

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA NO.2039/2015

Order reserved on 08.08.2016
Order pronounced on 19.08.2016

HON'BLE SHRI P.K. BASU, MEMBER (A)
HON'BLE DR B.A. AGRAWAL, MEMBER (J)

1. Sh. Jagpal Singh, aged about 51 years,
Section Officer, CISF,
S/o Sh. Piara Singh,
R/o F-57B, MIG Flats,
Hari Nagar, New Delhi.
2. Sh. K. Alias, aged about 51 years,
Section Officer, CISF,
S/o Sh. KO Alias,
R/o 724, C-3 Hastal, Uttam Nagar,
New Delhi.

...Applicants

(By Advocate: Shri S.N. Kaul)

VERSUS

1. Union of India
Through its Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Director General,
Central Industrial Security Force,
Block No.13, CGO Complex,
Lodhi Road, New Delhi.
3. Ministry of Finance,
Department of Expenditure,
North Block, New Delhi.

...Respondents

(By Advocate: Shri Vinod Zutshi for R-2)

:ORDER:**DR BRAHM AVTAR AGRAWAL, MEMBER (J):**

The two applicants in the instant OA, working as Section Officers in the CISF (respondent no.2), had joined as Assistants on 27.10.1987 and 06.12.1988, respectively, on the basis of the Assistants' Grade Examination conducted by the UPSC in 1985 and 1986. Their grievance is : while their counterparts in the CSS were given grade pay of Rs.4600/- in PB2 w.e.f. 01.01.2006 [vide the Department of Expenditure's OM dated 16.11.2009 (Annexure R-2)], the applicants were allowed grade pay of Rs.4200/- only. The applicants pray that either they be accorded grade pay of Rs.4600/- w.e.f. 01.01.2006 or the said OM be declared illegal. They further pray that the decision of the respondent no.1 to have sent the matter to the 7th CPC for consideration, after a positive recommendation by the respondent no.2, be quashed.

1.2 Paragraph 7 of the respondent no.2's communication dated 16.09.2014 (Annexure R-5) forwarded to the respondent no.1 reads as under:

"As the Assistants and PAs of CISF are getting same pay scale to that of his counterparts in CSS/CSSS up to 5th CPC, they have to be treated at par with their counter parts in CSS/CSSS in 6th CPC and not differently. Putting so many years of service in CISF and allowing less pay at the fag end will not only affect their morale but also their retirement livelihood. Deviation from the same is putting them in a humiliating and disadvantageous position which is against the principle of natural justice."

(sic)

1.3 The respondent no.1's stand is reflected in the respondent no.2's communication dated 13.03.2015 (Annexure P-1), which reads, *inter alia*, as under:

"2. Shri Jagpal Singh, Section Officer (I&P) and Shri K.Alias, Section Officer (Wel) may be informed that their request for grant of Grade Pay of Rs.4600 at par with their counterparts in CSS/CSSS was referred to MHA. MHA, in consultation with IFD, examined the issue and decided to refer the same to 7th CPC. Accordingly, MHA has sent the matter to 7th CPC alongwith detailed proposals.

3. In view of the above, the Section Officers may be informed to wait till the outcome of 7th CPC."

2.1 We have heard the learned counsel for the applicants and the respondent no.2 [none represented the respondents nos.1 and 3], perused the pleadings as well as the rulings cited at the Bar, and given our thoughtful consideration to the matter.

2.2 Our attention was drawn to the Hon'ble Delhi High Court's judgment dated 14.10.2014 in the WP(C) No.4606/2013 [D.G.O.F. Employees Association and Anr. Vs. UOI and Ors.] (Annexure P-3), a case initiated by the employees of the Ordnance Factory Board. The High Court, giving them the relief, held as under:

"The petitioners were treated historically as equals to CSS/CSSS employees and enjoyed equal pay and all benefits flowing from equal pay. This was based on the previous four instances of determinations by successive Pay Commissions that they performed equal work. No other evidence of "complete identity" of work was necessary in the circumstances of the case. The materials on the record do show that the Sixth CPC stated in more than one place specifically that historical parity in pay scales ought not to be disturbed. Such being the case, this Court

is of the opinion that the CAT fell into error in holding that differentiation was facially justified, and could not be gone into given the nature of restricted judicial review. Consequently, a direction is issued to the respondents to fix the members of the Petitioner Association and other similarly placed Assistants working in Ordnance Factories and in OFB in the same pay scale as was given to Assistants similarly placed in CSS/CSSS, Army Headquarters, UPSC, CAT, MEA, Ministry of Parliamentary Affairs, etc. with effect from the same date as was first given to them. Consequential pay fixation and fitment orders shall be issued within eight weeks from today. The writ petition is allowed in the above terms without any order as to costs."

2.3 Our attention was further drawn to the Hon'ble Delhi High Court's judgment dated 06.09.2013 (Annexure P-4), a case concerning Assistants working in the Coast Guard. The High Court, giving them the relief, held as under:

"9. This Court has carefully considered the submissions. It is evident from the relevant extracts of the Pay Commission's recommendations that even though the subsequent portion of its report (paragraphs 3.1.14 onwards) do mention that historical parity need not necessarily be protected yet the fact remains that the earlier portions i.e. para 3.1.9, which has been extracted previously in this judgment, - had specifically carved out the services such as the Coast Guard as exceptions and maintained the pre existing parity with members of the Central Secretariat Services and those in the armed forces headquarters. That this recommendation was indeed acted upon and Rules were appropriately amended to preserve the parity recommended by the Pay Commission, is evident from the Recruitment Rules 2008, Extracts of the CSS (Revised Pay) Rules, 2008 - made effective from 1st January, 2006 - clause (v) along with table extracted earlier, lend force to the petitioner's submission that in fact parity which existed has been preserved under the Rules. Such being the case, the respondent's contention, which found favour in the impugned order, is unsupportable in law.

10. In addition to the above reasons, the Court also notices that the respondents position is further assailable by the fact that other non secretariat organizations such as Central Information Commission, Planning Commission, Central Reserve Police Force, Central Election Commission and the CAT itself had shown the readiness/willingness to provide for higher pay scales as has been sought for by the petitioners in this case. Indeed, similar officials, employees above the rank and status of 'Assistant including Section Officers' are not members of any Secretariat Services. In those organizations, the employees who do receive such higher pay (sought for by the petitioners here)

are also equally members of non-secretariat services. The petitioners therefore cannot be discriminated. For this reason, the position taken by the respondent is found to be arbitrary.

11. In view of the above discussion, this Court is of the opinion that the impugned order of the CAT cannot be sustained and it is accordingly, set aside. The directions sought for by the petitioners in OA No.143/2004 are granted. The respondents are directed to make consequent orders of pay fixation and release the difference of pay and emoluments to the petitioners within six weeks from today. The writ petition is allowed in these terms. No order as to costs."

2.4 Our attention was also drawn to the following observations of the 7th CPC at page 145 of its Report:

"The Commission accordingly strongly recommends parity in pay between the field staff and headquarter staff up to the rank of Assistants on two grounds – firstly the field staff are recruited through the same examination and they follow the same rigour as the Assistants of CSS and secondly there is no difference in the nature of functions discharged by both. Therefore to bring in parity as envisaged by the VI CPC, this Commission recommends bringing the level of Assistants of CSS at par with those in the field offices who are presently drawing GP 4200. Accordingly, in the new pay matrix the Assistants of both Headquarters as well as field will come to lie in Level 6 in the pay matrix corresponding to pre revised GP 4200 and pay fixed accordingly."

3. While we feel that the applicants have a strong case for parity between the Assistants in the CISF and the Assistants in the CSS, we cannot straightaway direct that the applicants be accorded the grade pay of Rs.4600/- w.e.f. 01.01.2006. Decision of the Government today may be to bring all Assistants to the new pay-scale equivalent of grade pay of Rs.4200/-, as recommended by the 7th CPC. We also feel that the instant OA was prematurely filed, in view of the fact that the 7th CPC was

then already seized of the matter, and the respondent no.1 did not finally reject the applicants' request.

4. In the light of above, we are of the view that this OA should be disposed of with a direction to the respondents to conscientiously consider the claim of the applicants and pass a speaking order within three months from the date of receipt of a copy of this Order.

5. The OA is disposed of with the above direction. No order as to costs.

(DR BRAHM AVTAR AGRAWAL)
MEMBER (J)

(P.K. BASU)
MEMBER (A)

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