

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT : HYDERABAD

O.A.No. 261 of 1987

Date of Order: 25-7-90

Between:

1. R.N.Moon
2. Ch.Suryanarayana
3. Abdul Bari
4. S.A.Basha
5. D.S.R.Sastry
6. G.Venkataiah
7. R.C.Jain
8. R.Chandra Mohan
9. S.Subba Rao
10. V.Sudarshan
11. B.Lakshminarayana
12. M.E.Enllawar
13. D.R.Gundale
14. K.D.Vaidya
15. Jawaharlal
16. M.Rajagopalacharyulu
17. K.S.R.K.Sastry
18. M.Krishnam Raju

..

Applicants

and

1. Chairman, Central Water Commission,
Sewa Bhavan, R.K.Puram,
New Delhi-110066.
2. Secretary, Ministry of Water
Resources, Shram Shakti Bhawan,
New Delhi.

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Respondents

Appearance

For the Applicants : Shri V.Jogayya Sharma, Advocate.
For the Respondents : Shri Naram Bhaskar Rao, Addl.CGSC.

CORAM:

THE HONOURABLE SHRI D.SURYA RAO, MEMBER (JUDICIAL).
THE HONOURABLE SHRI D.K.CHAKRAVORTHY, MEMBER (ADMN.)

(Judgement of the Bench delivered by Hon'ble Shri D.Surya Rao,
MEMBER (JUDICIAL).)

1. The applicants herein, who are 18 in number, are all
Research Assistants working in the Central Water Commission,
Government of India. They were appointed on various dates

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between 7-8-1965 and 22-8-1980. They have filed this application seeking a direction that they must be given the benefit of the scale of pay of Rs.550-900 given to Research Assistants in Central Water and Power Research Station (CW&PRS), Pune and the Central Soil and Material Research Station (CSMRS), New Delhi pursuant to Government of India, Ministry of Agriculture and Irrigation's letter No.44/50/78-Admn.I/Estt. dated 21-12-1979. The case of the applicants is that originally the Central Water Commission consisted of 3 units viz. (i) Central Water Commission (CWC) (Field), (ii) Central Soil and Material Research Station (CSMRS), New Delhi and (iii) Central Water and Power Research Station (CW&PRS), Pune. In the year 1978, the CW&PRS was separated from CWC. Thereafter, in 1982, CSMRS was also separated from CWC. It is alleged that the Research Assistants were governed by the same conditions of service and carried the same scales of pay with a common seniority list when all the three units formed part of the CWC. The posts of research Assistants in CWC (Field), CW&PRS and CSMRS were interchangeable. When bifurcation took place in 1978 and again in 1982, no options were called for from individual Research Assistants to exercise option to be absorbed in the unit of their choice. Appointments to CW&PRS were made arbitrarily without any norms. The result was that juniors in the category of Research Assistants got allotted to other units i.e. CW&PRS or CSMRS whereas seniors remained in CWC. The old scale of pay of Research Assistants was Rs.425-700 (Revised scale Rs.1400-2300) whereas that of Research Assistants Selection Grade was Rs.500-750 (revised scale of Rs.1600-2660). In the case of Senior Research Assistants, the scale of pay was Rs.550-900 (revised scale of pay Rs.1640-2900). By letter No.44/50/78-Admn.I/Estt.II dated 21-12-1979, the scale of pay of Research Assistants in CW&PRS and CSMRS was increased to Rs.550-900 (old) which is equivalent to Rs.1640-2900 in the revised scale. All the applicants,

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who remained in CWC, could not get the benefit of this higher scale though their juniors in the erstwhile CWC, who were absorbed in CW&PRS and CSMRS got the benefit of this scale. It is alleged that granting of this increased scale of the erstwhile juniors offends Articles 14 and 16 of the Constitution of India. This is particularly so since no formula was followed or any principle adopted in allotting the candidates to CW&PRS or CSMRS on separation of these establishments. It is stated that the matter was raised at the Staff Council meeting of CWC. The Chairman then agreed to refer the matter to the Ministry. In support of the contention that the Chairman had agreed to refer the matter to Ministry, a copy of the minutes dated 6-6-1986 has been enclosed as Annexure-B to the application. It is stated that when the question was again raised at the Staff Council meeting held in June 1986, it was turned down. The minutes of the said meeting dated 25-6-86 (forwarded vide OM dated 21-7-86) is enclosed as Annexure-C. It is sought to be contended that the plea of the Government that Research Assistants in Research Stations like CW&PRS and CSMRS have to do special work and their pay had to be increased is not correct in view of the fact that the posts over and above the post of Research Assistants in the said organisations have not been given higher scale of pay. It is stated that posts above the posts of Research Assistants in all the three organisations continue to carry the same scale of pay despite bifurcation or trifurcation. The applicants 1, 2 and 3 state that they were absorbed against the permanent vacancies in CW&PRS. Similarly, some of the candidates now working in CW&PRS and CSMRS were absorbed against permanent vacancies in CWC (Field). The former were not absorbed into CW&PRS while the latter were absorbed. It is contended that the job requirements and nature of duties of Research Assistants are one and the same and, therefore, there cannot be any discrimination between the RAs in CWC (Field) and the other two organisations. A direction is, therefore, sought to extend the benefit of higher scale of pay of Rs. 550-900 as contained in the letter dated 21-12-1979 to Research Assistants in CW&PRS and CSMRS.

2. On behalf of the Respondents a counter has been filed. In their counter it is alleged that 7 of the applicants viz., applicants No.17, 5, 13, 6, 3, 16 and 1 had represented for the revised scale of pay of Rs.1600--2900. They had been informed by the Superintending Engineer, CWC, Godavari Mahanandi Circle, Hyderabad, vide letter No.A-14012/1/83/Estt., dated 19-3-1987 that there is no Research Assistant post existing in the Ministry. It is further stated that their designations, duties and qualifications are different from the duties of Research Assistants working in the CWC. It is admitted that CW&PRS, Pune and CSMRS, New Delhi, were separated in the years 1978 and 1981 respectively. It is stated that as per normal practice options were invited in letter No.A-11013/2/78/Admn.IV, dated 6-10-1979. Again on the notification of recruitment rules of the separated cadres vide Gazette Notification No.44/32/78-Estt.II, dated 26-9-1984, fresh options were invited. It is further stated that at the time of separation of CSMRS vide notification No.11013/3/83/Estt.IV, dated 5-3-1983, options were invited from employees working in CSMRS. It is, therefore, denied that options were not called for.

3. It is further stated in the counter that none of the applicants except Shri Ch.Suryanarayana, exercised their option. Even the latter withdrew the same through his application dated 30-10-1979. In so far as permanency of employees either in CW&PRS or in CSMRS before separation is concerned, it is contended that despite being shown against posts in these organisations, one is ^{made} permanent only against the main organisation (CWC) only. On promotion to a higher grade, they are shown against the separate organisation. It is denied that selection was not made on a rational basis. After separation, ^{of} ~~the~~ the 2 organisations namely

CW&PRS and CSMRS in 1978 and 1981 respectively, the question of claiming seniority over the persons working in separate establishments does not arise. Therefore, there is no violation of Articles 14 and 16 of the Constitution of India. After separation from the CWC, fresh recruitment rules were framed by the concerned Ministry with revision in pay scales and qualifications. The qualifications and duties are totally different in CW&PRS when compared with CWC. It is, therefore, contended that there is no justification in the applicants' claiming parity in pay scales. It is also contended that according to the recruitment rules, options from the concerned officers were called for. But none of the applicants have exercised their option except Ch.Suryanarayana, whose case could not be considered by the screening committee owing to his withdrawing option. While admitting that applicants at Sl.Nos. 1 to 3 were declared permanent against the permanent posts sanctioned to CW&PRS, it is stated that this cannot be a basis for absorption in that organisation because persons were intertransferable earlier. It is stated that these applicants continue to hold permanency in CW&PRS till they acquire permanency in CWC in a higher grade. Thereafter, their permanency against CW&PRS will automatically cease on the individuals' acquiring permanency against vacancies in CWC. It is reiterated that since qualifications, method of recruitment and working system and responsibilities attached to the posts are not identical in the 3 organisations viz. CWC, CW&PRS and CSMRS after separation, the claim for equality is not justified. For these reasons, it is prayed that the O.A. may be dismissed.

4. We have heard the arguments of the learned counsel for the Applicants, Shri V.Jogayya Sarma, and the learned Standing Counsel for the Department, Shri Naram Bhaskar Rao, Addl.CGSC.

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5. The first contention of Shri V.Jogayya Sharma is that though the Research Assistants in CWC constituted one common category with common conditions of service and inter-changeability, in the 3 units namely CWC, CW&PRS and CSMRS, ^{and again} ~~either~~ when bifurcation took place in 1978/~~or~~ in 1981, no option was given to the employees to opt for one or other of the organisations. They were absorbed in the respective units wherein they were actually working as on the date of bifurcation. No selection or rational procedure was adopted for determining ~~that~~ which of the Research Assistants should remain in CWC or who should go to CW&PRS or CSMRS. It is, therefore, contended that employees were absorbed in the respective units arbitrarily. The Department on the other hand contends that in 1978 both before bifurcation and after framing of revised recruitment rules, options were called for. This is a question of fact which has to be looked into with reference to orders issued. The first order on the subject is Order No.44/30/78-Estt.II, dated 27-7-1979, which reads as follows:-

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No.44/30/78-Estt.II
Government of India
Ministry of Agriculture and Irrigation
(Department of Irrigation)

New Delhi, 27th July, 1979.

Chairman,
Central Water Commission,
New Delhi

(Attention: Shri S.V.Subramanyam, Secretary,
C.W.C.)

Subject: Separation of cadres of various categories of
posts in the CWPRS from the Central Water Commission.

Sir,

I am directed to say that a High Level Committee headed by Dr.M.S.Swaminathan recently examined the organisational structure, staffing pattern and procedural matters relating to the Central Water and Power Research Station, Pune. The Committee inter alia recommended that for efficient functioning

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of the CW&PRS, it was essential that the Research Station should have its own cadres and that all those cadres which are at present common with the Central Water Commission should be separated as was done in the case of the engineering cadres in 1961.

The above recommendation has been considered and it has been decided to accept and implement the same. Accordingly, the President is now pleased to decide that the posts in the CW&PRS, Pune, vide Annexure to this letter, which are at present borne on cadres common with the Central Water Commission, shall stand separated with immediate effect.

The existing incumbents of the various categories of posts indicated in the Annexure serving in the CW&PRS will have the option to stay in their respective places and get absorbed in the CW&PRS Cadre or opt for continuation in C.W.C. Cadre and get transferred to an equivalent post in the C.W.C. The options should be intimated to the Chairman, Central Water Commission, with a copy to Director, CWPRS, within a period of three months from the date of issue of this letter. The option once exercised shall be final. Any officer who does not exercise the option within the prescribed time-limit will be deemed to have opted for continuing in his existing place of posting and for absorption in the separate cadre of CW&PRS.

The recruitment and promotion to the various categories of posts in the Research Station now being separated from the Central Water Commission will continue to be regulated in accordance with the recruitment rules being followed as at present till fresh rules are formulated by this Department in consultation with the Department of Personnel, Ministry of Law, Union Public Service Commission, etc..

Yours faithfully,

Sd/-

(MUKESH CHAND)

Under Secretary to Govt. of India.

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This was followed by a letter No.A 11013/2/78-Adm.IV, dated 6-10-1979, which reads as follows:-

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No.A 11013/2/78-Adm.IV
Government of India
Central Water Commission

West Block No.I, Ist Floor, Wing
No.3, Ramakrishna Puram,
New Delhi-110022.

Dated: 6-10-1979

To
All Superintending Engineers
of the Circles under C.W.C.

Subject:- Separation of cadres of various categories
of posts in the Central Water & Power Research
Station, Pune, from the Central Water Commission.

Sir,

Consequent upon the separation of the posts in the

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CW&PRS, Pune, vide Annexure to this letter, borne on the cadres common with the Central Water Commission with effect from the 27th July, 1979, the existing incumbents of the various categories of posts serving in the CW&PRS are required to give option by 27th October, 1979 to stay in their respective places and get absorbed in the Research Station Cadre or opt for continuation in Central Water Commission Cadre and get transferred to an equivalent post in the CWC. It has now been decided that such officers of the CW&PRS, as have been posted to Central Water Commission on transfer or on deputation, can also furnish their options, but such isolated cases will be considered on merit alone. If any officer of the CWC wants a transfer to CW&PRS his case will also be considered only if any vacancies in CW&PRS remain unfilled after absorbing all officers of the CW&PRS.

2. It is requested that the above decision may be brought to the notice of all concerned to enable them to indicate their options/willingness by 27-10-79 at the latest.

Yours faithfully,

Sd/-
(J.K. Saha)
Under Secretary
Central Water Commission

From a reading of these ^{two} letters it is clear that no option was given either to Research Assistants who were actually working in CWC on the date of separation or bifurcation viz. 27th October, 1979. Options were only available to employees actually working in CW&PRS or to those Research Assistants of CW&PRS who were working in CWC on transfer or on deputation. (Applicants 1 to 3 come within the latter category). The contention of the Department that option was given to all Research Assistants is, therefore, not correct. The ^{basic} question is whether an option was given after the recruitment rules were framed. The Department's counter states that fresh options were again called for in the year 1984 after the recruitment rules in CW&PRS were ^{framed}.

The relevant statutory rules are the CW&PRS Pune Research Assistant (Engineering/Scientific Posts) Recruitment Rules 1984 published as GSR No.1123 dt. 27/IV/84, on 26-9-1984 whereby a revised scale of Rs.550-900 was given to the erstwhile Research Assistants (Scientific) in the scale of Rs.425-700. ^{Sub-} Rules (2) and (3) of Rule 3 of the said rules deal with giving options and they read as follows:

"(2) All Senior Research Assistants (Scientific) in the scale of Rs.550-900, now redesignated as Research Assistant (Scientific) who were working on regular basis on the 27th July, 1979 in the Central Water and Power Research Station, Pune shall be deemed to have been appointed at the initial constitution stage with effect from that date in the separated cadre of the Central Water&Power Research Station; Pune:

Provided such officers make a written request in this regard within a period of 90 days from the date of commencement of these rules.

(3) All Research Assistants (Scientific) in the scale of Rs.425-700 and Research Assistants (Engineering) in the scale of Rs.550-750, now redesignated as Research Assistant (Scientific) and Research Assistant (Engineering) respectively in the scale of Rs.550-900, who were working on regular basis on the 27th July, 1979, in the Central Water and Power Research Station, Pune shall be eligible to be considered for appointment at the initial constitution stage with effect from the 20th August, 1979, that is to say, the date of upgradation of the posts, in the separated cadre of the Central Water and Power Research Station, Pune provided they possess the educational qualifications of Degree in Engineering or M.Sc. Degree in Physics/Chemistry/Mathematics, as the case may be, from a recognised University or equivalent or have rendered 5 years' regular service in the respective grade. "

- A reading of these rules discloses that only those Research Assistants working on regular basis in the CW&PRS on 27-7-79 would be eligible to be considered for appointment at the initial constitution stage with effect from 20-7-79, provided they make a written request (option) in this regard

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within 90 days of commencement of the rules. When C.S.R.M.S. was sought to be bifurcated from C.W.C. similar instructions were issued namely Memorandum No.A-11013/3/83-Estt.IV, Govt. of India, Central Water Commission, dated 5th March, 1983, which reads as follows:

"It has been decided by the Govt. vide Ministry of Irrigation letter No.18(4)/82-Estt.II, dated 21-1-1983, that CSMRS should have its own cadres and that all cadres which are common with the CWC should be separated. It has further been decided that the posts sanctioned in CSMRS as given in the Annexure-I, which were borne on the common cadres of CWC stand separated and are borne on the separated cadres. The incumbents to these categories of posts shall have the option to be retained in the separated cadres of CSMRS at its initial constitution. Accordingly, all officials who were working in CSMRS on 1-7-81 or those who have had prior to 1-7-81 worked in CSMRS for any period of time shall be eligible for appointment/consideration for absorption in the equivalent grade if they opt for the same and are found to be suitably by the Screening Committee.

It is requested that all eligible officials should furnish their options to this Commission on the enclosed proforma with a copy to Director, CSMRS, New Delhi, within a period of 3 months from 21-1-83. The option once exercised shall be final subject to any subsequent change in the finally notified recruitment rules for various categories of posts. Any official who does not exercise the option within the prescribed time limit will be deemed to have opted for continuing in the cadre of C.W.C. "

The statutory rules governing initial constitution and maintainance of the CSMRS in regard to Research Assistants are ~~governed by~~ Rules similar to CW&PRS Research Assistants Recruitment Rules. These rules, namely, CSMRS (Design Assistant (Engineering/Scientific) Posts Recruitment Rules 1983 issued in Ministry of Irrigation Notification No.16(5)/82-Estt.II dated 22-10-83 gave an option only to Research Assistants working in CSMRS as on 1st July 1981 to be considered for appointment to the CSMRS at the time of initial constitution. Neither the memorandum dated 5-3-83 or the statutory rules gave an option to Research Assistants in CWC to opt for CSMRS at the time of initial constitution.

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6. To sum up, ~~it is clear that~~ when CW&PRS was bifurcated from CWC in the year 1978/79, no option was given to all Research Assistants wherever they were working, to opt to come over to CW&PRS. This is clear from the letters No.44/30/78-Estt.II dated 27-7-79 and No.A-11012/2/78-Adm.IV dated 6-10-79. Again in the statutory rules namely, CW&PRS Pune Research Assistants (Engineering/Scientific Posts) Recruitment Rules, 1984, the right to get absorbed in CW&PRS was limited to those who were working in CW&PRS on the date of initial constitution. In regard to those who were holding a lien on posts in the CW&PRS prior to bifurcation but were on deputation or transferred to other posts in CWC, a limited option was given to the extent that they could also opt but they were to be considered only after absorbing or disposing of the options of those who were actually working in CW&PRS on the date of bifurcation. Similar is the case when bifurcation of CSMRS took place. The Memorandum No.A-11013/3/83-Estt.IV dated 5-3-83 is weighted in favour of Research Assistants actually in position in CSMRS on 1-7-81. The CSMRS (Design Assistant (Engineering/Scientific Posts) Recruitment Rules, 1983 also are weighted in favour of those Research Assistants actually working in CSMRS on 1-7-81. The contention of the Department that options were given to all Research Assistants of CWC is not borne by the above mentioned instructions or statutory rules. The objection or contention of Shri Jogayya Sharma that there was no option given to the applicants under the instructions/rules is, therefore, factually correct.

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7. It has been contended for the respondents that options were given to some of the employees like the Applicant No.2, Shri Ch.Suryanarayana, Applicant No.5, Shri D.S.R.Sastry and others and in the case of Shri Suryanarayan he had given option in 1979 to go over to CW & PRS but he later withdrawn the same. The file produced namely, file No.11013/2/78-ADM-IV clearly discloses that even if these employees had made certain options, they were not treated as on par with their counterparts namely Research Assistants who were in position in CW & PRS on the date of bifurcation vide letter No.44/30/78-Adm.Estt.II, dated 3-12-1979 wherein it had been clarified that no options were required to be given to officers borne on common cadre presently holding posts in the Central Water and Power Commission. This was in response to a letter No.11013/2/78-ADM.IV, dated 6-10-1979 from the Secretary, Central Water Commission to the Ministry of Agriculture, forwarding options of persons like the applicant No.5 and applicant No.2. Hence, merely because some of the applicants had made or submitted options, it cannot be said that valid options had been given to all or some of them.

8. The question now arises as to whether not giving options to persons like the ^{applicants} persons or similarly situated Research Assistants in CWC gives the applicants a cause of action. Shri Jogayya Sharma, the learned Counsel for the applicants, contends that the matter is covered by the full bench decision of the Hyderabad Bench of the Tribunal rendered in 1988(3) SLJ 631 (CAT) (R.S. Chimni v. Union of India). That was a case wherein

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the erstwhile Defence Science Service was trifurcated into three distinct services viz. Defence Research and Development Service (DRDS), Defence Quality Assurance Service (DQAS) and Defence Aeronautical Quality Assurance Service (DAQAS). The Full Bench, applying the decision of the Supreme Court in 1988 SCC (L&S) 76, held that the Government had a right to reorganise its cadre as deemed best and no fault can be found with any decision taken by the State in framing separate statutory rules with separate conditions of service for each wing. The Tribunal, however, held that the relevant rule which gave options to existing employees to join any one of the cadres was really no option at all since the absorption in a particular wing depended upon ^a the fortuitous circumstances namely ^{the} wing in which a particular employee was working at the time of trifurcation. To this extent, it was held that the option was illusory and an empty formality and, therefore the rule was bad. However, the Full Bench instead of striking down the rule, had, in view of the long years which had elapsed after trifurcation, had taken place, refused to strike down the offending rule. The relief was limited to the applicants in the case before the Tribunal by directing that they should be treated as having been absorbed in the service of their choice after trifurcation. Shri Sharma contends that as in the case of Sri Chimni before the Full Bench, all Research Assistants in C.W.C. were never given any option, that the option available to those like applicants 1 to 3, who had held permanent posts in the CW&PRS or in the CSMRS, but were actually working in the CWC at the time of its bifurcation or trifurcation in 1978 and 1981 respectively, was a very limited option and discriminatory vis-a-vis those who were actually in position in CW&PRS or CSMRS as the case may be. Since the latter were to be absorbed first and it was only against the residuary posts that the former could be considered.

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He, therefore, contends that the process of absorption adopted by the Government of India in giving effect to reconstituted CW&PRS and CSMRS as separate services, is arbitrary and violative of Article 14 to the extent of initial constitution of the posts of Research Assistants in the scale of Rs.425-700. The applicants who were all drawing the said scale had, because of the lack of proper option, been denied the right to opt to go over to either CW&PRS or CSMRS as compared to their juniors in CWC but who were in position in CW&PRS and CSMRS on the relevant dates. He contends that as in the Chimni's case, the Tribunal may limit the relief and direct that the applicants herein should be deemed to have been absorbed either in CW&PRS or in CSMRS and they should be given the benefit of Rs.550-900 scale right from the date when their juniors were given that scale and that they should also be given the benefit of consequential rights like promotion.

9. In our view, the full bench judgment would not apply in ^{pari materia} ~~parametric~~ to the facts of the present case. It is to be noted that in the Full Bench decision in Chimni's case, namely 1988 (3) SLJ 631 (CAT), Rule 7, clause (1) (A) of DRDS, DQAS and DAQAS rules were questioned on the ground that they were illegal, discriminatory and offending orders of Articles 14 and 16 of the Constitution of India. The applicants, in those cases, had filed writ petitions in the year 1981 before the High Court of Andhra Pradesh immediately after the said rules were promulgated in the year 1979. There was no delay on the part of the applicants before the Full Bench in questioning the discriminatory rule. In the instant case before us, the applicants had not

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questioned the vires of either Rule 3(iii) of the CW&PRS Pune Research Assistants Recruitment Rules, 1984 or the corresponding provision of the CSMRS (Design Assistant Engineering/Scientific Posts) Recruitment Rules 1983. They have not questioned the vires of the relevant notifications issued in 1979 or in 1983 namely whereby limited options were given to Research Assistants actually in position in CW&PRS or CSMRS to the detriment of other Research Assistants like the applicants actually working in CWC. They knew as long ago as in 1979 and 1981 respectively that Research Assistants who had the right to get absorbed in CW&PRS and CSMRS were eligible for a higher payscale namely Rs.550-900 as against the pay-scale of Rs.425-700 given to the Research Assistants in CWC. When no option was given to them to come over to the beneficial scale available to their juniors working as Research Assistants in CW&PRS and CSMRS, they ought to have immediately questioned the vires of the rules or the notification which gave such beneficial treatment to their juniors. If they had immediately done so, they would have had a valid cause of action. Despite not questioning the vires of the Statutory Rules or the instructions, the entire argument has proceeded on the basis that the rules framed or the notifications issued giving options, are discriminatory and ultra-vires of Article 14. Their representations to the respondents was not that they should be given options. Their contention in the case before us is that the work in the CW&PRS, CSMRS and CWC is no different and that, therefore, the Research Assistants in CWC should be given an identical payscale as that of

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Research Assistants in CW&PRS and CSMRS. It is not their prayer that they should be given an option and be absorbed in CW&PRS or in CSMRS and their prayer is only that the scale of pay available to the Research Assistants in the CW&PRS and CSMRS be extended to Research Assistants in C.W.C. They have averred that they are entitled to such scale of pay as was granted by letter No.44/50/ADM.I/Estt. dated 21-12-1979. It is thus their case that all Research Assistants in CWC should be given the scale of pay of Rs.550-900 on the ground that Research Assistants in the Research Stations do not have to do any special work. By way of analogy they cite the fact that higher posts in the Research Stations were not given any rise to pay, and even till today there is a common scale of pay in regard to posts higher than Research Assistants in all the three organisations viz. CW&PRS, CSMRS and the CWC. They have sought to get over the delay and latches in approaching the Tribunal by stating that the matter was raised before the Staff Council meeting of the CWC held in March 1986 and that the Chairman agreed to refer the matter to the Ministry. They relied upon the minutes of the 5th meeting of the Staff Council of CWC held at New Delhi on 6-6-86 enclosed as Annexure-B and the minutes of the next meeting of the council held on 25-6-86 (Annexure-C) when the staff were informed by the Member of the CWC that the matter had been reviewed but it was not possible to agree to revise all payscales of Research Assistants from Rs.425-700 to Rs.550-900. The reason given in Annexure-C is that qualification prescribed and duties attached to the posts of Research Assistants (Scientists) in CW&PRS and CSMRS are different from those prescribed in CWC. It is, thereafter, the applicants had filed this

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application in the year 1987. It is clear that the applicants are not aggrieved by not being absorbed either in CW&PRS or CSMRS but because the scale of Rs.550-900 available to Research Assistants in the former two organisations is not extended to Research Assistants in CWC though according to the applicants the work continues to be the same. In substance, the relief of an identical scale for Research Assistants in CWC on par with Research Assistants in CW&PRS and CSMRS is based on the plea of equal pay for equal work. The Respondents have denied that the work of Research Assistants in CWC is identical with that of Research Assistants in CW&PRS or in CSMRS. It is also stated that the qualifications prescribed are not identical. These averments have not been rebutted nor ^{have} the applicants established how the work is identical or that the qualifications are identical. It has been held by the Supreme Court in AIR 1989 SC 1308 (Markandeya Vs. State of A.P.) that a claim of equal pay for equal work can be enforced only when discrimination is among equals. In the instant case, since employees of the three organisations are not equal, the applicants cannot question the same since the work of Research Assistants in CW&PRS and CSMRS is different from the work of Research Assistants in CWC. The right of the Government to bifurcate or trifurcate an existing service cannot be questioned in the interest of or requirement of the Government. Obviously, Research organisations can be separated from the main organisations. Further, it is not the case of the applicants that in CWC they are doing the research work as in the case of Research Assistants in CW&PRS and CSMRS. It has never been their case that the work in all the three organisations continues to be identical in all respects.


Since the Research Assistants in C.W.C. do not form the same class as Research Assistants in CW&PRS and CSMRS it is not open to former to claim that Research Assistants in CWC should be paid the same scale of pay as in CW&PRS and CSMRS.

10. To sum up, the applicants' grievance is mainly that the scale of pay available to Research Assistants (Scientific) in CW&PRS and CSMRS should be given the Research Assistants (Scientific) in C.W.C. It not having been established that the work of Research Assistants in the three organisations is identical and since the educational qualifications are not the same, the Research Assistants in the three organisations do not form one class. Not extending the scale to Research Assistants in CWC cannot be assailed as being discriminatory and violative of Articles 14 and 16 of the Constitution of India since after bifurcation or trifurcation in the year 1979 and 1981, the three wings are governed by separate and distinct service rules. The applicants, no doubt, had a cause of action or grievance since no proper options were given to them in the years 1979 and 1981 when notifications were issued proposing to give options only to employees in position in CW&PRS and CSMRS. Again when statutory rules were framed in the years 1983 and 1984 respectively, options were not given to them to join either CW&PRS or CSMRS. But the applicants never questioned either the Office Memorandum or the Statutory Rules at the relevant point of time. Instead they continued without demur in CWC. It is only in the year 1987 that they have turned round and questioned the validity of the options given and even when doing so

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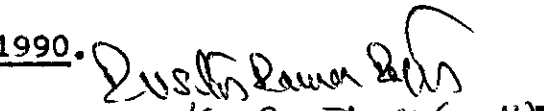
they have not asked for or prayed for relief by way of being given an option. All that they have sought is a direction that the same payscale available to the Research Assistants in CW&PRS and CSMRS should be given to the Research Assistants in CWC. On the ground of inordinate delay in questioning the procedure laid down in giving or granting options and since no prayer for granting options is sought, the argument that the applicants should have been given the options is liable to be rejected. For these reasons we find no merits in the application. The Full Bench decision is not applicable to the facts of the present case. The application is accordingly dismissed. No costs.


(D. SURYA RAO)
Member (J)


(D.K. CHAKRAVORTY)
Member (A)

Dated: 25th July, 1990.

nsr/mhb


Deputy Registrar (JOD)

To

1. The Chairman, Central Water Commission,
Sewa Bhavan, R.K. Puram,
New Delhi - 110066.
- 2 The Secretary, Ministry of Water Resources,
Sram Shakti Bhawan,
New Delhi.