

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 61 of 2007

Reserved on 6.8.2014

Pronounced on 15th September, 2014

Hon'ble Mr. Navneet Kumar, Member-J
Hon'ble Ms. Jayati Chandra, Member-A

Dr. Vijay Kumar Saxena, aged about 63 years, S/o late Sri inder Behari Saxena, Retired Assistant Director (OL), Office of D.P.A. Aliganj, Lucknow.

.....Applicant

By Advocate : Sri R.S. Gupta

Versus.

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Dehli.
2. Union of India through the Ministry of Home Affairs, Government of India, New Delhi.
3. Director General (Department of Posts), New Delhi.

.....Respondents.

By Advocate : Sri S.P. Singh

O R D E R

Per Ms. Jayati Chandra, Member-A

The applicant has filed this O.A. under Section 19 of Administrative Tribunal Act, 1985 seeking the following relief(s):-

"(a) That this Hon'ble Tribunal may kindly be pleased to quash the order dated 1.6.2004 as contained in Annexure no.1 and direct the Opposite parties to grant equal pay scale to the applicant with A.D. (OL) in CS OLS in at once every PS Group 'B' officers in MO Communication and Hindi Officers/Translator Officer in Ministry of Home Affairs i.e. 7500-12000/- and quash the order placing the applicant in a lower scale of Rs. 6500-10500/- vide Annexure no.2 dated 9.10.1997 with all consequential benefits.

(b) Any other relief which may be found just & proper in the circumstances of the case.

(c) to allow application with costs."

2. The applicant has averred that he joined Ministry of Communication, Government of India on 25.7.1965 as Senior Hindi Translator and was promoted to Group 'B' cadre w.e.f.

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6.11.1986 as Hindi Officer, now re-designated as Assistant Director (Office Language) (ADOL) in the scale of Rs. 2000-3500/- (pre-revised). He was made permanent as Hindi Officer (HO) (ADOL) w.e.f. 9.11.1995 (Annexure-3). On the basis of the duties and responsibilities of Hindi Officer (ADOL) in the Ministry of Communication, Department of Posts, the pay scale of Rs. 2000-3500/- drawn by AD (OL) was the same as that drawn by Postal Superintendents, who were Group 'B' cadre service officers. The duties and responsibilities of HO are incorporated in the order dated 31.12.1975 as circulated under order dated 24.7.1992 (Annexure -4). There has been subsequently no change in the duties of either H.O./AD (OL) or officers of Postal Superintendent (PS) Group 'B' Officer, but in the 5th CPC, the same Postal Superintendent Group 'B' officer have been given the scale of Rs. 7500-12000/-; whereas the applicant, who had been Group 'B' officers for the last ten years were given the pay scale of Rs. 6500-10500. This has resulted in loss of pay to the applicant right from 1.1.1996. Thus, the applicant, who had worked as gazetted officer in the department right from 1986, has now been demoted to non-gazetted rank. In an earlier case of similar demotion of the post the matter was resolved through judicial intervention. The post of Inspector of Post offices (IPO) was placed in a higher scale of pay (Rs. 220-380.425-700) by 1st and 2nd CPC, but subsequently their pay scales were equalized with the lower selection grade clerks in the grade of 210-350/425-700. These two pay scales were merged as one i.e. Rs. 1400-2300/-. This pay anomaly was rectified by the order of this Tribunal passed in O.A. no. 256 of 1992 and IPOs are now in the scale of Rs. 5500-9000/- and are promoted after five years to the scale of Rs. 6500-10500/- and to the scale of Rs. 7500-12000/- thereafter immediately. Similarly, the AD (OL)/HO who were earlier in Group 'B' services equivalent to Postal Superintendent should also be given higher pay scale of Rs. 7500-12000/- at par with other Group 'B' officers. This becomes further justified in view of the order dated 9.10.1997 which lays down certain conditions to be fulfilled before granting the scale of Rs. 7500-12000/- P.S. Group 'B' Officers of Postal Department.

3. The department of Atomic Energy vide order dated 11.8.2003 granted the scale of Rs. 7500-12000/- to AD (OL) at par

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with the AD (OL) of the Central Secretariat official Language (CSOLS) who are getting this scale vide Ministry of Home Affairs G.O. dated 27.2.2003. Earlier the AD(OL) of Postal Department was getting the same pay scale of Rs. 2000-3500/- as AD OL) in the Ministry of Home Affairs. Now, the Ministry of Home Affairs has enhanced the pay scale of AD (OL) to Rs. 7500-12000 by order dated 27.2.2003. In a similar matter of pay anomaly the Senior Accountants of the Postal Department had filed O.A. No. 204 of 2003 seeking parity with Assistant and Stenographers of Central Secretariat Service. By order dated 20.2.2003, the pay scale of Sr. Accountants were given parity with similar grade officers of Central Secretariat Service.

4. The applicant had earlier filed O.A. No. 377 of 1998. By order dated 7.10.2003 this Tribunal directed the respondents to remove the pay anomaly. When the respondents did not comply with the order of this Tribunal, the applicant filed Contempt petition No. 1 of 2004, which was dismissed vide judgment and order dated 29.9.2004. Now, the respondents had complied with order dated 7.10.2003 by passing the order dated 1.6.2004, which is impugned in the present Original Application. The applicant has placed reliance the decision of Hon'ble Supreme Court in the case of Ranbir Singh Vs. Union of India & Others reported in AIR 1982 SC 879 wherein it was held that there must be "for equal pay for equal work". While passing the impugned order, the respondents have totally disregarded the same.

5. The respondents have disputed the claim of the applicant. They have contended that the applicant joined service on 25.7.1965 as Sr. Hindi Translator and was promoted to Group 'B' cadre w.e.f. 6.11.1986 purely on temporary and adhoc basis. He was appointed on the said cadre on regular basis only in the year 1995. The entire pay structure of Ministry of Communication, Department of Posts including the pay scale of AD (OL) and P.S. Group 'B' which was earlier both in the pay scale of Rs. 2000-3500/- were examined by the 5th CPC. Except the pay scale of AD (OL) of Postal Department, the scale of all other cadres were upgraded by the 5th CPC to Rs. 7500-12000/-. For this disparity, the applicant had filed O.A. no. 377 of 1998. The respondents

were directed to decide the claim of the applicant by order dated 7.10.2003 by passing a reasoned and speaking order. In compliance of the said order, the respondents passed the impugned order dated 1.6.2004. They have further contended that the pay structure of Postal Service Group 'B' officers is governed by altogether different set of Rules and the issues pertaining to the pay structure, cadre structure for the officers of the Postal Service and Official Language Posts in subordinate services have been considered by the 5th CPC separately and no specific parity has been recommended. The pay scales have been formulated after due deliberations by the 5th CPC which is an expert body. They have further pleaded that the applicant had been given the scale as recommended by the Pay Commission and accepted by the Government. The enhancement of pay scale is a policy matter to be implemented by a specific order and is not automatic and does not lie within the domain of the respondents. More-over the impugned order has been passed in June 2004 and the O.A. has been filed after the stipulated limitation period as laid down in Section 21 of Administrative Tribunals Act, without any delay condonation application.

6. Rejoinder Reply has been filed by the applicant denying the contentions of the respondents made in Counter Reply reiterating the averments made in Original Application. He has stated that the post of HO is a promotional post for the Hindi Translator. The pay scale of Senior Hindi Translator has been given the pay scale of Rs. 6500-10500/- vide order dated 18.9.2006 passed in O.A. no. 753 of 2004. Thus the promotional post of HO/AD (OL) must be given a higher pay scale either in the pay scale of Rs. 7500-12000/- or Rs. 8000-13500/-. Further, parity with AD (OL) of CSOLS has been given to AD (OL) in the Postal Department in the 6th Pay Commission.

7. We have heard the learned counsel for the parties and perused the material available on record.

8. In a nutshell, the applicant has based his claim of pay parity under the principle of 'Equal Pay for Equal Work' in the scale of Rs. 7500-12000/- on the following grounds:

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(i) He was earlier a Group 'B' officer, now demoted to below Group 'B'. In a similar case, relief was granted in O.A. No. 256 of 1992;

(ii) The parity sought is with post of PS (Group 'B') officers whose pay scales of Rs. 7500-12000/- was subject to fulfillment of certain conditions as per letter dated 9.10.1997;

(iii) The pay scale of Rs. 7500-12000/- is admissible to AD (OL) in Department of Atomic Energy vide order dated 20.2.2003 at par with AD (OL) in the Central Secretariat Official Language Service vide O.M. dated 27.2.2008.

(iv) Vide order passed in O.A. no. 405 of 2003, the senior Accountants in the Postal Department were given pay parity with Assistants and Stenographers of Central Secretariat Service by order dated 20.2.2003.

(v) The feeder post of Senior Hindi Translator has been given the pay scale of Rs. 6500-10500/-. As AD (OL)/ HO in a promotional post, it must be given a higher scale.

9. In so far as ground nos. (i) and (ii) are concerned, it is fairly stated by the applicant that the disparity between the pay scale of HO/AD (OL) and PS Group 'B' arose from the 5th CPC report as accepted by the Central Cabinet of Ministers. The applicant has not challenged the virus in such a decision, but has merely prayed for his pay being fixed in a grade which has not been awarded to his post. The issue herein is not whether or not PS (Group 'B') is entitled to pay scale of Rs. 7500-12000/-but whether the applicant holding the post of AD (OL)/HO is entitled to the same. In so far as the order passed in O.A. no. 256 of 1992 is concerned, the applicant has produced no copy of the same. Therefore, we are unable to adjudicate in this case on the basis of the same.

10. The relevancy of the order dated 9.10.1997 in the case of the applicant is not readily understood. The order under reference requires the fulfillment of certain conditions before PS (Group 'B') become entitled to pay scale of Rs. 7500-12000/- The operative portion of the order reads "it would, therefore, be seen that it is implicit in the recommendations of the Pay Commission that such scale necessarily to take prospective effect and the concerned

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posts will be governed by the normal replacement scale until then". This order refers to the CPC report which does not lay down the same conditionalities etc. for the post of H.O./AD (OL) in the Department of Posts.

11. Coming to ground nos. (iii) and (iv) no-doubt the post of AD (OL) in the Central Secretariat Official Language Service (CSOLS) carries the pay scale of Rs. 7500-12000/- vide G.O. dated 27.2.2003 The applicant does not belong to the same service, even though broadly speaking the nature of the work as revealed by the designation appear to be the same. Nonetheless that is not enough for invoking equality under Article 14 of Constitution of India. There would be a case of discrimination had he belonged to the same cadre. The pay scales unless they relate to employees of a centralized or All India cadres are specific to a department/Ministries where recruitment/ promotion etc. are made as per the Recruitment Rules of that Department/Ministry/Organization. The question of applying the yard stick of 'Equal Pay for Equal work' cannot be applied purely based on the nomenclature of the post without undertaking an examination of nature and volume of work. Infact this kind of work study had already been under taken by the 5th CPC and the recommendations of the same has also been accepted by the Cabinet and no equivalency has been granted. Thus, the instance of the grant of Pay scale similar to that of AD (OL) of CSOLS cannot be a basis for granting the same to the applicant as the two departments are distinct and separate.

12. In an similar case where Stenographer of subordinate offices of Geological Survey of India had claimed the same pay scale as Stenographer Grade 'C' to the Central Secretariat, the Hon'ble Supreme Court in the case of Union of India Vs. Tarit Ranjan Das reported in (2003) 11 SCC 658 denied the same.

13. The order dated 20.2.2003 in O.A. no. 405 of 2003 cannot be extended to the applicant as the facts and circumstances of the two cases are separate and distinct. The pay discrepancy in that case had arisen not out of the CPC, but as a result of directions passed in O.A. No. 1538 of 1987. In any case, the Central

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Government sets up an Anomalies Committee to resolve any kind of pay anomaly that arises from the reports of the CPC as accepted by the Cabinet to resolve both inter-departmental and (intra) -departmental issues.

In this case, the applicant's case which cannot be treated as an individual case arising out of violation of service rights of the individual, but relates to a matter that is common to all AD (OL) working in a particular pay scale should have been raised in the appropriate forum, that is Anomalies Committee. It is not clear that this avenue was exhausted prior to approaching this Tribunal as is required under Section 20 of Administrative Tribunals Act, 1985 nor has the relevant portion of the Pay Commission report/Cabinet decision is under challenge in this O.A.

14. Coming to the ground no. (v) through the Rejoinder, for the first time the applicant cited the case of Sr. Hindi Translator, which is in the feeder cadre for HO/AD (OL) having been given the pay scale of Rs. 6500-10500/- through order dated 28.9.2006 passed in O.A. No. 753 of 2004. Although, the applicants and the respondents not recorded in the copy of the order produced as Annexure no.RA-1, but the case appears to relate the posts which belong to the Central Public Works Department (CWPD) making it an order in personum. More-over as stated in para 11 above, the decision with regard to CPWD personnel depends upon the promotional avenues available in that cadre. Even if a similarity is drawn, the applicant has not demonstrated that the cadre of AD (OL) has been adversely discriminated against a lower post in the same promotional border in the department. He has also referred to para 7.10.29 of the report of 6th CPC. This too is of no help to the applicant as the said recommendations are not retrospective in nature.

15. On the issue of pay parity and pay fixation the Hon'ble Supreme Court in the case of **State of U.P. & Others Vs. J.P. Chaurasia & others reported in (1989) 1 SCC 121**, the Hon'ble Supreme Court has held as under:-

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"para 30 In All India Customs and Central Excise Stenographers Recognised) and Others v. Union of India and Others, [1988] 2 Judgments Today SC p. 5 19, Sabyasachi Mukherjee, J. said:

"There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment emphasise that equal pay for equal work is a concomitant of Article 14 of the Constitution. But it follows naturally that equal pay for unequal work will be a negation of that right."

And said: (SCC pp.104-105 para 11)

"The same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less--it varies from nature and culture of employment. The problem about equal pay cannot always be translated into a mathematical formula. If it has a rational nexus with the object to be sought for, as reiterated before a certain amount of value judgment of the administrative authorities who are charged with fixing the pay scales has to be left with them and it cannot be interfered with by the Court unless it is demonstrated that either it is irrational or based on no basis or arrived mala fide either in law or in fact."

In the case of **Union of India & others Vs. Ram Gopal Agarwal & Others** reported in (1998) 2 SCC 589 the Hon'ble Supreme Court has held as under:-

Para 9 The present case would not fall under the same category in order to test the principle of "equal pay for equal work". The nature of work, the sphere of work duration of work and other special circumstances, if any attached to the performance of the duties have also to be taken into consideration. The principle of "equal pay for equal work" is well settled but to arrive at the conclusion the facts of each case has to be scrutinized with precision....."

On the issue of judicial intervention in the recommendations of Pay Commission, in the same judgment, the Hon'ble Supreme Court has held as under:-

1. Para 11 "In fact this distinction is being drawn on the basis of the report of the IVth Central Pay Commission submitted, which is an expert body in this regard. It is not possible for this Court, on the basis of the affidavits filed, to come to a clear

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conclusion specially in contradiction to the expert body report such as IVth Central Pay Commission Report, to hold it arbitrary unless there is cogent facts and reasons brought before us, which is not in the present case"

In the case of Union of India Vs. Tarik Ranjan Das reported in **(2003) 11 SCC 658** had looked into the matter of equalizing the pay of Stenographers in GSI with Stenographers of Central Secretariat as allowed by the Guwahati Bench of this Tribunal and Hon'ble High Court of Guwahati.

In this case the Stenographers of GSI filed O.A. no. 151 of 1991 seeking parity with Stenographers Gr. C of Central Secretariat. Initially the O.A. was dismissed, but subsequently allowed in the review observing that nothing in the report of the Pay Commission indicated that nature of duties of the employees were specifically considered. In the case of **Union of India Vs. Tarit Ranjan Das (2003) 11 SCC 658** the Hon'ble Supreme Court has observed as under:-

"para 3.....Thereafter on 10.7.1998 the respondent-employee filed O.A. No. 151/1991 before the Tribunal seeking parity of pay scale with that of Stenographer Grade 'C' of the Central Secretariat. OA was dismissed by the Tribunal holding that nature of work, duties and responsibilities of the two categories of Stenographers were not the same. Subsequently on 25.2.2000 the Tribunal took a different view in the review application filed. In the review application it held that all the relevant facts were not placed before the Central Pay Commission and it has not given any reason as to why different scales were to be fixed. It was observed that nothing in the report of the Pay Commission indicated that nature and duties of the employees were specifically considered. It only made the difference on the ground that workload and responsibilities of Stenographer Grade 'C' of Central Secretariat are expected to be heavier. Tribunal found fault with this conclusion. It was further noted that the nature of work, duties and responsibilities of the two categories of Stenographers clearly indicate that the relevant aspects were not considered by the Commission and it proceeded on a different basis. The Tribunal was of the view that Stenographer Grade-II should be placed in the pay scale of Rs. 1640-2900 by applying the logic of equal pay for equal work. Challenge before the High Court was turned down as noted above."

"Para 6 This Court in Union of India vs. Pradip Kumar Dev 2000 (8) SCC 580) after referring to various decisions dealing with the similar question in para 8 has held thus: (SCC P. 584).

"8. In our considered view, the Division Bench of the High Court was not right and justified in straight way giving

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direction to grant pay scale to the respondent when there was no material placed before the Court for comparison to order to apply the principle of 'equal pay for equal work' between the Radio Operators of CRPF and the Radio Operators working in civil side in the Central Water Commission and the Directorate of Police Wireless. In the absence of material relating to other comparable employees as to the qualifications, method of recruitment, degree of skill, experience involved in performance of job, training required, responsibilities undertaken and other facilities in addition to pay scales, the learned Single Judge was right when he stated in the order that in the absence of such material it was not possible to grant relief to the respondent. No doubt, the Directorate of CRPF made recommendations to the Pay Commission for giving higher pay scales on the basis of which claim is made by the respondent for grant of pay scale. The factual statements contained in the recommendation of a particular department alone cannot be considered *per se* proof of such things or they cannot by themselves vouch for the correctness of the same. The said recommendation could not be taken as a recommendation made by the Government. Even otherwise a mere recommendation did not confer any right on the respondent did not confer any right on the respondent to make such a claim for writ of mandamus."

"Para 7.. Yet, in another decision in State Bank of India vs. M.R. Ganesh Babu 2002 (4) SCC 556) a Bench of three learned Judges of this Court, while dealing with the same principle, in para 16 has expressed that: (SCC p. 563)

"16. The principle of equal pay for equal work has been considered and applied in many reported decisions of this Court. The principle has been adequately explained and crystallized and sufficiently reiterated in a catena of decisions of this Court. It is well settled that equal pay must depend upon the nature of work done. It cannot be judged by the mere volume of work; there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities made a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scale of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. The principle is not always easy to apply as there are inherent difficulties in comparing and evaluating the work done by different persons in different organizations, or even in the same organization. Differentiation in pay scales of persons holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. The judgment of administrative authorities concerning the responsibilities which attach to the post, and the degree of reliability expected to an incumbent, would be a value judgment of the authorities concerned which, if arrived at

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bona fide, reasonably and rationally, was not open to interference by the court."

(Also see State of Haryana and Anr. vs. Tilak Raj and others, 2003 (6) SCC 123) and Orissa University of Agriculture & Technology and Anr. vs. Manoj K. Mohanty 2003 (5) SCC 188).

"Para 11 In the case of State of U.P. vs. J.P. Chaurasia 1989 (1) SCC 121) it was pointed out that whether two posts are equal or should carry the equal pay, depends on several factors. It does not depend just upon either the nature of work or the volume of work done. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts by the Competent Authorities constituted for the purpose and Courts cannot ordinarily substitute themselves in the place of those authorities. The quantity of work may be the same but the quality may be different. That cannot be determined by relying upon averments in affidavits of interested parties. It must be determined by expert bodies like Pay Commission and the Government, who would be the best judges, to evaluate the nature of duty, responsibility and all relevant factors. The same view was reiterated in the case of State of M.P. vs. Pramod Bhartiya 1993 (1) SCC 539) by a three-Judge Bench of this Court. In the case of Shyam Babu Verma vs. Union of India 1994 (2) SCC 521) a claim for equal pay by a group of Pharmacists was rejected saying that the classification made by a body of experts after full study and analysis of the work, should not be disturbed except for strong reasons which indicate that the classification made was unreasonable."

16. In view of the aforesaid discussions and also based on various pronouncements of Hon'ble Supreme Court, we find no good ground to interfere in the impugned order passed by the respondents. The O.A. is accordingly dismissed. No costs.

J. Chandra

(Ms. Jayati Chandra)
Member-A
Girish/-

V.R. Agrawal

Navneet Kumar
Member-J