with specific reference to para 55.31 of the report for canteen staff in the Defence Establishments. The claim of the applicant is that there must be a parity of pay between the two canteen employees wherein the applicant is working in the industrial canteen attached to the NSRY, and through this O.A. the applicant sought for fixation of his pay scale of Rs.4000-6000 with effect from 1.1.96, and to revise the type of NSRY canteen to higher grade in accordance with law. On going through the order of the Hon'ble High Court, we find that there is no specific direction by the Court. But what has been directed is to dispose of the applicant's representation dated 3.3.1999 in the light of Annexure A-1 dated 26.3.98 which has been quoted in the said judgement as follows:

"The undersigned is directed to refer to the recommendations given by the Vth CPC in para 55.30 and 55.31 of their report and to say that the Government have accepted the recommendations to remove the disparities in the pay scales between the non-statutory canteen Employees in General and statutory canteen employees in Defence Establishments. Accordingly, the higher revised pay scales are hereby authorised in statutory canteen in Defence Establishments for the respective categories mentioned therein."

9. Admittedly the applicant is an employee of the non-statutory canteen under the 3rd respondent. The Vth Pay Commission has highlighted the disparities that existed in the pay scales, recruitment qualifications and promotional avenues between the canteen employees of statutory and non-statutory canteens and made recommendation as per paragraph 55.31 in their report for canteen staff in Ministry of Defence. In

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furtherance of that, the Ministry of Defence has issued an order dated 26.3.98 (Annexure R3(A)) and higher revised pay scales have been granted mentioning therein that it will come into effect from 1.1.96. Accordingly, applicant's pay has been revised and fixed in the scale of Rs.3050-4590 from Rs.950-1500. There was a hike in fixation of pay scale. This was reiterated and confirmed by the DOPT by Annexure R-3(A) and R3(B) orders.

10. Now the grievance of the applicant is that it should have been at Rs.4000-6000 w.e.f.1.1.96. It is evident from Annexures R3(A) and R3(B) that the Government had issued separate orders with regard to the pay scales of employees of the statutory and non-statutory canteens. The orders passed by Director of Canteen are not *suo motu* applicable to Canteen staff in statutory canteen. The order passed at R3(A) is rightly applicable to the applicant as it relates to the revised pay scale of respective categories of canteen staff in statutory canteen in Defence Establishments. The applicant has not challenged R3(A) order but claims higher pay scales. Annexure A/1 (the same as Annexure R3(A)) was issued with the concurrence of Ministry of Finance vide their order dated 19.3.1998 indicating at the bottom of the orders that "it does not indicate higher pay scale for the applicant." Vth Pay Commission after examining the non-statutory and statutory canteen employees and other type of employees and the nature of duties in each canteen with reference to the pay scale, cadre structure recruitment qualification etc. of various categories of canteen staff, recommended for restructuring as at paragraph 55.22 of their report. In furtherance, the Ministry of Defence, accepting the recommendation at paragraph 55.30 and 55.31, issued revised pay scale as per order at Annexure A-1. Annexure R3(B) is with reference to the canteen employees of

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non-statutory departmental canteens which in any way cannot be suo motu applicable to the statutory canteens. One of the arguments of the respondents was that the Supervisor Grade III like that of the applicant in Statutory canteen and the Manager Grade III in the non-statutory canteen are not the same cadre, rank and equal post. The volume of work, nature of work and quality of work performing under different categories of canteen are not one and the same but differ to each other. Therefore, there cannot be any comparison with each other canteens especially with the recommendations of the Vth Pay commission. The non-statutory canteen of INS Venduruthy in any way cannot be compared with that of the employees of the statutory canteen like the applicant.

11. On a perusal of the rules and the recommendations of the Vth Pay Commission, we find that the Vth Pay Commission never recommended the scale of pay in par with each other, but what has been recommended is the wide disparity that were in existence. The pay fixation vide R3(A) and R3(B) for statutory and non statutory canteens have been fixed by the concerned Ministries only after work study and considering various aspects like volume of work, quality of work etc. and we are to state that the applicant has not succeeded in placing the material/proof in support of his claim that the functions of Supervisor Gr.III in Statutory canteen and the Manager Grade III in the non-statutory canteens are similar. The revision of pay in the respective cadres has been made in giving effect to the Vth Pay Commission wherein the applicant has enjoyed the hike in the scale of pay. The claim of the applicant that his pay has to put in par with that of the Manager Gr. III in non-statutory canteen cannot be granted. In the matter of fixation of pay, in Union of India Vs. PV Hariharan & others (1997 SC L&S 838), Hon'ble Supreme Court has held that

"fixation of pay is not the function of the Central Administrative Tribunal and it is a function of the Government which normally acts on the recommendation of the Pay Commission. It is for the Expert Body to look into such matter." Therefore, it is clear that the pay fixation has been done in furtherance of the Pay Commission's recommendations, which has been accepted by the Government after an expert study on the matter, and respective orders have been passed. In these circumstances, we are refrained from interfering with the pay structure that has been fixed for the applicant and the other canteen employees and it cannot be faulted in any way. Apart from that the claim of the applicant for equal pay for equal work and parity thereof, in many decisions, such as 1993 (1) SCC 539, State of Madhya Pradesh and Another vs. Pramod Bhartiya and Others, Hon'ble Supreme Court has reiterated that the Tribunal ordinarily should not go into the question of fitment of officers in a particular group or pay scale attached thereto. The matter should be left to experts of Special Commission like Pay Commission unless there is some apparent error. In evaluating similarity, the qualification, nature of work, selection process, quality and volume of work, these are all the matters generally to be taken into consideration and Hon'ble Supreme Court also made it known that the Courts are not placed as Judge to evaluate the nature of duties and responsibilities of the post and therefore, equation of post or equation of pay must be the duty of Executive/Government.

12. On going through the impugned order A-4, we find that this is a very speaking and considered order with elaborate discussion of the Vth Pay commission with reference to paragraph 55.30 and 55.31 and whatever the disparity that existed had already been removed in respect of pay scales of the employees between the statutory canteens in general and non-statutory canteens in

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Defence establishments and orders issued thereof considering the various service conditions, volume of work and examining all the relevant aspects as per the recommendations of the Vth Pay Commission. On a perusal of the said order, which is impugned herein, we do not find any reason to interfere with the order or set aside the same.

13. In the result, the O.A. fails and deserves to be dismissed. We dismiss the O.A. accordingly with no order as to costs.

(Dated, 3rd February, 2003)



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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