

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 314 OF 2010

Friday, this the 21st day of October, 2011

CORAM:

**HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. All India Naval Clerks Association
Represented by General Secretary
T.M.Mathew, LDC Headquarters
Southern Naval Command, Kochi – 4
 2. K.S.Babu
Assistant, Headquarters
Southern Naval Command
Type 3 C-III Dawson Vihar Tylakodam PO
Vytilla, Kochi
 3. Smt. T.K.Ramavathy
UDC, Southern Naval Command
Revathy, 29/5889
Panampilly Nagar, Kochi – 36
 4. M.J.Martha
UDC, Naval Ship Repair Yard
Naval Base, Kochi
- ... Applicants

(By Advocate Mr.S.Radhakrishnan)

versus

1. Flag Officer Commanding -in-Chief
Southern Naval Command
Kochi – 4
 2. Union of India represented by the Secretary
to Government of India
Ministry of Finance
New Delhi
 3. Administrative Officer, Grade II
Civilian Administrative Office, Headquarters,
Southern Naval Command
Kochi - 4
- ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

The application having been heard on 21.10.2011, the Tribunal on the same day delivered the following:



ORDER**HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER**

The 1st applicant is a Registered Association of the Indian Navy, the 2nd applicant is the office bearer of the Association and 3rd and 4th applicants are members of the Association. They are aggrieved by the order dated 13.03.2009 issued by the Integrated Headquarters of Ministry of Defence holding that the applicants who were working as Assistants in the organization outside the Secretariat are not entitled to get the pay scale of Assistants in the Secretariat organization i.e ₹ 5500-9000 with effect from 01.01.1996, the date of implementation of the 5th Pay Commission report. Annexure A-1 is the said order. The said order was passed on a representation made by the applicants as directed by the Hon'ble High Court of Kerala in W.P(C) 33648 of 2004 dated 22.10.2007. Earlier the applicants approached this Tribunal by filing OA 32/2002 inter-alia contending that Assistants in Navy should be granted pay parity with the Assistants in Central Secretariat Service and some of its attached and subordinate offices. They had compiled an impressive array of historical and judicial precedents to substantiate their contention. According to them, the 6th Pay Commission recommended the same scale of pay to the Assistants in CSS as also to the Assistants in the lower formations with effect from 01.01.1996. The dispute however, is between 01.01.1996 to 01.01.2006. The intervening period the Assistants in the Navy were alone treated differently from the Assistants working in other lower formations. This Tribunal on an earlier occasion in OA 32/2002 held that the Assistants in the Navy were at no point of time comparable with the Assistants of CSS as they did not belong to the category of Assistants at all, until the 5th Pay Commission redesignated the post of Office



Superintendent Grade II as Assistants and gave them the upgraded scale of ₹ 5000-8000 instead of the replacement scale of ₹ 4500-7000 (which corresponded to the scale of ₹ 1400-2300 in which OS Grade II was placed). The Office Superintendent was in a scale lower than Assistant until the 5th Pay Commission. The Tribunal proceeded to hold that it has to be accepted that there was no case for parity until the 5th Pay Commission recognized the two posts as equal. The 5th Pay Commission created the designation in Navy and granted the pay scale of ₹ 5000-8000. Holding that this is not the right forum to declare the equality of status as held in **State of U.P & Ors v. J.P.Chaurasia & Ors, 1989 SC (L&S), 71** and **Bhagwandas v. State of Haryana 1987 4 SCC 634** where the Apex Court observed that :

"..... 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 degrees to the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts.....".

2. The Tribunal also referred to the decision of the Principal Bench of CAT in OA 144-A of 1993 and held that the three main situations listed by the Principal Bench is as follows:-

- (i) *The Pay Commission omitted to consider the pay scale of some posts of any particular service.*
- (ii) *The Pay Commission recommended certain scales based on no declassification or irrational classification.*
- (iii) *After recommendation of th Pay Commission is accepted by the Government, there is unjust treatment by subsequent arbitrary state action or inaction. In other words, the subsequent state action or inaction results on favourable treatment to some and unfair treatment to others."*

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3. But this Tribunal proceeded to add that the case of the applicants does not fall into any of the situations nor have the applicants showed any concrete situation in which they have been prejudicially treated in the application of the 5th Pay Commission recommendations. Ultimately the application was dismissed. Aggrieved thereby the applicants approached the Hon'ble High Court of Kerala in W.P(C) 33648 of 2004 challenging the said decision of this Tribunal. The said Writ Petition was disposed of by judgment dated 22.10.2007, a copy of which is marked as Annexure A-3. After referring to the fact situation, the Hon'ble High Court held that nature of duties of the petitioners who are Assistants in the Navy are equivalent or comparable with the nature of duties in other lower formations and therefore they are entitled to get the same scale of pay enjoyed by other Assistants, is a matter which should be considered at the first instance, by the Government. In view of the matter, the applicants were asked to submit the representations before the Government and directed the Government to dispose of the matter within one month from the date of judgment. It is also directed that in that event the said respondent will consider the claim of the petitioners for granting the scale of Pay presently enjoyed by the Assistants in CSS and other lower formations to the Assistants in Navy. The 2nd respondent (Ministry of Finance) shall take a decision on this point after affording an opportunity of being heard to the applicants. Thus the effect of the dismissal of the case filed by the applicants in OA 32/02 was intervened by the Hon'ble High Court leaving the question in the first instance to be decided by the Government. In other words, if there were any finding contra to the applicants, observing that the Assistants in the Navy are not to be equated with the Assistants in other lower formations, such finding has



been upset by the decision of the Hon'ble High Court. Pursuant to the judgment of the Hon'ble High Court, applicants preferred a detailed representation to the government which was disposed of by Annexure A-1, which is impugned in this OA. In Annexure A-1 order dated 13.03.2009, it was held that the parity of Assistants in CSS and in other lower formations cannot be extended to Assistants in Navy. For easy reference we may refer to Para 4 where the respondents observed as follows:-

- “(a) It is observed from the copy of the judgment made available by the Association dated 28 Sep 1998 that the Award of the Board of Arbitration which has been quoted in OA 527/97 was in respect of Stenographers Grade II in the subordinate offices. The same was not applicable to the post of Assistants in the subordinate offices.*
- (b) The pay structure was subsequently revised based on the recommendations of the 5th Central Pay Commission. The pay scale allowed to the Assistant working in the organizations outside the Secretariat was ₹ 5000-8000 whereas the pay scale of Assistants in the Secretariat organization was allowed the scale of pay of ₹ 5500-9000. Thus the 5th Central Pay commission did not find any parity with the Assistants in the Secretariat vis-a-vis those working outside the Secretariat as per Para 46.9 of 5th Central Pay Commission recommendations also.*
- (c) As a result of acceptance of the recommendations of 6th Central Pay Commission, the pay scales of ₹ 5000-8000, ₹ 5500-9000 and ₹ 6500-10500 have been merged and placed in the Pay Band-2 with grade pay of ₹ 4200/-.”*

4. Thus according to the respondents, the award of Board of Arbitration was in respect of Stenographers Grade II in the subordinate offices. In this context, we may refer to some more facts as to how the matter was referred to the Board of Arbitration. Prior to 4th Pay Commission the pay scale of Assistants in CSS was ₹ 425-800 whereas the pay scale of Assistants in the lower formation was ₹ 425-700. The 4th Pay Commission recommended revision of pay scale of Assistants of CSS



to pay scale of Assistants to ₹ 1400-2600 whereas pay scale of Assistants in lower formation was ₹ 1400-2300. The employees of the lower formations were asserting that the Assistants in other lower formations are to be treated on par with the Assistants in CSS and to resolve the dispute the Government referred the matter to the Board of Arbitration by Justice D.Bhaskaran. The said Board gave its award for parity for Stenographers, Grade II of CSS and Stenographers, Grade II in subordinate offices and Government of India vide its order dated 04.05.1990 accepted the award. Thus stenos in subordinate and attached offices were placed in the pay scale of ₹ 1400-2600 bringing them on par with the Stenographers Grade 'C' of CSS. Some of the employees in other lower formations were given the revised scale of ₹ 1640-2900 from 01.01.1986. But the said revision was not extended to some of the employees. It is inter-alia challenging the upgradation of pay scale in favour of Assistants and Stenographers of CSS, OA was filed before the Principal Bench of the CAT. Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training vide their order dated 31.07.1990, a copy of which is produced as Annexure A-4 said that the question regarding revision of pay scales for the post of Assistants in CSS has been under consideration of the Government in terms of order dated 23.05.1989 in OA 1538/87 of CAT, Principal Bench, New Delhi. Accordingly, the President is pleased to prescribe the revised scale of ₹ 1640-2900 for the pre revised scale of ₹ 425-800 for duty posts included in the Assistant of CSS and Grade 'C' Stenos of CSSS with effect from, 01.01.1986. The same revised pay scale will also be applicable to Assistants and Stenographers in other Organizations like Ministry of External Affairs which are not participating in

the Central Secretariat Service and Central Secretariat Stenographers Service but where the posts are in comparable grades with same classification and pay scale and the method of recruitment through open competitive examination is also the same. Challenging the said notification certain employees approached the Principal Bench of CAT by filing OA 527/97. One of the grounds by the applicants therein was to assail the aforesaid upgradation is that the duties and responsibilities of the applicants are in no way inferior to those of Stenos Grade 'C' of CSSS. That confining Annexure A-1 benefit only to Assistants of CSS and also Grade C Stenos of CSSS has been held to be wrong in the earlier order rendered in OA 144-A / 93 and connected cases decided on 19.01.1996. In those cases, some of the applicants in OA 527/97 who were Assistants and Stenos in the CBI, Assistants in the Directorate General of Income Tax and Stenos Grade II in other Departments. These OAs were allowed by granting the benefit of the pay scale of ₹ 1640-2900 to the applicants who are similarly placed like the applicants herein. It was for claiming parity in the matter of scale of pay that O.A 144-A/1993, 981/1994 etc. were filed. The applicants in OA 527/1997 came with a grievance claiming the same benefit. It was their case that Annexure A-1 order is violative of Articles 14 and 16 of the Constitution of India and there is no reason to treat the applicants in a different manner. In para 7 of the order, the stand taken by the respondents has been reiterated.

" In the counter, Shri Madhav Panicker, counsel for respondents submitted that the 4th PC recommended pay scale of ₹ 1400-2300 to stenos of DGI which was the normal replacement scale of ₹ 425-700. The pay scale recommended by 4th PC for Stenos Gr.'C' in the CSSS was ₹ 1400-2600. Respondents did not deny that the pay scale of Stenos Grade II in DGI was revised from ₹ 1400-2300 to ₹ 1400-2600 vide order dated 04.05.90 bringing them at par with Stenos Gr.C of CSSS. The aforesaid parity was



later on disturbed by order dated 31.07.1990 by revising the pay scale of Assistants and Stenos Gr.C in CSSS from ₹ 1400-2600 to ₹ 1640-2900 in implementation of order dated 23.05.1989 by the Principal Bench of the Tribunal. According to this order, revised scale of pay of ₹ 1640-2900 is applicable for pre-revised scale of pay of ₹ 425-800 for the duty posts included in the Assistants Grade of CSS and Stenos C of CSSS. This scale was also applicable to Assistants and Steno C in other organization, like Ministry of External Affairs which are not participating in the CSS/CSSS but where the posts are in comparable grades with same classification and pay scale and the method of recruitment is through open competitive examination. Subsequently, this OM was followed by clarification OM dated 03.01.1991 by DOPT making it clear that the revised pay scale is also applicable to such posts in the Ministries/Departments and those of attached and subordinate offices in which the method of recruitment is direct recruitment through examinations conducted by SSC. In case of posts of Assistants and Stenographers or other posts in the pre revised scale of ₹ 425-800 where the method of recruitment is not through the same open competitive examination, these orders are not applicable."

5. The observation of the Tribunal in Para 18 in OA 144-A/ 98 and OA 548/94 is extracted in Para 14 of Annexure A-7 order as follows:-

" This part of OM has been examined by the various Benches of the Tribunal. Assistants and Stenographer Grade C working in the department of Central Administrative Tribunal, Border Security Forces, Indo Tibetan Border Police, Central Industrial Security Force and Bureau of Police and Research Development were granted parity with the Assistants of CSS and stenographer Grade C of CSSS by the Tribunal. It is also worthwhile mentioning that there was no provision for direct recruitment to the post of Assistants in Central Administrative Tribunal."

6. The Tribunal ultimately held that the respondents stand that the applicants are promotees and they cannot be granted the revised pay scales can hardly be sustained in the eye of law and it was held that the applicants are also entitled for similar benefits. In this connection, it may be noticed that the decision in OA 985/93 became final after dismissal of the SLP filed by the Department. It was held that in the absence of any record to show after the recommendation of the 4th Pay Commission which was accepted by the Government, no new development has occurred to create differentiation between the status of the Assistants working in lower



formation and that of CSS. Similar view was taken by Delhi High Court and allowed the revised scale of ₹ 1640-2900 to the Assistants and Stenographers of the National Book Trust, New Delhi in the case of Deepankar Gupta in CWP No.4842/96. The decision in OA 144-A/93 by the Principal Bench, CAT which we have referred to above is produced as Annexure A-8. Yet another order of the Principal Bench in OA 981/94 is produced as Annexure A-9. There the applicants were All India ESI Corporation Employees Federation. They were aggrieved by the communication denying them the pay scale of ₹ 1640-2900 as against similarly situated Assistants in CSS who were extended the benefits. The dispute therein was also parity in pay scale sought by the ESI vis-a-vis their counterparts working in CSS. Annexure A-10 is the decision rendered by the Guwahati Bench of CAT in OA 63/97. There the applicants are Senior Auditors in the office of the Principal Accountant General (Audit) Assam and Meghalaya. They also claim that they are entitled to the pay scale of ₹ 1640-2900. Ultimately the Tribunal allowed the application in their favour. There is no dispute that the award by Justice D.Bhaskaran recommending the same scale in the lower formations was accepted and implemented by the Government. We have already noticed in Annexure A-7 that the same benefit was extended to similarly situated persons in other lower formations. Guwahati Bench also extended the benefit to similarly placed Assistants in A.G's office. Therefore, it is idle to contend that the decision of the award rendered by Justice D.Bhaskaran was in respect of Assistants and Grade II Stenos in CSS which were not subordinate offices. In this connection, it may be noticed that Assistants in Navy were designated earlier as Office Superintendents Grade II and Senior most UDC's doing duties of complex nature were redesignated as



Assistants with effect from 01.01.1996. As a matter of fact, there is no dispute that parity was extended to Assistants in other lower formations and they were treated alike by the various decisions of the Tribunal by extending the pay scale of ₹ 1640-2900 as that of Assistants in CSS. Therefore, as a matter of fact even this Tribunal while rendering the decision in OA 32/2002 has found that the applicants are all Assistants and so far there was no dispute. The fact that even assuming Justice D.Bhaskaran award was in respect of Stenographers Grade II in lower formations, after referring the Justice D.Bhaskaran award, the Government accepted and implemented and the various Tribunals extended the benefit to the post of Assistants in 8 like establishments like, CAT, Border Security Force, Indo Tibetan Border Police, Central Industrial Security Force, Bureau of Police and Research Development, Customs and Central Excise, Director General of Income Tax Department and Directorate of Field Publicity. So the case of applicants cannot be discriminated and there was no data to prove that the Assistants in Navy are to be differently treated from other lower formations.

7. The second reason given for rejection is that the 5th Pay Commission did not find any parity with the Assistants in Secretariat vis-a-vis those working outside the Secretariat. As a matter of fact, the 5th Pay Commission did not find any parity and if it had recommended otherwise there would not be any occasion for any dispute of this nature. After the recommendation of the 4th Pay Commission, there were no new development and in the absence of any good reason, there is no reason to treat them differently when admittedly, Justice D.Bhaskaran rendered award on the dispute arising in the 4th Pay Commission as Assistants in

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lower formation be equated with Assistant in CSS.

8. Yet another point on which the representation was rejected is that the 6th Pay Commission has accepted the equation of the Assistants in lower formations with that of Assistants in CSS. At least that be so, if there is any difference between Assistants working in Navy and Assistants elsewhere in lower formations, different recommendations should have been made by the 6th Pay Commission. On the other hand, the 6th Pay Commission has recommended the same Pay Band with same Grade Pay. In the result none of the grounds stated in Annexure A-1 was sustainable in the eye of law. As a matter of fact the Hon'ble High Court specifically directed the consideration of the question as to whether the applicants who are Assistants in the Navy are equivalent or comparable with the nature of duties in the other lower formations and therefore they are entitled to get the same scale of pay enjoyed by the other Assistants, is a matter at the first instance to be considered by the Government. But the Government did not address this question at all while disposing the representation. The Government has no case that having due regard to the nature of duties in the Navy and in other lower formations, they are totally different. Thus the government while disposing the representation did not advert to the relevant and perhaps the sole question as is referred above but on extraneous consideration find the applicants not entitled for the equal treatment.

9. In the result, we declare that the applicants are to be treated alike with that of the Assistants in other lower formations and their pay scale revised as in the case of applicants in Annexures A-8, A-9 and A-10 and



issue necessary orders within a period of three months from the date of receipt of a copy of this order.

8. OA is **allowed** as above. No costs.

Dated, the 21st October, 2011.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R.RAMAN
JUDICIAL MEMBER

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