

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No. 63 of 1997.

14-9-1999.
DATE OF DECISION.....

Shri Hironmoy Sen and 267 others.

(PETITIONER(S))

S/Shri A.K.Phukan and M.Munir

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Union of India & Ors.

RESPONDENT(S)

Shri A.Deb Roy, Sr.C.G.S.C.

ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE MR JUSTICE D.N.BARUAH, VICE CHAIRMAN.

THE HON'BLE MR G.L.SANGLYINE, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman



CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 63 of 1997.

Date of Order : This the 14th Day of September, 1999.

The Hon'ble Mr Justice D.N.Baruah, Vice-Chairman.

The Hon'ble Mr G.L.Sanglyine, Administrative Member.

Shri Hironmoy Sen and 267 others

All the applicants are Senior Auditors
in the office of Pr.Accountant General
(Audit), Assam, Meghalaya etc. at
Shillong and Guwahati.

. . . Applicants.

By Advocate S/Shri A.K.Phukan and
M.Munir.

- Versus -

1. Union of India
represented by the Comptroller
and Auditor General of India,
New Delhi.
2. The Comptroller and Auditor General
of India, New Delhi - 110002.
3. Secretary to the Government of India,
Ministry of Finance,
Department of Expenditure,
New Delhi.
4. The Principal Accountant General(Audit)
Assam, Meghalaya, Arunachal Pradesh
and Mizoram, Shillong.

. . . Respondents.

By Advocate Shri A.Deb Roy, Sr.C.G.S.C.

O R D E R

BARUAH J.(V.C)

268 applicants have approached this Tribunal by filing this present application. Permission under the provision of Rule 4(5)(a) of the Central Administrative Tribunal(Procedure) Rules 1987 has been granted to the applicants to proceed in this single application. The applicants in this O.A. have prayed for a declaration that the applicants are entitled to the scale of pay of Rs.1640-2900/-(pre-revised) i.e. before 5th Pay Commission and have further prayed for a direction to the respondents to extend

the benefit of the said scale with retrospective effect equal to the Assistants of the Central Secretariat. For the purpose of disposal of this present application short facts may be narrated as follows :

The applicants are at present working as Senior Auditors in the office of the Principal Accountant General(Audit), Assam and Meghalaya. The scale of pay of the Senior Auditors earlier was similar to that of the Assistants of the Central Secretariat. Some Assistants of the Central Secretariat being dissatisfied with the scale of pay filed an Original Application No.1538 of 1987 before the Principal Bench of the Central Administrative Tribunal claiming higher scale of pay on the grounds mentioned in the said application. The said O.A. was disposed of by the Principal Bench by order dated 23.5.1989 directing the respondents that the anomaly identified in the judgment should be referred to by the first respondent to the Anomaly Committee as mentioned in para 45 of the order for disposal in accordance with the procedure prescribed. Pursuant to the said decision the Government of India issued Office Memorandum No.2/1/90-CS-IV dated 31.7.1990 raising the scale of pay of the Assistants of Central Secretariat. We quote the relevant portion of the said Office Memorandum :

"The president is now pleased to prescribe the revised scale of Rs.1640-60-2600-EB-75-2900/- for the re-revised scale of Rs.425-15-500-EB-15-560-20-700-EB-25-800/- for duty posts included in the Assistant Grade of Central Secretariat Service and Grade 'C' Stenographers of Central Secretariat Stenographers Service with effect from 1.1.1986. The same revised pay scale will also be applicable to Assistants and Stenographers in other Organisations like Ministry of External Affairs which are not participating in the Central Secretariat Service and Central Secretariat Stenographers Service but where the posts are in comparable grades with same classification and pay scales and the method of recruitment through Open Competitive Examination is also the same."



However, neither the Principal Bench nor the Office Memorandum made any distinction with the Senior Auditors regarding the responsibility, status, nature of work and educational qualification etc. which are the guiding factors for making distinction of one post to another. There was no observation that the Senior Auditors were in any way less than that of the Assistants in the Central Secretariat. In fact the applicants in the O.A.No.1538/87 never raised the issue that their responsibility, status and nature of work were higher than the Senior Auditors. The present applicants claim that the responsibility, status, educational and other qualifications of the Senior Auditors are at par with the Assistants of the Central Secretariat and therefore they are entitled to get the benefit of the Office Memorandum dated 31.7.1990 in similar way. The representations had been made by the applicants to the authorities, however to no avail of.

2. Being aggrieved the applicants filed O.A.No.45/92 claiming inter alia that they should be given the same benefit of Annexure-IV Office Memorandum dated 31.7.1990 on the grounds mentioned therein. It was also contended that the Government arbitrarily discriminated them from that of the Assistants with no reason whatsoever. In the aforesaid O.A. the applicants contended that they were at par with the staff of the Central Secretariat Service which had been given the benefit of the increased scale of pay as referred to in Annexure IV Memorandum dated 31.7.1990. The said O.A.45/92 was disposed of by order dated 2.11.1994. While disposing of the O.A. this Tribunal summarised their contentions in para 4 of the judgment as follows :

- "i. Historically the posts of the applicants and the Assistants of the Central Secretariat Service were on par.
- ii. The minimum educational qualification in the entry level for the direct recruit Assistants of Central Secretariat Service and the Auditors of IA & AD is the same namely graduation.



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- iii. The Senior Auditors are drawn from the posts of Auditors after qualifying at the departmental examination with limited number of chances and after acquiring functional knowledge for at least three years as Auditors."

To sum up the contentions of the applicants that the educational qualification for entry into the service and the responsibility of the job are identical with that of the Assistants of the Central Secretariat. This Tribunal considered the pleadings and framed the following issues for consideration as referred to in para 9 of the judgment as follows :

- "1. Whether the applicants are entitled to get parity of pay scale with the Assistants and Stenographers Grade 'C' of the Central Secretariat Service on the principle of Equal Pay for Equal Work and on the basis of other grounds raised by them ?
2. Whether the refusal to grant the applicants pay parity by the respondents is in violation of Articles 14, 16 and 39(d) of the Constitution of India ?
3. Whether the respondents have acted contrary to the recommendation of the Fourth Pay Commission arbitrarily and illegally ?"

Before deciding those points this Tribunal observed in para 11 of the judgment that the case of the applicants rested on the following grounds :

- "1. Historically there was parity of scale.
2. Educational qualification at the entry level is the same.
3. The duties of applicants as assistants in Audit Department are no less onerous than those of the Secretariat Staff.
4. There is no rational basis for differentiation in scales.
5. The action of the respondents is arbitrary and discriminatory."

Thereafter on the first ground this Tribunal held hereunder :

" We are therefore inclined to hold that historically there was parity in the pay scale of applicants and Assistants in Central Secretariat. . . . "

Regarding qualification also this Tribunal found that they were similarly placed with the Assistants. The nature of

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duties and responsibilities were also not less than the Assistants in the Central Secretariat. On coming to the conclusion the Tribunal thus decided the matter in favour of the applicants holding that they were of equal status having same qualification and the responsibility and therefore they were entitled to get the similar treatment and accordingly directed to re-consider the matter in the light of the observations made in the judgment and made following directions :

"We however feel that we will be better advised to leave the matter for fresh and proper decision by the respondents. The respondents can always review their own decision when necessary. We would therefore recommend to the respondents in the interest of justice to re-examine the question and take a suitable decision afresh without postponing the issue to the report of the Fifth Central Pay Commission. We do not make such a direction or stipulate a time limit as we have no doubt that the reasons that have persuaded us to make the recommendation as reflected in the foregoing discussion will receive due and expeditious attention from the respondents. The fresh decision whichever way it may be taken however shall be communicated to the applicants."

No appeal was preferred before the Hon'ble Supreme Court against this judgment meaning thereby, the respondents had accepted the judgment. Therefore, it can be taken as a final judgment so far as the present applicants are concerned. Even after the judgment the respondents did not extend the benefit of Annexure-IV Memorandum dated 31.7.1990 to the applicants notwithstanding clear indication regarding the status of the applicants and that of the Assistants. Hence the applicants have filed this application.

3. In due course the respondents have filed written statement. We have heard both sides. Mr A.K.Phukan, learned Senior counsel appearing on behalf of the applicants assisted by Mr M.Munir submits that the Government did not take into consideration of the judgment of this Tribunal passed in the said O.A.45/92. Mr Phukan also submits that this judgment was



followed by the Chandigarh Bench of this Tribunal. In fact the judgment has reached its finality in this regard. Learned counsel further submits that this Tribunal in the aforesaid judgment made it clear that historically the Senior Auditors had been enjoying the same status and the scale of pay with that of the Assistants of the Central Secretariat. This Tribunal further observed that the responsibilities and qualification of the posts were also same, because in order to become a Senior Auditor he should not only be a graduate but is required to undergo certain training etc. and the job to perform by the Senior Auditors are of responsible in nature. According to the learned counsel, Senior Auditors are equal to Central Secretariat Service. Besides, Mr Phukan tries to emphasise that those points having been finally settled, the Government has no jurisdiction to take a different view by saying that if the similar pay is granted to the Senior Auditors, the Government would be required to give ^{such benefit} to other similarly situated persons. Mr A. Deb Roy, learned Sr. C.G.S.C for the respondents on the other hand submits that the matter was first considered after the order of the Tribunal passed in O.A.45/92 but no final decision could be taken because of model code of conduct as the election was announced. After the election, the new Government took a different view.

4. We have perused the pleadings and the written arguments submitted by the parties. The applicants in their application have categorically stated that the Government took a decision to give the same scale of pay with that of the Assistants but this could not be implemented because of the announcement of the general election. Later on new Government decided otherwise. In the written statement, the respondents have stated about it. In para 3 of the written argument, the respondents have stated as follows :

"In compliance of the Hon'ble Tribunal's order the question of higher pay scale to

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the Sr. Auditors was re-examined and an 'in-principle' decision was taken to grant the higher pay scale equivalent to the pay scale of Assistant in CSS from the date of judgment of this Hon'ble Tribunal, viz 2.11.1994. The matter was being processed further when holding of General Elections was announced. It was decided by the Government that the proposal might be deferred till the new Govt. takes over, in view of the Model Code of Conduct."

(Emphasis added)

Again in para 12 of the written statement the respondents also repeat the same thing. We quote the relevant portion of that para :

"... However, the Government clarified that the decision to revise the scale of Senior Auditors did not imply that the Government had conceded parity with the Assistant in the Central Secretariat Service and that all such matters were to be left for consideration of Fifth Pay Commission. For this purpose a Cabinet Note was prepared by the Respondent No.2 which was also approved by the then Finance Minister and Minister of State (Personnel and Pensions). But due to the announcement of general election, the then Finance Minister had desired that in view of model code of conduct of the elections, the proposal would have to be deferred till the new Government took over."

The statement made in this paragraph quoted above is however somewhat different from the written submission made by the learned Sr.C.G.S.C. During the course of hearing the learned counsel for the applicant has produced a note dated 2.7.1996 prepared by the Ministry of Finance, Department of Expenditure under the signature of the Under Secretary in-charge. In para 5 of the said note it is stated as follows :

"The proposal was examined on merits on the directions of the CAT and the then FM had agreed to the proposal to revise the pay scale subject to the approval of the Cabinet. The Cabinet Note prepared by the C & AG was also approved by then FM and MOS (PP). However due to announcement of the general elections then FM had desired that in view of Model Code of Conduct of elections, the proposal will have to be deferred till the new Government takes over."



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Same thing was repeated again by letter No. 12(3)/IC/95 dated 15.1.1996 which was written by the Joint Secretary to the Deputy CAG of India. In para 2 of the said letter also there is a reference regarding the granting of Scale of pay equal to Assistants in Central Secretariat. We quote the relevant portion of the said letter :


" . . . it has been agreed, in principle, to upgrade the scale of pay for the post of Senior Auditors in IA&AD from Rs.1400-2600/- to Rs.1640-2900/- from the date of order of the Tribunal, Guwahati Bench viz. 2.11.94..."


These two letters have not been disputed by Mr Deb Roy. From all those it appears that the Government had taken a decision in principle to give the benefit of higher pay at par scale/with that of Assistants of the Central Secretariat. But the decision could not be implemented in view of the announcement of the general election. In this regard we find that the written submission given by the learned Sr. C.G.S.C is similar to that of those letters even though in written statement we find some difference. Taking all together we can safely come to the conclusion that the Government had taken a decision to give parity of scale with that of the Assistants of the Central Secretariat. Unfortunately this was reversed when the new Government came to power. It is a well settled principle that a decision can be revised by the Government, but there must be some plausible or reasonable ground for doing so. In the written statement it is spelt out that if the applicants are given the benefit of the Annexure-IV Office Memorandum, the Government will have to pay to the others also. Law is well settled in this regard also. If the qualification, nature of duties and responsibilities are similar, the similar benefit must be given. Merely because some more employees will come and claim the similar benefit, in our opinion cannot be a ground for denying the right. If that is so the

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Government ought to have come forward at that time itself when the Assistants pay was raised by the order of the Principal Bench of the Tribunal. They were satisfied with the judgments and therefore did not prefer any appeal before the Supreme Court. Therefore it is not reasonable to say that similar employees will come and claim the same benefit. We therefore have no hesitation of coming to the conclusion that the respondents did not properly scrutinise the findings of this Tribunal given in O.A.45/92 dated 2.11.1994 and also the spirit of the judicial pronouncements. Mr Deb Roy while supporting the action of the respondents has cited some decisions of the Supreme Court that the Tribunal/Courts should not play a role of an employer by interfering with the pay scale. This is, in our opinion, a well settled principle. But we feel that the order passed by this Tribunal which reached its finality, has not been fully complied with. The Tribunal having come to the conclusion that the nature of job, qualification, responsibility of the Senior Auditors are same or similar with that of the Assistants historically, they had been given the same scale of pay. Even the expert body like Fourth Central Pay Commission also gave similar scale. Government had already taken a decision. We find no justifiable ground to make a departure from that decision of the Government earlier taken. Accordingly we direct the respondents to consider the true spirit and direction given in the judgment dated 2.11.1994 passed in O.A.45/92 and to pass necessary and appropriate orders regarding the parity of pay. This must be done as early as possible, at any rate, within a period of 4 months from the date of receipt of this order.

Application is accordingly disposed of. However, considering the entire facts and circumstances of the case we make no order as to costs.


(G.L. SANGLYINE)
ADMINISTRATIVE MEMBER


(D.N. BARUAH)
VICE CHAIRMAN