

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW DELHI BENCH~~
NEW BOMBAY BENCH

O.A. No. 748 1987
~~XXXXXXXX~~

DATE OF DECISION 12/7/89

Shri V.V.Sreenivasan & 6 Others. Petitioner

Dr.V.Balasubramanian Advocate for the Petitioner(s)

Versus

Union of India & Others. Respondent

Shri M.I.Sethna Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.B.Mujumdar, Member(J)

The Hon'ble Mr. M.Y.Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

(9)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.748 of 1987

1. Shri V.V.Sreenivasan,
2. Shri A.S.M.Sundaram,
3. Shri C.R.Pathak
4. Shri G.R.Sawant,
5. Shri N.Gopalkrishnan,
6. Shri S.Ramachandran
7. Shri U.S.Khatwani,

Personal Assistants,
Income-tax Appellate Tribunal,
4th floor, Old C.G.O.Bldg.,
101, M.K.Road,
Bombay-400 020.

.. Applicants

V/s.

1. Union of India
through the Secretary,
Ministry of Law & Justice,
Shastri Bhawan,
New Delhi.
2. The Secretary,
Ministry of Law & Justice,
Shastri Bhawan,
Dr.Rajendra Prasad Road,
New Delhi.
3. The President,
Income-tax Appellate Tribunal,
4th floor, Old C.G.O. Bldg.,
101, M.K.Road,
Bombay-400 020.

.. Respondents

Coram: Hon'ble Member(J), Shri M.B.Mujumdar
Hon'ble Member(A), Shri M.Y.Priolkar

Appearance:

1. Dr.V.Balasubramanian,
Advocate
for the applicants.
2. Shri J.D. Desai (for
Shri M.I.Sethna),
Counsel
for the respondents.

JUDGMENT:-

Dated: 12-7-1989

OPER: Shri M.Y.Priolkar, Member(A) I

The applicants in this case are Personal
Assistants working in the Income Tax Appellate Tribunal



(I.T.A.T. for short) under the Ministry of Law and Justice at its Bombay head office. They state that although they are attached to equally ranked officers and perform exactly similar duties as Private Secretaries in Customs Excise and Gold Control Appellate Tribunal (C.E.G.A.T. for short) under the Ministry of Finance, the latter enjoy higher status and emoluments.

2. CEGAT was brought into existence from 1st April, 1981 and was modelled on the lines of ITAT. The applicants assert that pursuant to Finance Minister's statement in Parliament on 30th July, 1980 that the law relating to ITAT will be amended so as to bring the status as well as the emoluments and the position of ITAT on par with CEGAT, orders were issued on 10.7.1981 revising the scales of pay of the posts of President, Vice-Presidents, Judicial and Accountant Members and Registrar of ITAT to bring them on par with the scales of pay of their counterparts in the newly started CEGAT, with retrospective effect from 1.4.1981. But the Personal Assistants of ITAT, it is alleged, were not considered for equal status and emoluments as their counterparts designated as Private Secretaries in CEBAT.

3. The applicants submit that their repeated representations to the respondents since 1981 for parity with their counterparts in CEGAT have not yielded any results. They were last informed on 12.6.1986 that the Central Fourth Pay Commission

(11)

was seized of the matter. But since nothing favourable to them was contained in the Fourth Pay Commission's Report, the Chairman of the Empowered Committee, Ministry of Finance, was addressed in August, 1986. There being no response to this as well as to subsequent representations to respondent No.2 in October and December, 1986, the applicants have approached this Tribunal on 19th October, 1987 praying for direction to respondents to sanction emoluments and status to Personal Assistants of ITAT on par with their counterparts in CEGAT from 1.4.81 and all consequential benefits.

4. In the written reply filed on behalf of the respondents, it has been stated that the representation addressed to the Empowered Committee was duly considered by the competent authorities and it was decided to give to all the Personal Assistants attached to Members etc. in ITAT the higher scale of Rs.2000-3200 instead of Rs. 1640-2900 which was otherwise admissible on the basis of the Fourth Pay Commission's Report. The orders to this effect were issued on 9.6.1987 (Annexure-A). The present pay scale of Private Secretaries in CEGAT is Rs. 2000-3500. Although their applications before this Tribunal is dated 19.10.1987, this material fact was not disclosed by the applicants.

5. The pay scale of the applicants at present is thus Rs. 2000-3200 and they are agitating for the pay scale of Rs. 2000-3500. It is the contention of the respondents that this pay scale of Rs. 2000-3500 is not for Personal Assistants in CEGAT but for Private Secretaries and that this distinction is not only

(2)

distinction in nomenclature alone, but it is effectively different. In CEGAT, a Member is provided with 2 assistants, namely, (a) Private Secretary and (b) Personal Assistant. The scale of the Private Secretary is Rs. 2000-3500 and of Personal Assistant Rs. 1400-2500 whereas in ITAT, only Personal Assistants (now re-designated as Senior Personal Assistants) ^{are provided to Members, in} ~~with~~ scale of Rs. 2000-3200. There are 103 such posts of Senior Personal Assistant for 76 Members (including President, Senior Vice-President and Vice-President) in ITAT. It was also mentioned during the course of hearing that the actual number of posts of Senior Personal Assistants is sanctioned ^{on} workload and is probably based on a work study carried out by the Staff Inspection Unit of the Ministry of Finance sometime in the sixties, when the norm decided was three Senior Personal Assistants for a bench of two Members.

6. Apart from this structural difference, it is argued on behalf of the respondents that there is no uniformity in the pattern of stenographic or secretarial assistance to the Members of these two Tribunals in particular and in general with other Tribunals. Such assistance is provided according to the needs of each individual Tribunal so as to suit its purpose and functions. Different pay scales have, therefore, to be provided for smooth functioning as well as appropriate ^{promotional} avenues for employees manning the posts created in different organisations based upon their specific needs. It is also mentioned that for

13

fixing all such pay scales and introducing requisite and desirable uniformity (without sacrificing the specific needs of each organisation), Pay Commissions are appointed from time to time and they are the most appropriate authorities for determining pay scales of various organisations of Government.

7. The applicants' case rests primarily on the premise that there is no difference in the work performed by them and the Private Secretaries in CEGAT but their pay scales are lower than those of the latter, thus violating the principle of equal pay of their contention for equal work. In support/Dr.V.Balasubramanian, the learned advocate for the applicants cited the following authorities:-

<u>*Sr.No.</u>	<u>Cause Title</u>	<u>Citation</u>
1.	Randhir Singh	AIR 1982 SC 879
2.	P.Savita	AIR 1985 SC 1124
3.	Dhirendra Chamoli	(1986) 1 SCC 637
4.	Surinder Singh	AIR 1986 SC 584
5.	Mackinnon Mackenzie & Co. Ltd.	(1987) 2 SCC 469
6.	D. Rajagopalan	(1985) LLJ-1,459 (Mad.)
7.	Vishnath & Ors.	(1987) LAB IC 514 (All.)
8.	Kamalanand	(1986) LAB IC 1858 (Del.)
9.	Central Excise & Customs NGO Assn.	TA No.609/86 CAT, Jodh.
10.	State of Mysore B. Basavalingappa	(1987) LAB IC 234 = AIR 1987 SC 411
11.	Bhagwandas	(1987) LAB IC 1662 = AIR 1987 SC 2049
12.	Daily rated casual labour employees of P & T.	(1988) 1 SCC 122
13.	Jaipal & Ors.	(1988)3 SCC 354.

Contd...6/-

(14)

14. Shakti Sarup Puri & Ors. (1986) ATC 303, CAT, N.Delhi.
15. Keshav Mathur (1987) 3 ATC 662. CAT, Jodh.
16. Suresh Laxman Bartare (1987) 8 ATC 180. CAT, N.Bombay
17. Vir Bhan Thakkar & Ors. (1988) 7 ATC 672, CAT, N.Delhi.
18. State Bank of India v. Yogendrakumar Srivastava & Ors. (1987) 3 ATC 733, SC.**

8. Apparently, in all these cases, the facts were not much in dispute that the employees involved were performing the same work and the functions, duties and responsibilities ^{were more or less} identical. The differentiation in salary and other conditions of service between the two sets of employees was sought to be made for reasons like nature of employment, i.e. ad hoc, daily basis, temporary etc., source of recruitment, financial burden, on ground of sex or of belonging to different departments etc. Such differentiation was found ^{to be} based on no classification or irrational classification and, therefore, held to be not sustainable. On the other hand, in the present case, as already stated earlier, the respondents have contended that the stenographic and secretarial assistance provided to Members of ITAT is both qualitatively and quantitatively different from that provided to Members of CEGAT.

9. Admittedly, the sanctioned posts are such that each Member of CEGAT is provided with one Private Secretary (scale Rs. 2000-3500) and one Personal Assistant (scale Rs. 1400-2600) whereas each Member of ITAT is provided with slightly more than one (about 1.35) Senior Personal Assistant (Scale Rs. 2000-3200). In view of this

Contd...7/-

5

it is difficult to accept the applicants' contention that each Senior Personal Assistant performs the same functions and duties as a Private Secretary in CEGAT. It only shows that Members of ITAT have not been provided with stenographic and secretarial assistance exactly on par with the Members of CEGAT, but on a slightly lower scale. One consequence of this may be that the Members of ITAT may themselves have to perform some of the routine functions which in case of Members of CEGAT are performed by their Private Secretaries. But we do not consider it either necessary or proper for us to express any views in this regard. In fact, even if the Government were to decide on uniform pattern of stenographic and secretarial assistance to the Members of the two Tribunals, one important relevant consideration will be that it will not only involve upgradation of 76 posts from Rs. 2000-3200 scale to that of Rs. 2000-3500 but also downgradation of the remaining 27 posts from Rs. 2000-3200 to Rs. 1400-2500.

10. In State of U.P. and others v. J.P. Chaurasia and others (AIR 1989 SC 19), the Supreme Court has observed as under:-

"...The answer to the question whether two posts are equal or should carry equal pay depends upon several factors. It does not just depend upon either the nature of work or volume of work done. Primarily 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 in 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. If there

(16)

is any such determination by a Commission or Committee, the court should normally accept it. The court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration.."

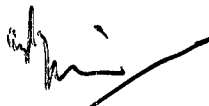
11. In ~~other~~ case of Federation of All India Customs and Central Excise Stenographers v. Union of India and Others (1988(2) SLR 721), the Supreme Court rejected the claim of parity of pay scale of Stenographers attached to officers in the scale of Rs. 2500-2750 (Pre-Fourth Pay Commission) outside the Central Secretariat with those attached to Joint Secretaries in the same pay scales working in the Central Secretariat observing as follows:-

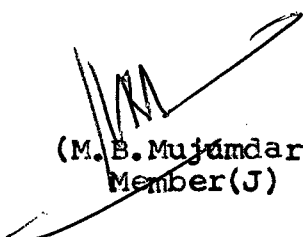
"...The same amount of physical work may entail different quality of work, some more sensitive, some requiring more fact, some less-it varies from nature and culture of employment. The problem about equal pay cannot always be translated into a mathematical formula. If it has a rational nexus with the 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 scale 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 light of the averments made and in the facts mentioned before, it is not possible to say that the differentiation is based on no rational nexus with the object sought for to be achieved..."

12. In our view, the observations made in the two recent/Supreme Court judgments cited above, are applicable to the present case and we do not consider it to be a fit case for interference by this Tribunal. The grievance of the applicants ^{who} ~~also~~ are agitating for the scale of Rs. 2000-3500 has been largely met by upgrading their posts from Rs. 1640-2900 to Rs. 2000-3200. Complete uniformity would mean marginal upgradation of 76 posts from Rs. 2000-3200 to Rs. 2000-3500 scale but would

17

involve steep downgradation of 27 posts from Rs. 2000-3200 to Rs. 1400-2600 scale. In the light of the facts mentioned earlier, it cannot be said that the differentiation made is irrational or based on no basis or arrived mala fide either in law or fact. In this view of the matter, this application must fail and it is accordingly dismissed, without any orders as to costs.


(M.Y. Priolkar)
Member(A)


(M.B. Mujumdar)
Member(J)

R.P. No. 27/89

884
12/11/89

Judgment dtd 12/7/89
Send to Parties
on 11/9/89.

Q/12/89
11/9/89

Judgment dtd. 12-7-89
served on all applicants
and Respondent No. 3 on
13/9/89.

RMP
19/9