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CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JABALPUR

Original Application No. 67 of 2006

Jabalpur, this the 30th day of August, 2006

Hon'ble Dr. G.C. Srivastava, Vice Chairman
Hon'ble Mr. A.K. Gaur, Judicial Member

Kamwaljit Singh Bakshi,
S/o. Sahri K.S. Bakshi,
Age about 44 years,
Occupation Service (Barrack
Supervisor Infantry School Mhow),
R/o.

- APPLICANT

(By Advocate - Shri Rakesh Saxena)

Versus

1. Through the Secretary,
Union of India,
Ministry of Defense,
New Delhi.
 2. CGDA (Controller General of
Defence Account), R.K. Puram,
New Delhi.
 3. CDA (Controller of Defence Account,
Ridge Road Jabalpur,
Jabalpur.
 4. The Commandant Infantry School Mhow,
Mhow (MP).
 5. Director General of Military Training,
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G.S. Branch (General Staff Branch)
(MT 07), Army Head Quarter,
DHQ Post Office,
New Delhi 10011.

6. Director General of Infantry,
Infantry-04, General Staff Branch
Army HQ DHQ Post Office,
New Delhi 110011.

- RESPONDENTS

ORDER

By A.K. Gaur, Judicial Member –

By means of the aforesaid Original Application the applicant challenges the validity of orders dated 24.1.2005, 5.4.2005 and 29.8.2005, whereby the respondents denied the benefit of higher pay to the applicant ignoring the principle of equal work of equal pay. Initially in this case no specific relief has been claimed by the applicant but subsequently, on 12.6.2006 an application supported by an affidavit has been filed by the applicant seeking amendment for adding prayer clause in the Original Application. The following prayers have been claimed by the applicant:

“[a] By way of appropriate order and direction to direct the respondent to consider the case of applicant on merit, on the basis of the norm, of 5th pay commission in accordance with law, and provided the benefit of higher pay scale on the principle of Equal work for Equal pay.

[b] By way of appropriate order and direction the Hon'ble Tribunal quash, the interpretation of respondent No. 03, which is totally unjust and arbitrary.

[c] By way of appropriate order, and direction also quash the order Annexure 11, 12 and 13, in the interest of justice.”

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2. It is also relevant to mention here that although amendment has been allowed, but the same has not been incorporated in the body of the OA but we are treating the same as if the same has been incorporated in the body of the Original Application.

3. The brief facts of the case are that on the basis of Vth Pay Commission, the respondent No. 1 revised the pay scale of Barrack Supervisor Grade-I and Grade-II in the Military Engineering Service (in short MES) formation at the rate of Rs. 1400-2600/- to Rs. 5500-9000/- and 1200-2400/- to Rs. 5000-8000/- respectively. The applicant has filed a comparative chart for proving the fact that he performed the identical type of duties and extra work in comparison to MES formation. The classification of work regarding to the post of Barrack Supervisor in both the formations namely MES and Infantry School are same. It is urged on behalf of the applicant that the employee of the Infantry School, Mhow perform several other duties and different type of work like looking after electric and water supply, but in MES the Barrack Supervisor is not performing those duties and extra work in comparison to Infantry School, Mhow. The grievance of the applicant is that on the basis of settled principle of equal pay for equal work, the employees of the Infantry School are entitled to avail the benefit of Vth Pay Commission without any delay. It is alleged that the applicant is also holding three years experience of Civil Engineering and he is entitled to avail the benefits of higher pay scale as per the norms of 54-42 of the Vth Pay Commission report, in equivalent to the employees of MES formation. On 12.1.2000 the

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Army Headquarters, forwarded a letter to Infantry School for providing the benefit of Vth Pay Commission to the Infantry School employee who worked on the same post or cadre as a Barrack Supervisor in the Infantry School, Mhow, in accordance with the Vth Pay Commission, and decided to increase the pay scale of Barrack Supervisor of Infantry School. Copy of the Army Headquarter letter dated 12.1.2000 is filed as Annexure A-3 to the Original Application. On the basis of reclassification order dated 1.12.1997 the applicant is appointed on the post of Barrack Supervisor vide order dated 24.11.1997. Copy of the same is filed as Annexure A-4. The Army Headquarter decided to increase the pay scale of Barrack Supervisor of Infantry School, Mhow at the rate of Rs. 5500-9000/- and directed the authorities to provide the benefits of higher pay scale to the concerned employees According to the applicant he is working on the post of Barrack Supervisor and looking after more than 20,000 square meter area. In fact he is looking after the total floor area of 94,063.35 square meter and his main ground is that he is entitled to avail the same pay scale on the post of Barrack Supervisor as per the benefits of Revised Pay Rules, 1997. But the authorities of the Infantry School did not consider the case of the applicant. The applicant submitted a detailed representation on 13.2.1998 mentioning his grievance. The representation of the applicant was forwarded vide letter dated 21.8.1998 by respondent No. 4 to respondent No. 5. The applicant has also pointed out that the respondent No. 3 wrongly interpreted the order of the Army Headquarter and observed that the applicant is not entitled to higher pay scale as per the provisions of Vth Pay Commission. He is only entitled to the allowance in tune of Rs. 200/-

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as extra allowance, knowing fully that he is only performing the duties of Caretaker. The copy of the letter dated 6.1.2005 has been annexed as Annexure A-10. Vide order dated 29.8.2005 the respondent No. 3 has clearly denied the benefit of higher pay scale on the basis of the recommendation of Vth Pay Commission to the applicant and advised the respondent No. 4 to appoint a new employee if there is shortage of Caretakers in the Department.

4. We have heard learned counsel for the applicant and we are of the considered view that as per the judgment of the Hon'ble Supreme Court in the case of State Bank of India & Ors. Vs. K.P. Subbaiah & Ors., AIR 2003 SC 3016, the fixation of pay scales is essentially a function of the executive. They are closely interlinked with evaluation of duties and responsibilities attached to the post and the pay scale normally linked with conclusions arrived at by expert bodies like the Pay Commission. Ordinarily, a pay structure is evolved keeping in mind several factors, such as (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v) avenue of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar job, (viii) public dealing, (ix) satisfaction level, and (x) the employer's capacity to pay etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause unavoidable ripples in other cadres as well. The applicant is also not entitled to avail the benefit of the pay scale as claimed by him because it is the function of the Government which normally acts on the

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recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. It is settled principle of law that interfering with the prescribed pay scale is a serious matter. The Pay Commissioner, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales. The Hon'ble Supreme Court in 1997 SCC (L&S) 838, Union of India & Anr. Vs. P.V. Hariharan & Anr., and in 1999 (1) SCC Page 616, Chief Administrator-cum-Joint Secretary to the Government of India and Anr. Vs. Dipak Chandra Das, has clearly held that the Tribunal has no jurisdiction to issue such direction for fixation of a particular pay scale. We have carefully seen the order dated 29.8.2005 (Annexure A-13) passed by the competent authority wherein it is mentioned that grant of higher pay scale is not possible to a Caretaker who is looking after more area than required of his post. The competent authority has ultimately observed in this order that it is once again clarified that the Government of India vide letter dated 30.6.1999 has laid down the norms for caretaking posts for Government buildings. It has not introduced revised pay scales to be granted to the caretaker posts. In view of the said letter the applicant's claim is not justifiable and is liable to be rejected.

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5. We accordingly, dismiss this Original Application at the admission stage itself, as we do not find it a fit case to be interfered with on the principle of equal pay for equal work.

A.K. Gaur
(A.K. Gaur)
Judicial Member

Dr. G.C. Srivastava
(Dr. G.C. Srivastava)
Vice Chairman

"SA"

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....
पतिलिपि अर्को बिल:-

- (1) सचिव, उच्च न्यायालय वार एसोसिएशन, जबलपुर
- (2) आलेखक श्री/श्रीमती/कु.....के काउंसल
- (3) प्रत्यक्षी श्री/श्रीमती/कु.....के काउंसल
- (4) मंत्रालय, के.प्र.दा., जबलपुर मन्त्रालय
सूचना एवं आवश्यक कार्रवाई हेतु

Rakesh Singh
for mhow.

G.C. Srivastava
उप-निर्देश 7.9.06

Dismiss
on 7/9/16
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