

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA NO.3915/2014

NEW DELHI THIS THE 2ND DAY OF JANUARY, 2018

**HON'BLE MR. JUSTICE PERMOD KOHLI, CHAIRMAN
HON'BLE MS. PRAVEEN MAHAJAN, MEMBER (A)**

Sh. M.R. Sharma,
Aged about 61 years,
Hindi Officer,
S/o Late Shri S.R. Sharma,
R/o 1377, Sector-12, R.K. Puram,
New Delhi-110022. ...Applicant

(By Advocate: Mr. D.R. Gupta)

VERSUS

Union of India through:

1. Secretary,
Ministry of commerce & Industry,
Udyog Bhawan, New Delhi.
2. Secretary,
Ministry of Finance,
Department of Expenditure,
North Block, New Delhi.
3. The Director General of Foreign Trade,
Ministry of Commerce & Industry,
Udyog Bhawan, New Delhi. ...Respondents

(By Advocate: Mr. Ashok Kumar)

:ORDER (Oral):

HON'BLE MR. JUSTICE PERMOD KOHLI, CHAIRMAN:

The applicant was initially appointed to the post of Jr. Hindi Translator in the pay scale of Rs.5000-8000 w.e.f. 07.12.1981 in the Department of Directorate General of Foreign Trade (DGFT).

He was later promoted to the next higher post of Hindi Officer on 12.11.1991 initially on deputation basis and secondly on regular basis w.e.f. 14.12.1996. The applicant claims 2nd Financial Upgradation on completion of 24 years of regular service in the next pay-scale of Rs.10000-15200, claiming to be the next pay-scale of the higher post. He made representation for such financial upgradation which was rejected by the respondents in consultation with the DOP&T and other departments. The claim of the applicant having been rejected vide order dated 08.05.2009, the applicant approached this Tribunal by filing OA No.166/2010. This OA was allowed vide judgment dated 21.09.2010 with the following observations/directions:

"5.....Therefore, it is not justified to say that the applicant got two financial benefits at the time of grant of initial promotion. This position has been upheld in the judgment/order of this Tribunal dated 20.04.2004 in OA 2380/2003 and confirmed by the Hon'ble High Court and Hon'ble Supreme Court of India.

6. In the circumstances, the impugned order dated 08.05.2009 cannot be sustained, hence it is set aside. The respondents are directed to consider the representation of the applicant and grant him the next higher benefit in the hierarchy meant for Hindi Translators and Hindi Officers within a period of two months from the date a copy of this order is supplied to them. The O.A. is allowed accordingly. No costs."

2. It seems that pursuant to the aforesaid direction the respondents granted him pay-scale of Rs.7500-12000. Not being satisfied, the applicant again approached this Tribunal by filing

OA No.3877/2012. This OA also came to be disposed of vide order dated 29.10.2013 with the following directions:-

"6. We have heard the learned counsels for the parties and perused the material placed on record.

7. In terms of Section 20 of the Administrative Tribunals Act, 1985 before approaching the Tribunal, an employee needs to exhaust the remedies available to him before the departmental authorities. Such condition imposed upon an employee approaching the Tribunal casts counter obligation on the departmental authorities also to examine the grievance of the employee expeditiously and in accordance with rules. Once in view of the stand taken by the applicant the Department of Personnel & Training is already seized of the matter and he has made fresh representations to the Director General of Foreign Trade, we deem it appropriate to dispose of the present Original Application with a direction to the Director General of Foreign Trade to decide the aforesaid representations of the applicant within a period of 12 weeks from the date of receipt of a copy of this order. While doing so, the authorities would keep in view the order of the Hon'ble Supreme Court relied upon by the applicant and placed on record as enclosure to the rejoinder. It is ordered accordingly.

8. It is made clear that in case the grievance of the applicant still subsists, he would be at liberty to file the fresh application in accordance with rules. No costs."

3. Resultantly, the respondents passed the impugned order dated 25.09.2014, rejecting the contentions of the applicant for grant of pay-scale of Rs.10000-15200 w.e.f. 07.12.2005. The relevant extracts of the impugned order read as under:-

"2. In this regard, it is stated that you have been promoted from Junior Hindi Translator to the post of Hindi Officer in the pay scale of Rs.6500-10500/- by skipping the pay scale of Rs.5500-9000/- due to non-availability of the post of Senior Hindi Translator in the hierarchy of Official Language Posts in the Zonal Office of DGFT, CLA, New Delhi. As such, the promotional hierarchy in your case is not similar to that of the Central Secretariat Official Language Service (CSOLS).

3. Further, your representation has been examined in this Directorate in consultation with the Department of Personnel and Training (DoP&T). Department of Official Language, Ministry of Law and Department of Expenditure and the same has not been found feasible to be agreed to by the Competent Authority of this Directorate."

4. Under these circumstances, the present OA has been filed. The claim of the applicant is that he is entitled to the pay-scale of Rs.10000-15200, which was the pay-scale available in the higher post of Hindi Officer/Assistant Director. He pointed out that the issue in hand having also been settled by this Tribunal and the Hon'ble Apex Court, the applicant should be granted the benefits of the higher pay-scale of Rs.10000-15200 as against pay-scale of Rs.7500-12000 granted by the respondents vide the impugned order.

5. In the counter affidavit filed by the respondents, the claim of the applicant is contested on the ground that there being no higher post in DGFT, the pay-scale of the next hierarchical post for Hindi Officer in the subordinate offices of the Government of India, i.e. Assistant Director (Rs.7500-12000), as per the recommendations of the 5th CPC, was granted to the applicant w.e.f. 07.12.2005, as 2nd ACP, vide DGFT order dated 03.01.2011. Further, reference is made to the filing of the second OA by the applicant bearing No.3877/2012 wherein, again directions were issued to consider the representation filed by the applicant, which resulted in passing of the impugned order.

6. Mr. Ashok Kumar appearing for the respondents submits that the applicant became entitled to financial upgradation as per the observations/directions of this Tribunal w.e.f. 07.12.2005 and on the said date, the next hierarchical post in the office of DGFT was Hindi Officer/Assistant Director in the pay-scale of Rs.7500-12000 and thus the applicant was only entitled to be placed in the said pay-scale on account of 2nd Financial Upgradation. It is contended that this was the pay-scale, which was prevalent to the post of Assistant Director at the relevant time. His further submission is that the post of Hindi Translator and higher post in the DGFT and Central Secretariat Official Language Service (CSOLS) are different and their service conditions and Recruitment Rules are also different and thus the post cannot be equated. Their functional requirements are also all together different. Accordingly, distinction is being drawn on the basis of the fact that the applicant belongs to DGFT whereas the posts under the CSOLS are different.

7. The contentions of the applicant are, however, refuted by the applicant by making reference to clarificatory order dated 21.05.2009 issued by the Directorate General, Doordarshan. The said order reads as under:-

“Queries have been receiving from Kendras regarding the specifications of posts of Hindi Officer and Assistant Director (OL).

2. It is hereby clarified that the posts of Hindi Officer and Assistant Director (Official Languages) are identical posts."

8. Another order has been passed by the Ministry of Commerce and Industry, Directorate General of Foreign Trade on 11.10.2013 vide Notification No.15/2013. The said order reads as under:

"The post of Hindi Officer in the subordinate offices of Directorate General of Foreign Trade is re-designated as Assistant Director (Official Language) in Pay Band-3 (Rs.15600-39100/-) with Grade Pay of Rs.5,400/- with immediate effect."

9. From the perusal of records, we find that the post of Hindi Officer was also re-designated as Assistant Director (Official Language and both posts are in the same pay-scale). Mr. Ashok Kumar, learned counsel, appearing for the respondents has, however, attempted to draw distinction that the order dated 11.10.2013 has been issued by the DGFT for re-designation of the post and the order has been issued in 2013. Therefore, it will not be retrospectively applicable from the year 2005.

10. We have carefully perused the two judgments of the Hon'ble Apex Court relied upon by the applicant in **Union of India and Others Versus Rajesh Kumar Gond, SLP (C) No.17419/2009** (with other connected matters) decided on 25.07.2013. The claim of the officer working in the DGFT for seeking parity with the officers working in the CSOLS was examined by the Tribunal, which was allowed in the OA filed by the officer of DGFT. The Hon'ble Delhi High Court upheld the

judgment of this Tribunal and finally the Hon'ble Supreme Court, while considering the issue of parity and equity on the basis of applying the doctrine of 'equal pay for equal work', held as under:

"5. Mr. Malhotra, learned Additional Solicitor General appearing for the Union of India submitted that the two posts cannot be equated but having noted that when no material was placed before the Tribunal about the functional distinction, in our view, the order of the Tribunal could not be faulted. The High Court was, therefore, right in dismissing the writ petition.

6. Before we conclude, we may profitably refer to the observations of Chinnappa Reddy, J., in paragraph 8 of the judgment in Randhir Singh (supra) which reads as follows:

"8. It is true that the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right. But it certainly is a constitutional right. Article 39(d) of the Constitution proclaims 'equal pay for equal work for both men and women' as a Directive Principle of State Policy. 'Equal pay for equal work for both men and women' means equal pay for equal work for everyone and as between the sexes. Directive Principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay....."

11. The question of parity to the post of Hindi Translator with the different cadre under the CSOLS and DGFT performing the

same kind of duties has been considered and there is no functional distinction as observed by the Hon'ble Supreme Court. The post of Hindi Officer was equated with the post of Assistant Director by two clarificatory orders. In view of the fact that the above posts are at par and their functional requirements being same, the applicant is entitled to be placed in the pay-scale of Assistant Director on his promotion as Hindi Officer, both the posts being equal in status in the CSOLS and any other department.

12. Mr. Ashok Kumar has also submitted that the applicant also got the benefits for promotion from Junior Hindi Translator to the post of Hindi Officer on account of non-availability of the post of Senior Hindi Translator. The applicant was directly promoted to the next higher post of Hindi Translator and on that account he was not given any benefits. It was only in implementation of the directions of this Tribunal that he was granted the benefits. This argument was made on account of statutory rules i.e. namely the Directorate General of Foreign Trade (Hindi Officer) Recruitment Rules 1996 as notified by Notification dated 21.03.1996. In the scheduled, a Junior Hindi Translator with 8 years of regular service can also be promoted to the post of Hindi Officer whereas the Senior Hindi Translator could be promoted to the post of Hindi Officer with 5 years of regular service. Thus, the Junior Hindi Translator was also feeder channel post of Hindi Officer.

Admittedly, the applicant was appointed as Junior Hindi Translator in the year 1981 and was promoted to the post of Hindi Officer in the year 1991 i.e. after completion of more than 8 years of service. Thus, he was entitled to the 2nd Financial Upgradation on the post of Hindi Officer which is equal to the post of Assistant Director.

13. In the above circumstances, the OA is allowed and the impugned order dated 25.09.2014 is set aside. Respondents are directed to grant to the applicant higher pay-scale of Rs.10000-15200 w.e.f. 07.12.2005, the date he completed 24 years of regular service as 2nd Financial Upgradation under the ACP Scheme. The applicant shall be entitled to the consequential benefits including the arrears from the said date. The financial benefits shall be calculated and released in favour of the applicant within a period of three months from the date of receipt of a copy of this order. Respondents would also re-determine the pensionary benefits on account of the financial upgradation, in the above terms and re-fixation of his pension in the aforesaid period of three months. No costs.

(Praveen Mahajan)
Member (A)

(Justice Permod Kohli)
Chairman

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