

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 232 of 1998.

16-3-2000.

DATE OF DECISION.....

Ponnoor Kelu Shanmughan

PETITIONER(S)

Sri I. Hussain.

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Union of India & Ors.

RESPONDENT(S)

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

ADVOCATE FOR THE
RESPONDENT(S)

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

THE HON'BLE SMT. LAKSHMI SWAMINATHAN, JUDICIAL 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 Judicial Member.

Lakshmi Swamithan

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 232 of 1998.

Date of Order : This the 16th Day of March, 2000.

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

The Hon'ble Smt. Lakshmi Swaminathan, Judicial Member.

Ponnore Kelu Shanmughan,
Stenographer Grade-II
O/O the Director,
North Eastern Police Academy,
Govt. of India,
Ministry of Home Affairs,
Umsaw, Umiam, Meghalaya

... . Applicant

By Advocate Sri I.Hussain.

- Versus -

1. Union of India
represented by Secretary,
Ministry of Home Affairs.
Govt. of India,
North Block, New Delhi.

2. The Director,
North Eastern Police Academy,
Govt. of India,
Ministry of Home Affairs,
Umsaw, Umiam, Meghalaya.

... . Respondents.

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

O R D E R

SMT.LAKSHMI SWAMINATHAN (J.M)

The applicant is aggrieved by the order passed by the respondents dated 21.1.1998 rejecting his request for extension of revised pay scale of Rs.1640-2900/- (pre-revised) to him as Stenographer Grade-II in North Eastern Police Academy (NEPA).

2. The brief facts of the case are the applicant was appointed as Stenographer Grade-III on 1.3.1990 and was promoted as Stenographer Grade-II in the scale of pay of Rs.1400-2600/- with effect from 22.10.1993, and continuing in the post. According to him, the pay scale of Stenographer Grade-II in subordinate offices has been

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brought at par with the Stenographer Grade 'C' Central Secretariat Stenographers Service (CSSS) from 1.1.1986 and posts of Stenographer Grade-II in NEPA and Stenographer Grade 'C' in CSSS are in comparable grades with same classification. Sri I.Hussain, learned counsel for the applicant has submitted that the applicant is performing the same duties and has the same responsibilities as Stenographers in CSSS. He has submitted that in fact, the applicant who is attached to the Joint Director of NEPA in the North Eastern States has a more onerous job as he has to function in a sensitive area where there is militancy, which the Joint Director is required to deal with. ^{has} He submitted that the applicant has been discriminated in not giving him the revised pay scale of Rs.1640-2900/- as given to Stenographers Grade 'C' in CSSS. He has relied on a number of judgments of the Tribunal, copies placed on record. He has submitted that ⁱⁿ one of these judgments namely, All India ESI Corporation Employees Federation & another vs. Director General, ESI Corporation and another (O.A.981/94, C.A.T., Principal Bench) decided on 17.3.1999, the Tribunal had considered all aspects of the matter including the judgment of the Supreme Court in Bhagwan Das & Ors. vs. State of Haryana (AIR 1987 SC 2049). In this case the Supreme Court had noted that once the nature, function and work are not shown to be dissimilar, the fact that the recruitment was made one way or the other would hardly be relevant from the point of view of equal pay for equal work doctrine. Learned counsel has, therefore, submitted that ^{account of} taking into the facts and circumstances, the applicant should also be granted revision of pay scale of Rs.1640-2900/-, with effect from 22.10.1993 and revised scale of Rs.5500-9000/- with effect from 1.1.1996.

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3. The respondents in their reply have submitted that the post of Stenographer Grade-II in NEPA was created in 1985 in the pay scale of Rs.425-700/- (pre revised). The method of recruitment to the post is either through promotion or by transfer on deputation, and direct recruitment through open competitive examination is not a prescribed mode of recruitment to these posts as per statutory recruitment rules. As a result of the recommendation of the Fourth Pay Commission the pay scale of Stenographer in NEPA was revised to Rs.1400-2300/- with effect from 1.1.1986 and subsequently revised to Rs.1400-2600/- with effect from 1.1.1986 vide office order dated 22.5.1990. Accordingly, the applicant had been given this pay scale in NEPA in accordance with the rules. Sri A.Deb Roy, learned Sr.C.G.S.C has submitted that the claim of the applicant cannot be granted by the Tribunal. He has submitted that the Fifth Pay Commission in its report had also not conceded to the demand of the Stenographers in subordinate offices, like the applicant, for absolute parity in pay scales. Apart from that, he has submitted that the mode of recruitment of Stenographer Grade-II in CSSS and that of the applicant is different, which is a material factor. He also relies on the judgment of the Supreme Court in Union of India & another vs. P.V. Hariharan & another (1997 SCC (L&S) 838). He has submitted that the impugned order has given the reasons for rejecting the applicant's claim and as the Fifth Central Pay Commission has also examined the proposal of revision of pay scale of such officials, the Tribunal may not allow such claim as put forward by the applicant's counsel.

4. We have carefully considered the pleadings and submissions made by the learned counsel for the parties.

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5. One of the main contentions of Sri I.Hussain, learned counsel for the applicant, is that the respondents cannot contend that the revised pay scale of Rs.1640-2900/- cannot be made applicable to Stenographer Grade-II of NEPA merely because they have different method of recruitment. For this he relies on the orders of the Tribunal in Naveen Saxena & Ors. vs. Union of India & Ors. (O.A.407/97, C.A.T., Principal Bench) decided on 9.1.1998 which has been followed in certain other judgments of the Tribunal of other Benches, including that of the Guwahati Bench order dated 25.2.2000 in R.A. 15/98 in O.A.151/91, copy placed on record. The judgment of the Tribunal, after referring to a number of relevant decisions of the Hon'ble Supreme Court including that of State of Uttar Pradesh vs. J.P.Chaurasia & Ors. (1988) 7 ATC 591) has observed that the answer to the question regarding scale of pay depended upon several factors and cannot depend upon either the nature of work or volume of work done by Bench Secretaries, primarily it required among others, evaluation of duties and responsibilities of the respective posts. In the Tribunal's order dated 9.1.1998 in Naveen Saxena's case, the Tribunal had held in the facts of that case that denying the CSSS pay scale to the applicant is without merit. It has also been observed that the parity of pay scale cannot be denied merely because the mode of recruitment is different, which has been heavily relied upon by Sri I.Hussain, learned counsel.

6. The Supreme Court in a catena of judgments has held that it is for the administration to decide the question whether two posts, ^{which} very often may appear to be same or similar should carry equal pay, the answer to which depends upon several factors, namely, evaluation of duties and responsibilities, which should be left to the expert bodies like the

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Pay Commission (See State of U.P. vs. J.P. Chaurasia & Ors. (supra), Supreme Court Employees Welfare Association vs. Union of India & Ors. (AIR 1990 SC 334), State of West Bengal vs. Harinarayan Bhowal (1994 27 ATC 524 (S.C)), and State of Madhya Pradesh and another vs. Pramod Kumar Bhartiya & Ors. (JT 1992(5) S.C.683)). The thrust of the decisions of the Supreme Court in these cases is that normally it is not the function of the Courts to fix pay scales and this should be left to expert bodies like the Pay Commission, who are in a position to look into the matter, ^{better} ~~carefully~~. It has also been held that it is not enough that the classifications are same or that the service conditions are similar or they perform very nearly the same or similar nature of duties as has been contended by the learned counsel for the applicant, who had tried to brush aside the admitted position in the present case, that the mode of recruitment of the applicant and Stenographer Grade-II in CSSS are different. In State of U.P. & Ors. vs. Ramashyraya Yadav and another (1996 SCC (L&S) 714), the Supreme Court has held, inter alia, that the mode of recruitment to the post held by the respondents was through Departmental Selection Committee whereas the mode of recruitment for regular Investigator-cum-Computer is through Public Service Commission, Uttar Pradesh or U.P. Subordinate Services Selection Board, Lucknow. Hence it was held that the principle of equal pay for equal work is attracted only when two sets of employees are similarly situated and are discharging similar functions and in the circumstances of the case, it was held that the claim of the respondents for higher pay which was available to the regular Investigator-cum-Computer, is not in order. In this case it is relevant to note that the Apex Court has referred

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also to the mode of recruitment to the post while dismissing the claim of the respondents for parity of pay scale. This judgment of the Supreme Court is binding on the Tribunal. In the present case, the mode of recruitment of the applicant is different to that of the Stenographers Grade-II in CSSS, ^{therefore,} He cannot ^{get} get the benefit of the higher pay scale on the ground that the mode of recruitment is not material as this would be against ^{the} decision of the Apex Court in Ramashyraya Yadav^{1 case} (supra), which is a later decision to the decision in Bhagwan Das & Ors. vs. State of Haryana (supra).

7. In the light of the 1996 judgment of the Supreme Court, the other decisions of the Tribunal relied upon by the applicant will not assist him, in the claim for parity in pay scale. Apart from the reasons given above in which we find the claim of the applicant not sustainable, it is also relevant to note that the Fifth Pay Commission in its recommendation (Annexure-X) has already considered the matter in para 46.34. However, the Commission, after taking into account the relevant facts, did not agree to the demand for absolute parity in regard to pay scales between Stenographers in offices outside the Secretariat and in the Secretariat, notwithstanding the fact that some petitioner-Stenographers Grade-II have got the benefit of parity in pay scale through Courts. In the light of the recommendation of the Fifth Pay Commission which is an expert body to look into such matters of revision of pay scales and the decisions of the Supreme Court referred to above, we are not in a position to accept the claim of the applicant that this is a fit case to issue a direction to the respondents to place him in the higher pay scale of Rs.1640-2900/- with effect from 22.10.1993 with consequen-

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-tial benefits. The action of the respondents in accepting the recommendation of the ^{5th. 1956} Pay Commission or in rejecting the applicant's request by the impugned letter, in which they have given the reasons for the classification and method of recruitment for the two categories of posts cannot be held to be either arbitrary or unreasonable to justify any interference in the matter.

8. We are also unable to hold that the action of the respondents is discriminatory against the applicant, because he is working as Stenographer Grade-II with an officer in NEPA. The distinction drawn between the Stenographers in Central Secretariat and those attached to subordinate offices is based on a reasonable classification and on this ground also the application fails. We have also considered the other submissions made by the learned counsel for the applicant but do not find any merit in the same to warrant allowing this application.

9. In the result, for the reasons given above the O.A. fails and is dismissed. No order as to costs.

Lakshmi
(SMT LAKSHMI SWAMINATHAN)

JUDICIAL MEMBER

G.L.Sanglyine
(G.L.SANGLYINE)
16/3/2000
ADMINISTRATIVE MEMBER