

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1462 of 1995.

Dated this Wednesday, the 12th day of September, 2001.

Smt. Vijaya K. Nair. Applicant.

..... Advocate for the
Shri S. P. Saxena. Applicant.

VERSUS

Union of India & Another. Respondents.

..... Advocate for
Shri V. G. Rege. Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).
Hon'ble Shri Kuldip Singh, Member (J).

- (i) To be referred to the Reporter or not ? Yes
- (ii) Whether it needs to be circulated to other ~~Yes~~ No
Benches of the Tribunal ?
- (iii) Library. Yes

B.N.B.
(B.N. BAHADUR)
MEMBER (A).

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1462 of 1995.

Dated this Wednesday, the 12th day of September, 2001.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri Kuldip Singh, Member (J).

Smt. Vijaya K. Nair,
Library Information Assistant,
Department of Legal Affairs,
Branch-Secretariate, Bombay,
Aayakar Bhavan Annexe, 2nd floor,
Bombay - 400 002.

... Applicant.

(By Advocate Shri S. P. Saxena)

VERSUS

1. Union of India through
The Secretary,
Ministry of Law, Justice
and Company Affairs,
Department of Legal Affairs,
Shastri Bhavan,
New Delhi - 110 001.
2. The Secretary,
Department of Personnel
& Training,
Loknayak Bhavan, Khan Market,
New Delhi - 110 003.

3. The Secretary,
Ministry of Industry, Deptt. of
Industrial Policy & Promotion,
Udyog Bhavan,
New Delhi - 110 011.
4. The Director,
Directorate General of Techni-
cal Development, Udyog Bhavan,
New Delhi - 110 011.
5. Joint Secretary & Legal
Advisor, Branch Secretariate,
Department of Legal Affairs,
Aayakar Bhavan Annexe,
Bombay - 400 020.

... Respondents.

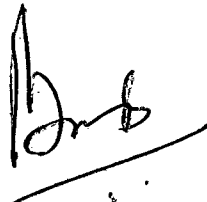
(By Advocate Shri V. G. Rege).

O R D E R (ORAL)

PER : Shri B. N. Bahadur, Member (A).

The Applicant in this case, comes up to the Tribunal seeking the relief, in substance, for a direction that she ought to have been fixed in the scale of Rs. 1640-2900 w.e.f.

...2



01.01.1986 consequent upon the revision of the scales of pay by the Fourth Pay Commission/Ministry of Finance. The Applicant also seeks consequential benefits, as detailed in para 8(ii) to 8(vi) of the O.A.

2. The facts of the case, as brought out by the Applicant, are that having been appointed as Junior Stenographer in the Office of the Cement Controller in the grade of Rs. 330-560 on 16.07.1981, she competed in a direct recruit selection through the Staff Selection Commission for the post of Sr. Stenographer (Rs. 425-800) and having been successful, was promoted on 30.06.1983. In December, 1985, she was rendered surplus by her Ministry and her service was placed at the disposal of the D.O.P.T. with effect from 31.12.1985. She was, however, asked to mark attendance in the Regional Office, in Mumbai itself. Further, the Applicant avers that during the period from 01.01.1986 to 25.05.1986 she was paid by the D.O.P.T. and on 26.05.1986 she was taken on the strength of D.G.T.D., New Delhi. The averments and contention of the Applicant is that the revised scale of pay of Stenographers was Rs. 1640-2900 for C.S.S.S. Stenographers, as decided by the Government, and since she was on the strength of the D.O.P.T., she should have been provided with such a scale and was indeed provided the scale w.e.f. 01.01.1986.

3. However, in February, 1991, D.O.P.T. informed D.G.T.D. that the Applicant, not belonging to the C.S.S.S. cadre, could

...3



not be fixed in the scale of pay of Rs. 1640-2900 and was, therefore, fixed in the scale of Rs. 1400-2600. Orders of recovery of amounts paid were issued. Further stages in the case are described. It is with such grievance that the Applicant comes up to the Tribunal seeking the reliefs, as mentioned above.

4. The Respondents in the case have filed a Written Statement of reply, where the defence taken is that the Applicant who was appointed as Senior Clerk w.e.f. 26.05.1985 through the surplus cell of D.O.P.T. did not belong to the C.S.S.S. cadre. Infact, had she not been provided with such posting under the "Surplus" Scheme, her services were liable to be terminated/retrenched. The Respondents specifically deny in the Written Statement that the Applicant was on the strength of D.O.P.T., as alleged, and contend that she was not eligible to be inducted into the C.S.S.S. or provide benefits accordingly. She was merely on the surplus cell in terms of the relevant scheme.

5. The facts regarding the pay scales are then discussed further in the Written Statement. It is also pointed out that applicant's representation dated 07.08.1991 was attended to, and it was found that her grievance of non-grant of pay scale of Rs. 1640-2900 had been considered even earlier and it was found that she was not eligible for the same and this decision had been communicated already to the Applicant vide letter dated 04.02.1991. It is also stated that the Applicant does not find a place in the seniority list of Stenographer Grade 'C' on C.S.S.S.



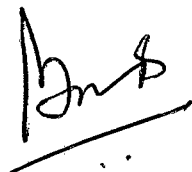
6. We have considered all papers in the case and have heard the Learned Counsel on both sides. We have also seen the case law cited by the respective sides.

7. The Learned Counsel for the Applicant, Shri S. P. Saxena, argued the case at some length, and contended first that the Applicant was on the strength of D.O.P.T. during the period cited. He took us over some of the documents filed to make his point and argued that the applicant was fully entitled to being provided to the scale of Rs. 1640-2900. He contended that there was no reply from the Government to the representation made by the Applicant. Learned Counsel further made a point that the Applicant was discriminated against, in that, the other Group 'C' Stenographers of D.G.T.D. had been provided with the higher scale and that the Department had not only been arbitrary in denying this to the Applicant but had also not been reacting to the several pleas/representations made by her.

8. Learned Counsel took support of the following two cases to press on his argument :

- (i) P. K. Sehgal & Others V/s. Union of India & Others reported at 1992 (2) AI SLJ 331.
- (ii) Naveen Saxena & Others V/s. Union of India & Others reported at 1999 (1) AI SLJ 211.

The second case of Naveen Saxena was cited to make the point that the discrimination is illegal and that the principle of 'Equal



Pay for Equal Work' was valid in the case of the Applicant. Winding up his argument, Shri S.P. Saxena, made the point that without prejudice to the arguments made, the Applicant was entitled to be exempted from recovery and also to refund of already recovered amount in terms of the law settled in the matter of Shyam Babu Verma & Others V/s. Union of India & others reported at 1994 (27) ATC 121.

9. ~~Learned~~ Learned Counsel, Shri Rege, took the defence, as made out in the Written Statement and further took us over the various communications and documents filed by the Applicant and Respondents. He first stated that the order of the Cement Controller dated 30.06.1983 (Exhibit A-3/page 23) had clearly put the Applicant in the lower grades of the two and it was not that she was selected for the C.S.S.S. She was a direct recruit and the Office of the Cement Controller was a subordinate office. It was contended by Shri Rege that during the period that the Applicant was in Surplus Cell she continued to get salary in the lower scale and strenuously denied that she had become a part of the D.O.P.T.

10. Shri Rege also argued that there were no pleadings in the O.A. regarding "equal pay for equal work". To ask relief on the basis of principles of 'Equal Pay for Equal Work' and that too at this point, was not valid. Shri Rege further denied that any discrimination had been made and made the point that no detailed

Ans

pleadings or names of other Stenographers provided with higher scales are given and the allegations made are vague. All representations, he stated, were decided by the Respondents.

11. We must at the start recall that the relief sought is on the grievance that the scale of Rs. 1640-2900 was not provided from 01.01.1986. We find that, right at the beginning, when the Applicant was appointed to the post of Sr. Stenographer, she was appointed on the basis of selection process undertaken by the Staff Selection Commission and was placed in the scale of Rs. 425-800. This was the position right in June, 1983. It is nowhere alleged at any stage by the Applicant that the selection was made for a higher pay scale or for C.S.S.S. or to the effect that her juniors were posted in the C.S.S.S. even though they had competed in the same examination. Had this been the stand of applicant, it was open to the Applicant to have agitated the matter in 1983 or within a reasonable time thereafter. Even now this is not the case, and hence it has to be accepted that the Applicant was indeed appointed to a subordinate office and in a definitely stipulated pay scale, as per the order dated 30.06.1983. This is not something that can be gone into and protested now. The fact also was that the post of Sr. Stenographer in the subordinate office carries a lower pay scale.

12. The main support taken in argument by the Learned Counsel for the Applicant was sought on the basis of the case of P. K. Sehgal & others V/s. Union of India & Others decided by

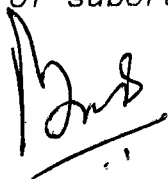
... 7



the Principal Bench of this Tribunal in O.A. No. 527/97 on 28.9.1998. The O.A. had been allowed and the Respondents were directed to consider applying revised scale of Rs. 1640-2900 to the Applicant on the same basis as Stenographer Grade-II of C.S.S.S. Now as against this, our attention was drawn by the Learned Counsel for Respondents to the ratio of a case decided by the Hon'ble Supreme Court in the matter of Federation of All India Customs & Central Excise Stenographers (Recognised) and Others V/s. Union of India & Others reported at 1988 (7) ATC 591. The issue has been discussed in this case. The Headnote in part reads as under :

"Service Law - Pay - Equal Pay for equal work - Applicability - Differentiation in pay scales among government servants holding same posts and performing similar work on the basis of difference in degree of responsibility, reliability, confidentiality, etc. valid - Value judgement of concerned administrative authorities made bona fide, reasonably and rationally not open to interference by Court - Different pay scales fixed for Stenographers Grade-I working in Central Secretariat and those attached to heads of subordinate offices on the basis of recommendation of Pay Commission, held, not violative of Article 14 and not to be interfered with under Article 32 - Constitution of India, Articles 14, 38 (d) and 32.

It is clear, therefore, that the value judgement of administrative authorities made on the basis of bonafide, reasonable and rational decisions in this regard were not open to interference by the Court. Importantly, that different pay scales for Stenographer Grade-I in Central Secretariat and Heads of subordinate offices were not violative of the Constitution of



India. In the face of such guidance from the Supreme Court, the other case law would have no validity or importance. The case law settled by the Supreme Court directly applies on all focus to the present case before us.

13. Before parting with the case, we must refer to the point of discrimination argued on behalf of the Applicant. It is true that as pointed out by the Learned Counsel for respondents that this is something of a vague allegation and no definite pleadings with details are available. Even if there were, that could not have become a ground for the provision of relief, as sought by the Applicant. In view of the above discussions, specially the guidance of the Supreme Court available to us, we find that there is no case made out by the Applicant for our interference in the matter.

14. We must, however, deal with the question of recovery that has been ordered against the Applicant. The matter is well settled by the case of Shyam Babu Verma & Others V/s. Union of India & Others (supra) and on the basis of ratio of this case, the Applicant is fully entitled to the claim made by her that no recovery should be made in respect of the amounts already paid to her. Also, that any amounts recovered should be refunded to her. Accordingly, we hereby order that the Respondents shall make no recoveries in respect of the amounts already paid to the Applicant due to fixation of pay in higher scale, and shall



refund the amount that has been recovered, if any, (without interest) within a period of three months from the date of receipt of a copy of this order.

15. The O.A. is therefore dismissed, subject however to the directions contained in para 14 above. No order as to costs.


(KULDIP SINGH)

MEMBER (J).



(B. N. BAHADUR)

MEMBER (A).

OS*