

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~X.XX.XXX~~

411/89

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DATE OF DECISION 21-1-92

P.T. Joseph & 2 others Applicant (s)

Mr. G.Sivarajan Advocate for the Applicant (s)

Versus

Union of India & 4 others Respondent (s)

Mr. P.A.Mohammed Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V.Krishnan, Administrative Member

The Hon'ble Mr. A.V.Haridasan, 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

N.V.Krishnan, AM

The applicants are officers of the Departmentalized Accounting Organisation of the Government of India, headed by the 2nd respondent, the Comptroller General of Accounts, Ministry of Finance, Department of Expenditure. Their grievance is that the parity between their pay scales and that of the officers of the Audit Wing under the Comptroller & Auditor General of India which obtained till 29.2.84 was disturbed from 1.3.84 by giving the latter officers a higher pay scale and that this disparity has now been set right with effect from 1.4.87 only. They claim that the disparity which existed earlier amounts to denial of equal pay for equal work and should have been set right from the date it arose.

2. The brief facts giving rise to this application are as follows:

2.1 The Comptroller and Auditor General of India (CAG, for short) is, admittedly, the highest constitutional authority responsible for the maintenance of accounts of the Central Government and State Governments as well as for the preparation of Audit Report for submission to Parliament as required by the Constitution. There was always a suggestion that, to enable the CAG of India to concentrate on the audit functions which are more important, he should be relieved of his accounting functions, because, in the normal course, the accounts ought to be maintained by the concerned Government.

2.2 The first step in this direction took place in the Central Government when the responsibility of maintaining the accounts of the Government of India was transferred to the respective Departments under the overall control of the Ministry of Finance, Department of Expenditure. To give effect to such separation, the Departmentalisation of Union Accounts (Transfer of Personnel) Act, 1976 was passed.

2.3 Immediately prior to this separation, the applicants were employees in the Indian Audit and Accounts Department under the overall control of the CAG and were working in the office of the Accountant General, Kerala. Admittedly, they were transferred to the Departmentalized Accounting Organisation, allegedly against their wishes. The applicants are respectively working as Accounts Officer in the Central Administrative Tribunal, Ernakulam Bench, Pay & Accounts Officer, Ministry of Agriculture, Department of

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Agriculture and Co-operation, Ernakulam and Assistant Accounts Officer in the zonal accounts office of the Central Board of Direct Taxes.

2.4 A re-structuring of the Audit and Accounts Organisation was made by the CAG with effect from 1.3.1984, keeping the Audit Office separate from the Accounts and Entitlement Office. The scheme was announced in Kerala by the Accountant General Kerala by his notice dated 24.12.83 (Annexure-B).

2.5 The salient features of the scheme relevant for this case are as follows:

i) In the Audit Office, there will be two categories of employees--Auditors and Section Officers. In each category 20% of the posts will be in a lower pay scale (Rs 330-560 and Rs 500-900 respectively) and the remaining 80% of the posts will be in a higher scale (Rs 425-800 and Rs 650-1040 respectively). It was indicated that this was done considering the special nature of the work and ^{it was also} stipulated that the actual audit should be done by the officials holding posts in the higher pay scale.

ii) As against this, in the Accounts and Entitlement Offices, which deal with only accounts matters, there was no revision of the pay scales, though there was a change in the designations. The Auditors and S.G. Auditors were re-designated as Accountants and S.G. Accountants. The Section Officers and S.G. Section Officers were re-designated as Section Officers (Accounts) and S.G. Section Officers (Accounts). However, the following benefits were to be provided to them.

It was provided that future recruitment to the grade of Accountants (corresponding to the post of Auditor in the combined office and of Auditor in the lower scale in the

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restructured Audit office) will be only by promotion from Clerks--50% on seniority basis and 50% through departmental examination for Accountants.

10% of Accountants and senior grade Accountants will be eligible for special pay of Rs 35 when engaged in important and complex functions.

20% of the vacancies of Section Officers will also be filled by promotion from selection grade Accountants.

2.6 The contention of the applicants is that prior to this re-structuring, officers in both the Audit Wing and Accounts Wing in the ^{Indian} ~~the~~ Audit and Accounts Department were on par with each other. The re-structuring sscheme has created an inequality in pay scales as between equals and amounts to hostile discrimination and therefore the disparity should be removed.

2.7 It is stated that this Scheme was challenged by the Indian Defence Accounts Employees Association in the Supreme Court. However, as the Fourth Pay Commission was to be appointed, the writ petition was withdrawn from the Supreme Court as both the parties agreed that the question raised in the petition should be decided by the Fourth Pay Commission.

2.8 This matter was considered by the Fourth Pay Commission. That Commission observed that the Audit and Accounts functions are complementary to each other and are generally performed in an integrated manner which is necessary for effective functioning.

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Hence, the Commission recommended broad parity in pay scales of the staff in the Indian Audit and Accounts Department and other Accounting Organisations of the Government of India. The Commission left to the Government to decide the number of posts to be placed in the lower grade and the higher grade like in the Indian Audit and Accounts Department where 20% of the posts is in the lower grade and 80% in the higher grade.

2.9 These recommendations were accepted and the Annexure-D order dated 12.6.87 was passed by the Government of India. In the Accounting Organisations of the Government of India, it was now decided to have 20% of the posts of Junior Accountants and Section Officers in the lower scale (Rs 1200-2040 and 1640-2900 respectively) and the remaining 80% of the posts were designated as Senior Accountants and Section Officers of Selection Grade in the scale of Rs 1400-2600 and Rs 2000-3200 respectively). These orders were to take effect from 1.4.87. With this decision the disparities created from 1.3.84 disappeared.

2.10 The demand of the applicants is that the Fourth Central Pay Commission's recommendation is an admission that there was discrimination earlier in this matter from 1.3.84 and that therefore they are entitled to get the benefit of the Annexure-D order from that date.

2.11 It is in these circumstances that the applicants have, in effect, prayed for a direction that the benefit of the Annexure-D memorandum be given from 1.3.84 with all consequential benefits.

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3. The respondents have denied that any relief is due to the applicants. It is submitted that the applicants were transferred to the Departmentalised Accounting Offices under the Departmentalisation of Union Accounts (Transfer of Personnel) Act from 1.3.76. They have also been confirmed in the respective Departmentalised Accounting Offices with effect from 1.4.80 by orders dated 13.4.82, 2.2.87 and 4.9.82 (Exbt. R1, R2 and R3). Therefore, they cease to have any connection whatsoever with the Indian Audit and Accounts Department, as their lien on that Department stood terminated under the provisions of FR 12A and 14A(d).

4. The respondents contend that though the claim is based on the principle of equal pay for equal work, the applicants have not made out that they have been doing equal work as the Audit people since 1.3.84. The Pay Commission has nowhere stated that the work done by the Accounts staff is equal to the work done by the Audit staff. What weighed with the Commission was only that there was parity between the pay scales applicable to both these staff earlier. Further, it was contended that if the Commission felt that the accounting staff were also entitled to the same treatment as the Audit staff, nothing prevented that Commission to fix the percentage of staff in the higher pay scale and in the lower pay scale at 80% and 20% respectively--as in the case of Audit staff--and also direct that this should be made effective from 1.3.84. On the contrary, it left this matter to the judgement of the Government which

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is a clear indication that the Commission did not opine that equal pay was being denied for equal work.

5. It was also contended that the Bangalore Bench of the Central Administrative Tribunal had rejected the plea of discrimination in Nanjundaswamy Vs. Accountant General [1988 (8) ATC 271] but directed that the benefit of the Pay Commission's recommendations should be given effect from 1.1.86 as in the case of other recommendations regarding pay scales.

6. The learned counsel of the applicant however submitted that the aforesaid decision of the Bangalore Bench was rendered without considering another earlier ^uunreported decision of the Jodhpur Bench of the C.A.T. in IA 609/86, a copy of which is produced for our perusal. That was a case concerning the officers of the Central Excise and Customs Department who were enjoining parity of pay scales with officers of the Income-tax Department from 1.4.73 till 1.1.80. On that date, the Government of India raised the pay scales of the Income-tax Officers from Rs 425-800 to Rs 500-900 in compliance of an Arbitration Award. The matter was considered by the Fourth Pay Commission which recommended that the parity of pay scales between these two categories be restored. The Government of India gave effect to that decision with effect from 1.1.86. The Central Excise & Customs Non-gazetted Officers' Association and another approached the Jodhpur Bench of the Tribunal in IA 609/86 claiming that in the circumstances they are entitled to relief from 1.1.80 from which date the discrimination arose. This was allowed by that Bench.

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7. A question also arose whether it was not possible to contend that during the period from 1.3.84 there were good and sufficient reasons for according larger benefits only to the Audit Staff of the Indian Audit Department. In this regard, we directed the learned ACGSC to produce for our perusal the records on the basis of which the original decision of 1.3.84 was taken. These documents have since been produced.

8. We have carefully perused the records of the case and given our anxious consideration to the rival submissions made by the parties.

9. Respondents have contended that this application is time barred. The applicants should have challenged the restructuring scheme, which became effective from 1.3.84, within time. It is not open to claim that relief in an indirect manner by contending that the benefit of Annexure-D order dated 12.6.87 should be made effective from 1.3.84. May be there is some force in this, but the applicants have stated that a petition filed by the Indian Defence Accounts Employees Association before the Supreme Court was withdrawn as both parties agreed that the question raised in the petition would be better decided by the Fourth Pay Commission. Hence the bar of limitation cannot be seriously held against them.

10. A perusal of the judgement of the Bangalore Bench in Nanjundaswamy's case shows that the applicants therein are Accounts staff of the Indian Audits and Accounts Department, i.e. the persons basically affected

by the initial restructuring scheme implemented in Kerala by the Annexure-B letter. The question raised in the present application was directly an issue in this case. Extracts of paras 27, 28, 36 and 37 of that judgement are instructive and are reproduced below:

"27. Dr. Nagaraja next contends, that the persons allocated to the Accounts Wing, who possessed similar qualifications before and after entry into the Department, were performing duties of same nature, as those allocated to the Audit Wing, and that being so, allowing them lower scales of pay than those allowed to the Audit Wing was violative of Articles 14 and 16 of the Constitution. On this aspect, Dr. Nagaraja relies on the recommendations of the Fourth Pay Commission at para 1138 and the latest order of GOI made on 12.6.87. While relying on the order dated 12.6.87 of the GOI, Dr. Nagaraja contends, that on the very terms of that order, the applicants were entitled to the revised pay scale sanctioned in that order from 1.1.1986, as in the case of all other civil servants of the Union of India."

"28. Shri Padmarajaiah contends that the inherent distinctions and differences between the Audit and the Accounts Wings, justified the award of higher scales of pay to those working in the former and the same was not irrational and arbitrary and was not violative of Articles 14 and 16 of the Constitution. On the claim of the applicants for revised pay scales from 1.1.86, Sri Padmarajaiah contends that the decision of GOI extending the revised pay scales being a concession, the same cannot be extended by the Tribunal from any earlier date and from 1.1.1986."

"36. On the formulation of the Scheme which spells out slightly higher scales of pay for those who had opted for the Audit Wing and slightly lower scales of pay for those opted for the Accounts Wing, the applicants were given the option or preference to work either in the Audit or the Accounts Wing. But, the applicants for reasons best known to them, which in any event is not material for our purpose, opted to remain in the Accounts Wing. When the applicants with open eyes had opted to remain in the Accounts Wing, which provided for lower scales of pay, then they cannot complain that they have not been given higher scales of pay as sanctioned to the Audit Wing. On this short ground itself, we must reject

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this claim of the applicants, without examining all other questions. But, notwithstanding this, we will now also examine the merits of this claim of the applicants."

"37. With due regard to the nature of the duties and various other relevant factors, GOI had sanctioned slightly higher scales of pay to the personnel of the Audit Wing. We cannot say that they are all unreal and irrelevant and have no nexus to the objective sought to be achieved. The fact that the qualifications inclusive of training before and after entering the integrated IA and AD were similar, in the case of the personnel in the Audit and the Accounts Wings, does not necessarily imply that there cannot be differences after bifurcation. We are, therefore, of the view that the orders allowing higher scales of pay to personnel of the Audit Wing and not to the personnel of the Accounts Wing, satisfies the twin tests of a valid classification and is not also arbitrary. We, therefore, see no merit in this contention of Dr. Nagaraja and we reject the same."

It has been observed that it cannot be stated with certainty that there cannot be any difference between the two establishments in the Indian Audit and Accounts Department after 1.3.84. This is an important point that has to be noticed. The bifurcation of the Indian Audit and Accounts Department was meant to serve a particular objective and differences in the quality of work were built in in the scheme itself. This will be clear from the special provision in the scheme relating to recruitment to the post of Accountants and Section Officers to which we have made a reference ⁴ in para 2.5 supra. earlier. Therefore, the scheme itself had created differences between the two groups.

11. As seen from the judgement in Nanjundaswamy's case supra it appears that in an earlier case filed before the Madras High Court and later transferred

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to the Madras Bench (TA 987/86), the restructuring scheme itself had been challenged. That case (B.Ranganathan Vs. C.A.G. of India) was decided on 9.12.87 but the judgement does not appear to be reported.

12. The same matter has been decided by the Allahabad High Court in Sudhish Chandra & others Vs. Comptroller and Auditor General of India [1986(1) SLJ 136 All.]. That was also filed by the affected staff of the Indian Audit and Accounts Department. The issue of discrimination raised therein was repelled as follows:

"61. We have heard learned counsel for the petitioners on this point and at some length, but we are not impressed by the arguments. The Manual clearly lays down the objects and the need for restructuring of the two cadres. The Scheme spells out the reasons for having two separate wings in the cadre so that there is an improvement in the maintenance of accounts of the State Government transaction as well as to improve the quality of Audit and to give better service to the community of Government employees. The basic aim of the Scheme was to promote the efficiency and to improve the quality of work. The intention was that by creating two separate wings in the cadre the work may proceed with the expertise needed. The scheme has been referred to earlier in this judgement and it will only suffice to say that the Scheme aims at streamlining the system in the Accountant Generals and similar offices so that there may be prompt and efficient disposal of the matters that come before it. The employees are there to do the work that comes before them. They are not really concerned as to how the C&AG and the Government want the work to be done. The employees would only be concerned if they were adversely affected in regard to pay, emoluments and other service conditions."

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"70. It is, therefore, evident that 80 per cent Section Officer transferred to the Audit side would get a new pay scale i.e. 650-1040. This has been explained in the scheme as essential,

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for the audit work requires specialised work. The other change is that the Senior Auditors would get the scale of Rs 425-800 but the point is that all those who have opted for the Audit side are to be considered for the Audit side unless they decline to go to that side when their turn comes or they get a promotion in the Accounts side itself. We do not see any discrimination in this. With regard to the other pay scales, they are the same for both sides. There is a better pay scale for group 'D' peons. We see no discrimination there too. We may reiterate once again that all those who have opted for the Audit side and have not been placed on that side, their names are included in a Waiting List and they are to be considered before any direct recruitment is resorted to. This is ample safeguard for all those who have opted for the Audit side but have not been absorbed at present in the Audit side. It is also clear that all those who have applied for the Audit side cannot be absorbed immediately--the number being in excess of the posts available on the Audit side. It is, therefore reasonable for the C&AG to have provided in the Manual for this alternative arrangement for them. In our opinion, there is neither any discrimination nor any illegality in this part of the scheme. Consequently, we find no merits in the arguments of the learned counsel for the Petitioners on this point."

13. We are in respectful agreement with the conclusions reached in the aforesaid three decisions. In these circumstances, we do not find it necessary to examine afresh whether the restructuring scheme introduced from 1.3.84 was vitiated by the vice of discrimination during the period it was in force from 1.4.84 to 31.3.87.

14. That leaves for consideration the contention of the learned counsel of the applicants that in Nanjundaswamy's case the judgement was rendered without considering the earlier judgement of the Jodhpur Bench in the case of Central Excise & Customs and non-gazetted officers/that the present application should be disposed of following the latter judgement.

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15. We have perused that judgement. It is true that the Judhpur Bench has directed that though the parity of pay scales between the officers of the Income-tax Department and the applicants has again been brought about from 1.1.86 by implementing the Fourth Pay Commission's recommendations in this behalf, it, nevertheless, found that such orders should be given effect to from 1.1.83 when a discrimination was made between the pay scales of the two groups. A careful perusal of that judgement shows that this direction was issued in entirely different circumstances. Admittedly, the two groups [✓] (i.e. Income-tax Inspectors & ~~Excise~~ Inspectors) were not getting the same pay scales and this disparity continued for quite some time. For the first time, the Third Pay Commission considered the matter in detail and recommended the same pay scale for the Inspectors in the Central Excise and Customs and Preventive Department--coupled with certain recommendation regarding recruitment--which was accepted by the Government. The scale prescribed was Rs 425-800 and was given to both groups. It was then that the officials of the Income-tax Department clamoured for a higher pay scale. Ultimately, the matter was decided by arbitration. It has been found by that Bench that before the Arbitrator the Government of India resisted the claims of the Income Tax Officers on the ground that if that claim was admitted, it would be necessary to extend the benefit to the officers of the Central Excise and Customs Department also. It was held by the Bench that the mere fact that an Arbitrator who considered only the claims of

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income-tax officers, increased the pay scale to Rs 500-900 will not detract from the basic fact that officials of the two Departments have to be treated on par as was recommended by the Third Pay Commission. That apart, on the conclusion of ^{the} ~~arbitration~~ proceedings relating to the income-tax officers, the case of the Central Excise and Customs Inspectors ~~xxx~~ was not referred for arbitration as a decision had already been taken by the Government to set up the Fourth Pay Commission.

16. Thus, there are basic differences between the two cases. The Pay scales of Inspectors of Central Excise and Customs and the Income-tax Inspectors were different till about 1973. It is the Third Pay Commission which recommended parity and recommended Rs 425-800 for both groups. This was given effect to from 1.1.73. In the present case, there was a parity between the Audit Staff and the Accounts Staff till 1.3.84 on which date the new restructuring scheme was introduced which brought into existence a disparity in the pay scales based on certain relevant provisions. That apart, in the former case the Government contended before the Arbitrator that the Central Excise and Customs Inspectors were doing similar work as the ~~xxxxxxx~~ ^{Inspectors} of Income-tax Department. In the present case there is no such admission. Lastly, in the present case, the difference in the treatment meted out to the Audit staff and Accounts staff of the Indian Audit and Accounts Department has been upheld by two judgements.

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17. For these reasons, we are of the view that the decision of the Jodhpur Bench is distinguishable and has been rendered in totally different circumstances which are not replicated in the present case.

18. We are, therefore, of the view that there is no merit in the claim that the Annexure-D decision dated 12.6.87 implementing the revised pay scale from 1.4.87 only should be made effective from 1.3.84.

19. Further, the withdrawal of the writ petition filed in the Supreme Court (vide para 2.7 supra) carries with it an implication that the parties would abide by the recommendation of the Fourth Pay Commission. The recommendation of that Pay Commission has been accepted. It is also ^{true} correct that no recommendation of the Pay Commission has been given effect from a date earlier than 1.1.86. For this reason also the aforesaid prayer is liable to be dismissed.

20. That leaves for consideration the question whether the Ann.D decision should not have been implemented from 1.1.86 with effect from which almost all recommendations regarding revision of pay scales have been implemented. The only defence of the respondents is as follows:

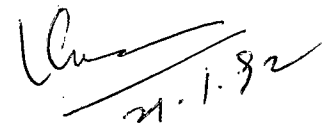
"The Commission candidly stated that any recommendation of this aspect was not within its purview but nevertheless suggested that the recommendations relating to the general pay scales applicable to all Central Govt. employees could be given effect from 1.4.1986 whereas 'other recommendations' could be given effect from the date to be decided by the Government keeping in view the relevant aspects, including the administrative and accounting work. Since grant of scale of Rs 2000-3200 was not replacement of any old scale but was under restructuring of the posts in the Departmentalised Accounts Offices, it required consideration and

decision as 'other recommendation' and the Government after taking into account all relevant factors decided that higher pay scale should be granted from 1.4.87."

21. We have considered^o this issue carefully. We do not see how the pay scale Rs 2000-3200 cannot be considered to be a 'general pay scale' for the group of people for whom^w it was recommended. The Commission's recommendation having been accepted by Government there was no difficulty in giving effect to it from 1.1.86 from which date the general revision of pay scales was given effect to. The decision of the Government to implement the recommendation of the Fourth Pay Commission's recommendation from 1.4.87 only cannot, therefore, be upheld. In this regard, we are in full agreement with the decision of the Bangalore Bench of the Tribunal in Nanjundaswamy's case.

22. Accordingly, we dispose of this application with a direction that the benefits granted from 1.4.87 by the order dated 12.6.87 (Annexure-D) shall be granted to the applicants from 1.1.1986 and they shall be granted all consequential benefits within two months from the date of receipt of this order.


(A.V. Haridasan)
Member (Judicial)


(N.V. Krishnan)
Member (Administrative)

21.1.92

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

RA-26 of 1992 in

O. A. No. 411 of 1989

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CORAM :

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&

The Hon'ble Mr. AV HARIDASAN, JUDICIAL MEMBER

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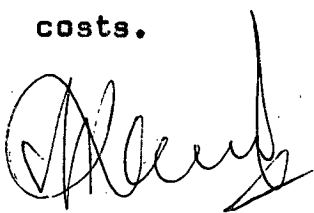
JUDGEMENT

(Hon'ble Shri AV Haridasan, Judicial Member)

This review application has been filed by the applicants in the original application challenging the wisdom of our finding on grounds which ^{were} ~~was~~ urged and were not found acceptable. No new point of law nor any additional new material is brought out in the R.A. which if brought to our notice earlier, would have persuaded us to take a different view. The ruling of the Hon'ble Supreme Court reported in AIR 1989 SC, 1215 was rendered in an entirely different set of facts and circumstances which have no application to the case on hand at all. It is admitted

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that the respondents in the O.A. have filed an SLP challenging the order sought to be reviewed and that the SLP is now pending before the Hon'ble Supreme Court. If the applicants are aggrieved by the decision, it is open for them to raise their contention before the Hon'ble Supreme Court. In this background, we do not find any ground to review the order dated 21.1.1992 in OA-411/89. R.A. fails and therefore it is dismissed without any order as to costs.



(AV HARIDASAN)
JUDICIAL MEMBER



(PS HABEEB MOHAMED)
ADMINISTRATIVE MEMBER

5-11-1992

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