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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A.NO. 060/01070/2014 Date of order:- October 20, 2015.

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mr. Uday Kumar Varma, Member (A).

H.S.Gill son of Shri Hari Singh, retired as Security Officer, CSIR-CSIO and r/o # HIF 70/2, HIG-PUDA Colony, Sector 48-C, Mohali.

.....Applicant.

(By Advocate :- Mr. V.K.Sharma)

Versus

1. Union of India through the Director General, C.S.I.R., Anusandhan Bhawan, 2, Rafi Marg, New Delhi-110 001.
2. Director, CSIR-Central Scientific Instruments Organization, Sector 30-C, Chandigarh-160030.

...Respondents

(By Advocate : Mr. Sunder Singh).

ORDER

Hon'ble Mr. Uday Kumar Varma, Member (A):

Applicant H.S.Gill has filed the present Original Application, under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:-

- i) Quash and set aside the impugned order Annexure A-1;
- ii) For issuance of appropriate directions to the respondents to grant the then prevalent (01.07.2002) pay scale of Rs.10000-15200 (pre-revised, 5th CPC) wef

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01.17.2002 i.e. the date of joining of the applicant in CSIO as Security Officer on the cardinal principle of "Equal pay for equal work" as done in the case of Assistant Manager, Guest House (Annexure A-4) and Hindi Teachers (Annexures A-6 & 8) with all the consequential benefits;

And/or

iii) Issue appropriate directions to the respondents to grant the applicant the pay scale on the cardinal principle of "Equal pay for equal work" by comparison with the similar placed post (Annexure A-10) in the International Advance Research Centre for Power Metallurgy and New Materials (ARCI), Hyderabad, Ministry of Science & Technology, the same Ministry to which applicant also belongs, but respondents adopt different pay scales, assessment/promotion criterion, categorization of post etc. in spite of having similar educational qualifications, experience and duties & responsibilities;

iv) to fix the pay of the applicant in the scale of Rs.10000-15200 and make the payment of arrears thereof with interest @ 12% from the due date till the date of payment".

2. Facts of the case are that the applicant was appointed as Senior Security Assistant in CSIR, Dhanbad on 4.12.1989 in the pre-revised pay scale of Rs.1640-2900 and was promoted as Security Officer with effect from 4.12.2000 in the pay-scale of Rs.6500-10500. After the death of Shri S.M.Khanna, Security Officer in CSIO, Chandigarh, the applicant made a number of representations to respondent no.2 for posting/appointing him as Security Officer in their department. On his request, the applicant was transferred as Security Officer from CFRI, Dhanbad to CSIO, Chandigarh, against one of the vacant posts vide order dated 19.6.2002. In pursuance of order

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dated 19.6.2002, the applicant joined his duties in the office of respondent no.2 on 1.7.2002. After joining his duties, the applicant for the first time submitted a representation on 29.8.2011 to grant him prevalent pay-scale of Rs.10000-15200 with effect from 1.7.2002 i.e. the date of his joining CSIO as Security Officer on the principle of Equal pay for Equal work as has been granted to Assistant Manager, Hindi Teachers, and Junior Technical Assistants. When the genuine request of the applicant was not acceded to, he approached the Tribunal by filing OA No.133/CH/2012. The said OA was disposed of on 31.7.2014 by directing the respondents to examine all the points raised in the representation by passing a speaking order. The applicant also filed a supplementary representation on 12.8.2014. However, the respondents have rejected the representation of the applicant vide order dated 10.11.2014. Hence the present OA.

3. Pursuant to notice, the respondents have contested the claim of the applicant by filing written statement. They have stated that before joining the CFRI, Dhanbad, the applicant worked as a Sargent in the Indian Air Force. The rank of Sargent is like that of the rank of Havildar – a non-commissioned post in the Army and below the rank of Naib Subedar – a Junior Commissioned Officer. On completion of his required residency period, the applicant was promoted as Security Officer on 4.12.2000 in the pay-scale of

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Rs.6500-10500 vide order dated 31.12.2001. The post of Security Officer at CSIO Chandigarh was created in the pay-scale of Rs.1100-1600 and thereafter the pay-scale was revised to Rs.10000-15200. In terms of the sanction, the post of Security Officer was required to be filled up from amongst Ex.Army Officers i.e. a Captain in the Indian Army which is five levels higher to the rank of Sargeant, a non-commissioned rank.

4. On merits, the respondents have stated that the while working as Security Officer in the pay-scale of Rs.6500-10500 at erstwhile CFRI, Dhanbad, the applicant himself sought transfer to CSIO, Chandigarh in the same capacity as Security Officer in the same pay scale and his request for transfer was acceded to by respondent no.2 vide letter dated 30.5.2002. The pay-scale of Rs.10000-15200 which the applicant is claiming at Chandigarh on his transfer is two levels higher than the pay-scale which the applicant was holding at Dhanbad. The applicant was transferred in the office of respondent no.2 as Security Officer held by him at Dhanbad and mere transfer to CSIO, Chandigarh, at his own request and in the same capacity, accrues no right to the applicant for claiming higher pay-scale and the doctrine of equal pay for equal work cannot apply in the present case. The judgments relied upon by the applicant are on different footing. They have thus prayed for dismissal of the OA.

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5. The applicant has filed a rejoinder by generally reiterating the averments made in the O.A.

6. We have gone through the record and have carefully considered the arguments put-forth before us by the rival counsels.

7. One of the major argument of the counsel for the applicant is that in the instant case, the principle of "Equal Pay for Equal Work" is invoked. His argument is that since the applicant is also working as Security Officer, he was entitled to the same pay as his previous incumbent was getting. The fact, however, remains that the previous incumbent was a direct recruit and was fulfilling a more stringent criteria of appointment whereas the applicant was a transferee from another institution under CSIR to the institution in Chandigarh. The Hon'ble Apex Court in the case of **S.C.Chandra & Ors. versus State of Jharkhand & Ors.** (2007(4) S.C.T. Page 76) has clarified the following principles while deciding the law on Equal pay for equal work:-

"i) Fixation of pay scales by Courts by applying the principle of equal pay for equal work upsets the high Constitutional principle of separation of powers between the three organs of the State.

(ii) In recent years Supreme Court avoided applying the principle of equal pay for equal work, unless there is complete and wholesale identity between the two groups (and there too the matter should be sent for examination

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by an expert committee appointed by the Government instead of the Court itself granting higher pay).

(iii) Only because the nature of work is the same, irrespective of educational qualification, mode of appointment, experience and other relevant factors, the principle of equal pay for equal work cannot apply.

(iv) Equation of posts and salary is a complex matter which should be left to an expert body.

(v) Fixation of pay and determination of parity is a complex matter which is for the executive to discharge.

(vi) Granting of pay parity by the Court may result in a cascading effect and reaction which can have adverse consequences".

If we carefully examine the present case in the light of above clarification enunciated by the Apex Court, we cannot fail to notice that on several counts, it fails the laid down principles. Firstly only because the nature of work is same, irrespective of educational qualification, mode of appointment, experience and other relevant factors, the principle of equal pay for equal work will not apply. In the instant case, this principle i.e. (iii) above is clearly invoked because the applicant's mode of appointment and the qualification for being in this post are clearly different.

8. Further, the principle laid down with regard to cascading effect is also very relevant here because once this is permitted, every other Security Officer in other establishments of the present organization i.e. CSIR would demand the same pay-scale because they

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are also working on the same post whereas the scale that the applicant is demanding is, under the rules, available only after two promotions. It has been clarified by the respondents that the scale of Rs.10000-15200 is that of Senior Security Officer (sg) which is two steps above the scale of Rs.6500-10500 belonging to that of Security Officer. If the applicant's arguments are accepted, it amounts to giving a double promotion to an employee without applying the requirements laid down in the rules. Such a view would not only be improper but also may be called as arbitrary and devoid of any legal justification. It is, therefore, our considered opinion that the argument about Equal pay for equal work is not applicable in this case.

9. It is also noteworthy that the applicant was transferred from Dhanbad to Chandigarh, on a specific request made by him. His request is reproduced below:-

" I joined CFRI on 4th December 1989 as Senior Security Assistant through open selection in the pay scale of Rs.1640-2900 (revised to Rs.5500-9000). In the meantime, I have been promoted to the post of Security Officer in the revised pay scale of Rs.6500-10500 with effect from 4th December, 2000 and my present basic pay in this scale is Rs.7500. I am in continuous service of CFRI since my joining.

I have come to know that a post of Security Officer in your institute, Central Scientific Instruments Organisation, is lying vacant for some time, after the said demise of the Security Officer, Capt. S.M.Khanna. Sir, in case this post can be filled up through transfer of security officer from another sister institute of CSIR, then I am very much interested to come to your esteemed institute and serve



you. On being transferred to CSIO my service can better be utilized in larger interest of CSIR.

Therefore I request you kindly to consider my case with all the benefits such as seniority, transfer TA/DA, accumulated leaves etc. and give me an opportunity to serve CSIO. For this act of kindness I shall remain extremely grateful to you".

From this letter, it is apparent that the applicant was willing to forgo all the benefits including that of seniority, transfer TA/DA, accumulated leave etc. just to be accommodated at Chandigarh. Nowhere he has expressed the desire to give him the higher pay-scale i.e. Rs.10000-15200. The order dated June 19, 2002 transferring him from Dhanbad to Chandigarh, reads as follow:-

"The Director, Central Fuel Research Institute, Dhanbad, has been pleased to approve the transfer of Shri H.S.Gill, Security Officer from CFRI, Dhanbad to CSIO Chandigarh in the same capacity against one of their vacant post. The transfer being on his own request, he will not be entitled to transfer T.A., joining time and joining time pay etc. Shri Gill will be relieved of his duties at CFRI on 28.06.2002(AN) on production of "No Demand Certificate" duly certified by all concerned Sections/Divisions as per procedure, to enable him report at CSIO, Chandigarh".


10. This order also does not in any way suggest that the transfer is on the condition that he will enjoy the higher pay-scale which was being enjoyed by his previous incumbent. In fact, the correct inference from this order is that he will continue to draw the same emoluments as he was drawing at Dhanbad. At best, it can be concluded that the competent authority while issuing orders should

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have clarified the pay-scale that he will draw on his transfer to Chandigarh.

11. We have also noted the fact that the applicant continued to accept his emoluments in the pay-scale of Rs.6500-10500 for nearly ten years. Only in 2011, he moved a representation dated 29.8.2011 requesting the Director General, CSIR to grant the then prevalent pay-scale of Rs.10000-15300 to the applicant. There is no satisfactory explanation as to why the applicant remained silent for close to a decade and then raised this demand.

12. In view of the above discussion, we have no hesitation in coming to the conclusion that the relief claimed by the applicant should not be granted, as, it will amount to mis-carriage of justice. We, thus, find the OA bereft of any merit and the same, therefore, is dis-allowed. No costs.


(UDAY KUMAR VARMA)
MEMBER (A).


(SANJEEV KAUSHIK)
MEMBER (J)

Dated:- October 20, 2015.

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