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MIRAL
CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 856/1996 & 352/97.

Date of Decision: 23.3.99

J. R. Gaikwad & 55 Others, Petitioner/s

Shri M. S. Ramamurthy, Advocate for the
Petitioner/s

v/s.

Union Of India & Anr., Respondent/s

Shri V. G. Rege, Advocate for the
Respondent/s

CORAM:

Hon'ble Shri Justice K. M. Agarwal, Chairman.

Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri D. S. Baweja, Member (A).

(1) To be referred to the Reporter or not? ✓ Yes
(2) Whether it needs to be circulated to other Benches of the Tribunal? ✓ ~~Yes~~

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

1) ORIGINAL APPLICATION NO.856/96.
2) ORIGINAL APPLICATION NO.362/97.

PROONOUNCED , this the 23rd day of MARCH 1999.

Coram: Hon'ble Shri Justice K.M.Agarwal, Chairman,
Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

1. ORIGINAL APPLICATION NO.856/96.

1. J.R.Gaikwad,
2. R.L.Fulpagare,
3. Smt. V.Y.Sathe,
4. R.S.Gholap,
5. Smt.M.T.Paithankar,
6. Smt.K.U.Mahadik,
7. R.P.Tannu,
8. K.D.Chavan,
9. H.S.Borate,
10. L.G.Patil,
11. V.S.Garud,
12. A.P.Kudre,
13. D.D.Borade,
14. A.B.Deodhar,
15. B.K.Chavan,
16. M.B.Bhor,
17. D.K.Chougule,
18. V.A.Jadhav,
19. D.A.Ranpise,
20. S.V.Bhandre,
21. R.S.Kadam,
22. U.S.Ghayal,
23. Y.N.Nikalje,
24. D.S.Jadhav,
25. M.V.Pawar,
26. S.A.Shaikh,
27. Smt.N.V.Jathar,
28. U.A.Variath,
29. R.K.Prasad,
30. N.G.Ovhal,
31. Smt.S.M.Mirashi,
32. Smt.S.S.Mangade,
33. Smt.B.Saroja,
34. S.G.Nerlekar,
35. Y.M.Sathe,
36. A.V.Kulkarni,
37. S.A.Rokade,
38. G.L.Pardeshi,
39. G.T.Gaikwad,
40. G.V.Dhende.

... Applicants in
(O.A. NO.856/96)

2. ORIGINAL APPLICATION NO.352/97.

1. R.M.Papani,
2. R.P.Inamdar,
3. P.P.Hande,
4. D.S.Kulkarni,
5. S.C.Khamkar,
6. Smt. M.A.Nisal,
7. Smt. N.S.Chadha,
8. A.F.Sabnis,
9. V.P.Kavi,
10. S.S.Sangade,
11. S.I.Inamdar,
12. S.D.Dudhane,
13. S.S.Fand,
14. Smt.P.P.Utgikar,
15. S.R.Malwadkar,
16. S.A.Mate.

... Applicants in
(O.A. NO.352/97)

(All the above applicants are
working as Laboratory Assistants
Grade - II in the Central Water &
Power Research Station, Khadakvasla,
Pune.)

(By Advocate Shri M.S.Ramamurthy)

V/s.

1. Union of India through
The Secretary,
Ministry of Water Resources,
Shram Shakti Bhavan,
Rafi Marg,
New Delhi - 110 001.

2. The Director,
Central Water & Power Research
Station, P.O. Khadakvasla (RS),
Pune - 411 024.

... Respondents in both
the OAs.

(By Advocate Shri V.G.Rege.)

: O R D E R :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

On a reference made by a Division Bench of this Tribunal dated 20.01.1998, the Hon'ble Chairman has constituted a Full Bench for hearing the reference. In the order of reference, the Division Bench has referred two

...3.

questions for consideration by Full Bench. We have heard Shri M. S. Ramamurthy, the Learned Counsel for the applicants and Shri V.G. Rego, the Learned Counsel for the respondents.

2. The two questions referred to in the order of reference dated 20.01.1998 are as follows :

- (i) Whether the Saini's judgement in T.A. No. 335/85 and other judgements based on that in the cases of Senior Computers would be applicable in the case of Senior Observers also ?
- (ii) If the relief granted to the Senior Computers as a result of Saini's decision would continue to apply even after the designation of Computers being eliminated after the implementation of Swaminathan Committee Report to the posts of Lab. Assistant Grade-II ?

3. In order to decide the questions referred to the Full Bench, we will refer to the relevant facts which are necessary for answering the two questions.

The applicants in both the cases were originally Observers or Senior Observers and some of them have been subsequently promoted to higher posts. In O.A. No. 856/96 there are 40 applicants, of whom Applicant Nos. 1 to 38 are Laboratory Assistants Grade-II (of whom Applicant Nos. 34 to 38 have already retired) and Applicant Nos. 39 and 40 are Laboratory Assistants Grade-I in the Central Water and Power Research Station, Pune.

In O.A. No. 352/97 all the applicants are working as Laboratory Assistants Grade-II in the same office mentioned above.

The applicants were originally appointed as Observers. Then they came to be promoted as Senior Observers. We are not concerned about their further promotions for our present purpose. Prior to 1980, the Research Station had four categories, namely - Observer, Senior Observer, Computer 'B' and Computer 'A'. During 1979-80, it is stated, that the Government appointed a High Level Committee under the Chairmanship of Dr. Swaminathan to look into the

organisational structure of the Research Station and to suggest staffing pattern, method of recruitment, etc. The Committee submitted a report. It suggested that Observer and Computer 'B' should be merged into Laboratory Assistant Grade-III in the scale of Rs. 260-430. The Senior Observer and Computer 'A', though had different pay scales, to be merged and designated as Laboratory Assistant Grade-II in the pay scale of Rs. 330-560. Then Computer 'A' was to be re-designated as Laboratory Assistant Grade-I in the same pay scale of Rs. 425-700. These recommendations of the Committee were accepted by the Government and necessary Government orders were issued. Some of the employees filed O.A. No. 380/90 and some other cases under which the Senior Observers, who were now designated as Laboratory Assistant Grade-II, should be given the same pay scale as Laboratory Assistant Grade-I. Similar cases were clubbed alongwith O.A. No. 380/90 and a common judgement was delivered by a Division Bench on 05.12.1994 under which the Senior Observers, who were designated as Laboratory Assistants Grade-II were granted the same pay scale of Rs. 425-700, which is the pay scale of Laboratory Assistant Grade-I. The case of the applicants in both these O.As. is that ^{also} they were/initially appointed as Observers and promoted as Senior Observers and therefore, they are entitled to the same pay scale as given to the re-designated post of Laboratory Assistant Grade-I as per the judgement of this Tribunal in O.A. No. 380/90. It is their case that they are discharging the same duties as the Laboratory Assistant Grade-I and hence, entitled to pay scale of Laboratory Assistant Grade-I, as per the judgement of this Tribunal in O.A. No. 380/90.

Therefore, the applicants in both these cases want that though they are now in the re-designated post of Laboratory Assistant Grade-II, they should get the salary of Rs. 425-700, as given to Laboratory Assistant Grade-I, in pursuance of the judgement of this Tribunal in O.A. No. 380/90.

4. The respondents' defence in these two O.As. are identical. It is



stated that the recommendations of Dr. Swaminathan's Committee was accepted by the Government and the auxilliary staff were divided into three "grades" - Laboratory Assistant Grade-I, Grade-II and Grade-III. Then new recruitment rules were framed for filling up these posts. According to 1983 Recruitment Rules, an official who is working as Laboratory Assistant Grade-III is entitled for promotion to Grade-II after having a particular minimum number of years of service in the feeder cadre. Similarly, an official working as Laboratory Assistant Grade-II is entitled to be promoted to Grade-I after putting a particular minimum number of years of service in Grade-II. It is, therefore, stated that a deliberate and conscious decision was taken by the Government to have three separate grades with different pay scales and different criteria for appointment and promotion. Then they have referred to number of earlier decisions of different Benches of the Tribunal which pertained to different pay scales in the grade of Computer 'A'. The dispute in those cases was, that in the grade of Computer 'A' 80% of the posts were given a lower pay scale and 20% was given higher pay scale. The Tribunals held that discrimination among the officials in the grade of Computer 'A' doing the same nature of duties and having similar qualifications was discriminatory and therefore, the Tribunals held that all officials of Computer Grade 'A' should get the same pay scale, namely - Rs. 425-700. The Respondents' case is, that those decisions which pertained to anomaly in the pay scales of different posts in Computer 'A' do not apply to the case of Senior Observers. As far as Senior Observers are concerned, they had only one scale, namely - Rs. 380-560 and there was no such anomaly of certain posts of Senior Observers having a higher pay scale and certain posts having a lower pay scale like Computer 'A'. Now the Senior Observers have been re-designated as Laboratory Assistant Grade-II and they have a promotional opportunity to go to Grade-I. Therefore, the case of the applicants cannot be compared with the

employees working in the grade of Computer 'A'. It is, therefore, stated that the pay scales of Rs. 425-700 given to all officials working in Computer 'A' grade cannot be given to the applicants working as Senior Observers. If the Senior Observers who are now working as Laboratory Assistant Grade-II are given the scale of Rs. 425-700, then they will become equal to Laboratory Assistant Grade-I. In other words, an official who is working as Laboratory Assistant Grade-III on promotion will automatically jump to Laboratory Assistant Grade-I to get the pay scale of Rs. 425-700 and the post of Laboratory Assistant Grade-II becomes redundant, which would be contrary to the policy decision of the Government and the recruitment rules. It is further stated that the decision of this Tribunal in O.A. No. 380/90 and connected cases did not take into consideration this important aspect. It is stated that the relief granted by this Tribunal in O.A. No. 380/90 and connected cases is contrary to the Recruitment Rules of 1983 and it amounts to granting promotion to Laboratory Assistant Grade-III straightforward to Grade-I bypassing Grade-II. No relief can be granted contrary to Service Rules. Therefore, the respondents have prayed that the applicants are not entitled to the pay scale of Rs. 425-700 and hence have prayed that the O.As. be dismissed with costs.

5. When the matter was heard by the earlier Division Bench, it considered the rival contentions and pointed out that the Senior Observers are not similarly placed like Computer 'A' and, therefore, they cannot claim the same scale of pay as was given to Computer 'A' who is now designated as Laboratory Assistant Grade-I. In the referring order, the Division Bench disagreed with the view taken by the earlier Division Bench in O.A. No. 380/90 dated 05.12.1994 and connected cases and that is how the Division Bench has referred the two questions, referred to above, for consideration by the Full Bench.

6. The Learned Counsel Shri M.S. Ramamurthy contended that there are



number of decisions of different Benches of this Tribunal granting the scale of Rs. 425-700 to all officers of Computer 'A' and since the Senior Observers were placed on par with 80% of Computer 'A' who were getting a lower pay scale and since now the entire 100% of Computer 'A' has been granted pay scale of Rs. 425-700, on the same reasoning, even the Senior Observers must be granted the same pay scales as per number of decisions of this Tribunal. On the other hand, the Learned Counsel for the respondents contended that as far as officers in the grade of Computer 'A', there was some anomaly since there was discrimination in the pay scale between 20% of the officials on the one hand and 80% of the officials on the other and that anomaly or discrimination was set right by the judgements of this Tribunal starting from the earlier case of B.S. Saini and others. He further submitted that as far as an Observer or Sr. Observers are concerned, there was no such anomaly or no such discrimination and therefore the decision pertaining to officials of Computer 'A' grade cannot be applied to Senior Observers. We will examine the rival contentions on the basis of materials on record.

7. In the present case, the claim is based entirely on the judgement of this Tribunal dated 05.12.1994 in O.A. No. 380/90 in the case of A. D. Kshirsagar & Others. We have gone through the judgement of the Division Bench of this Tribunal in Kshirsagar's case. The Division Bench in that case referred to number of earlier judgements in B.S. Saini's case and other cases and came to the conclusion that Senior Computers have been consistently given the pay scale of Rs. 425-700 and in that background, the Senior Observers who are now clubbed with the Junior Scale of Computers should also be given the same pay as given to Senior Computers in those judgements. There is no discussion as to why and how the Senior Observers should be given the same pay scales as given to Senior Computers in pursuance of the Third Pay Commission Report. Once having reached the conclusion that all Senior

Computers, both in Senior Scale and junior scale should be given only one scale, namely - the senior scale of Rs. 425-700, the Division Bench held that even the Senior Observers who are placed on par with the junior scale among Senior Computers, should get the same pay scale of Rs. 425-700. The Division Bench has referred to number of earlier judgements starting from Saini's case and all of them were cases pertaining to Computers and not Senior Observers.

8. The Learned Counsel for the applicants has placed strong reliance on the earlier judgements of different Benches of this Tribunal starting from Saini's case. After the implementation of the Third Pay Commission, there came to be two categories of Computers known as Senior Computers and Junior Computers. Then among the Senior Computers or Computer 'A' 20% of the posts were kept in the Senior scale of Rs. 425-700 and remaining 80% of Senior Computers were kept in a junior scale of Rs. 330-560. Though there were 32 posts of Senior Computers, a sub-classification was made of six posts in higher scale and 26 posts in lower scale. Two of the Senior Computers who were kept in the junior scale, namely - B.S. Saini and another, filed a Writ Petition in the Delhi High Court in 1977 alleging discrimination by the Government among Senior Computers by creating two classes with two different scales of pay. After the constitution of the Administrative Tribunal, the writ petition came to be transferred to the Principal Bench of this Tribunal and it was numbered as Transfer Application No. 335/85. The Principal Bench disposed of that case by judgement dated 11.04.1986. The Division Bench in that case accepted the case of the applicants and recorded a finding that discrimination of creating two classes and two different pay scales among Senior Computers was in violation of Article 14 and 16 of the Constitution. Therefore, the Bench held that all the Senior Computers should get the same pay scale of Rs. 425-700. Therefore, we see that Saini's case was decided on the peculiar facts of that case. There was an anomaly created in the pay

scales of Senior Computers by giving higher scale to 20% and lower scale to 80% among the same group of officers holding the same designation, covered by the same recruitment rules and having the same duties and responsibilities. It is in that context that Division Bench in Saini's case held that Government cannot discriminate and give different pay scales in respect of officials belonging to a particular cadre and therefore gave a direction that all Senior Computers should be given the same pay scale of Rs. 425-700.

Saini's case is the earliest judgement on the point. Some subsequent decisions have come from different Benches of the Tribunal taking the same view so far as Senior Computers are concerned. We will briefly refer to those decisions which are relied on in these cases and which were pressed into service by the Learned Counsel for the applicants.

9. In O.A. No. 1942/88 {A. K. Khanna & Others} by order dated 06.09.1988 the Principal Bench following Saini's case held that the applicants before them, namely the Senior Computers in a different organisation, are also entitled to the same pay scale of Rs. 425-700. Therefore, this case also pertains to Senior Computers and the dispute was about giving two scales of pay to the same cadre, namely - the Senior Computers.

In O.A. 682/87 {K.S. Munda & Others} the Principal Bench in a judgement dated 16.11.1988 again considered the case of Senior Computers in Central Water Commission and directed the Government to give the same pay scale to all Senior Computers as given in Saini's case.

In the case of G. Gangadhar Rao & Others in O.A. No. 212/88, a Division Bench of this Tribunal at Hyderabad considered the claim of Senior Computers and gave them the same relief following Saini's case.

In the case of P. R. Kasande & Others in O.A. No. 1187/90, by order dated 01.09.1994, where also the claim was of Senior Computers, the Division

Bench following the earlier decisions in B.S. Saini's case and other cases, directed that all the Senior Computers should be given the same pay scale as Rs. 425-700.

10. From the above discussions we find that all the earlier judgements, right from Saini's case & Others, the question was about equal pay for all Senior Computers. We have already seen that there was an anomaly in fixing the pay scale of Senior Computers after the Third Pay Commission Report, by placing the 20% in a higher pay scale and 80% in a lower pay scale. Whether we call it as an anomaly or a case of discrimination, it is immaterial. For the first time in Saini's case, this anomaly or discrimination was set right by giving a direction to the Government to give the same pay scale to all the Senior Computers. In none of these cases the question of equating Senior Observers with Senior Computers was never raised nor decided. Therefore, we cannot apply these decisions to the case of Senior Observers. But the Division Bench of this Tribunal in Kshirsagar's case (O.A. No. 380/90) after noticing some decisions pertaining to Senior Computers, gave a finding that Senior Observers are also entitled to the same pay scale. With respect, we are unable to subscribe to the view of the Division Bench in Kshirsagar's case in extending the pay scale of Rs. 425-700 to Senior Observers on the basis of the earlier decisions pertaining to Senior Computers.

There was no anomaly or no discrimination so far as Senior Observers were concerned. There was no allegation, much less any material, to show that in the pay scale of Sr. Observers there was any such anomaly or discrimination as was found in the case of pay scales in the grade of Computers. The Senior Observers had one and only scale, namely - Rs. 380-560 which was little higher than the junior scale of Senior Computers. There was no question of giving two scales in the case of Sr. Observers, one having a higher scale and another having a lower scale, as found in the case of Sr. Computers. Therefore, we

cannot mechanically apply the decisions of the Tribunals in Saini's and other cases which pertain to Senior Computers to the case of Sr. Observers. There is no rationale behind in extending the benefit of pay scale of Sr. Computers to Sr. Observers. We may also mention that Saini's case was filed as a Writ Petition in the High Court in 1977 and in 1985 it came to be transferred to the Principal Bench of the Tribunal and hence there was no reference to either Swaminathan's Committee Report or the consequent Government Order and the new Recruitment Rules. Though Saini's case came to be decided in 1986, unfortunately, neither side brought to the notice of the Tribunal about Swaminathan's Committee Report, Government order accepting the same and the new 1983 Recruitment Rules. We do not know as to what would have been the view of the Bench in Saini's case if these materials had been brought before it. Even otherwise, the question in Saini's case was about different pay scales to one grade of officers, namely - Senior Computers. In our view, the said decision cannot be applied to the case of Senior Observers.

11. Infact, the applicants themselves are mentioning Swaminathan's Committee Report in the application. Infact, they want the implementation of the Swaminathan's Committee Report. The Learned Counsel for the respondents placed before us the Swaminathan's Committee Report. In 1976, the Government of India appointed a High Level Committee of Experts under the Chairmanship of Dr. Swaminathan, who is a well-known Agricultural Scientist of International reputation. The Committee made an extensive study and gave a voluminous report making number of suggestions regarding organisational structure, staffing pattern including suggestions for recruitment, promotions, etc. The Computers and Observers come under auxiliary technical services of the Central Water and Power Research Station, Pune. Para 5.19 at page 35 of the Report pertains to Auxiliary Technical Services. The Committee noticed that there were 51 posts of Senior Observers in the pay scale of Rs. 380-560. Then it

noticed that in Computer 'A' there were 43 posts, of which there were two grades, one in the pay scale of Rs. 330-560 for 80% and the remaining 20% at the pay scale of Rs. 425-700. Then the Committee suggested the Computers and Sr. Observers may be merged into Grade-II. The new pay scales and grades recommended by the Committee and accepted by the Government of India are as follows :-

Laboratory Assistant Grade-III ... Rs. 260-430.

Laboratory Assistant Grade-II ... Rs. 380-560.

Laboratory Assistant Grade-I ... Rs. 425-700.

The Committee also suggested as to how promotions should be done from grade to grade. The Government of India issued order dated 23.12.1980 giving effect to the recommendations of the Committee under which the new designated posts and grades are shown as Laboratory Assistant Grade-I, II and III in the pay scales mentioned above.

12. Then the Government of India framed rules known as 'Central Water and Power Research Station, Pune, Auxiliary Technical Services (Laboratory Staff) Recruitment Rules, 1983'. In the Schedule, we have three grades mentioned above. Laboratory Assistant Grade-III can be filled up by direct recruitment. Then Lab. Asstt. Grade-III is a feeder cadre for promotion to Lab. Assistant Grade-II. It further provides that one must have 8 years regular service in Grade-III. The promotion is done by a D.P.C. consisting of High Level Officers mentioned in Column No. 13. Then the Lab. Asstt. Grade-II is made a feeder cadre for promotion to Grade-I with minimum service of 5 years in Grade-II. Here also, a high level D.P.C. is provided for considering promotion.

Therefore, the recruitment rules clearly provide that an official working as Lab. Assistant Grade-III with 8 years of service is entitled to be considered for promotion by a D.P.C. to the post of Grade-II. Similarly, an

official in Grade-II with five years service is entitled to be considered for promotion to Grade-I by the D.P.C.

If we now accept the applicants' case that Sr. Observers who are now designated as Lab. Assistant Grade-II in Swaminathan's Committee Report and in the Government Order and Recruitment Rules should be given the pay scale of Rs. 425-700, then these officials will get the pay scale of Laboratory Assistant Grade-I. That means, we cannot have any pay scale of Rs. 380-560 at all. That means, a Laboratory Assistant Grade-III who is in the pay scale of Rs. 260-430, on promotion will not go to Grade-II in the scale of Rs. 380-560 but it will be a straight away jump to Grade-I with a pay scale of Rs. 425-700. This will be the result if we accept the applicants' case and allow these two applications. That means, we are rewriting the recommendations of the Expert Committee and we are re-writing the Government Orders dated 23.12.1980 and what is more, we are re-writing the very provisions of 1983 Recruitment Rules. If we accept the applicant' case, by one stroke, we will have to abolish the post of Laboratory Assistant Grade-II and provide only Lab. Assistant Grade-III and then Grade-I. In our view, such a course is not permissible. An Expert Body has given a recommendation that there should be three grades and promotions from one grade to another with minimum number of years of service and further promotion to be considered by High Level Departmental Promotion Committees. A Court or Tribunal cannot meddle with the reports of Expert Bodies. Then we find that the Expert Committee's Report has been accepted and statutory recruitment rules are framed under Article 309 of the Constitution. We cannot give any relief contrary to the Statutory Rules. There is neither prayer in the application, much less necessary allegations to question the constitutional validity of the 1983 Recruitment Rules. Though we are now in 1999, there is no challenge by anybody to the Government Order dated 23.12.1980 constituting three separate and specific grades of Laboratory



Assistants Grade-I, II and III with specific pay scales on the ground that the classification is arbitrary, unreasonable or it violates Articles 14 and 16 of the Constitution. Similarly, Statutory Recruitment Rules were framed in 1983 and in the last 16 years there is no challenge by anybody that this 1983 Rules creating three grades of Lab. Assistants Grade-I, II and III is in violation of Article 14 of the Constitution or it is arbitrary or unreasonable. Both, the Government Orders of 1980 and the Recruitment Rules of 1983 are holding the field for the last so many years. In the absence of pleadings and materials, we cannot interfere with the statutory rules or give any direction contrary to the statutory rules. If we accept the applicants' case, then we have to delete Lab. Assistant Grade-II from the recruitment rules of 1983.

13. In this connection, we can usefully refer to a decision of the Apex Court report in 1997(2) SC SLJ 308 {I.C.A.R. & Another V/s. T.K. Suryanarayan & Others}. That was a case where an employee staked his claim for promotion on the ground that similar relief was given to some other employees. In the present case also, the applicants who are erstwhile Sr. Observers, are claiming the benefit of the judgement of this Tribunal in Kshirsagar's case on the ground that they are similarly situated. The Supreme Court in this case observed that promotions cannot be given contrary to Service Rules and if some employees had been given wrong promotions contrary to Service Rules, the same benefit cannot be extended to others. This is what the Supreme Court observed at para 8 of the reported judgement which is reproduced below :

"We are, however, unable to accept the submission made by the Learned Counsel appearing in both these SLPs. Even if some cases, (in erroneous promotions had been given contrary to the said Service Rules and consequently such employees have been allowed to enjoy the fruits of improper promotion, an employee cannot base his claim for promotion contrary to the statutory Service Rules in law courts. Incorrect promotion either given erroneously by the department by misreading the said Service Rules or such promotion given pursuant to judicial orders contrary to Service Rules cannot be a ground to claim erroneous promotion by perpetrating infringement of statutory Service Rules."

As already pointed out, if we accept the applicants' claim, we will have to

give them higher pay scale of Lab. Assistant Grade-I, though most of them are in Lab. Assistant Grade-II and once we accept that claim, we will be removing Lab. Assistant Grade-II from the statutory recruitment rules and making a situation in which Lab. Assistant Grade-III should get a direct promotion to Lab. Assistant Grade-I, which would be contrary to Service Rules and which cannot be permitted in view of the law laid down by the Supreme Court to the effect that benefits cannot be given contrary to or in violation of Service Rules.

14. The question as to what pay scale should be given to Sr. Observers who are now re-designated as Lab. Assistant Grade-II is a matter which cannot be and should not be decided by a Court or Tribunal. It is a matter for an Expert Body to decide and it is for the Government to decide on the recommendations of Expert Bodies as a policy decision. It may be on the basis of the recommendations of Swaminathan's Committee and on the basis of a policy decision the Senior Observers came to be merged with certain posts of Computer Grade 'A' and re-designated as Lab. Assistant Grade-II in a particular scale of pay. On that basis, the applicants cannot claim higher pay scale on the ground that all the employees in Computer Grade 'A' were given common pay scales on the basis of earlier judgements of the Tribunal. The subsequent merger ^{is} a policy decision will not give right to the Senior Observers to claim the pay scale given to those officials who were merged with them. As far as policy decisions and fixation of pay scales, it is purely in the discretion of the Government and it depends upon the report of the Expert Committee. We have come across number of recent judgements of the Supreme Court cautioning Courts and Tribunals in interfering in matters of policy decisions, fixation of pay scales, etc.



15. Now we will refer to some of the cases with the relevant observations of the Supreme Court which are necessary for our present purpose.

In the case of State of Haryana & Others V/s. Jasmer Singh & Others, reported in 1997 SCC L&S 210, the Supreme Court in para 8 of the reported judgement has observed as follows :

"It is, therefore, clear that the quality of work performed by different sets of persons holding different jobs will have to be evaluated. There may be differences in educational or technical qualifications which may have a bearing on the skills which the holders bring to their job although the designation of the job may be the same. There may also be other considerations which have relevance to efficiency in service which may justify differences in pay scales on the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that good performance can be elicited from persons who have reached the top of the pay scale. - There may be various other similar considerations which may have a bearing on efficient performance in a job. This Court has repeatedly observed that evaluation of such jobs for the purposes of pay scale must be left to bodies and, unless there are any malafides, its evaluation should be accepted."

Again in Shiba Kumar Dutta & Others V/s. Union Of India & Others reported in 1997 (1) SC SLJ 463, the Supreme Court has observed as follows :

"nomenclature and fitment is one of executive policy of the Government. Unless the action is arbitrary or there is invidious discrimination between persons similarly situated doing same type of work, as is pointed out, it would be difficult for the Courts to go into the question of equation of posts or fitment into particular scale of pay. They must be left to be decided by the Expert Committee and Government. The Courts cannot go into them and evaluate the job criteria and scales of pay prescribed for each category. Under those circumstances, the Tribunal is justified in refusing to go into the question."

Then we may make reference to the case of Union Of India & Anr. V/s. P.V. Hariharan & Anr. reported in 1997 (1) SC SLJ 598 where in para 5 the Apex Court has observed as follows :-

"Before parting with this appeal, we feel impelled to make a few observations. Over the past few weeks, we have come across several matters decided by Administrative Tribunals on the question of pay scales. We have noticed that quite often the

Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of 'equal pay for equal work' is also being misunderstood and mis-applied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales."

13. It is, therefore, seen that in a matter like this, the question has to be decided on the basis of Reports of Expert Bodies like Pay Commission or Special Committees, etc. Here we have report of an Expert Committee under the Chairmanship of Dr. Swaminathan, who have after detailed study made recommendations of providing three new grades of Lab. Assistant Grade-I, II and III and different yardsticks for promotion from Grade-III to Grade-II and then to Grade-I. As a policy decision, the Government has accepted the report of a High Level Expert Committee and issued Government Orders and even framed recruitment rules in 1983. We have already observed that for the last 15 to 18 years no one has challenged the legality and validity of the Government Order of 1980 nor the Recruitment Rules of 1983.

Having given our anxious consideration to the question raised before us, we have no hesitation to hold that the reasons which weighed with the Tribunal starting from Saini's case and onwards in granting common pay scales to all the employees of Computer Grade 'A' or Senior Computers, will not apply to the case of Senior Observers. Senior Observers had their own different scales of pay and they did not have scope of further promotion like Computer 'A'. From the Swaminathan's Committee Report we find that the association of

Senior Observers made a grievance that these people are appointed as Observers and then stagnated as Senior Observers with no prospect of further promotion. The grievance of the Observers' Association is noted by the Committee at Item No. IX at page 96 of the Swaminathan's Committee Report. Therefore, the Expert Body gave a new structure and new designation to the Auxiliary Services providing promotional opportunities from Grade-III to Grade-II and then to Grade-I with different scales of pay. We cannot meddle with reports of Expert Bodies and which has been accepted by the Government as a policy decision and necessary orders have been issued. It may be that a policy decision of the Government or even the report or the recommendations of an Expert Body can be questioned before a Tribunal or Court but the scope of interference is very limited. Interference is called for if there is hostile and invidious discrimination in dealing with the recommendations regarding fixation of pay scales, etc. We are not told of any such hostile discrimination shown to the applicants in the recommendations of the Swaminathan's Committee or in the Government Order of 1980 or in the Recruitment Rules of 1983. Infact, the applicants have stated in so many places in the application that they want the benefit of Swaminathan's Committee Report but they want the benefit of higher pay scale because that has been considered or granted by a Division Bench of this Tribunal to Senior Observers in Kshirsagar's case. As already pointed out by the Supreme Court, merely because some promotion or some relief was granted wrongly to some official is no ground to grant similar wrong benefits contrary to service rules to other employees. We are, therefore, of the firm opinion that the decision of the Division Bench in Kshirsagar's case by common order dated 05.12.1994 in O.A. No. 380/90, O.A. 488/90 & O.A. 534/90 is not correctly decided and therefore it cannot be applied to the applicants in these two cases. We hereby over-rule the view of the Division Bench in that case that Senior Observers should get the pay scale of Rs. 425-700. Point No.



1 referred to in the referring order is therefore answered in the negative.

14. In our view, question No. 2 referred to in the Referring Order need not be answered. The question no. 2 is whether Senior Computers would continue to get the same pay scale as per the judgement of the Tribunal in Saini's case even after the implementation of Swaminathan's Committee Report. In the present case, the applicants are not claiming that relief at all. The Senior Computers are not parties to the present two O.As. The only question raised by the applicants in both these cases is that the Senior Observers should get the same pay scale of Senior Computers, namely - Rs. 425-700, which is covered by Question No. 1. We are not concerned about the position of Senior Computers in the present two cases after the implementation of Swaminathan's Committee Report. Hence, in our view, there is no necessity to answer Question No. 2 since Senior Computers are not parties to these two O.As. and therefore, we express no opinion on Question No. 2.

15. In the result and for the reasons recorded above, we answer the two issues referred to the Full Bench as follows :

ISSUE NO. 1 : The Senior Observers are not entitled to get the same pay scale as given to Junior Computers as per the judgement of the Tribunal in Saini's case in T.A. No. 335/85 and other judgements of the Tribunal.

ISSUE NO. 2 : This question is not answered, since the Senior Computers are not parties to these two cases and their disputes cannot be decided in the present O.As. The question is, therefore, not answered.



The matter be placed before a Division Bench for disposal of the two O.As. on the basis of the opinion of the Full Bench expressed above.

~~Bhawej~~
(D.S. BAWEJA)
MEMBER(A).

~~Rainhart~~
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

~~Agarwal~~
(K. M. AGARWAL)
CHAIRMAN.

OS*