

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

JAIPUR BENCH, JAIPUR

Date of decision: 3<sup>rd</sup> May, 2004

OA No.138/2002

with

MA No.103/2002

1. Shri Anil Kumar Pareek s/o Shri Shyam Narain Pareek, aged about 45 years r/o 1493, Rasta Jat Ka Kuwa, 2nd Cross Chandpole Bazar, Jaipur.
2. Shri Purshottam Nr. Mathur s/o Shri L.L.Mathur aged about 44 years r/o A-239, Telephone Colony, Barket Nagar, Tonk Phatak, Jaipur.
3. Shri Vishamber Dayal s/o Shri Badri Prasad aged about 44 years r/o CPWD Apartment, Qtr. No. 67, Vidhyadhar Nagar, Sector 7, Jaipur.
4. Smt. Gyan Battrra daughter of/wife of Shri Ajay Kr. Batra, aged about 44 years r/o 2/20, Jawahar Nagar, Jaipur.
5. Shri Hemant Kr. Saxena s/o Shri S.D.Saxena, aged about 42 years, r/o 102/102, Meera Marg, Agrawal Farm, Jaipur.
6. Shri Madan Gopal Khurana s/o Shri R.L.Khurana aged about 43 years r/o 688, Frontier Colony, Adarsh Nagar, Jaipur.
7. Shri Sohan Lal Verma s/o Shri Laxmi Narain Verma aged about 44 years, r/o D-88, Shanti Nagar, Near NBC Khatipura Road, Jaipur.
8. Shri Khushal KV. Gyamlani s/o Shri Topan Das Gmamlani aged about 44 years, r/o 1/738, Malviya Nagar, Jaipur.
9. Shri Satya Nr. Sharma s/o late Shri B.L.Sharma aged about 44 years r/o 1) 2477, Risotto Patwan, Telipara, Chaura Rasta, Jaiipur 2) C-75, Model Town, Malviya Nagar, Jaipur.

: 2 :

10. Shri Dinesh Kr. Luhadia s/o Shri H.C.Luhadia aged about 43 years, r/o 2657, Nagorion Ka Chowk, Gheewalon Ka Rasta, Johri Bazar, Jaipur.
11. Shri Rajendra Kr. Khorania s/o Shri Laxmi Nagain Khorania aged about 43 years r/o 67, Lalpura Colony, Vanasthali Marg, Jaipur.
12. Shri Hemant Kr. Pareek s/o Shri Suraj Mal Pareek, aged about 43 years r/o CPWD Apartment, Qtr. No.75, Vidyadhar Nagar, Sector-7, Jaipur.  
(All are working as Junior Supervisor)

.. Applicants

V E R S U S

1. Union of India through the Secretary, Ministry of Home Affairs, Central Secretariat, New Delhi.
2. The Registrar General of India and Census Commissioner, 2-A, Mansingh Road, New Delhi.
3. The Director, Census Rajasthan, 6-B, Jhalana Doongri, Jaipur.

.. Respondents

Mr. P.P.Mathur, counsel for the applicants

Mr. Gaurav Jain, counsel for respondents.

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

O R D E R

Per Hon'ble Mr. M.L.Chauhan.

The applicants have filed this OA thereby praying for the followign reliefs:-

"i) respondents may be directed to grant pay replacement of Rs. 5500-9000 to the Junior Supervisors working in the office of Registrar Général of India. The said benefit may be granted from

67

1.1.96 i.e. date from which the recommendation of the 5th Pay Commission were implemented.

ii) Respondents may also be directed to pay arrears of salary amount after proper fixation as allowed in terms of Clause-1 may also be granted to the applicants alongwith interest at the rate of 18 percent per annum till the date of actual payment.

Any other appropriate order or direction which the Hon'ble Tribunal thinks just and proper in the facts and circumstances of the case even the same has not been specifically prayed for but which is necessary to ensure ends of justice may kindly also be passed in favour of the applicants.

Cost of the Original Application be awarded in favour of the humble applicants."

2. Facts of the case are that the applicants are working as Junior Supervisor in the Census Department, Rajasthan. It is averred that pay scale of the applicants had been upgraded to Rs. 1600-2660 from the scale of Rs. 1400-2300 but appropriate revised scale has not been allowed. According to the applicants, the replacement scale of Rs. 1600-2660, in which the applicants were working, is Rs. 5500-9000 whereas they have been allowed revised pay scale of Rs. 5000-8000, as can be seen from the order dated 6.1.98 (Ann.A1). It is stated that in other Government of India Departments viz. Air Force, Central Laprosy Teaching Research Institute, National Informatic Centre etc. the scale of Rs.

1600-2660 has been revised to scale of Rs. 5500-9000, but the applicants in the Census Department have been allowed lower pay scale which is discriminatory. It is further stated that in OA No.2249/99 scale of Rs. 5500-9000 has been granted to grade of Data Entry Operator Grade-B in the scale of Rs. 1600-2660. As the Data Entry Operator Grade-B in other departments have been allowed the scale of Rs. 5000-8000 then the applicants who were holding the post of Junior Supervisor, which is a promotional post for the feeder grade of Data Entry Operator Grade-B, they should be granted higher pay scale of Rs. 5500-9000. It is on these basis that the applicants have filed this OA, thereby praying for the aforesaid reliefs.

3. The applicants have also filed Misc. Application No.103/02 for condonation of delay. In this Misc. Application, it has been stated that revised/replacement scale for the post of Junior Supervisor in other departments has been revised to Rs. 5500-9000 whereas the applicants have been allowed pay scale of Rs. 5000-8000. The applicants submitted various representations (Ann.A7 and Ann.A8) to the respondent department. In response thereto the respondents have stated that the matter is under consideration but no final decision has been taken so far. Thus, according to the applicants, the application is within limitation since the applicants are suffering continuous loss month after month and

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delay, if any, is required to be condoned.

The respondents have filed reply to the Misc. Application. Though, it has been stated that the successive representations do not extend the limitation, but the fact that the matter is under consideration before the higher authorities, has been admitted by the respondents. Thus, we are of the view that delay in filing the OA deserves to be condoned. Accordingly, the Misc. Application No.103/2002 is allowed.

4. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents' case is that the pay scale of Rs. 5000-8000 has been granted to the applicants on the basis of recommendations of the Fifth Pay Commission which was the expert body constituted by the Govt. of India to examine the pay structure and emoluments of various categories of the employees. It is stated that prior to the Fifth Pay Commission, the Data Entry Operators Grade-B carried a pay scale of Rs. 1350-2200 and its promotional post was Junior Supervisor in the pay scale of Rs. 1400-2300. The Fifth Pay Commission in its report, recommended merger of the pay scales of Rs. 1350-2200 and Rs. 1400-2300, and on implementation of the recommendations of the Fifth Pay Commission, the pay scale of Data Entry Operator, was revised to Rs. 4500-7000. It is further stated that the promotional post of

69

Junior Supervisor has been granted the pay scale of Rs. 1600-2660 revised to Rs. 5000-8000. It is stated that other departments have given pay scale of Rs. 5500-9000 as they have different job requirement which cannot be compared with the job requirement of the Census Department.

By way of additional pleas, it has been stated that the similar controversy was also raised by the Senior Supervisors in OA No.570/93 filed by Shri Sughasis Sen and ors. vs. Union of India which was disposed of by Hon'ble Cuttack Bench vide order dated 26.4.99. The prayer of the Senior Supervisors for upgradation of their pay scale from Rs. 5500-9000 to Rs. 6500-10500 was rejected by the Hon'ble Tribunal. As such, there was no case for upgradation of the pay scales of Senior Supervisors. In this circumstances, the pay scale of its feeder grade, that is Junior Supervisors cannot be upgraded as it will become at par with the pay scale of its promotional post and thus will lead to an anomaly. Copy of the order dated 26.4.99 has been placed on record as Ann.R/3. Similarly, it has been stated that OA No.2249/99 was also filed by Suresh Kumar Sharma and ors. in CAT, Principal Bench, New Delhi praying inter alia to upgrade the pay scales of the post of Junior Supervisors from Rs. 5000-8000 to Rs. 5500-9000. The Hon'ble Principal Bench disposed of the OA vide order dated 13.9.2000 in which the prayer for upgradation of the pay scale from 5000-8000 to Rs. 5500-9000 was not allowed by the Principal Bench. The Hon'ble Principal

Bench only allowed the upgraded pay scale of Rs. 1600-2660 w.e.f. 1.1.86 instead of 1.1.96. This decision of the Hon'ble Principal Bench for granting the upgraded pay scale of Rs. 1600-2660 with effect from 1.1.86 was challenged by the Union of India in Delhi High Court in Writ Petition No.4399/2001. After hearing the parties, the Hon'ble Delhi High Court allowed the Writ Petition vide order dated 31.5.2002. Thus, the claim of Junior Supervisors for upgradation of the pay scale from Rs. 1400-2300 to Rs. 1600-2660 from retrospective date that is 1.1.86 was also rejected by the Hon'ble High Court. Copy of order dated 31.5.2002 is placed on record as Ann.R4.

5. We have heard the learned counsel for the parties and perused the documents placed on record.

5.1 The main grievance of the applicants is that the Data Entry Operator Grade-B in the Census Department perform the same duties which is being performed by their counterpart in the Railways and National Informatic Centre etc. and they have been granted pay scale of Rs. 5000-8000, as such the applicants who belong to higher category of Junior Supervisors ought to have been granted pay scale of Rs. 5500-9000. Further, according to the learned counsel for the applicants, this is a case of hostile discrimination, inasmuch as, the Principal Bench in OA No.2249/99 has recommended that equivalent grade of Data Entry Operator Grade-B i.e. Rs.

400

1600-2660 is Rs. 5500-9000. Thus on that basis, the applicants are also entitled to the said relief.

5.2 We have given our thoughtful consideration to the matter. It is settled legal position that the Courts cannot interfere in the matter of pay scales where the pay scales are granted on the basis of the recommendations of the expert body like the Pay Commission. Where two sets of employees are governed by different rules, their pay scales and other conditions are to be governed by the respective rules and discrimination in the pay scale cannot be successfully pleaded. Mere same nomenclature of the post does not entitle the employees of different departments the same pay scale, more so, when this averment in the reply that there is difference in the recruitment qualification and duties and responsibilities of the Railway Data Entry Operators, has not been refuted by way of rejoinder. See State of Haryana and others vs. Jasmer Singh and others (JT 1996 (10) S.C.878), Union of India and others vs. Pradip Kumar Dey (2001 SCC (L&S) 56), Government of Andhra Pradesh and anr. vs. P.Hari Hara Prasad and others (2002 (2) SC (SLJ) 355 and State Bank of India and anr. vs. M.R.Ganesh Babu and others (JT 2002 (4) SC 129).

5.3 It is seen that prior to the recommendations of the Fifth Pay Commission report, there were two grade of Data Entry Operator viz. Rs. 1150-1500 and Rs. 1350-2200.

The third pay scale of Rs. 1400-2300 was meant for Junior Supervisor. On the recommendations of the Fifth Pay Commission, pay scale of Data Entry Operator Grade-A was upgraded from Rs. 1150-1500 to Rs. 1200-2040 and the pay scale of Data Entry Operator Grade-B was upgraded to Rs. 1400-2300. The replacement pay scale of Rs. 1400-2300 is Rs. 4500-7000. Since the Data Entry Operator Grade-B was feeder category for promotion to Junior Supervisor, pay scale of Rs. 1350-2200 for the post of Data Entry Operator Grade-B was merged with the pay scale of Rs. 1400-2300 and higher pay scale of Rs. 1600-2660 was prescribed for the post of Junior Supervisor w.e.f. 1.1.96. It was under these circumstances that higher pay scale of Rs. 1600-2660 was provided to the post of Junior Supervisor. This is the pay scale which has been provided pursuant to OM dated January 6, 1998 on the recommendation of the Fifth Pay Commission and there is no error in the process of implementation of the said report. In the matter of railways, the position was different. The existing pay scale of Rs. 1350-2200 for the Data Entry Operators had already been revised to Rs. 1400-2300 in the general recommendations of pay structure of E.D.P. staff. The promotion grade was Rs. 1600-2660. Thus, the pay scale of Data Entry Operator in the railway was higher than the pay scale of Data Entry Operator working in the Census Department before the Fifth Pay Commission report. Therefore, disparity has not arisen because of implementation of the Fifth Pay

Commission recommendations and it cannot be said to be a case of hostile discrimination.

5.4 That apart, as already noticed above, the scale of Rs. 5500-9000 is applicable to the post of Senior Supervisor which is promotional post from the post of Junior Supervisor. The Senior Supervisors had also filed OA No.570/93 titled Sughasis Sen and others vs. Union of India before the Cuttack Bench which was disposed of vide order dated 26.4.99. In that case, the relief sought by the applicants therein was upgradation of their pay scale from Rs. 5500-9000 to Rs. 6500-10500. The prayer of the applicants therein was rejected. Thus, in view of the decision rendered by the Cuttack Bench, it is not permissible for us to grant scale of Rs. 5500-9000 to the applicants, who belong to the category of Junior Supervisor, at par with Senior Supervisor. Thus, the respondents are right in saying that the pay scale of feeder grade i.e. Junior Supervisor cannot be upgraded as it will become at par with the promotional post and thus lead to an anomaly. Thus, according to us, the applicants are not entitled to any relief.

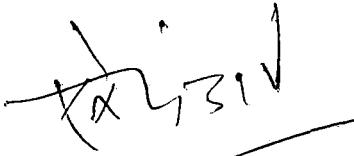
5.5 So far as the contention of the learned counsel for the applicants that they are entitled to the benefit on the basis of the decision rendered by the Principal Bench in OA No.2249/99, suffice it to say that the said decision was challenged before the Delhi High Court in Writ Petition No.4399/2001 and after hearing the parties, the Hon'ble High Court allowed the Writ

10

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Petition vide order dated 31.5.2002. Thus, the claim of Junior Supervisors for upgradation of pay scale of Rs. 1400-2300 to Rs. 1600-2660 from retrospective date i.e. from 1.1.86 was rejected by the Hon'ble High Court. That apart, this Bench in OA No.490/01, Shayam Sunder Sharma and ors. vs. Union of India and ors., decided on 9.5.03, has dismissed the OA filed by the Data Entry Operator Grade-B in the Census Department of Rajasthan whereby they have prayed for grant of replacement scale of Rs. 5000-8000. In that case it was held that no fault can be found on the part of the respondents in granting the scale of Rs. 4500-7000 to the applicants therein. Admittedly, the Junior Supervisor, which is promotional post from the cadre of Data Entry Operator scale of Rs. 4500-7000, has been granted higher pay scale of Rs. 5000-8000, no grievance can be made by the applicants in the OA that the scale of Rs. 5000-8000 is not a proper replacement scale for the promotional post of Junior Supervisor and they should be granted scale of Rs. 5500-9000 which is promotional scale of higher post of Senior Supervisor.

6. For the reasons stated above, the OA is devoid of merit and the same is accordingly dismissed with no order as to costs.

  
(A.K.BHANDARI)

Member (A)

  
(M.L.CHAUHAN)

Member (J)