

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH

AT HYDERABAD

O.A.No.387/94



Date of Order: 17.3.97

BETWEEN:

1. S.Raghurami Reddy
2. Syed Ghouse Basha
3. R.Narayana Rao
4. J.V.Subbamma
5. P.Manjula
6. G.Padmabhavani
8. K.Padmavathy
9. D.V.S.Narasimha Rao

.. Applicants.

AND

1. Union of India, rep. by its
Joint Secretary, Dept. of
Space (ISRO), Antheriksha
Bhavan, New BEL Road,
Bangalore - 560 094.
2. The Head Personnel and General
Administration Division,
SCF SHAR Centre, Sriharikota,
Nellore Dist. 524 124.

.. Respondents.

Counsel for the Applicants

.. Mr.Y.Suryanarayana

Counsel for the Respondents

.. Mr.N.R.Devraj

CORAM:

HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

HON'BLE SHRI B.S. JAI PARAMESHWAR : MEMBER (JUD L.)

J U D G E M E N T

X Oral order as per Hon'ble Shri B.S. Jai Parameshwar, M(J) X

Heard Shri Y. Suryanarayana for the applicants. -
~~None appeared for the applicants.~~ Heard Mr.N.R.Devraj,
learned standing counsel for the respondents.

2. There are nine applicants in this OA. They have joined and promoted in the services of the Government of India in the Office of Respondent No.2 as Office Clerks 'A' between 1.1.82

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scale of pay of Rs.330-560. The above set of persons i.e. the applicants herein approached this Hon'ble Tribunal in OA.229/91 and obtained interim order. The judgement in OA.229/91 was delivered on 15.7.92. Consequently they were given the old scale of pay. Therefore, the old scale of pay has been made applicable to the following six categories of OCBs in the respondent organisation.

- i) Persons who were working as OCBs as on 31.12.1979;
- ii) Persons who were appointed to officiate between 1.1.1980 and 31.12.1982 and later confirmed as OCBs.
- iii) Persons who were promoted as OCBs after 31.12.1982 but are seniors to 'b' category;
- iv) Persons who were appointed as OCAs prior to 1.1.1980 and promoted before 31.12.1984 as OCBs;
- v) Persons who were appointed as OCAs prior to 1.1.1980 but promoted after 31.12.1984 as OCBs (through Tribunal Judgement) This would be applicable even to persons who will be promoted in future;
- vi) Persons initially appointed as Telephone/Telex Operators and got merged into OCA after 1.1.1980 and promoted to OCB after 31.12.1984 as OCBs.

4. The above scale has been deprived to the applicants. It is submitted that the applicants and the above categories of persons are doing the same nature of work and responsibilities and the posts in which the applicants and above categories of persons work are interchangeable. There is no difference between the persons appointed before 1.1.80 and after 1.1.80 and promoted prior to 31.12.84 and after 31.12.84 and that all are performing the similar nature of duties and responsibilities.

5. Hence they have filed this OA to call for the records relating to and connected with proceedings No.SCF:PGA:ESTT-II 53 dt. 4.10.93 from the office of the Respondent No.2 and to declare the same as illegal, arbitrary and unconstitutional and consequential direction to the respondents to extend the scale of pay of Rs.380-640 (1350-2200) to them from the date of promotion as OCB with all consequential benefits such as pay fixation and payment of arrears of pay and such other arrears.

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confirmed in that place. There were 2 sets of individuals who were promoted after 6.11.82 and who were given the lower scale of pay of Rs.330-560 and those who were senior to persons who were earlier given officiating appointment as OCBs in higher scale. To protect the pay of the above 2 categories of officials the department issued 2 orders dated 2.8.85 and 8.4.86, respectively, and both the categories of persons were allowed the scale of pay of Rs.380-640 as personal to them.

4. However the staff have been demanding for continuation of the old scale of Rs.380-640 to all the OCBs and the matter was considered at various levels including in the Joint Committee Meeting. According to the request of the demand from the staff side the Government issued further official memorandum dt. 20.1.87 extending the old scale of pay to some more sets of officials. The benefit was extended to persons who were appointed as OCAs prior to 1.1.80 and were promoted between 1.1.80 and 31.12.84 as the scale personal to them.

5. Aggrieved by the above orders, some officials initially approached the Hon'ble C.A.T. Ernakulam Bench, in OA.150/88 alleging discrimination. The Hon'ble Tribunal by its order was pleased to hold that the prescription of cut off date as 31.12.84 as legal, constitutional and direct^{ed} to extend the said benefit of old scale to the applicants therein who were promoted after 31.12.84 as OCBs. They further submit that vide O.M. dt. 28.7.80 the Telephone/Telex Operators were drawing the scale of pay of Rs.260-400 (pre-revised) which was equivalent to OCA and they were merged into the OCA category. After merger such persons should be ranked junior to the existing incumbents and the period of service rendered prior to merger would not be counted for the purposes of review for promotion to the next higher grade in the clerical grade. The said offer was extended from time to time. The persons who had exercised the options were promoted as OCB after 31.12.84 and consequently their pay was fixed in the pre-revised

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- iii) To consider suggestions like adopting other scales of pay or merger of the existing scales keeping in view the pay structures and avenues of promotion available for ..

8. The report of the Committee containing the recommendations was considered by the Space Commission and based on the decisions of the Space Commission orders were issued on 13.12.79 by the DOS revising upward/downward certain scales of pay which had been adopted earlier in the ISRO as a non-government body. The Committee had recommended that the scale of pay of Rs.380-640 (pre-revised) should be replaced by the scale of pay of Rs.330-560 which was the grade applicable to the non-gazetted category of the staff, ⁱⁿ the G.O.I. However based on the recommendations of the Committee on par with the scale of pay for identical posts in other departments of the Government of India it was decided to adopt the higher scale of pay of Rs.650-960 (pre-revised) the intention being to create parity in the matter of scales of pay with other Government attached to the identical posts in ISRO.

9. The decision to reduce the scale of pay of the post of OCB and other changes were contemplated in the orders dt. 13.12.79, that the said order dt. 13.12.79 was challenged by the OCA before the Hon'ble High Court of Kerala, that an interim stay order had been issued in the said Writ Petition that the department hence issued an order dt. 4.3.80 (Annexure-E) keeping the order dt. 13.12.79 in abeyance, that the Hon'ble High Court of Kerala dismissed the Writ Petition and thereafter orders were issued on 6.11.82 communicating to the effect that the decisions contained in the order dt. 13.12.79 regarding revision of scale of pay of OCB from Rs.380-640 (pre-revised) to Rs.330-560 (pre-revised) be implemented vide its order dt. 6.11.82.

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6. The respondents have filed their counter stating that in view of the increasing magnitude of its financial outlay on the projects the Government considered that it would be in the public interest to take over the direct responsibilities of the IsRO and a decision was taken to convert ISRO into a Government organisation w.e.f. 1.4.75. When IsRO was a non-government body under PRL the terms and conditions of service were laid down by the Government of India. At the time of conversion of IsRO into a government body, an option was given to all the employees of the IsRO to accept the service conditions in IsRO re-constituted as a Government body or to resign from the IsRO. Those who were willing to serve as Government servants w.e.f. 1.4.75 were also given option to retain the existing terms and conditions. On conversion of IsRO into a Government body under the department of Space w.e.f. 1.4.75 Government rules were made applicable to the IsRO organisation.

7. It was noticed that some of the scales of pay adopted earlier in the IsRO to certain posts (listed in Annexure-B) were not on par with the pay scales attached to similar posts in the other government departments. Therefore it was decided by the government that the issue should be examined in detail and that accordingly a committee was adopted by the DOS by order dt. 17.1. (Annexure-C) for the following purposes:-

- i) To review the scales of pay of various posts, both Scientific & Technical and Administrative/Auxiliary, existing in IsRO vis-a-vis the pay scales approved by the Government on the basis of the recommendations of the Third Pay Commission.
- ii) To make a comprehensive study of the implication of the continuation of the scales of pay existing in IsRO against various posts both in Scientific/Technical and Administrative/Auxiliary categories which were different from those for similar posts in other Central Government Ministries/Departments.

the seniority. For the employees concerned in ISKO even after such reversions they were reappointed to the same post in the same scale of pay which they had held while officiating. Such reversions were carried out in the case of OCAs who were promoted as OCBs on officiating basis before 6.11.82 and continued to officiate on or after 6.11.82 and this created a situation where on their regularisation on various dates after the cut off date 5.11.82, they were given only the scale of pay of Rs.330-560 as against Rs.380-640 which they were holding till their reversion in view of the orders issued by the department revising downward the scale of pay of the post of OCB to Rs.330-560 effective from 6.11.82. It was found that the reversion was essentially to make the employees concerned in-eligible for counting the period of officiating promotion for the purpose of seniority^{and} promotion, etc had acted to their disadvantage in respect of the pay scale in as much as they could not continue in the higher scale of pay of Rs.380-640 on their regular promotion as OCBs.

11. AS per the general orders such reversions were not strictly necessary that where persons appointed to officiate as OCBs in Rs.380-640 scale before 6.11.82 and continued to officiate after the date were ultimately regularised as OCBs without any break the reversions done in their case may only be treated as technical reversions without change in the scale of Rs.380-640 they were drawing. Promotions against short term vacancies were given on a section or divisionwise basis of the over all centre seniority of the persons in the lower post. This was done with a view to avoid unnecessary dislocation of work by shifting persons for short periods from one division to another. Where short term vacancy had arisen^{in any} section/group/division may not be able to fit in properly in the changed division or group or section. In such cases it was useful to promote a person within the same section or group or division, that this resulted in a situation where a person who is more senior but working in a section or

10. In ISRO appointment to the post of OCB is made only by promotion ~~of staff~~ from the lower grade of OCA. During the period between 1.1.80 the date from which the revised scale of pay should have come into existence but for the stay order issued by the Hon'ble High Court of Kerala ^{and 5.11.82} the date on which the Hon'ble High Court of Kerala dismissed the Writ Petition; promotions to the post of OCB were made in the scale of pay of Rs.380-640. Such employees were allowed to retain the scale of pay as scale personal to them. Apart from OCA, who were promoted in the scale of pay of Rs.380-640 till 5.11.82 certain OCAs were given short term promotions against the leave vacancies to the post of OCB prior to 6.11.82 in the scale of pay of Rs.380-640 that they were continued to officiate as OCBs even after 6.11.82 ^{and} that some of the OCAs were in the meantime, empanelled to the post of OCBs. Whenever regular vacancies arose those OCAs were given regular appointment as OCBs. However in ISRO as a matter of convention persons promoted as short term basis were reverted before they were given regular promotions even though such regular promotions took effect without any break. In such cases, persons who were reverted to the lower posts ^{were} and promoted on regular basis on the same day to the same higher post which they were holding before the reversion. This had been done with a view to ensure that the period of such short term promotion did not count for the purpose of seniority etc. As per the general orders of the Government of India on the subject when an employee who is already empanelled for the higher post, is given opportunity to officiate in the higher post against short term vacancies is promoted on a regular basis during the course of his officiating promotion, he is regularised in the higher post and reversion is not resorted to in such cases. The period of officiating service followed by regular appointment without break was also taken into account for the purpose of seniority, pay protection etc. Normally reversion and regularisation on the same day did not create any difficulties, except for

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to the department that in the revised scales of pay recommended by the 4th Pay Commission that merged the scales of pay of Rs.330-560 and Rs.380-640 but had retained them as 2 different scales and had accordingly given them 2 distinct new scales of pay. The employees also pointed out that downward revision of the scales of pay had acted to their disadvantage and officials in the ISRO who were promoted as OCBs before 6.11.82 they could give them the higher scale of pay of Rs.380-640, that in some other centres where no vacancies arose where the promotion process took considerable time due to administrative reasons they could promote only OCAs after 6.11.82 and thus they were given the lower scale of pay of Rs.330-560. Thus inspite of belonging to the same category some OCAs got the benefit of getting the scale of Rs.380-640 on their promotion as OCBs while some others were denied the said benefit.

15. The employees also raised the said issue before the departmental counsel of JCM held on 10.7.86 and pleaded that all the OCAs in department of space and ISRO be given the scale of pay of Rs.380-640 to all OCBs on their promotion on or after 6.11.82. After detailed discussions in the meeting the counsels desired that the matter should be examined in greater detail. There was no compulsion on the part of the department to have reconsidered the decision taken in 1979 to revise downward scale of pay of OCBs as even Hon'ble ^{High} Court of Kerala had upheld the decision.

16. However taking into account the fact that OCAs/OCBs constituted a large segment of the administrative staff in DOS/ISRO and render valuable support at the working level in the various divisions/section/groups in the centres/units, it was felt that it would be a good gesture on the part of the department to give the benefit of higher scale of Rs.380-640 to at least those who were appointed before 1.1.80 and were promoted, subsequently, as

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division or group or other than the one where the leave vacancy had arisen in not getting officiating promotion but a person junior to him getting the same.

12. In the normal course such situations did not confer any such benefits, that, however, in the context of revision of the scale of pay of the post of OCBs from 380-640 effective from 6.11.82 in the ISRO, the above mentioned procedure of giving officiating promotions on divisions/section/groupwise basis ^{created} an anomalous situation. The department was completely justified in implementing the lower scale of Rs.330-560 (pre-revised). The department had however considered and rectified certain genuine anomalies arising out of the breaks of reverting adhoc/officiating promotees, before regular appointment without any break and also to cover up the cases of the seniors getting the lower scale as compared juniors in the same panel as explained in the proceeding paragraphs.

13. The demands from the OCBs that they should also be given the scale of pay of Rs.380-640 which was operated in ISRO till 5.11.82 on their promotion to the post of OCB. The employees had submitted that many LDCs in the other departments of Government of India had left their jobs after putting long years of service and joined ISRO with the hope of getting the post of OCB in the higher scale of Rs.380-640. As a result of the orders issued by the department they could get only the scale of Rs.330-560 in ISRO on their promotion as OCB.

14. The department explained the position to the employees that the scale of Rs.380-640 attached to the post of OCB in ISRO could not be continued indefinitely after conversion into a Government organisation, that the employees were however not satisfied with the explanation given by the department they represented

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- (d)) The OCB to whom the benefit under these orders are found to be applicable shall be entitled to draw pay in the scale of pay of Rs.380-640 (PR) / Rs.1350-2200 (R) only with effect from the date of issue of the orders. For the period of service rendered as OCB prior to issue of this order, the fixation of pay in the scale of pay of Rs.380-640 (PR) / Rs.1350-2200 (R) shall only be notional and no arrears would be admissible.

18. Some employees who had joined the organisation as OCAs prior to 1.1.80 but who were promoted as OCBs after 31.12.84 started making representations that they had legitimate expectations of getting their scale of pay of Rs.380-640 that some of the employees has also approached the Tribunal that based on the judgement of the Hon'ble Tribunal the department examined the issue in detail and issued orders on 28.4.94 (Annexure-L) to the effect that in partial modification of OM dt. 20.1.87 on the subject the employees who had joined prior to 1.1.80 (including Telex/Telephone Operators 'A' appointed prior to 1.1.80 and subsequently redesignated as OCAs based on the options given by them) may be given the scale of pay of Rs. 380-640 on promotion as OCBs irrespective of the date of their promotion. From the above department has stretched to the maximum extent possible to extend the benefit of the higher scale of pay of Rs.380-640 attached to the post of OCBs. It is not possible for the respondents to agree to the demand of the applicants to extend the benefit of the scale of Rs.380-640 to the applicants as they joined the department only after 1.1.80 by which time orders were issued by the department revising the pay scale.

19. This Bench dismissed OA.137/92 on the following grounds:-

- (a) The significance of 1.1.80 is the date from which the Govt. scale of Rs.330-560/- was introduced to OCBs.
- (b) The respondents chose the Govt. scale of Rs.330-560/- w.e.f. 1.1.80. They did so within their competence with full knowledge and powers.

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OCBs upto a specific cut off date which date had been considered carefully by the department. Taking into account number of OCAs appointed before 1.1.80 in the organisation who had put in sufficient years of service and who could reasonably look forward for promotion as OCBs within the average time taken by the OCAs in the DOS/organisation to get promoted as OCBs, the department felt that 31.12.84 might be fixed as the cutoff date for extending the benefit to the posts of OCBs. In other words the OCAs appointed before 1.1.80 and promoted to the post of OCBs within a period of 5 years from 1.1.80 (the date from which the scale of pay of the post of OCBs originally brought down from Rs.330-560) would get the benefit of the higher scale. Before fixing the cut off date the department had collected and examined all the relevant facts and statistics in this regard. Large number of persons working in the department of Government of India in similar posts and if the respondents were to give their higher pay scale policy of the Government of India to have the same pay scales would be defeated.

17. Accordingly O.M.No.7/8(1)/80-I(Vol II) dt. 20.1.87 (Annexure-K) were sent communicating the following decisions:-

- (a) OCAs who joined DOS/IDRO prior to 1.1.80 and were promoted on a regular basis as OCBs before 31.12.84 may be given the benefit of the scale of pay of Rs.380-640 (PR) subject to the conditions that no arrears of pay as a result of pay fixation in the revised scale of pay as per the Fourth Pay Commission's recommendations.
- (b) OCAs, irrespective of their dates of joining DOS/IDRO, who were promoted as OCBs after 31.12.84 will get only the scale of pay of Rs.330-560 (PR).
- (c) The scale of pay of Rs.380-640 (PR) shall be given to OCBs covered by (a) above only, as "scale personal" to them. Whenever, the incumbent vacates the post, the post shall be operated only in the scale of pay of Rs.330-560 (PR)/Rs.1200-2040 (R). No further concessions whatsoever, shall be allowed in this regard.

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23. Since the applicants joined as OCAs in the organisation after 1.1.60 they cannot claim higher scale of pay of Rs.380-640 in the OCB group. The applicants cannot claim a particular scale of pay which was in existence in the organisation while it was an autonomous body. The respondents have given instances in detail wherein certain revision downward and / or upward of the posts in the organisation became necessary to keep them on par with the other posts in the government.

24. Therefore, there are no merits in this OA. Hence the OA is dismissed. No costs.

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY
[Signature]
अधीक्षक अधिकारी
JUDGE OFFICER
राज्य प्रशासनिक न्यायालय
State Administrative Tribunal
विजयवाड़ा
Vijayawada Bench

| | | |
|---|--------------------|----------|
| क्यास नंबर | CASE NUMBER | 387/94 |
| नियंत्रण का तारीख | Date of Judgement | 12/13/95 |
| प्रति तय्यार किया गया दिनांक | Copy Made Ready on | 15/5/92 |
| अनुभाग अधिकारी (न्य बिक) Section Officer (J) | | |

- (c) The Govt. can revise scales of pay downwards as well as upwards.
- (d) The decision of the respondents has a nexus to the objective to introduce Govt. scales of pay after becoming a Govt. body.
- (e) Extending the scale of Rs.380-640/- even to those OCAs who joined after 1.1.80 would amount to perpetuating that scale deviating from the scale available to similar staff in other departments.
- (f) There is nothing wrong in the respondents action in restraining the scale only to those who were OCAs prior to 1.1.80.

20. Based on the judgement this Bench dismissed OA.136/92 filed by the employees who had joined as OCAs after 1.1.80 seeking higher scale of pay. This Bench while dismissing the OAs observed there was nothing wrong with the respondents' action in restricting the higher scale on their promotion as OCBS only to those who were OCAs prior to 1.1.80. Subsequently the department by keeping in view, the observations made by this Bench extending the higher scale to those OCAs who had joined prior to 1.1.80 on their promotion as OCBS.

21. All the applicants in this OA have joined as OCA after 1.1.80 with the full knowledge of revision of pay scale of OCB and they have no claim of whatsoever for a higher pay scale.

22. On going through the material placed on record and also the detailed counter filed by the respondents it is clear that the department have ^{extended} benefit to the OCAs who were joined prior to 1.1.80 the benefit of the pay of Rs.380-640 irrespective of the date of their promotion as OCBS. Admittedly the applicants joined as OCAs after 1.1.80. In page-3 of the OA, their appointments to the cadre of OCA has been clearly indicated. The applicants joined the organisation knowing fully well that the scale of pay in the OCB is Rs.330-560 and not Rs.380-640. The department is justified in implementing the decision of the Hon'ble High Court of Kerala and also in implementing the decision of this Bench in OAs 171/92 and 136/92.

