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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.380/90, O.A.488/90, & O.A.534/90

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|--------------------------------|---------------------------------|
| 1. A.D.Kshirsagar &
10 Ors. | .. Applicants in
O.A.380/90 |
| 2. R.M.Papani & 25 Ors. | .. Applicants in
O.A. 488/90 |
| 3. R.N.Bhadale & 49 Ors. | .. Applicants in
O.A.534/90 |

-versus-

- | | |
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| 1. Union of India
through
The Secretary,
Ministry of Water
Resources,
Govt. of India,
New Delhi - 110 001. | |
| 2. Director,
Central Water and
Power Research Station,
Khadakwasla,
Pune - 411 024. | .. Respondents in
all the above
OAs. |

Coram: Hon'ble Shri Justice M.S.Deshpande,
Vice-Chairman

Hon'ble Shri M.R.Kolhatkar,
Member(A)

Appearances:

1. Mr.M.S.Ramamurthy
Counsel for the
Applicants.
2. Mr.M.I.Sethna
Counsel for the
Respondents.

JUDGMENT:
(Per M.R.Kolhatkar, Member(A))

Date: 5-12-94

As the fact situation is common,
the three O.As are being disposed of together
mentioning individual reliefs separately
as necessary :

O.A.380/90

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The 11 applicants in this case are Senior Observers in the Central Water and Power Research Station, Khadakwasla under Ministry of Irrigation (later on called Ministry of Water Resource Development). The relief is sought in the context of recommendations of High Level Review Committee under the Chairmanship of Dr.M.S.Swaminathan. It is not disputed that the Govt. orders on the Swaminathan committee were issued under No. 44/52/78-Adm.I/E.II dated 23-12-80. This order states as below :

"In pursuance of the recommendations made by the High Level Committee under the Chairmanship of Dr.M.S. Swaminathan, Director General, ICAR, which recently examined the organisational structure, staffing pattern and procedural matters relating to the Central Water & Power Research Station, Pune, it has been decided to merge the grades of Computers and Observers, which will form a part of the Auxillary Technical Services which is proposed to be set up, in the now integrated grade of Laboratory Assistants in the manner shown below, where each new grades of Laboratory Assistant has been indicated against its corresponding existing grade of Observers and Computers:

Nos.of posts.	Name of posts	Scale of Pay	Nos.of posts	Name of post	Scale of pay
20	Computer 'A'	Rs.425-700	20	Laboratory Assistant (Gr.I)	Rs.425-700
23	Computer 'A'	Rs.330-560	74	Laboratory Assistant (Gr.II)	Rs.380-560
51	Sr.Observers	Rs.380-560			
22	Computers 'B'	Rs.260-400	97	Laboratory Assistant (Gr.III)	Rs.260-430"
75	Observers	Rs.260-430			

The order stated that separate recruitment rules are being framed for these posts and it is not disputed that these rules were issued on 14-12-1983 and called Central Water and Power Research Station, Pune, Auxiliary Technical Services(Laboratory Staff)Recruitment Rules,1983. The applicants herein were working as Senior Observers as on 23-12-80 viz. the date of issue of orders. The 3rd Pay Commission pay scale attached to the post of Senior Observers was Rs.380-560. Consequent on the issue of the orders dated 23-12-80, the designation of the applicants was changed to Laboratory Assistant,Gr.II but the pay scale remained^{the} same viz. Rs.380-560. In accordance with the Recruitment Rules, the applicants ~~who~~ were redesignated as Laboratory Assistants Gr.II were promoted to the post of Laboratory Assistant Gr.I in the scale of Rs.425-700(revised to Rs.1400-2300 w.e.f. 1-1-86) At Ex.'A' has been given a statement of the service record of the applicants from which it is seen that the applicants were promoted to the post of Laboratory Assistants Gr.I on different dates, the earliest date being 22-4-83(A.D.Kshirsagar,applicant No.1) and the latest date being 27.12.89(B.S.Theurkar applicant No.10).

2. The applicants contend that the Principal Bench of C.A.T. in the case of A.K.Khanna & Ors. vs. U.O.I. & Ors.(O.A.1942/88) decided on 6-9-88 ruled that Senior Computers are entitled to pay scale of Rs.425-700 from the

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date the said pay scale became effective and hence the applicants represented in July, 1989 demanding the scale w.e.f.

1-3-1975, the date from which the applicants were promoted as Senior Observers. The applicants filed another representation in November '89 repeating the demand and ^{representation} also additional/ demanding allotment of higher scale of Rs.550-900 (revised to Rs.1640-2900) from 1-1-86, so as to provide them a channel of promotion as enjoyed before. The respondents sent a reply by their letter dated 24-2-1989 as below :

"2. As regards the proposal to extend the judgment to the similarly placed persons, it has been decided that benefit of higher scale may be allowed to them on notional basis w.e.f. 1-1-1973 and actual basis w.e.f. 1-12-1988. The similarly placed Senior Computers for this purpose (for higher scale of pay) will be only those who were in the scale of Rs.150-380/- prior to 1-1-1973 and were placed in the scale of Rs.330-560/- based on the recommendation of the Third Pay Commission."

Chief

In terms of this letter the ^{Chief} Administrative Officer of the C.W.P.R.S. issued office order dated 27-7-89 (Annexure 'G') as below:

"In pursuance of judgment delivered by the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi on 6-9-88 in O.A.No.1942/88 filed by Shri A.K.Khanna and others versus Union of India and also pursuant to Ministry of Water Resources' letter No.8/28/87-Estt.I dated 24-2-1989, the pay of Senior Computers only who

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were in the pay scale of Rs.150-380 prior to 1-1-73 and were placed in the pay scale of Rs.330-560 based on the recommendations of the Third Pay Commission may be allowed the benefit of higher scale of Rs.425-700 on notional basis w.e.f. 1-1-73 and on actual basis w.e.f. 1-12-1988."

The applicants have impugned these orders. According to them the decision of the Govt. to have the benefit of the higher scale on notional basis w.e.f. 1-1-1973 only to those Computers 'A' who were in the scale of Rs.150-300 prior to 1-1-1973 and who were placed in the scale of Rs.330-560/- w.e.f. 1-1-1973 is totally unjust and arbitrary and ^{denial} of the benefit of higher scale of Rs.425-700 to Senior Observers like the applicants who were in slightly higher scale of Rs.380-560/- was wrong. The respondents ought to have extended the benefits of higher scale of Rs.425-700 to the applicants w.e.f. 1-3-75 onwards when the applicants became senior observers. For this purpose they have relied on judgments in A.K.Khanna and others and G.Gangadhar Rao and Ors. They have also stated that on this point there is a latest judgment of the C.A.T. Principal Bench vide O.A.No.1187/90 delivered on 1-9-94 by division bench consisting of Hon'ble Member (A) Shri S.R.Adige and Smt.Lakshmi Swaminathan Member(J). We have gone through the judgment. The judgment in para 5 states as below :

"5. During hearing, Shri G.D.Gupta for the applicants has placed before us a copy of the Tribunal's judgment dated 23-11-1990 in O.A.1163/89 - Ram Mohan Nigam & Ors. vs. Union of ..6/-

India & Ors. and connected cases wherein the respondents were directed to treat all those applicants as Senior Computers in the revised pay scale of Rs.425-700 from the dates from which they were entitled to the said scale and not from 1-12-1988, together with all consequential benefits including arrears of pay, allowances and seniority. Shri M.K.Gupta for the respondents has not been able to show us anything to establish that this judgment in Nigam's case(supra) does not hold the field as of date."

This is the basis for the Tribunal for allowing the O.A. and directing the respondents to grant the revised pay scale of Rs.425-700 to the applicants from the date they became entitled to the said scale. The judgment of Ram Mohan Nigam & Ors. is not before us. We have therefore gone through the ^{other} judgment quoted by the applicants and we find that the basic judgment of the Tribunal on this point was delivered by C.A. Principal Bench in T-335/85 decided on 11-4-1986 in the case of B.S.Saini and another vs. Union of India and another. That case pertained ^{to} Junior Computers/Senior Computers in the Ganga Basin Resources Organisation under the Ministry of Agriculture and Irrigation. The judgment relied on the ratio of Hon'ble Supreme Court in Savita & Ors. vs. Union of India, 1985 SCC(L&S)826. To quote:

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"The pay scales of senior computers was revised as per the recommendations of the Third Pay Commission partly to Rs.425-700 and partly to Rs.330-560. Six posts of senior computers were admitted in the pay scale of Rs.425-700 and the remaining 26 posts of Senior Computers were admitted to the grade of Rs.330-560. The petitioners were promoted to the post of senior computers on 3-7-71. The pay scale of senior computers was revised under the revised pay rules of 1974 which became effective from 1st January, 1973. Thus all the petitioners were promoted before the Third Central Pay Commission revised the pay scale of Senior Computers as above. Only because 6 posts of Senior Computers were admitted to the pay scale of Rs.425-700 and the remaining 26 posts were in the pay scale of Rs.330-560, the petitioners were denied the higher pay scale. The duties attached to the post and discharged by all the Senior Computers irrespective of as to which scale they are admitted to are one and the same. They were all promoted under the same rules prior to the revision of pay scales. As declared by the Supreme Court in Savita & Others vs. Union of India fixing different pay scales for the same post is violative of Articles 14 and 16 of the constitution. Following the above judgment of the Supreme Court, this Tribunal in P.K.Taneja & Others vs. Union of India & Another (Regn. No.T-194/85-CW 616/75) by a judgment dated 9-4-1986 held that the denial of the higher pay scale to all the Senior Draughtsmen is wholly illegal,

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unjustified and violative of Fundamental Rights guaranteed under Articles 14 and 16 of the Constitution. The claim of the petitioners who are Senior Computers and whose pay scales were similarly revised partly to Rs.425-700 and partly to Rs.330-560 is identical to that of Senior Draughtsmen in the above said case and must be allowed. The order revising the pay scales attached to the post of Senior Computers to Rs.330-560 is accordingly quashed and the petitioners are declared entitled to the post of Senior Computers in the revised pay scale of Rs.425-700."

It would be thus seen that the action of the respondents in giving the higher grade to only a few posts and denying the same to a larger number of posts, the incumbents of which perform the similar duty was held to be violative of the doctrine of equality enshrined in Article 14 read with directive principle of equal pay for equal work incorporated in Article 38 of the Constitution. So far as the case of ~~xxxxxxxxxx~~ A.K.Khanna decided by C.A.T. is concerned Principal Bench on 6-9-1988/ that was a case in which the action of the respondents in denying a particular benefit to the petitioners merely on the ground that they were not parties to the litigation even though they were similarly placed was itself held as discrimination violating articles 14 and 16 of the constitution.

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So far as G.Gangadhara Rao & Ors. O.A.212/80, decided by C.A.T. Hyderabad Bench on 18-11-88 is concerned it related to Senior Computers and it followed the ratio of Saini and Khanna.

3. In this background we have to consider the claim of the applicants to get the scale of Rs.425-700 from 1-3-75. We have no doubt that the applicants are entitled to get the scale from the date they became eligible thereto subsequent to implementation of the recommendations of the Swaminathan Committee dt. 23-12-80 to which we had referred at the beginning of this order. But can we sustain the claim of their being entitled to this scale merely on the ground that they have become eligible from 1-3-75. In our view this latter claim cannot be sustained because the rationalisation/re-organisation of various designations and scales brought about by Swaminathan Committee cannot be the fiction of relation back be stretched to have an anterior date merely because the applicants became entitled thereto. This is because if Swaminathan Committee had not made its recommendations, the question of reorganisation would not have arisen at all. Merely because Swaminathan's Committee's recommendations happened to have been made at the mid point of the currency of 3rd Pay Commission's scale they cannot be deemed to have come into effect from an earlier date.

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4. We are therefore of the view that the applicants succeed but only to the extent that they will be entitled to the pay fixation in the pay scale of Rs.425-700 and the arrears thereto not merely notionally but actually from the date they became entitled thereto after 23-12-1980. The respondents contend that whatever orders are made by the Tribunal should be made conditional on provisions of recruitment rules. This contention of the respondents does not appeal to us because this case relates not to eligibility of the applicants for promotion but given the fact that the applicants are entitled to be promoted in terms of applicable rules from a particular date, it relates to the claims that they must get actual pay fixation and arrears of pay fixation from the date they are so entitled and not from the arbitrary date i.e. 1-3-88 which was laid down by the Ministry of Irrigation vide their order dt. 24-2-89.

5. The next relief claimed by the applicants is that the respondents be directed to allot the scale of Rs.550-900 from the date they were promoted as Laboratory Assistant Grade I and grant consequential benefits. This relief is not pressed by the applicants because the rules for promotion to the post of Research Assistant carrying the scale of Rs.550-900 to which posts Laboratory Assistant Grade I are entitled have come into force in 1984. The claim of the applicants to get that higher scale from the date they were promoted to the grade of Laboratory Assistant Gr.I cannot be accepted but they certainly ...11/-

have a claim to be considered for the post of Research Assistant in the pay scale of Rs.550-900 from the date they are eligible in terms of recruitment rules.

6. The third relief claimed by the applicants is that they should be given the pay scale of Rs.290-500 from 1-1-1973 the date of implementation of 3rd Pay Commission to 28-2-75 the date from which they are claiming the benefit of pay scale of Rs.425-700. This claim is based on the case of Parmananda Sharma vide T.A.No.27/87 decided by C.A.T. Cuttack Bench on 23-9-1988. In that case the issue involved was that of fixing the pay scale of Parmananda Sharma who was appointed as Laboratory Assistant by the Chief Administrator, Dandakarnya Development Authority in the scale of Rs.85-140 and posted as Laboratory Assistant in the Higher Secondary School under Dandakarnya Development Authority. The grievance of the petitioner^{was} that the petitioner should have been given the revised scale of pay as recommended by the 3rd Pay Commission viz. Rs.290-500. There was no dispute that the petitioner was Laboratory Assistant in a school and the petitioner relied entirely on the analogous of pay scale of Laboratory Assistant in the schools^{run by} Ministry of Defence and Ministry of Railways and the case of the applicant rested on the contention that the

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Laboratory Assistant in a school under Dandakarnya Development Authority which is an organisation under the Govt. of India cannot allot a different pay scale. Therefore the Tribunal directed that the petitioner should be given the pay scale of Rs.290-500 w.e.f. 1-1-1973.

7. This case does not appear to help the present applicants because they are trying to compare the incomparables. The post of Laboratory Assistant in the Schools under the central government require a different qualification and the duties of the post of Laboratory Assistant in Schools are also different from those of Laboratory Assistant in the departmental laboratories of central government. Moreover, the applicants are comparing the pay scales of Laboratory Assistants Grade III with the pay scale of Laboratory Assistants in the school viz.Rs.290-500. But the hierarchy of Laboratory Assistants in the departmental laboratory does not hold in the school and there is no comparison between the duties and functions of these two categories. The prayer of applicants is therefore without merit and is rejected.

O.A.488/90

8. The 26 applicants in this O.A. are Laboratory Assistants Grade III initially appointed as Observers or Computer 'B' between the period 23-12-80(Shri R.M.Papani, applicant No.1) and 6-12-89(D.G.Walje applicant No.25) Their prayer is that they should be given the scale of Rs.290-500 from 1-1-1973 or from the date of appointment of the applicants

whichever is later and the scale of Rs.1200-2040 from 1-1-1986, and consequent arrears and other attendant benefits. The second relief of resanctioning of special pay of Rs.40/-p.m. is not pressed. The case of the applicants entirely depends on the case of Parmananda Sharma decided by Cuttack Bench of the CAT to which we have referred above. This O.A. is therefore liable to be rejected and is rejected.

O.A.534/90

9. The 50 applicants in this O.A. are Laboratory Assistants Grade II. The main relief claimed by them is to allot the scale of Rs.290-500 w.e.f. 1-1-73 or from the date they were working as Observer or as Computer 'B' and pay to the applicants the scale of Rs.425-700 from the date they were working as Senior Observer/Laboratory Assistant Gr.II and the scale of Rs.1400-2300 from 1-1-86 and pay the consequent arrears on that basis and to hold and declare that the Govt. of India order dt. 24-2-89 and the order dated 27-7-89 of the C.A.C., C.W.P.R.S. restricting the actual benefits of the higher scale of Rs.425-700 from 1-12-1988 and that too only to Computers 'A' are arbitrary, unconstitutional, null and void.

10. So far as the first prayer is concerned it is liable to be rejected for the reasons explained above. But so far as the second prayer and subsequent prayers are concerned the same are entitled to be

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allowed following the ratio of Saini's case as explained in the detailed reasons given in relation to our order in O.A. 380/90. We, therefore, direct that the applicants should be given the pay scale of Rs.425-700 from the date they became entitled to.

11. O.A.Nos. 380/90, 488/90 and 534/90 are accordingly disposed of. There will be no order as to costs.

(M.R.KOLHATKAR)
Member(A)

(M.S.DESHPANDE)
Vice-Chairman

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