

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 159 of 2002

Jabalpur, this the 2nd day of August, 2004

Hon'ble Mr. Sarweshwar Jha, Administrative Member
Hon'ble Mr. Madan Mohan, Judicial Member

1. Laloo Lal
S/o Lakhuram
aged about 42 years,
Barbar, R/o Jogini Nagar
H.No. 1899/3-C, Rampur,
Jabalpur. APPLICANT
2. Shambhu Nath Thakur
Barbar, S/o Shri Gulab Chand Thakur,
aged about 45 years,
R/o GRC Centre,
Jabalpur.
3. Veer Bahadur
S/o late Dasairam,
Barber, aged about 50 years,
r/o Rishala, Falbarline,
No. 44, Jabalpur, Cantt.
Jabalpur.
4. Mohd. Mobin,
S/o, Mohd. Mustafa, aged about
49 years, 1, MTR, Opp. B. Com
Mess, H. No. 71/6, Punjab niwas,
Cantt., Jabalpur.
5. Civilian Regimental Mazdoor Congress
(INTUC), L/1, Hathital Colony,
Jabalpur. APPLICANT

(By Advocate - Shri S. Paul)

versus

1. Union of India,
through its Secretary,
Ministry of Defence,
New Delhi.
2. The Director General of Signals,
Sig. 4(c) General Staff Branch,
Army Headquarters,
New Delhi 110011. RESPONDENTS

(By Advocate - Shri K.N. Pethia)

ORDER (Oral)

By Sarweshwar Jha, AM-

The applicants have prayed for a direction to be given to the respondents to pay them the pay scale of Rs.3050-4590 with effect from 1.1.1996 with arrears of pay and all other consequential benefits.

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2. The facts of the matter, briefly, are that the applicants, who have been working against the post of Barber in the respondent-organisation, earlier held the post in the scale of pay of Rs.775-1025 in consequence of the recommendations of the Fourth Central Pay Commission with effect from 1.1.1986. They had been given the said scale of pay in parity with the scale of pay as given to other civilian employees such as Cooks, who were also in the same scale of pay. However, when the Cooks were subsequently granted the scale of pay of Rs.2610-3540, their counterparts in other departments of respondent no.1 were given higher scale of pay of Rs.3050-4590, whereas the Cooks in the respondent-department were given the scale of pay of Rs.2610-3540. This led to their having filed O.A.No.82 of 1999 before the Tribunal and it was during the pendency of the said OA that the respondents decided to give the desired scale of pay to the Cooks at par with their counterparts. Accordingly, the orders dated 28.3.2001 and 9.6.2001 (Annexures-A-1 & A-2) were issued whereby the Cooks have also been given the scale of pay of Rs.3050-4590 and also the benefit of ACP.

3. The grievance of the applicants is that the Cooks, Barbers and Washermen were in identical scale of pay in the respondent-department and this status was continued by the successive Central Pay Commissions including the Fourth Central Pay Commission. However, it was after the 5th Pay Commission's recommendations had been submitted that the applicants were granted the lower scale of pay of Rs.2610-4000 w.e.f. 1.1.1996. The applicants preferred representations against the said decision of the respondent-department (Annexures-A-3 to A-6); but they have not been given the necessary reliefs so far. In support of their contention for higher scale of pay being given to them at par with Cooks, they have referred to the case of Barbers, Washermen and 'Dhobi working under the Delhi Police, and have argued that the duties and qualifications of the Barbers working under the

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Delhi Police and those working under the respondent-department are identical. Giving a little history to the case of the Barbers in Delhi Police, the applicants have submitted that they were also in the scale of pay of Rs.750-1025 initially and they had approached the Principal Bench of the Tribunal in O.A. 363/1990 seeking revision of their scale of pay, and in which it has been held by the Tribunal that the Barbers and Dhobis are performing identical and similar functions and that two scales of pay to similarly situated employees in different units are discriminatory and running contrary to the equality clause as provided for in Articles 14 and 39(d) of the Constitution of India. Accordingly, the respondents were directed by the Tribunal vide order dated 9.10.1990(Annexure-A-7) that the scale of pay of the applicants in the said OA be revised at par with their counterparts. The learned counsel for the applicants has referred to the decision of the Hon'ble Supreme Court in the case of Alvaro Noronha Ferriera and Anr. Vs. Union of India and others, (1999) 4 SCC 408 in which the principle of parity in employment has been upheld. Reference has also been made to the decision of the Hon'ble Supreme Court in the case of Employees of Tannery and Footwear Corpn. of India Vs. U.O.I., 1991 Supp(2) SCC 565 in which it has been upheld that different agencies of the Central Government are instrumentalities of the Central Government and, therefore, they may be given identical treatment.

4. The applicants have also submitted that the scale of pay of Cooks has been enhanced to Rs.3050-4590 only by an executive order and not in consequence of the recommendations of the Pay Commission and, therefore, similar dispensation can also be given to them. However,

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the respondents have maintained that the Pay Commissions are the best Judge to look into the matters relating to revision in the scale of pay and that the Hon'ble Apex Court while deciding the matters regarding disputes relating to wages and salaries has laid down the law in a series of cases. The respondents, in support of their argument that it is the management which can appropriately evaluate the nature of work and responsibilities of the posts and not the Courts, have relied on the decision of the Hon'ble Supreme Court in the case of Umesh Chandra Gupta and others Vs. Oil & Natural Gas Commission and others, AIR 1989 SC 29 wherein it has been held that "the nature of work and responsibilities of the posts are matters to be evaluated by the management and not for the court to determine by relying upon the averments in the affidavits of interested parties. If the management for good reasons have classified the posts into two categories with different pay scales, the courts generally must accept unless it is demonstrated that it is patently erroneous either in law or on fact".

5. Giving reply to the relevant paragraphs in the OA, the respondents have submitted that reference to the case of scale of pay of the Barbers and Washermen in Delhi Police and seeking parity with them is misconceived and devoid of substance. In their opinion, the fact that the Barbers in the department of Delhi Police are drawing the scale of pay of Rs.3050-4590 alone does not make it relevant for the applicant to claim entitlement for the said scale. They have essentially to establish similarities in the nature of work, ~~and~~ quality of work, and quantity of work, in terms of conditions of service. They have also to establish the parity with reference to the relevant criteria for such parity in pay scale. According to them, granting of higher scale of pay to the Cooks is due to the fact that the 5th CPC had been apprised by the Ministry of Defence of the fact that there was no promotion avenue available to the canteen employees

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except some in-situ promotion based on Court orders and that, accordingly, a submission was made seeking revision of scales of pay of Assistant Canteen Supervisors, Cooks, Halwais etc. on the ground of their skilled nature of job and also on the ground that disparities that existed in the scales of pay, recruitment qualifications and promotional avenues between employees of statutory and non-statutory canteens be removed. This led to revision in the scale of pay of the Cooks working in the said department to maintain equality and to reduce the volume of resentment. They have further argued that the instance of the Cooks and the Barbers working in the department of Delhi Police cannot be referred to for seeking parity with them on the mere fact that the applicants are holding similar jobs which are unskilled in nature, according to them. They have also taken the position that the quality of work required in both the cases is not similar nor identical. It has also been argued that while an illiterate person can be recruited as a Barber, educational qualification for Cooks has been raised to Matriculate as against 8th standard previously. Also, the working schedule of the Cooks has been recognised as tedious in that they have to start working early in the morning and to continue till late in the evening (9 p.m.), working in shifts at odd hours every day; while Barbers have a simple work schedule confined to day schedule. It is further observed that the respondents have shown lack of knowledge on their part regarding the terms and conditions of service of Barbers serving with Delhi Police. They have left the matter being verified by the Tribunal and to take a decision as to whether the Barbers serving in the respondents-organisation and those in Delhi Police should be treated at par for purpose of higher pay scale, as has been granted in the case of the Cooks. In their opinion, the applicants have tried to mislead the Tribunal by misinterpreting the rule of equality as established by the conditions given by the Principal Bench of the Tribunal in OA 363/1990 filed



by the Barbers and Dhobis of Delhi Police, whereby a higher pay scale to some Barbers and Washermen working in same unit, and a lower scale of pay to those working in some other units of Delhi Police have been allowed and equality in terms of one scale of pay has been upheld. According to them, the contention of the applicants that they are similarly placed as Cooks is not correct, in terms of educational qualifications required for the two grades and also in terms of the working conditions as already mentioned above.

6. A rejoinder has been filed by the applicant reiterating most of the points as already submitted by them in the OA. The respondents also have filed an additional reply to the rejoinder and have reiterated their previous submissions.

7. On a closer perusal and examination of the facts as submitted by the two sides, it is observed that the applicants who are Barbers in the respondent-organisation under the Ministry of Defence, have claimed parity with the scale of pay of the Cooks in Delhi Police, on the basis of the fact that they had parity till the Fourth Central Pay Commission report. They have obviously ignored the fact that the revision in the scale of pay of Cooks had its roots in the demands of the canteen employees under the Ministry of Defence which have been given due consideration by the 5th CPC and which, for the reasons placed before them, allowed them the higher scale of pay of Rs.3050-4590. It was no doubt sought and also given to the Cooks of the Delhi Police in due course. However, the applicants belong to a different category and, therefore, to seek parity with the scale of pay of the Cooks does not appear to be relevant. It is also not quite unusual to find that the scales of pay of certain posts with same nomenclature but having qualitatively and quantitatively different nature of duties also in terms of qualifications and conditions of employment are higher than

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of posts with same nomenclature in some departments. All these aspects of the matter can appropriately be looked into by the Pay Commissions only and not by the departments. However, in the present case, the respondents, having pointed out that the scale of pay of the Cooks has been revised by ~~the~~ executive order thereby giving an impression that the same has been done by the Government on their own and not on the basis of the recommendations of the 5th CPC, needs to be looked into.

~~It is quite possible that the executive order has been issued on the basis of examination of the matter in consequence of the same having been given due consideration by the 5th CPC. However, the facts of the matter in this regard can be reported only by the department, who has issued the said orders, dated the 28th March, 2001 (Annexure-A-1). It has always been observed that after the recommendations of the Pay Commission are submitted to the Government and the same are accepted/implemented by the Government, some anomalies in the scales of pay, as recommended and as accepted by the Government, still remain and the same are addressed by the anomalies committee appointed by the respective competent authorities and finally in the concerned unit of the Ministry of Finance, Department of Expenditure. It is quite possible that the case of the applicants has gone through the deliberation of such anomalies committees appointed by the concerned authority. If not, it would be relevant to advise the respondents to get the matter examined by such a committee in consultation with the Ministry of Finance, Department of Expenditure.~~

8. Having regard to the facts and circumstances of the case and also that the applicants have relied upon certain decisions of the Hon'ble Supreme Court, though the respondents have claimed that the nature of duties of the Cooks are entirely different from that of the applicants, we dispose of this OA with a direction to the respondents to refer the matter to the relevant anomalies committee/unit under the Ministry of Defence/

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Ministry of Finance, as the case may be, and to see that the matter is given due consideration by them and the outcome thereof is conveyed to the applicants. The respondents are directed to ensure that the decision in the matter is taken within a period of six months from the date of receipt of a copy of this order and its outcome conveyed to the applicants by issuing a speaking and reasoned order. No costs.


(Madan Mohan)
Judicial Member


(Sarweshwar Jha)
Administrative Member

rkv.

मुद्रित सं औ/वा..... ज्ञानमुख दि.....
मुद्रित किया गया दिन:—
(1) अधिक, उच्च न्यायालय द्वारा दिया गया, ज्ञानमुख
(2) अधिकारी की दिया गया..... द्वारा कार्रवाल S. Paul
(3) अधिकारी की दिया गया..... द्वारा कार्रवाल K.W. Pethia
(4) कार्रवाल द्वारा, ज्ञानमुख द्वारा दिया गया, ज्ञानमुख द्वारा कार्रवाल P.M. 10-8-04 on Name
अधिकारी का दायरेक जारी करनी है।

Issued
On 10-8-04
By