

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A. 729/92 & O.A. 1023/93

O.A. 729/92

Shyam Jagannath Vaidya

O.A. 1023/93

P.M. Haridas & Ors.

.. Applicants

Vs.

Union of India and Ors.

.. Respondents

CORAM : 1. Hon'ble Shri Justice M.S.Deshpande, Vice Chairman  
2. Hon'ble Shri P.P. Srivastava, Member (A)

Appearances

Shri.S.P.Saxena  
Advocate  
for the applicants

Shri.R.K.Shetty  
Advocate  
for the respondents

ORAL JUDGMENT

DATED : 08/08/1995

(Per. Shri Justice M.S.Deshpande, V.C )  
O.A.729/92

By this application, the applicant seeks a direction to the respondents to fix his pay and allowance in the scale of Rs.2000-3200 from the date the Ministry of Defence approved the said revised scale i.e. 1.9.1987 and to pay arrears of salary with all consequential benefits.

2. The applicant was appointed as Stenographer Grade-III under the Respondent No. 5, the Commandant A.C.Centre and School, Ahmednagar on 3.10.1956 and was promoted to the post of Stenographer Grade-II in 1982 and later to the post of Stenographer Grade-I/Sr.P.A to Commandant in the pay scale of Rs.1640-2900. The Ministry of Defence vide its letter dated 1.9.1987 (Exhibit A-1) accepted the recommendations of IVth Central Pay Commission and the sanction of President was conveyed to the upgradation of the pay scales of

Stenographers Grade-I from Rs.1640-2900 to Rs.2000-3200 in the R&D organisation of the Ministry of Defence, subject regarded as to the posts of Stenographer Gd.I being / complementary to posts in the Senior Administrative Grade (Rs.5900-6700) and above with effect from 01/09/1987. The applicant made a representation on 8.3.1988 to the Respondent No. 5 stating that since the Commandant

Respondent No. 5 is Major General in the pay scale of Rs.5900-6700, the applicant who is attached to him is entitled to be upgraded to the pay scale of Rs.2000-3200. Respondent No. 5 forwarded this representation on 12.3.1988 to Respondent No. 4 but the benefit was not extended to the applicant on the plea that the matter was under active consideration of the government. The applicant, therefore, has approached this Tribunal for the aforesaid relief.

3. The respondents by their Written statement admitted that Respondent No. 5 is Major General in the pay scale of Rs.5900-6700 but urged that the scales of pay were recommended only in the case of Stenographer Grade-I working in the Research & Development Department of the Ministry of Defence whereas the applicant is employed in the office of Respondent No. 5 which is not a R&D Department and hence, the Ministry of Defence Circular dated 1st September, 1987 was not applicable to him. It was also urged that this Circular regarding upgradation of scales of pay applies only to Stenos working under Civilian Officers and not under Defence Services. It is further contended that upgradation of scales of pay was a matter which was entirely within the discretion of the respondents that being a policy matter and the Tribunal should not therefore, interfere with the policy decisions taken by the respondents.

4. The only question which arises for our consideration is about the applicability of the letter at Exhibit 'A1', dated 01-09-1987 under which 19 posts of Stenographers Grade-I complimentary to posts in the Senior Administrative Grade (Rs.5900-6700) were upgraded. Our attention was drawn to para 2 of that letter which refers to 'the expenditure involved will be debited to Major Head 82076, Minor Head '108' R&D Orgn-Defence Services Estimates. Para 3 records that the letter is issued with the concurrence of Integrated Finance Division vide their U.O.No. 2066/IF/R&D dated 12/8/87 and in consultation with Department of Expenditure. Another letter which requires to be examined is Exhibit A-7, dated 23.2.1989 issued by Ministry of Defence. That letter reads that the letter dated 6th February 1989 was being forwarded for information and necessary action in so far as civilians paid from Defence Services Estimates are concerned and in effect directs that the entitlement of officers for stenographic assistance has been revised with immediate effect and four categories of Stenographers are ~~were~~ to receive certain scales. With regard to the post of Sr.P.A (Rs.2000-3200), it was to be given to Officers of Senior Administrative Grade or equivalent posts carrying the pay scale of Rs.5900-6700 and above.

5. The learned counsel for the applicant relied only on these two letters for entitlement of the applicant and he did not contend that the applicant ~~should be~~ <sup>should be</sup> paid equal pay for equal work or ~~it is to be~~ compared with identical categories working with different departments in the context of Article 16 of the Constitution. The question regarding the

jurisdiction of the Tribunal to decide matters pertaining to the policy of the government did not arise for consideration, in view of the definite case put forward by the applicant. As we have pointed-out, the letter dated 1.9.87 (Exhibit 'A1') and letter dated 23.2.89 (Exhibit A7) require that the benefit of pay scale of Rs.2000-3200 to be given to Sr.P.As working with Officers of Senior Administrative Grade of equivalent posts carrying pay scale of Rs.5900-6700 and above. The fact that the applicant was attached to such an officer has not been disputed by the respondents.

6. In G.Chacko V. M.Girija Vallabhan (O.A.336/92) decided by Ernakulam Bench of this Tribunal on 23.4.93, similar question with regard to Stenographers came up for consideration and the Tribunal gave a direction to the respondents to consider the claim of the applicants therein in the light of the agreement that was reached, observing that it was not necessary for the Tribunal to go into the merits of the contentions raised. In O.A. 792/89 (V.M.Radha-Kanthan Vs. Secretary, Ministry of Defence & Ors.) decided by this Bench of the Tribunal on 3-7-1991 the contention was raised that the posts held by defence service personnel such as Major General do not fall within the ambit of the Circular. The Tribunal observed when the entitlement of Stenographer Grade-I attached to Commandant, Armed Forces Medical College for the higher grade of Rs.2000-3200 that came up for consideration, the expression 'Senior Administrative Grade' does also include the Commandant of the Armed Forces Medical College, Pune as the functions of that officer are also administrative

in nature and merely because the post is held by Defence Service Personnel, no distinction can be made with respect to the entitlement for stenographic assistance in the level of Senior Personal Assistant in the grade of Rs.2000-3200. The matter is thus covered and we are bound by the ratio of the decision in that case. Having regard to the contents of document at Exhibit 'A7', we find that the applicant is entitled to the benefit of scale of pay of Rs.2000-3200 since he is attached to an officer of Senior Administrative Grade (Rs.5900-6700).

7. We, therefore, allow the petition and direct the respondents to grant the benefit of the letter at Exhibit 'A1' with effect from 1.1.86 and all consequential reliefs including arrears of pay except that the actual payment of arrears on the basis of pay fixation with effect from 1.1.1986 shall be restricted to the period one year next before filing of the petition i.e. the applicant will be entitled to the benefit from 21.7.91 onwards. This entitlement shall be worked-out and paid to the applicant within four months from the date of receipt of copy of this order. Since the applicant retired in the year 1993, we direct that the pension and retiral benefits of the applicant shall be worked-out on that basis and also be paid within the time limit we have prescribed above.

O.A. 1023/93

8. In O.A. 1023/93 which was heard alongwith O.A. 729/92 identical questions were raised. That application is by 61 persons belonging to different grades for appropriate action for implementation of the directions as to the benefits accorded by letter dt.6.2.89

and to upgrade them to the higher pay scale with effect from 1.1.86. The letter as issued by Ministry of Personnel and Pension on 6.2.89 relating to recommendations of IVth Central Pay Commission, all the scales for stenographic assistance in subordinate offices has been shown as under :

<u>"Level of Stenographic Assistance</u>	<u>Scale of Officer entitled</u>
1. Stenographer Gr.III (Rs.1200-2040)	Rs.3000-4500 and below Rs.3700-5000
2. Stenographer Gr.II (Rs.1400-2600)	Rs.3700-5000 and above but below Rs.5100-5700
3. Stenographer Gr.I (Rs.1640-2900)	Rs.5100-5700 and above but below Rs.5900-6700
4. Sr. P.A (Rs.2000-3200)	Rs.5900-6700 and above (Officers of Senior Administrative grade or equivalent posts) "
9. In para 2 it is mentioned that the post of Stenographers Gr.III may be upgraded to Gr.II in those cases where the officers in a scale of pay lower than JAG have been allowed the revised scale of JAG with the approval of Ministry of Finance/Cabinet. The same contentions which were raised in O.A. 729/92 were raised in this case also and for the reasons which we have given in that case, we direct that the respondents shall extend the benefit of letter dt.6.2.89 to the applicants and upgrade them to the higher scale on the basis of those instructions with effect from 1.1.86 together with consequential benefits. Actual monetary benefits in view of bar of limitation u/s.21 of Administrative Tribunals Act, shall be restricted to the period of one year from the date of filing of O.A, in this case 27.9.92 onwards. The monetary entitlements of the applicants shall be calculated and paid to them within four months from the date of receipt of copy of this order by the respondents.	

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

C.P.NO. 6/96 in OA.NO. 1023/93

Monovo this the 20th day of January 1998

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman  
Hon'ble Shri P.P.Srivastava, Member (A)

P.M.Haridas & Ors.

By Advocate Shri S.P.Saxena

... Applicants

v/s.

Union of India & Ors.

By Advocate Shri R.K.Shetty

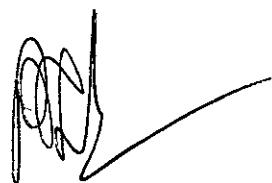
... Respondents

G R O U P

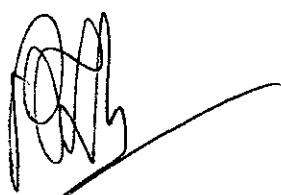
(Per: Shri P.P.Srivastava, Member (A))

The applicant in the OA.NO.1023/93 has filed this C.P. for non implementation of the judgement of the Tribunal dated 8.8.1995. The applicants had filed the OA. for seeking the relief that the benefit of letter dated 6.2.1989 for upgradation for the post of Stenographer should be made applicable to them. The Tribunal vide their order dated 8.8.1995 disposed of the OA. and directed as under :-

"We direct that the respondents shall extend the benefit of letter dt.6.2.89 to the applicants and upgrade them to the higher scale on the basis of those instructions with effect from 1.1.86 together with consequential benefits. Actual monetary benefits in view of bar of limitation u/s. 21 of Administrative Tribunals Act, shall be restricted to the period of one year from the date of filing of O.A., in this case 27.9.92 onwards. The monetary entitlements of the applicants shall be calculated and paid to them within four months from the date of receipt of copy of this order by the respondents."

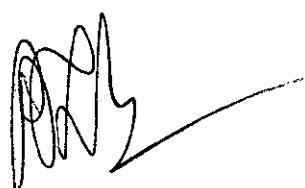


2. A notice was issued on the C.P. The respondents have filed reply. The matter came for hearing before the Tribunal on many occasions in the past and the last it was heard on 25.7.1997 wherein the respondents were directed to file an affidavit stating therein why the applicants could not be given the promotion with effect from 1.1.86 as per the order of the Tribunal. The respondents have filed an affidavit dated 5.12.1997 explaining the position of the promotions granted to the applicants. The respondents have brought out that 69 vacancies were identified for Steno Grade II and sanctioned by the Ministry. As on 1.1.1986, 14 Stenos Grade II were already in position in Southern Command. Therefore, the vacancies available were 55. The break-up of 55 vacancies were, 42 for general candidates, 7 for SC and 6 for ST. The respondents have further brought out that they have conducted DPC for 42 Stenos Grade III against the general posts from 1.1.1986. The respondents have further brought out that the other applicants have, therefore, been promoted based on the actual occurrence of vacancies in subsequent years. The respondents have further brought out that the further promotions are being made for 8 applicants and they will be paid arrears within a period of two months from 27.9.1992. They have further submitted that 25 applicants have already been paid their arrears and receipts of acknowledgement by them is enclosed.



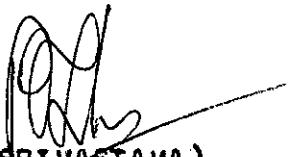
3. Learned counsel for the applicant has argued that the respondent administration has not complied with the orders as all the posts which were available from 1.1.1986 were required to be upgraded in terms of the Circular of 6th February, 1989. The respondents have reduced the number of vacancies by resorting the process of work study which is in contravention of judgement rendered by the Tribunal. Respondent administration has brought out that the letter dated 6.2.1989 has been modified by the letter dated 9.2.1990 and DOP&T letter dated 25.6.1991, copy of which is enclosed along with the affidavit dated 5.12.1997. Therefore, the respondent administration is duty bound to implement the orders of 1989 as modified by the Government. They have further mentioned that there was no challenge to these orders and respondent administration has no other alternative but to comply with the judgement in terms of the various modifications issued by the Government of India which they have/fully complied with.

4. After hearing both the counsels, we are of the view that the respondent administration has substantially complied with the judgement of the Tribunal. The question whether the modification issued by the Government of India in their letters dated 9.2.1990 and 25.6.1991 for modifying the instructions of 1989 can be pressed into service for calculating the posts can be a issue for challenge

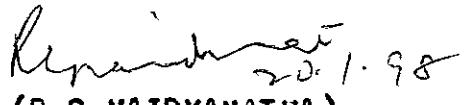


in the modification. The action of the respondent administration in complying with the 1989 instructions as modified by the other two letters [redacted] cannot be considered as an act of wilful disobedience.

5. We are, therefore, of the view that there is no wilful disobedience on the part of the respondent administration in complying with the Tribunal's orders in view of the position explained by the respondent administration in their affidavit dated 5.12.1997. The C.P. is accordingly dismissed.

  
(P.P. SRIVASTAVA)

MEMBER (A)

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

mrj.

order/Judgement despatched  
to Applicant/Respondent(s)  
on 20/11/98

  
28/11/98