

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR.

Date of Decision: 12/11/2001

OA 39/2000

1. R.C.Gary, Chief Typist O/o Dy.Controller of Stores, W/Rly, Ajmer.
2. Rajendra Sinha, Head Typist O/o Dy.Controller of Stores, W/Rly, Ajmer.
3. R.P.Sharma, Senior Typist O/o Dy.Controller of Stores, W/Rly, Ajmer.

... Applicants

Versus

1. Union of India through Chairman, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
2. General Manager, W/Rly, Churchgate, Mumbai.
3. Dy.Controller of Stores, W/Rly, Ajmer.

... Respondents

CORAM:

HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

HON'BLE MR.J.K.KAUSHIK, JUDL.MEMBER

For the Applicants ... Mr.Anupam Agarwal
For the Respondents ... Mr.U.D.Sharma

O R D E R

PER HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

The controversy in this OA is about the pay scales to be assigned to the category of typists in the Railway. The applicants have sought revision of the pay scales as has been assigned to this category after implementation of the Fifth Pay Commission's report. Their plea is that prior to Fifth Pay Commission they were enjoying the pay scales at par with clerical cadre. Consequent to Fifth Pay Commission's report, the scales were fixed lower than those of the Clerical cadre.

2. Heard the learned counsel for the parties. The learned counsel for the applicants submitted that pending disposal of this OA the pay scales of Typists, Head Typists, Chief Typists and Superintendent Typists have already been brought at par with the erstwhile corresponding grades of the Clerical side. To that extent,



grievance in this OA stands resolved. However, the category of Senior Typists has been left out. The learned counsel has alleged discrimination because only one grade of typists i.e. Senior Typist has been left out while other grades have been given parity.

3. We have perused the reply filed by the respondents. Our attention has been drawn to para-6 of the reply, wherein it has been stated that any anomaly related to the pay scales for different categories of staff recommended by the Pay Commission can be settled through the forum of Anomalies Committee constituted at the national and departmental level. The issue related to the pay scales of Typists cadre has been taken up by the Staff Federation in the Departmental Anomalies Committee. In terms of the procedure laid down by the Department of Personnel & Training, the disputed cases arising in the Anomaly Committee will be resolved by the Arbitrator to be appointed out of a panel of names proposed by the official and the staff side. The learned counsel for the respondents submitted that this process has not yet completed and this OA is thus premature.

4. We have given our anxious consideration to the rival contentions.

5. In respect of deciding the pay scales of the employees, the legal position is well settled. It has been held by Hon'ble the Supreme Court that job evaluation of posts or equation of pay or determination of pay scales are the functions of expert bodies like the Pay Commission and normally the courts should not interfere, except on any of the grounds of unjust and arbitrary State action or inaction or any grave error having crept in while fixing the pay scales. The Apex Court cautioned the courts against tinkering with the equivalence, unless it is shown that it was made with extraneous consideration.

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6. The learned counsel for the applicants vehemently emphasised that if there was any case of discrimination then this is the one where, while agreeing to give parity to Junior Typists, Head Typists, Chief Typists and Superintendent Typists, the Senior Typists have been left out. We have considered this contention of the learned counsel and we are unable to agree with his plea that this is a case of discrimination. The very fact that the Pay Commission had recommended the lower scales to all the categories enumerated above but later, on reconsideration, the Government has given parity to all other grades except Senior Typists is a situation which, in our view, has been arrived at after due deliberation. Though the learned counsel for the respondents was not in a position to throw any light as to what factors have been reckoned by the concerned agencies to arrive on this decision but this does not tantamount to be a case of discrimination. We have also noted that the subject matter is under consideration of the Anomalies Committee and that the mechanism provided for appointing an Arbitrator also is available in the event of disagreement between the Administration and Staff Federations. When a proper mechanism is available to the staff for the very purpose of resolving disputes like the anomaly in pay, we are of the considered opinion that is the only appropriate forum which should deal with the subject. Such issues can only be decided by the forum so set up or the expert bodies and not by the court and Tribunals. In the instant case, admittedly, the matter is before the Anomalies Committee already. In view of the this background, we find this OA is premature.

7. The learned counsel for the applicants submitted that the applicants were earlier given pay parity by the departmental authorities *suo moto*, while implementing recommendations of the Fifth Pay Commission. But by an order dated 15.10.99 the pay scales were revised to the detriment of the applicants for which no notice had been given. Further, orders have been issued for recovery of the payments so made in excess, vide letter dated 15.10.99.

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The learned counsel, Shri Anupam Agarwal, submitted that no recovery could not have been made as the applicants were earlier allowed to draw higher pay scales without any misrepresentation on their part. Further, the department itself has now given equal pay scales to Head Typists and Chief Typists at par with Head Clerks and Chief Clerks and have resolved this anomaly. In view of the fact that the demand of two of the applicants has already been accepted and they have been placed in the scale for which they were claiming, there can be no ground for making any recoveries.

In respect of third applicant, R.P.Sharma, who is working as a Senior Typist, the learned counsel stated that no recovery can be made in view of the law laid down by Hon'ble the Supreme Court in the case of Shyambabu Verma v. Union of India, 1994 SCC (L&S) 1320 and Sahib Ram v. State of Haryana & Ors., 1995 SCC (L&S) 248.

These arguments were countered by the learned counsel for the respondents, who stated that higher pay scales had been given to the applicants by the department by mistake and any mistake cannot be allowed to be perpetuated and needs to be corrected. While admitting that the Head Typists and Chief Typists have been accorded the pay scales, as requested by the applicants in the OA, but the same have been made effective from a prospective date. The over payments made prior to the date of operation of the revised pay scales necessarily have to be recovered as also the over payment to the third applicant, who is working only as a Senior Typist. In support of his contention that the over payment made can be recovered, the learned counsel placed reliance on 2000 SCC (L&S) 882, Union of India & Ors. v. Sujatha Vedachalam (Smt) & Anr.

8. The legal position on the point whether in the situation where payments have been received by the employees and there was no misrepresentation on their part, whether the department can recover the amount paid in excess of what was due, the learned counsel for the respondents stated that in the case of 'Sujatha Vedachalam' the Apex Court had upheld the order of recovery and the

only concession given was that the recovery of the amount was directed to be made in easy instalments spread over 15 years' period or till the date of retirement, whichever is earlier. We have gone through the judgement of Hon'ble the Supreme Court in this case as also the cases referred to by the learned counsel for the applicants. The same contentions were advanced in the case of E.K.Ramakrishnan & Anr. v. UOI & Ors., OA 702/2000, decided on 21.9.2001, by the Mumbai Bench of the Central Administrative Tribunal. In that case also, the Apex Court's order in 'Sujatha Vedachalam's case and the cases of 'Shyambabu Verma' and 'Sahib Ram' came up for discussion. We find ourselves in agreement with the conclusion arrived at by the Mumbai Bench after going through the judgements in these cases and we are of the considered view that in the instant case no recovery can be made by the department from the applicants, who received the excess payment because of no fault on their part. In the case of applicants No.1 and 2, in any case, the department has granted the relief prayed for though from a later date. This particular feature also goes in favour of these two applicants who were permitted the same pay scale earlier by the department on its own; in which they have now been formally placed. In any case, there was no misrepresentation on the part of all the three applicants when they were assigned higher pay scales. If there was any fault, that lay with the departmental functionaries who allowed the higher scales to the applicants, when there were actually no orders to that effect. It is open to the respondents to take, whatever action deemed fit, against such functionaries. The applicants cannot be blamed for this. In such a situation, no recovery can be made. We were informed that the recovery, in fact, has already been made. If that is so, the respondents shall refund the amount recovered to these applicants.

9. In the light of discussion aforesaid, we partly allow this OA. In respect of the relief for assigning



higher pay scale to the category of Senior Typists, we hold this OA as premature. However, the respondents are directed to refund the amount which has already been recovered from the applicants on the ground of being excess payment. Such amount shall be refunded within a period of one month from the date of receipt of certified copy of this order. For any delay beyond a period of one month, the applicants shall be entitled to receive interest @ 9% per annum. No order as to costs.

Jn 6/21/87
(J.K. KAUSHIK)
MEMBER (J)

Appt
(A.P. NAGRATH)
MEMBER (A)