

**Central Administrative Tribunal
Principal Bench**

OA No. 1331/2013

Order Reserved on: 05.01.2018
Order Pronounced on: 18.01.2018

Hon'ble Mr.V.Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)

1. Hazari Lal
S/o Sh. Ramji Lal
R/o 11/7, Buradi Road,
West Sant Nagar,
New Delhi.
2. Brahampal
S/o Sh. Rulharaidas,
R/o C-3/195, Lodhi Colony,
New Delhi-110003.
3. Bhagmal,
S/o Sh. Ravi Das,
R/o P-7, 111, Mangol Puri,
New Delhi.

... Applicants

(By Advocate: Mr. M.C.Kashyap)

Versus

Union of India through

1. The Secretary,
Ministry of Defence,
South Block, New Delhi.
2. Engineer-in-Chief (EIC) (V),
Army HQ, Kashmir House, DHQ,
New Delhi.
3. Garrison Engineer,
RR Hospital,
Rao Tula Ram Marg, New Delhi.

... Respondents

(By Advocate: Sh. R.K.Sharma)

ORDER

By Hon'ble Ms. Nita Chowdhury, Member (A)

This Original Application has been filed by the applicants claiming the following reliefs:-

- “a. Allow the present OA; and
- b. Set aside the order dated 10.02.2012;
- c. Direct the respondents to grant the applicant the revised Pay Scale of Rs.4000-6000 as per the 5th CPC recommendations w.e.f. 01.01.1996 with all consequential benefits as has been granted to other identically placed Machine Minders and Book Binders in the Printing Press of the defence Establishment; and
- d. Award costs in favour of the Applicants;
- e. Pass such other orders as this Hon'ble Court deems fit and proper.”

2. This case has a chequered history. The applicants were appointed on the post of Book Binder/Machine Binder on regular basis in the pay scale of Rs.950-1500 after proper selection as per existing recruitment rules. This post being an isolated post, they have no promotional avenues. They made several representations to the respondents for creating promotional avenues for them but in vain. However, they were placed in the pay scale of Rs.4000-100-6000 after the recommendation of 5th Central Pay Commission (CPC) but suddenly the respondents stopped the increment of the applicants w.e.f. 1997 without sufficient cause. They made

representation for releasing of annual increments and filed OA No.274/2002 before this Tribunal which was disposed of vide order dated 01.02.2002 with the direction to consider and decide the representation of the applicants within two months. However, when the respondents did not implement the order of the Tribunal, applicants filed Contempt Petition. During the pendency of Contempt Petition respondents passed order dated 25.06.2002 intimating that the pay stands fixed on 01.06.1998 in the pay scale of Rs.3050-4590 and the increment is being paid accordingly. Aggrieved by the aforesaid order, applicants again approached this Tribunal and after several litigations in this Tribunal and Hon'ble High Court of Delhi the pay of the applicants was fixed in the pay scale of Rs.3050-4590.

3. The applicants further submit that the Recruitment Rules, qualification, nature of work, sensitivity of service, job classification of the posts of Book Binder/Machine Minder of the applicants working in the Press and Government of India Press are identical. In support of their contention the applicants have raised the following important grounds:

(1) The applicants are entitled to pay parity with that of staff of Printing Press of the Defence itself where they are working for the past four decades;

(2) The action of the respondents in denying the pay parity is arbitrary, illegal and discriminatory inasmuch as the respondents

have extended the benefit of revised pay scale of Rs.4000-6000 to one Smt. Ganga Devi, Compositor and other persons who are identically placed.

(3) In accordance with the recommendation of the 5th CPC the Government of India has taken a stand that the applicants are entitled to the parity with their counterparts in printing press of Government of India.

(4) Right from 1971 the pay scale of Book Binder/Machine Minder in the Press had been the same.

4. Respondents have filed their counter affidavit denying the averments of the applicants contained in the OA. They have submitted that there is no such post namely Machine Minder/Book Binder in Government of India Press. The duties performed by the applicants as Machine Minder/Book Binder have no comparison with the duties performed by their counter parts in Government of India Press. It is further submitted that no specific recommendations have ever been made by the 5th CPC for printing staff of MES/MoD. There is no promotional post in the department for these posts being the isolated category. It is further submitted that their pay was erroneously fixed in the scale of Rs.4000-6000 and on objection being raised by the Audit Authorities the same was corrected to Rs.3050-4590. However, the applicants were given their due financial upgradations on completion of required number of years of service under the ACP/MACP.

5. The respondents have also filed additional affidavit in which they have categorically submitted that similarly situated three persons S/Sh. Banwari Lal (Machine Binder), Sanjeev Shankar (Book Binder) and Satish Kumar (Book Binder) were wrongly given the pay scale of Rs.4000-6000 which was withdrawn by the respondents by order dated 20.1.2016 and no payment of arrear is made to them. Hence, the respondents have prayed for dismissal of OA being devoid of merit.

6. We have heard the learned counsel for the parties and perused the material on record.

7. At the very outset, to our query as to whether any person on the post of Book Binder/Machine Minder is getting higher pay scale than the applicant at present, learned counsel for the applicants replied in negative.

8. Having gone through the pleadings very carefully, we are of the view that the grant of pay scale lies in the domain of the Executive and the Tribunal/Courts cannot interfere in such matters. It is the job of the expert bodies like Pay Commissions. We are fortified in this view of ours by the decision of Hon'ble Supreme Court in **Union of India & ors. vs. P.V.Hariharan & ors.**, 1997 SCC (L&S) 838 where while dealing with the similar issue, the Apex Court held as under:

“Before parting with appeal, we feel impelled to make a few observations. Over the past few weeks, we have come across several matters decided by Administrative Tribunals on the question of pay scales. We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a pay Commission. Change of Pay scale of a category has cascading effect. Several other categories similarly situated, as well as those situated above the below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The pay Commission, 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. Very often, the doctrine of "equal pay for equal work" is all being misunderstood and mis-applied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales.”

9. In **Union of India Vs. Tarit Ranjan Das**, (2003) 11 SCC 658 with regard to Pay Commission conclusion and the jurisdiction of the Court in judicial review, it is held that for the Court it is not open to sit in judgment as an appeal over the conclusion of the Commission. Also held by a three Judge Bench of the Apex Court in M. P. Rural Agriculture Extension Association vs. State of M.P., 2004 SCC (L&S) 667 that Article 14 does not forbid reasonable classification and the Court cannot prescribe equal scales of pay for different class of employees and when recommendations are made by a Pay Commission where the evaluation of job has been made would not be interfered with to issue any writ in the nature of mandamus. In State of Karnataka & Ors. vs. N. Parameshwarappa & Ors., 2005 SCC (L&S) 120, with the following observations, it is

ruled that the manner of differentiation sought to be made by the Government for denying the benefit of revised pay scales when not rested on any firm or definite legal stand is not tenable:-

“7. We have carefully considered the submissions made on either side. In our view, the approach, the method of dealing and the manner of differentiation sought to be made by the authorities of the Government for denying the benefit of the revised scales of pay to the respondent category of teachers alone does not seem to rest on any firm or definite legal stand. The benefit of coverage is found extended to all the teachers in first-grade degree colleges, also called as composite colleges and merely because such colleges have been permitted to have pre-university courses also, the teachers should not be discriminated merely on the ground as to which teacher is assigned, at a particular point of time to teach which class of students, though individual entitlement of each of the teachers may depend upon the fulfilment of other requirements stipulated therefor. This is obvious, in our view, from the omission of the State to bring forth positively and definite factual aspect for such differential treatment not only before the High Court but also in this Court which necessitated this Court on 16-1-2001, 24-4-2001 and 26-7-2001 to issue directions calling for disclosure of the specific stand and statement of facts to have an effective adjudication of the issue. We have been taken through the three affidavits filed in this Court by the Principal Secretary, Education Department, and as observed in the order of this Court on 24-4-2001 they seem to be more of argumentative nature, than the presentation of a specific and relevant fact or criteria based upon any concrete basis of fact and the affidavit filed thereafter also, except being in the nature of a mere assertion does not contain that relevant detail for this Court to take a different view of facts than the one consistently arrived at by the learned Single Judge as well as the Division Bench of the High Court. In that view of the matter and taking into account also to some extent the other factor such as the injustice that may result in denying the benefits of the order to merely about 80 or so of the teachers in the composite colleges in question imparting education for degree and PUC courses, we

do not consider it appropriate to disturb the findings on this aspect as to the coverage of such teachers in composite colleges, for purposes of revised UGC scales of pay to them.

10. Further, the Hon'ble Supreme Court in **K.T. Veerappa v. State of Karnataka**, (2006) 9 SCC 406, has held that the fixation of pay and determination of parity in duties are the functions of the executive and the scope of judicial review of administrative decision is very limited. In paragraph No.13, it was observed as follows :

"13..... There is no dispute nor can there be any to the principle as settled in State of Haryana v. Haryana Civil Secretariat Personal Staff Assn. that fixation of pay and determination of parity in duties is the function of the executive and the scope of judicial review of administrative decision in this regard is very limited."

11. Again, the Hon 'ble Supreme Court also held vide its judgment in **Chandrashekar A.K. v. State of Kerala**, (2009) 1 SCC 73, that whether the scale of pay should be revised or not is the matter of policy decision of the State and no legal right exists in a person to get the revised scale of pay implemented. In paragraph 14, it was observed as follows:

"14. The question as to whether the scale of pay would be revised or not is a matter of policy decision for the State. No legal right exists in a person to get a revised scale of pay implemented. It may be recommended by a body but ultimately it has to be accepted by the employer or by the State which has to bear the financial burden."

12. Again, the Hon'ble Supreme Court in **State of West Bengal v. Subhas Kumar Chatterjee**, (2010) 11 SCC 694, once again reaffirmed its earlier decisions and also condemned the Tribunal's action in interfering with the administrative authorities' power. In paragraph Nos.14 and 21, it was observed as follows:

"14. This Court time and again cautioned that the court should avoid giving a declaration granting a particular scale of pay and compel the Government to implement the same. Equation of posts and equation of salaries is a matter which is best left to an expert body. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. Even the recommendations of the Pay Commissions are subject to acceptance or rejection, the courts cannot compel the State to accept the recommendations of the Pay Commissions though it is an expert body. The State in its wisdom and in furtherance of its valid policy may or may not accept the recommendations of the Pay Commission. (See Union of India v. Arun Jyoti Kundu and State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.) It is no doubt true, the constitutional courts clothed with power of judicial review have jurisdiction and the aggrieved employees have remedy only if they are unjustly treated by arbitrary State action or inaction while fixing the pay scale for a given post".

13. In view of the above facts of the case, the OA is dismissed. No costs.

(Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)

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