

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI**

O.A. 876/1999

Date of Decision : 21 /03/2003

**All India DGQA Stenographers Association and
Shri. C. Chandran** : Applicant (s)

Mr. S. P. Saxena : Advocate for the Applicant (s)

Versus

Union of India & Ors. : Respondent (s)

Mr. R. K. Shetty : Advocate for the Respondent (s)

CORAM:

THE HON'BLE MR. A. S. SANGHVI : **MEMBER (J)**

THE HON'BLE MR. G. C. SRIVASTAVA : **MEMBER (A)**

ORDER

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

1. All India DGQA Stenographers Association, through the President Shri. K. M. Pillai, C/o. C.Q.A (ME), Aundh Road, Poona - 411 023.
2. Shri. C. Chandran Stenographer Gr. II C.Q.A. (EE) Aundh Camp, Poona - 411 027.

- Applicant -

Advocate : Mr. S. P. Saxena

Versus

1. Union of India, through The Secretary, Ministry of Defence, DHQ P.O. New Delhi - 110 011.
2. The Director General Directorate General of Quality, Assurance, Ministry of Defence, New Delhi - 110 011.

- Respondents -

Advocate : Mr. R. K. Shetty

ORDER

O.A. 876 of 1999

Date : 21 /03/2003

Hon'ble Shri. A. S. Sanghvi : Member (J).

The usual complaint of the employees that the employees working in Secretariat are being paid more salary than other staff working in non-Secretariat department finds its echo in this O.A. also. The All India DGQA Stenographers Association has come with a grievance that the Stenographers Grade III working in non Secretariat department are placed in the scale of Rs.1400-2600 while

the stenographers in the Secretariat department are placed in the scale of 1640-2900, though both of them are putting up the same work. They have approached this Tribunal to extend the revised scale of pay of Rs.1640- 2900 to the stenographers grade II in the DGQA organization. They have pointed out that prior to Fourth Pay Commission, the scale of the stenographers group 'C' now known as stenographers grade II in the DGQA organisation was Rs.425-700/- and that of the Central Secretariat was Rs.425-800/-. After Fourth Pay Commission the position was that the stenographers of DGQA organisation were placed in the scale of Rs.1400-2300 while that of the Secretariat were placed in the scale of Rs.1400-2600/-. Since this amounted to discrimination, the Government of India referred the matter of the pay scale of Stenographer 'C' (Stenographer grade II) to the Board of Arbitrator. The Board gave an award in favour of Stenographer grade II working in the non Secretariat offices and the Government of India accepted the award vide order dated 4.5.90. The stenographer grade II were therefore placed in the pay scale of Rs.1400-2600/- w.e.f. 1.1.86 bringing them at par with stenographer grade II / or stenographer grade 'C' of the Central Secretariat Stenographers Services. However, suddenly, the stenographers of CSSS were given the higher pay scale of Rs.1640-2900/- w.e.f. 1.1.86. The non-Secretariat stenographers were however not extended this benefit. A large number of O.As were filed in various Tribunals on behalf of stenographers grade II/Assistants working in subordinate offices praying for grant of scale of pay of Rs.1640-2900/- and all such applications were allowed by the Tribunals holding that the benefit of the scale of pay of Rs.1640-2900 only to the stenographers grade 'C' or Assistant of CSSS and

denial of the same to stenographers in subordinate offices was discriminatory and illegal. O.A. 985 of 83 allowed by the Principal Bench of the Tribunal was challenged before the Hon'ble Supreme Court but the Supreme Court had dismissed the said S.L.P. on merits vide order dated 11.7.96. It is also contended by the applicants that since the Board of Arbitrator had given the award for parity of the pay scales, the government cannot change the same unilaterally and when the scale of 1640-2900 is given to the CSSS Stenographers, the same requires to be extended to the stenographers grade II of subordinate offices. Pursuant to the award of the Board of Arbitration, the parity in the scales of both the categories was maintained till 31.7.90 but by order dated 31.7.90 the pay scales of the stenographers grade 'C' in CSSS were suddenly revised to Rs.1640-2900/-. According to the applicants they had submitted a representation to the respondent no.2 on 17.5.99 and again on 22.7.99 but their representations have remained un-replied by the respondents. They have maintained that they are entitled to be placed in the scale of Rs.1640-2900 at par with the stenographers grade II of CSSS in view of the award of the Board of Arbitrators and have prayed that the respondents be directed to refix their pay in the scale of Rs.1640-2900 w.e.f. 1.1.86 or the date of the promotion of individual stenographers and to pay the difference of arrears of such pay fixation from the date they had become entitled.

2. The respondents in their reply contended inter alia that no detailed analysis with regard to the required qualification, the list of duties and responsibilities as well as the work load of the stenographers working in their organisation has been submitted so

that the same can be compared with the duties and responsibilities, recruitment's qualification and the workload of the stenographers working in the CSSS. According to them, the applicants have not furnished any particulars with regard to the duties, responsibilities, recruitment qualification, etc of both the categories of the stenographers and hence the case for equal pay for equal work is not made out. Relying on a decision of the Bombay Bench of this Tribunal in O.A. No. **1248 of 93** they have contended that the Tribunal has rejected the case for up-gradation of the stenographers who were working in the BARC and claiming parity with the stenographers working in the department of Atomic Energy by staying that up gradation have to be and revision of pay scale can be decided only by expert body like Pay Commission and Central Government. The respondents have also contended that the Tribunal cannot enter into the question of the parity in the scale of the Stenographers working in CSSS with that of the subordinate offices, as it is the work of the expert body like Pay Commission and Central Government and this principal is well recognised by the Supreme Court in several decisions. Referring to the **O.A. No. 527 of 97** decided by the Principal Bench of the Tribunal, the respondents have submitted that they are not aware of the legal position as to whether the case of these stenographers was in fact considered positively and their pay scales were upgraded from Rs.1400-2600 to 1640-2900/-. According to them, the question of the equation of the post as well as the equation of the pay scales must be left to the Government or the Executives and the Tribunal should not undertake the exercise to decide this question. The respondents have further stated that in order to relieve stagnation

and to improve promotion prospects in stenographer cadre, instructions are issued by the respondents to upgrade 25% of the post of stenographer grade II to stenographer grade I in the pay scale of Rs.1640-2900/-. According to them, the Board of Arbitrator had rejected the demand for absolute parity but directed that stenographer grade II in the subordinate offices be placed in the scale of Rs.1400-2600/-. Claim of the applicants that the Board of Arbitrator gave this award in favour of steno grade II and they were brought at par with stenos of CSSS is clearly misplaced and misquoted. According to them, no case is made out by the applicants for parity with the pay scales of stenographers of CSSS and hence this O.A. deserves to be rejected.

3. We have heard the learned advocate of both the parties and have carefully considered the rival contentions.

4. Before we proceed to consider the rival contentions and the merit of the case, we may point out that though reliance was placed on the award of the Board of Arbitration for the purpose of seeking parity with the pay scales of the stenographers grade II of CSSS, the award is not placed on record by either of the parties. We have therefore no opportunity to examine the contents of the award. No analytical data like the workload, recruitment rules, qualifications for the recruitment, list of duties and responsibilities etc of the stenographers grade II of CSSS as well as of the subordinate offices or that of the applicants has been furnished thereby making it impossible to compare rival duties and responsibilities, recruitment qualification, workload etc and to conclude that they are all

comparable. The applicants, it appears have solely relied on the past decisions of the Tribunal to claim parity in the pay scales with that of the stenographers of the Secretariat. However, the decisions relied on by the applicants to support their case of the parity have lost their significance in view of the subsequent decisions of the Supreme Court which implidely reverses those decisions.

5. The main reliance is placed by the applicants on the decision in the case of **P. K. Sehgal Vs. Union of India** decided by the Principal Bench on dated **28.9.98 in O.A. 527 of 97** reported in **1999 (2) SLJ 331**. The Principal Bench therein was considering the question of the parity between the stenographers grade II working under Director General of Inspection (DGI), Customs and Central Excise and CSSS as well as Assistants of the Central Secretariat Services. The award of the Board of Arbitrator was also considered by the Principal Bench while deciding the O.A but mainly relying on the earlier decision in O.A. 985 of 93 of the Principal Bench, it was held that there was no justification in not giving the same scale to the applicants therein and not bringing them on par with the stenographers of CSSS. Consequentially, the Tribunal had allowed the O.A. and directed the respondents to consider applying revised pay of scale of Rs. 1640-2900 to the applicants on the same basis and on the same grade of stenographer of grade 'C' of CSSS.

6. We are not aware whether this judgment was implemented by the respondents or not. But in the case of **State of Haryana & Ors. Vs. Jasmer Singh and Others** reported in **1997 SCC (L & S) 210**, the Supreme Court while considering the case of **Randhir Singh Vs.**

Union of India AIR 1982 SC 877 and Meva Ram Kanojia Vs. All India Institute of Medical Sciences & Ors, ATJ 1989 (1) 654, which was relied on by the Principal Bench in O.A. 985 of 93 decided on 19.1.96 has observed in para 8 as under :-

"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 the 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 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 purpose of pay scales must be left to expert bodies and, unless there are any mala fides, its evaluation should be accepted."

7. In the case of **Union of India and Others Vs. P. V. Hariharan** reported in **1997 (1) SLJ 598** the Supreme Court had chided the Administrative Tribunals for not adhering to the principal that deciding the pay scales of the different cadres is the work of the expert body like Pay Commission and other and not resisting from interfering with the pay scales recommended by the Pay Commission and accepted by the Government, on the doctrine of equal pay for equal work. In para 5 of the judgment the Supreme Court has laid down as under :-

"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 misapplied, 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 the pay scales."

8. Again in the case of **State of U. P. Vs. Ministerial Karamchari Sangh** reported in **1998 SCC (L & S) 287** and **Associate Banks Officer's Association Vs. State Bank of India** reported in **1998 SCC (L & S) 293**, the Supreme Court has reiterated the above observations and maintained that the work of fixing of the pay scales or revision of the pay scales should be left to the expert bodies like Pay Commission and the Tribunals or the High Courts should not lightly interfere with the prescribed pay scales. These observations are very significant in view of the recommendations of the Third Pay Commission as well as the Fourth Pay Commission and the Fifth Pay Commission with regard to the parity of the stenographers in the subordinate offices and the Secretariat. The Fifth Pay Commission while dealing with the disputes between two classes of the stenographers i.e., Secretariat and non-Secretariat Stenographers in its report and more particularly in para 46.34 onwards has recommended as under :-

"We have given our careful consideration to the suggestion made by Association representing stenographers in offices out side the Secretariat in the light of the observations made by the Third Central Pay Commission. The commission had observed that as a general statement, it was correct to say that the basic nature of the stenographers work remained by and large the same whether he was working with an officer in the Secretariat or with an officer in an subordinate office. The commission was of the considered view that the size of the stenographers job was very much dependent upon the

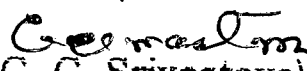
nature of work entrusted to that officer and that it would not be correct, therefore to go merely by the status in disregard of the functional requirement. By the very nature of work in the Secretariat, the volume of dictation and typing work was expected to be heavier than in an subordinate office, the requirement of secrecy even in civil office of the Secretariat could be very stringent. Considering the differences in the hierarchical structures and in the type of work transacted in the Secretariat and in the subordinate offices, the commission was not in favour of adopting the uniform pattern in respect of matters listed in the preceding paragraph. To our mind the observation of the Third Pay Commission are as relevant today as they were at that point of time and we are not inclined to overlook them totally. In view of the above mentioned distinguishable features, we do not concede the demand for absolute parity in regard to pay scales between stenographers in offices outside the Secretariat and in the Secretariat notwithstanding the fact that some petitioner stenographers grade II have got the benefit of parity in pay scales through Courts.

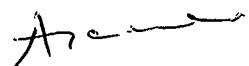
9. Though these observations are of the Fifth Pay Commission and as such not applicable to the recommendations of the Fourth Pay Commission, we find from the history given by the Fifth Pay Commission in para 43.29 of the report that the Fourth Pay Commission had also not recommended absolute parity between the two cadres. The Fourth Pay Commission had recommended replacement scale of Rs.1400-2300 for non-Secretariat stenographers grade II while Rs.1640-2900 to the Secretariat stenographer grade 'C'. The Board of arbitration to whom the matter was referred had also not given absolute parity and while rejecting the demand for absolute parity directed that stenographer grade II in subordinate offices should be placed in the pay scales of 1400-2600/-. It is therefore quite obvious that none of the expert bodies has recommended parity in the pay scales of the stenographers of the Secretariat and non-Secretariat stenographers. Under the circumstances, to hold that by not giving the parity to the non-Secretariat stenographers grade II with the pay scales of the

stenographers grade II of the Secretariat amounts to discrimination and requires to be interfered with will amount to taking a decision against the directions of the Supreme Court. We note that in the case of **M. K. Francis Vs. Chairman, Atomic Energy Commission and others** in O.A. 1248/93 decided on dated 17.2.99 and reported in 1999 (3) **All India Service Law Journal** 347, the Bombay Bench of this Tribunal has refused to interfere with the pay scales of the stenographers grade II of BARC and to give them parity in the pay scales with that of the Secretariat stenographers and have rejected the O.A. We are in respectful agreement with the findings of the Bombay Bench in the case of M. K. Francis and Others. We also note that quite recently the Supreme Court has again in the case of **Govt. of Andra Pradesh and Others Vs. P. Harihara Prasad** reported in 2002 **SCC (L & S)** 1105 reiterated the same principal that it is the work of the expert bodies like Pay Commission to fix the pay scales of the employees and that the principal of equal pay for equal work cannot be applied when their services are to be governed by the respective rules applicable to them. Rejecting the claim of the parity in the pay scales by the employees of the subordinate offices with that of the employees of the State Secretariat, the Supreme Court has observed as under :-

"The employees of the subordinate courts and the employees of the State Secretariat are governed by different rules and therefore their pay scales and other conditions of services are to be governed by the respective rules applicable to them. Ordinarily, it is not permissible to go into the nature of duties of employees while exercising writ jurisdiction under Article 226 and on that basis direct grant of pay scales which are applicable to employees of different services. Therefore the issue of the writ of mandamus directing the parity of pay scales on the assumption that posts were identical and the status of employees performing the same nature of duties cannot be sustained in so far as the rights of the subordinate courts are concerned."

10. The ratio of these decisions of the Supreme Court has direct application to the facts of the instant case. The applicants as well as the stenographers of the State Secretariat are governed by different rules and their pay scales and their other conditions of services are to be governed by the respective rules applicable to them. The applicants therefore cannot claim parity of pay scales with that of the CSSS. The reliance placed on the judgment in the case of Shri. P. K. Sehgal and others by the learned counsel for the applicants for the similar relief is not well founded as this judgment stands implidely overruled by the Supreme Court as discussed above. These decisions cannot be considered to be a precedent and cannot be followed. We note that it has not been followed by the Bombay Bench in the case M. K. Francis and Ors. (Supra). We are in respectful agreement with the decision in the case of M. K. Francis and Others and adopt the same reasoning. We hold that no case for parity in the pay scales of the applicants with that of the stenographers of CSSS grade II is made out. We therefore do not find any merit in the present O.A. The O.A. is accordingly dismissed with no order as to costs.


(G. C. Srivastava)
Member (A)


(A. S. Sanghvi)
Member (J)