

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 462/2011.

Dated this the 05th day of MARCH, 2018.

CORAM:- HON'BLE SHRI ARVIND J. ROHEE, MEMBER (J)
HON'BLE SHRI R. VIJAYKUMAR, MEMBER (A)

- 1) Shri K P Yadav, Aged 50 years,
Working as Sr. Statistical Assistant
in the office of Textiles Committee,
under the Ministry of Textiles,
having office at P. Balu Road,
Prabhadevi, Mumbai- 400 025.
Residing at: A-201, Poonam Orchid,
Yashwant Nagar, Near Virat Nagar,
Virar(West), Dist. Thane- 401 303.

...Applicant

**(By Advocates Shri P J Prasadrao and Shri P
Khosla)**

Versus

- 1) Union of India,
Through the Secretary,
Ministry of Textiles,
Govt. of India, Udhog Bhavan,
New Delhi- 110 001.
- 2) The Secretary, Textiles Committee
constituted under the Textiles Committee
Act, 1963 by the Govt. of India,
Ministry of Textiles, having office
at P. Balu Road, Prabhadevi,
Mumbai- 400 025

...Respondents

**(By Advocates Shri V S Masurkar for R-1 and Shri R
A Rodrigues for R-2)**

Reserved on :- 06.02.2018.

Pronounced on:- 05.03.2018.

O R D E R**Per:- Hon'ble Shri R. Vijaykumar, Member (A)**

This application was filed on 12.05.2011 claiming parity in pay scale with other similarly qualified and designated Statistical Assistants in various Ministries by virtue of his designation as Senior Statistical Assistant in the Market Research Wing of the Textiles Committee. This parity was declined while implementing the 6th Pay Commission recommendations by Office Order No. 131/64/2002/AD dt. 19.12.2008, issued by Respondent No.2. The applicant has also challenged the orders implementing the Fifth Pay Commission recommendations in Office order No. 131/64/2002-AD.IV dt. 05.06.2008 by which the applicant's pay scale was upgraded from 4500-125-7000 to 5500-175-9000 w.e.f. 27.11.2007. Based on the Fifth Pay Commission recommendations, the applicant's pay was fixed in the scale of 4000-100-6000 and later, on promotion as Senior Statistical Assistant on 19.03.2002, he was fixed in the pay scale of 4500-125-7000. Again, based on his representation dt. 24.04.2007, an order was issued in No. 131/64/2002-AD.IV dt. 05.06.2008 upgrading his pay scale to 5500-175-9000 but this

was revised by office order No. 131/64/2002/AD dt. 19.12.2008 downwards to 5200-20200(PB-1)+ GP 2800, which amounted to a reduction in his pay. Within the Textile Committee, other categories of Assistant, Senior Stenographer etc., had been granted higher pay scales and anomalies between them and other departments had been resolved but his category of Senior Statistical Assistant remained unresolved not only within the Textiles Committee but also with reference to several other Ministries and Departments. Therefore, the applicant claims the following reliefs:

- a) *That this Hon'ble Tribunal be pleased to hold and declare that the action of the Respondents in not granting the Applicant similar benefits of revision of Pay Scale(s) granted to the Statistical Assistant(s) in various other Ministries/Departments, is bad in law, arbitrary, discriminatory and violative of Articles 14 & 16 of the Constitution of India.*
- b) *That this Hon'ble Tribunal be pleased to direct the Respondents to grant the Applicant, the Revised Pay Scale of 5000-150-8000 in the cadre of Statistical Assistant w.e.f 01.01.1996 and the consequent Revision pursuant to the VIth Pay Commission implementation as applicable to the Applicant in the Pay Scale of 9300-34800.*
- c) *That this Hon'ble Tribunal be pleased to direct the Respondents to fix his Basic Pay accordingly in*

line with the aforesaid Pay Scales and calculate the monetary benefits accordingly and pay the same to the Applicant.

d) Such other and further Order(s) be passed, in the facts and circumstances of the case, as may be required.

e) That the costs of the Application be granted.

2. To appreciate the background of the matter, we note that the applicant was employed and works in the Textiles Committee established by the Government of India under the Textiles Committee Act, 1963 and which set up the Committee with a Chairman and Members appointed from the private sector and from other Government establishments in accordance with the Rules framed in 1965. The Vice-Chairman appointed ex-officio, is the Textile Commissioner, an officer on deputation from the Government of India. The functions of the Committee are to ensure quality of textiles for internal marketing and export purposes and for the manufacture of textile machinery and which are elaborated in detail under Section 4 of the Act of 1965. In addition, the functions include under 4(2)(j) 'provides for such other matters as may be prescribed.' The Act also records in Section 4(3), that in the

discharge of its functions, the Committee shall be bound by such directions as the Central Government may, for reasons to be stated in writing, give to it from time to time. Under Section 9, the Committee is authorized to employ officers other than the Secretary and employees and fix their methods of appointment, conditions of service and scales of pay in accordance with the regulations made by the Committee under the Act. The Committee has a Textiles Fund(TF) that comprises of grants made by the Central Government including loans, certain proceeds of excise duty transferred by the Central Government, fees and charges levied under the Act by the Committee and other moneys received by the Committee by way of grant, gift, donation, contribution, transfer or otherwise. Under the Textiles Committee Rules, 1965 framed to implement the Act, at Section 20 on heads of expenditure, the Committee has been directed to show the pay of officers, pay of establishment, travelling and other allowances, grants in aid, research promotion, miscellaneous expenses as heads of expenditure and any other heads that may be decided by the Committee subject to the

approval of the Central Government. In accordance with the powers conferred under the Act of 1963, in section 23(2)(c), the Textiles Committee, with the previous sanction of the Central Government, published "The Textiles Committee's Employees [Recruitment Regulations 1968] which contains the Recruitment Rules, etc. for appointment of employees other than the Secretary. The Act, Rules and Regulations elaborate and circumscribe the functions and powers of the Textiles Committee.

3. The applicant was recruited on 15.10.1986 as Junior Statistical Assistant in the pay scale of Rs. 1200-30-1560-EB-40-2040 in Grade S7 by the Textiles Committee who are Respondent No.2. At the time of appointment, he was a graduate as against the requirement of the post for a person aged 20-25 years and with "at least" second class graduate in Mathematics or Statistics or Economics or Commerce and with the pay that was equated under the Fifth Pay Commission at Rs. 4000-100-6000. The Rules also show that there is a post of Punch Operator with the same pay scale but with the requirement of being a graduate and prescribed

data entry speed. There are also posts of Junior Investigator in pay scale of 4500-125-7000, Senior Statistical Assistant with pay scale of Rs. 4500-125-7000 and Statistical Investigator with pay scale of Rs. 5500-175-9000 with differing and increasing levels of qualification including for experience and published papers. After the Fifth Pay Commission, the applicant was fixed in the pay scale of Rs. 4000-6000. Consequently, on 18.03.2002, the applicant was promoted as Senior Statistical Assistant in the pay scale of Rs. 4500-125-7000 under the Fifth Pay Commission Rules. On 24.04.2007, which was consequent to the 6th Pay Commission recommendations and prior to issue of orders based on this Pay Commission recommendations, the applicant made a representation to the respondents for the first time, addressed to the Chairperson of the Textiles Committee arguing that following Fifth Pay Commission recommendations, upgraded scales of pay were granted to Statistical function posts of Group B and C in various Ministries and Departments of Government of India but not in the Market Research Wing of the Textiles Committee.

He had, therefore, requested upgradation of his pay from 4000-6000 for Junior Statistical Assistant/Punch Operator to 5000-8000, for Senior Statistical Assistant/Junior Investigator from 4500-7000 to 5500-9000 and for Field Officer from 5500-9000 to 6500-10500. He also pointed out that higher pay scales were provided in the Textiles Committee to posts like Hindi Officer, Senior Translator, Junior Translator, Assistants and Senior Stenographers and attempted a comparison between the qualifications of jobs in his field and the other fields. It appears that the 97th Meeting of the Textiles Committee Counsel held on 27.11.2007 considered his representation and accorded approval to the request of the applicant based on which an Office Memorandum was issued on 05.06.2008[Annexure A-3] upgrading his pay scale from 4500-125-7000 to 5500-175-9000 in the pay scales under the Fifth Pay Commission. Thereafter, a letter was received from the Ministry of Textiles, addressed to the Secretary, Textiles Committee on 25.11.2008, stating that the proposed amendment made in the Textiles Committee Employees' Recruitment Regulations, 2007 as

decided in the 97th meeting of the Textiles Committee held on 27.11.2007, was under examination in the Ministry and until the Ministry accorded its approval, the Textiles Committee cannot implement the amendments and upgradations. The Ministry issued the following Orders:

"Udyog Bhawan,
New Delhi, dt. 25th November, 2008.

To

Shri Pradeep Gupta,
Secretary,
Textiles Committee,
P. Balu Road,
Prabhadevi Chowk,
Prabhadevi,
Mumbai.

Subject: Implementation of the decisions of the Textiles Committee regarding upgradation of pay scales.

Sir,

I am directed to refer to your letter No. 33(16)-1/2008-AD dated 4th and 14th November, 2008 on the subject mentioned above and to say that the matter regarding proposed amendment in the Textiles Committee Employee's Recruitment Regulations, 2007 is under examination of this Ministry. Till such time the Ministry accords its approval, the Textiles Committee cannot implement the amendments and upgradations.

The matter regarding upgradation of pay scales in respect of some employees is a separate issue and need not be linked with the amendment of Textiles Committee Employees' Recruitment Regulations, 2007.

It is, further clarified that pay fixation in view of recommendations of the 6th Pay Commission in respect of such posts whose scales of pay have been upgraded may be made on the earlier pay scales.

You are requested to submit a fresh proposal on the proposed upgradation of

posts/pay scales separately clearly indicating the reasons/justification for upgradation of pay scales for examination of this Ministry.

Yours faithfully,

(Brij Kumar)

Under Secretary to the Govt. of India."

4. Previous to these instructions, on 06.10.2008, the Respondent No.2, the Textiles Committee, obtained the option of the applicant in the prescribed form for accepting the revised pay structure w.e.f. 01.01.2006 which is by reference to the 6th Pay Commission. In this option form, the applicant has mentioned his existing pay scale as Rs. 5500-9000 which is presumably based on the approval of the Textiles Committee meeting which altered the regulations and for which the Government had withheld approval. However, in accordance with the orders of the Ministry, the Sixth Pay Commission recommendations were implemented in respect of the applicant in Textiles Committee Order No. 131/64/2002/AD dt. 19.12.2008 by which his pre-revised scale was noted as Rs. 4500-125-7000(S8) and his revised pay band was held at PB-I of 5200-20220 with GP Rs. 2800. It appears that the instructions on the

Ministry of Textiles on implementation of the recommendations of the Sixth Pay Commission were only received thereafter in their letter No. 14/1/2008-A&MMT dt. 27.03.2009. The office order issued in respect of the applicant on 19.12.2008, however, conforms to these orders.

5. The applicant's claims can be divided into two parts. The first part is his claim that he was similarly placed as with persons with the same designation and who were carrying out similar functions in various other Ministries and Departments of the Government of India. Those posts, he alleges, had similar qualifications as in his post at the entry level. Those Statistical Assistants were placed in the pay scale of Rs. 5000-150-8000 and if the Junior Statistical Assistant was held in parity, he would then get the pay scale of Rs. 5500-175-9000 which would then place him in PB-II with GP Rs. 4200 under the 6th Pay Commission. Specifically in his application, he has referred to the Statistical Assistants and Investigators in a few Departments as below:-

Sl. No	Ministry, Department	Post	Present Scale (4 th CPC) {Upto 31.12.1995}	Revised Pay Scale (5 th CPC) {w.e.f. 01.01.1996}	Para No. of the Report
1	Agriculture, Integrated Fisheries Project.	Statistical Assistant (Sl. No. 25)	1200-30-1560-EB-40-2040	5000-150-8000	56.55
2	M/O Communication, D/o Posts.	Statistical Assistant (Sl. No. 9)	1400-40-1800-50-2300	5500-175-9000	62.25
3	M/o Defence, EDP Staff in Air Force.	Statistical Assistant (Sl. No. 33)	1400-40-1800-50-2300	5000-150-8000	63.71
4	M/o Industry, Small Industries Development Organization (SIDO)	Investigator (Sl.No. 6)	1400-40-1800-EB-50-2300	5000-150-8000	72.68
5	M/o Information & Broadcasting, Audience Research Unit.	Investigator/Statistical Assistant (Sl. No. 6)	1400-40-1800-50-2300	5000-150-8000 5500-175-9000	73.22
6	M/o Labour, Directorate General of Employment & Training. Labour Bureau	Jr. Investigator (Sl.No.2) Investigators Gr.2 (Sl.No.5)	1400-40-1800-EB-50-2300	5500-175-9000	74.13 74.18
7	M/o Law, Justice & Company Affairs, D/o Company Affairs.	Statistical Assistant (Sl. No. 8)	1400-40-1800-EB-50-2300	5000-150-8000	75.23
8	M/o Planning & Programme Implementation, National Sample Service Organization.	Investigators, F.O.D. (Sl.No. 2)	1400-40-1800-50-2300	5000-150-8000	81.16
9	M/o Textiles, Development Commissioner of Handicrafts.	Investigators (Sl.No. 3)	1400-40-1800-EB-50-2300	5000-150-8000	88.13

10	M/o Welfare, National Commission for Scheduled Caste and Scheduled Tribes.	Investigator (Sl.No. 1)	1400-40-1800-50-2300	5500-175-9000	91.4
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6. He has also referred to a few other cases in a few other departments in his representation dt. 11.12.2008 [Annexure A-4] to the Secretary of the Textiles Committee.

Sr. No	Department	Post	Pay scale in IVth CPC	Pay scale in Vth CPC	Para No.	
1	All India Soil and land use survey	Statistical Assistant	1400-40-2300	5000-150-8000	56.44	Vth CPC
2	Integrated Fisheries Project	Statistical Assistant	1200-30-2040	5000-150-8000	56.55	Vth CPC
3	New Delhi Workshop of Postal Machines Repair Organization	Statistical Assistant	1400-40-2300	5500-175-9000	62.25	Vth CPC
4	EDP Staff in Air Force	Statistical Assistant	1400-40-2300	5500-175-9000	63.7	Vth CPC
5	Civilian Posts in the Navy	Investigator /Statistical Assistant	1400-40-2300	5500-175-9000	73.22	Vth CPC
6	M/o Planning & Programme Implementation	Jr. Statistical Investigator /Statistical Assistant	1400-40-2300	5000-150-8000	81.17	Vth CPC
7	M/o Power	Statistical Assistants	4500-7000	5000-150-8000 PB-2, Grade Pay Rs. 4200/-	7.35.2	VIth CPC

7. The applicant also claims that they have similar educational qualifications such as his and

that the work function is also the same. Therefore, he is entitled to pay parity.

8. The applicant also challenges the withdrawal of the increased pay scale that was extended to him in office dated 05.06.2008 whereby his pay scale was increased from 4500-7000 to 5500-9000 and he was restored to his previous pay scale without issue of any show-cause notice. The Applicant argues that in response to his letter dt. 11.12.2008 asking for parity in pay scale, a reply was received from the Textiles Committee in their reference No. 100/(46)/2009/AD dt. 13.01.2010 noting that the Textiles Committee follows the pay scales of the Central Government based on general recommendations and specific recommendations for various departments and in accordance with the instructions of the Ministry of Textiles issued on 27.03.2009, they have properly fixed his pay in the scale PB-I with GP of Rs. 2800 and that they are not at liberty to grant higher scale than those accepted and notified by the Government of India.

9. The Applicant has then addressed a series of references on 18.01.2010, 17.03.2010,

20.04.2010, 01.06.2010, 01.07.2010 and 10.08.2010 referring to the same alleged anomaly by way of parity, some previous decisions of the Standing Finance Committee of the Textiles Committee and the favourable treatment given to post of Hindi Translator, Assistant, Senior Stenographer, Librarian, who were placed on par with similar posts in the Central Government whereas Junior Investigators and Sr. Statistical Assistants were not similarly treated. On not receiving any reply, he has filed this Application.

10. The respondents assert that they have correctly implemented the 6th Pay Commission recommendations in respect of the applicant based on the instructions of the Ministry of Textiles. They oppose his comparison with various other posts in the Textiles Committee such as Assistant, Senior Stenographer which are following under the administrative stream and no comparison can be drawn for the purpose of the applicant. Moreover, these posts are filled by promotion from the feeder cadres and are available only after nearly 25-30 years of service. They refute his claim for parity in pay scales by reference to other Central

Government offices by stating that when he was recruited, his pay scale was Rs. 1200-2040 whereas it was generally Rs. 1400-2300 in other Central Government offices as also brought out by the applicant himself in his application. They also refer to the fact that the qualifications for the post of Statistical Assistant are different in the various organizations and includes degree/diploma in engineering in the Ministry of Industry, Small Industries Development Organization, Master's Degree in Ministry of Welfare and NCSC/NCST and Graduates in other remaining offices. They assert that the duties and functions of Statistical Assistant are distinct and separate and parity cannot be claimed by the applicant. They have also reiterated the factual elements brought out in preceding paragraphs. They deny that any discriminatory treatment has been given to the applicant and that a Committee was appointed headed by a retired Director(Legal) to examine various anomalies in the regulations of 1968 and the convenor has been appointed by letter dt. 17.02.2011[Annexure A-8] and the matter was under examination. They also refer to his

representations and state that the applicant never raised any objections to the pay fixation done after the 5th Pay Commission and it was only on 24.04.2007 that he made his first representation for claiming parity. Even after his pay was fixed on 18.03.2002 in the promoted cadre of Sr. Statistical Assistant, it was only after five years, on 24.04.2007, that the applicant started making representations. Therefore, his representation, they claimed, is subject to limitation. He also state that they acted in accordance with the directions of the Ministry of Textiles and in accordance with those directions, the excess payments made on the basis of the upgradation ordered by the 97th meeting of the Textiles Committee Council that did not receive approval by the Ministry were recovered from the arrears paid under 6th Pay Commission recommendations.

11. In his rejoinder, the applicant has reiterated some of the aspects raised earlier and expanded on his list of comparable posts in Government of India. In particular, he refers to the advertisement made by the respondents while

recruiting the applicant which stated that pay and allowances admissible to the Committee's employees are at present at par with those admissible to the employees of Central Government. In addition to this, he has also referred to certain proceedings of the Standing Finance Committee (SFC) of the Textiles Committee wherein they have recorded that in respect of pay and allowances, the fundamental and supplementary rules of the Central Government and the executive orders, decisions, etc, issued thereunder from time to time in regard to entitlement of pay and allowances of Central Government Servants shall apply to the employees of the Committee of corresponding grades of pay. Further, as per the provisions of the above said regulations, the rules and executive orders by way of the Gazette notification issued by the Government of India will be applicable to the employees of the Committee also. The Committee has adopted and implemented the decisions of the Government of India after the earlier four Pay Commissions.

12. In their sur-rejoinder, respondents have reiterated the points raised earlier and

elaborated their explanations. In particular, they have denied that there is any discrimination against the applicant and refer to the Committee that has been set up to look into the issue. They also deny the claim of parity as devoid of any basis and again question the laches on the part of the applicant in raising this issue after so many years.

13. The applicant later on 21.09.2016, filed a Miscellaneous Petition for condonation of delay claiming that the issue of differing pay scales of employees came up first before the 105th Standing Finance Committee Meeting, held on 28.05.2002. His first representation was much later in April 2007. He argues that a model employer should not compel employees to take matters to the Court for extension of relief already granted to other similarly placed employees and the delay can be condoned as was done in the case of **Shri Simer Singh Vs. Union of India & Ors. in Original Application No. 650/2007, decided by this Tribunal on 21.12.2012.** They also refer to the case decided by the **Hon'ble Apex Court in M.R. Gupta Vs. Union of India & Ors. (1996 AIR 669, 1995**

SCC (5) 628) dt. 21.08.1995 which held that pay fixation in correct pay scale or pension is a continuous cause of action.

14. On his pay fixation, he says that cause of action is of a continuing nature and refers to the **decision of the Principal Bench of this Tribunal in the case of Shri Dhyan Singh Rawat Vs Union of India & Ors. (1999(2) S.L.J. (CAT) 517)** which held that payment of salary is continuous cause of action and pay fixation was allowed w.e.f. 01.01.1947.

15. In reply, respondents have pointed out that although the OA was filed in 2011, it is only after five years that Miscellaneous Petition for condonation of delay was filed which makes it unsustainable.

16. They deny the applicability of the cases referred by the applicant. In particular, they referred to the principles laid down by the **Hon'ble Apex Court in (2013) 12 Supreme Court Cases 649, Esha Bhattacharjee Vs. Managing Committee of Ragunathpur Nafar Academy and ors.** which set out:

"ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation. (Emphasis supplied)

ix) The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily

to face such litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

Xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception."

17. During the hearing on 05.02.2016, written submissions were made by the both sides and we were also heard on the matter. It was after this, that the applicant has filed this MP No. 736/2016 for condonation of delay and respondents filed their reply thereafter, on 27.06.2017. It was decided then to consider the issue of delay along with OA at the final hearing and the matter was finally heard and reserved for orders on 06.02.2018.

18. The written submissions of the applicant reiterate the same issues raised and include reference to a few judgments. In the case of **Narsingha Patra & Anr. Vs. State of Orissa & Ors (1997 SCC (L&S) 1773) in Civil Appeal No. 768 of 1991, decided by the Hon'ble Supreme Court on 27.02.1997**, the Hon'ble Apex Court held that the

Government had fixed their pay scales at Rs. 240-315 w.e.f. 01.01.1974. But upon representations by the applicant, this was modified to Rs. 300-410 by an order passed in 1976. However, on 16.11.1977, the Order of 1976 was altered and they were restored to the scale of Rs. 240-315 based on the Orders of the 4th Pay Commission. The Hon'ble Apex Court conceded the view of the appellants that the withdrawal order was done behind their back and they were denied the opportunity of being heard and therefore, the Hon'ble Apex Court directed the State Government to give them a hearing and then take a decision.

19. In the case of ***S R Bhanrale Vs. Union of India & Ors. in Civil Appeal No. 9489 of 1996, decided by Hon'ble Supreme Court on 19.07.1996,*** arrears due in 1984 that were due to the appellant well before his retirement were wrongfully withheld and it was decided that the Union of India was wrong to make a plea of limitation to deny the dues to the appellant when it was itself at fault for not settling the dues on time.

20. In the case of ***P K Sinha Vs. Union of India & Ors. in OA No. 308/1996, decided by Patna***

Bench of this Tribunal on 24.10.1996, pay fixation was upheld as a recurring cause of action.

21. The applicants again refer to **Shri Simer Singh Vs. Union of India & Ors. (supra)**, decided by **this Bench in OA No. 650/2007 on 21.11.2012** which condoned the delay on the part of the applicant on the basis that he was pursuing the matter and only after the applicant received the reply to his notice, he preferred the Original Application. The applicant claims that his case is of a similar nature.

22. In their written submissions that were submitted on 26.02.2016, the respondents have referred to the absence of Miscellaneous Petition for condonation of delay which was a requisite under Section 21 of the Administrative Tribunals Act 1985 and that no condonation could be done in the absence of a request. They refer to cases of one **Ramesh Chand Sharma Vs. Udham Singh Kamal & Ors. (1999 (8) SCC 304) in Civil Appeal No. 3119 of 1997, delivered by the Hon'ble Supreme Court on 12.10.1999**, In **D.C.S.Negi Vs. Union of India & Ors. in Special Leave to Appeal (Civil) No.7956/2011, decided by the Hon'ble Supreme Court**

on 07.03.2011 In **Sushila Devi Vs. Chief Secretary, Govt. of NCT of Delhi & Ors. decided by Principal Bench of this Tribunal in OA No. 3303/2011 dt. 16.09.2011**, In **C K Antony Vs. State of Kerala in OA No.661/2012 dt. 09.01.2013**, decided by CAT Ernakulum Bench and its reference to **M.R. Gupta Vs. Union of India & Ors.(supra)** and **simer Singh Vs. Union of India & Ors.(supra)**. In the first two cases, it was held that in the absence of specific request, the statutory provision under Section 21(1) of the Administrative Tribunals Act, 1985, applies and delayed request for condonation of delay cannot be accepted irrespective of whether an objection on limitation is not raised by the respondents. **In the case of Sushila Devi(supra)**, the applicant relied upon **M.R. Gupta(supra)** to argue that since seniority and pay fixation were a continuing cause of action, they sought permission to withdraw the OA and file a fresh OA. The court refused to grant liberty as delay and laches were glaring and the OA was hit by limitation. The absence of a request for condonation of delay was also noted in the decision by the coordinate Bench in Ernakulum

in C K Antony case. They distinguish the analysis by the applicant of the Simer Singh case to say that the applicant in that case had filed a Miscellaneous Application for condonation of delay and it was on that basis that delay was condoned and not in its absence.

23. The respondents again reiterate the factual elements mentioned in their earlier briefs and that, after the benefits of the Pay Commissions were crystallized, it was not possible to re-open the entire issue after such a huge delay.

24. During the final hearing, learned counsel for the applicant reiterated the arguments raised in the briefs and made written submissions covering the applicant's plea which essentially drew upon the discrimination that existed between the post held by applicant and the similar post on similar duties held by corresponding persons with same or slightly different designations in various Ministries and Departments. He also referred to the Annexure R-1 filed by respondent which conveyed Government approval for implementation of 6th Pay Commission recommendations in the Textiles

Committee and also agreed to provide 80% of the additional funds required and promised to disburse the amount in the following financial year as per budget appropriation. The learned counsel for respondents contested the comparison made by the applicant who is a Sr. Statistical Assistant, with other employees in the Textiles Committee. They urged that any claim to parity within or by traveling to sister organizations cannot be made except with a study and a comparative chart which required examination followed by a decision and they again press their case based on the option obtained from the applicant on 06.10.2008 for implementation of the 6th Pay Commission and based on which, a detailed worksheet and office order was communicated in reference No. 131/64/2002/AD dt. 19.12.2008 to which there has never been any representation. They also refer to the fact that the orders of 27.03.2009 which has also provided for 80% grants-in-aid to the Textiles Committee is essentially a reaffirmation of the fact that the Textiles Committee has to abide by the decisions of the Ministry in respect of such matters that concern administration and salary fixation.

25. While emphasizing the recent character of the applicant's claims for parity, by virtue of his first representation in this matter in April 2007 and his specific options in regard to pay scale and pay fixation obtained while being promoted as Sr. Statistical Assistant in 2002 and later for grant of 6th Pay Commission fixation in 2008, they argue that he cannot now seek to retrace the entire path and get benefits from an earlier point in time. On the issue of parity, they point out that parity has been claimed as a matter of right without any proper comparative analysis. They refer to the decision of the **Hon'ble Apex Court in State of Haryana & Ors. Vs. Haryana Civil Secretariat Personal Staff Association[(2002) 6 SCC 72]** which held that parity was not a fundamental right and that its determination was a complex matter which devolved on the executive to discharge and for which there had to be a detailed comparative analysis of the nature of duties, responsibilities and qualifications. On the aspect of comparison with Ministries such as the Ministry of Agriculture, they refer to the decision of the **Principal Bench**

of this Tribunal in OA No. 2951/2003 dt.

21.04.2010 of a Junior Accounts Officer deputed from the Ministry of Finance and absorbed in CAT where it was held that the case was examined in detail by a comparative analysis and it was held that parity could be extended to the applicant. The second case cited by the applicant was the decision of the **Principal Bench of this Tribunal in OA No. 3052/2009** where a Private Secretary and PA in the AIIMS sought historical parity with counterparts in the Ministry of Health and Family Welfare. The Tribunal found that historical parity had always been maintained between the applicants and their counterparts in the Central Secretariat Service (CSS) and therefore, any violation of that historical parity was incorrect. The Respondents distinguish the case by saying that there is no historical relationship between the Textiles Committee and the various Ministries including the Ministry of Agriculture cited by the applicant. On the third decision of this **Tribunal in its Bangalore Bench, relied upon by applicant in OA 80/2002 dt. 25.11.2011**, the comparison between a Technical Assistant and a Statistical

Assistant was made after a detailed examination and it was found that both were employed in the same office and the applicant who held a Master's Degree in Statistics was appointed as Technical Assistant with a pay scale matching the colleagues posted as Statistical Assistant with Graduate qualification. After the 5th Pay Commission recommendations, the situation altered and the Technical Assistants who were performing the same tasks as Statistical Assistants received lower pay. The Tribunal made a comparative analysis and considering the origins of the two posts and the relative advantage of keeping the two cadres together for enabling the rational distribution of workload, allowed the application.

26. In that particular case, the Technical Assistant had a further disability of not having any promotional avenue which was available to the Statistical Assistant. In the present case, the comparison is being made by the applicant by traveling outside his office and as respondents argues, there are promotional avenues available in the Committee to the posts of Field Officer/Assistant Director, Deputy Director etc.

They have also referred to the decisions of **Hon'ble Apex Court in Secretary, Finance Department & Ors. Vs. West Bengal Registration Service Association & Ors. [(1993 Supp(1) SCC 153]** which found the need for detailed comparative analysis for claiming parity. **In Govt. of AP & Ors. Vs. P Hari Hara Prasad & Ors. [(2002) 7 SCC 707]**, it was held that no writ of mandamus can be issued directing grant of parity in pay scales assuming that posts of identical and that it is an equitable principle. They also referred to decisions of **Supreme Court Employees Welfare Association Vs. Union of India & Anr. [(1989) 4 SCC 187]** in WP(Civil) No. 801 of 1986 with **Supreme Court Fourth Class Employees Welfare Association Vs. Union of India & Anr. In WP (Civil) No. 1201 of 1986 with S P Jain & Anr. Vs. Union of India & Anr. In WP(Civil) No. 1530 of 1986 and in State of Maharashtra Vs. Association of Court Stenos, P.A., P.S., & Anr. [(2002) 2 SCC 141]** in Civil Appeal No. 109 of 2020, decided on January 9, 2002 [Three Judges Bench] and **State of UP & Ors. Vs. J P Chaurasia & Ors. [(1989) 1 SCC 121]** in Civil Appeal No. 56 of 1987, decided on September 27, 1988 and

in **Umesh Chandra Gupta & Ors. Vs. Oil and Natural Gas Commission & Ors.**[1989 Supp(1) SCC 584] in **Civil Appeal No. 3269 of 1979 decided on October 7, 1988[Three Judges Bench}** in which was underlined the need to do a comparative analysis broadly expressed as quantity of work and quality of work before arriving at any consideration of parity.

27. We have gone through the O.A. alongwith Annexures A-1 to A-14, Rejoinder, Misc. Petition 736 of 2016 for condonation of delay, filed on behalf of the applicants.

28. We have also gone through the reply alongwith Annexures R-1 to R-8, Reply to Rejoinder, filed on behalf of the respondents.

29. We have heard the learned counsels for the applicant and the learned counsels for the respondents and carefully considered the facts and circumstances, Written Submissions, law points and rival contentions in the case.

30. At the outset, the applicant's plea will need to be segregated in terms of his claim for parity with similarly named functionaries in other departments of Government of India and in respect

of his grievance that his request for parity was made in April 2007 and was considered in the 97th Meeting of the Textiles Committee. There, it was accepted and thereafter, implemented in June, 2008 by the Office but later retracted based on orders of the Ministry in November, 2008 while implementing the recommendations of the 6th Pay Commission in orders dt. 19.12.2008.

31. The first aspect of parity is a general principle and the applicant seems to have officially raised the matter only in April, 2007 in his representation to the Chairperson of the Textiles Committee. After further representations following the pay fixation in December 2008, he received a reply on 13.01.2010 in No. 100/(46)/2009/AD dt. 13.01.2010 page 38. from the Assistant Secretary, Textiles Committee with regard to the issue of pay fixation under the 6th Pay Commission. The letter states that the Textiles Committee follows the pay scales applicable to Central Government Staff but unless Government makes specific recommendations in respect of certain posts, only the general recommendations shall apply and this has been done

in his case. The implicit question of parity has accordingly been denied. Thereafter, this application was filed on 12.05.2011. Since the issue of parity is a general principle by which benefit is claimed, and it is clear that the applicant never raised this issue from his initial appointment to his representation from 2007 and which was replied in 2010, any benefit that he could obtain can only be prospective. On the substantive issue of his claim to parity, there is a catena of judgments that begins with the case of ***Kishori Mohan Lal Bakshi Vs. Union of India (AIR 1962 SC 1139)*** where it was held that the Principle of Equal Pay for Equal Work was not enforceable in a Court of Law. The Hon'ble Apex Court altered its view by reading that principle into the Doctrine of Equality in ***Randhir Singh Vs. Union of India (AIR 1982 1 SC 618)***, where it also held that the Court must consider the factors like source and mode of recruitment/appointment, the qualifications, the nature of work, the value judgment, responsibilities, reliability, experience, confidentiality, functional need etc. In ***State of Haryana Vs. Jasmer Singh [(1996) 11 SCC***

771], the Hon'ble Apex Court observed that there were difficulties in making such comparisons between persons in different organizations and even in the same organizations and there may also be considerations that are relevant to efficiency in services which may justify differences in pay scales. In **State of Haryana Vs. Tilak Raj & Ors. [(2003) 6 SCC 123]**, the Hon'ble Apex Court held, that while claiming relief on the basis of quality, it is for the claimants to substantiate a clear cut basis of equivalence and that the principle of "Equal Pay For Equal Work" is a concept which requires for its applicability, complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. In **Union of India Vs. P K Roy[AIR 1968 SC 850]**, the Hon'ble Apex Court set out four factors for considering equivalence:

- "i) the nature and duties of a post;*
- ii) the responsibilities and powers exercised by the officer holding a post; the extent of territorial or other charge held or responsibilities discharged;*
- iii) the minimum qualifications, if any, prescribed for recruitment to the post;*
- iv) the salary of the post."*

32. In **Official Liquidator Vs. Dayananad & Ors. in Civil Appeal No. 2985 of 2007, decided on 04.11.2008[Three Judges Bench]**, the Hon'ble Apex Court observed at Para 73 while considering the principle of "Equal Pay For Equal Work" in the context of ruling in **Randhir Singh Vs. Union of India (supra)**, and held that similarity in the designation or quantum of work are not determinative of equality in the matter of pay scales and that before entertaining and accepting the claim based on the principle of equal pay for equal work, the Court must consider the factors like the source and mode of recruitment/appointment, the qualifications, the nature of work, the value judgment, responsibilities, reliability, experience, confidentiality, functional need etc. Further, in the **State of Haryana Vs. Charanjit Singh[(2006) 9 SCC 321]**, the Hon'ble Apex Court noted the previous judgments and observed that a mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service.

33. The Hon'ble High Court of Delhi considered the claim of Contractual Medical Officers in the NRHM who made a claim for parity with regularly employed medical officers. After looking into various aspects of parity laid out in previous judgments, they observed that the petitioners were appointed against a particular scheme with a specific closure date and also not through the UPSC as was the case for regular doctors who were also posted in the same hostels/dispensaries where the petitioners were posted. The petition was accordingly dismissed.

Further, ***the Hon'ble Apex Court in the case of Union of India Vs. K K Dineshan[(2008) 1 SCC 586]***, observed that the application of the principle should be left to an expert body stating:

16. Yet again in a recent decision in the State of Haryana Vs. Charanjit Singh, a Bench of three learned Judges, while affirming the view taken by this Court in State of Haryana Vs. Jasmer Singh, Tilak Raj, Orissa University of Agriculture & Technology Vs. Manoj K Mohanty and Govt. Of W.B. Vs. Tarun K Roy has reiterated that the doctrine of equal pay for equal work is not an abstract doctrine and is capable of being enforced in a court of law. Inter alia, observing that equal pay must be for equal work of equal value and that the principle of equal pay for equal work has no mathematical

application in every case, it has been held that Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who are left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. Enumerating a number of factors which may not warrant application of the principle of equal pay for equal work, it has been held that since the said principle requires consideration of various dimensions of a given job, normally the applicability of this principle must be left to be evaluated and determined by an expert body and the court should not interfere till it is satisfied that the necessary material on the basis whereof the claim is made is available on record with necessary proof and that there is equal work of equal quality and all other relevant factors are fulfilled."

34. When we examine the case made out by the applicant, we note that there is a similarity of nomenclature between the applicant's designation and those in various departments of Government of India. The respondents have pointed out that the mode of recruitment for these posts is different from the manner in which the applicant was recruited by the Textiles Committee by advertisement and by invitation from employment exchanges. The qualifications in some of the cases mentioned are also different and include

engineering degrees. A bare reading of certain functions does not enable the satisfaction of all the parameters that are requisites for making an effective case for parity. As held by the Hon'ble Apex court, neither similarity in nomenclature nor simple references to certain aspects can help the applicant who has the complete burden to establish his case but he has not done this in the present matter. Therefore, we can only rule against the applicant in respect of his claim for parity based on the information that he has provided. We note that respondents had appointed a Committee which has now submitted its recommendations and these are being considered in the Textiles Committee and thereafter, will receive consideration in the Ministry of Textiles. That is precisely the procedure that the Hon'ble Apex Court has advocated in such cases rather than a hasty approach to the Courts or Tribunals seeking relief.

35. On the aspect of condonation of delay, applicant has objected to pay fixation and he received a reply only in February 2010 after which he has filed this OA on 12.05.2011, which is after

three months delay. The applicant never filed an application for condonation of delay until 20.09.2016 and as respondents emphasized by dependence on a number of cases, when there is no plea for condonation of delay, this Tribunal is compelled to reject the application under Section 21 of the Administrative Tribunals Act, 1985. In his application for condonation of delay, the applicant has asked for delay to be condoned from 31.10.1997 when pay fixation was done under the Fifth Pay Commission up to date of filing this OA. Considering that he was appointed in 1986 after the 4th Pay Commission, he could as well have made a similar application for condoning delay from the date of appointment. This Tribunal has also noticed that a further pay fixation was done in 2002 in consequence of his promotion as Sr. Statistical Assistant. All these three categories are related to the general principle of parity which he never opposed till the year 2007 when he addressed the Chairperson of the Textiles Committee. Considering the delay and the premises on the basis of which the applicant has made his claims for parity, we are not inclined to condone

the delay of all these years. However, in respect of the pay fixation following the 6th Pay Commission recommendations, which also corrected the irregular manner in which the Office of the Textiles Committee implemented the orders of the Textiles Committee counsel in 2008, and for which the formal reply was received only in 2010, the delay which amounts to three months is condoned and merits are discussed below.

36. The applicant has questioned the manner in which the decision to grant him a higher pay scale by the Textiles Committee in its resolution of November, 2007 and the grant by office order dt. 04.06.2008 was reversed while sanctioning fixation on 19.12.2008 based on the 6th Pay Commission recommendations as approved and communicated by the Ministry of Textiles. From the records as discussed above, the Ministry of Textiles conveyed its orders putting a hold on the implementation of the decision of the Textiles Committee. Even prior to this, the Office of the Textiles Committee appears to have granted a higher pay to the applicant on the basis of his claim to parity. Neither the issue of parity nor

the higher pay fixation had received the approval of the Ministry of Textiles. Although the Textiles Committee is an autonomous body, our foregoing discussions of the Textiles Committee Act, the Rules and the Regulations clearly indicate that this area is only a recommendatory function of the Textiles Committee and it was clearly incorrect for the executive branch to act on its recommendations. In the first place, we note that the applicant had filed this petition for seeking parity directly to the Chairperson and not to the Chief executive to the Textiles Committee who is the Textiles Commissioner. This itself is a serious irregularity and perhaps prompted the kind of decision and action taken by the Executive Branch. Further, it is also clear that the Textiles Committee is not fully autonomous for its financial functioning and as noted in the orders communicating sanction of the 6th Pay Commission recommendations, the Ministry has offered 80% of the additional expenditure as a grant. Grants-in-aid are also reflected in the Act and Rules of the Textiles Committee. Therefore, there can be no question that in

respect of such administrative matters, the Textiles Committee is bound by the directions of the Ministry of Textiles and cannot act independently.

37. The applicant was also asked for his option at the time when the 6th Pay Commission recommendations were processed. In the option form, the applicant has mentioned his previous scale as Rs. 5500-9000 when the actual scale that he was entitled to receive as Sr. Statistical Assistant was Rs. 4500-7000. Having given his option, he could have protested the pay fixation and refuse to receive pending a decision on the matter but it was clear that in the face of the directions of the Ministry of Textiles refusing to permit the Textiles Committee to implement its decision on pay parity, the applicant had no chance of success. In these circumstances, the issue of a show-cause notice prior to the re-fixation adopting his substantive pay scale could only be an empty formality. It is also noted that he was perhaps aware of the manner in which the pay fixation would be done and this led him to make an appeal on 11.12.2008, a week before

he received the pay fixation orders on 19.12.2008. Even otherwise, his claim for higher pay scale was only based on his claim for parity and as previously discussed on the general issue of parity and as discussed in the manner in which the Textiles Committee made its decision and got it implemented, the applicant has no case for getting any relief in this matter. In the circumstances, the application is dismissed as lacking merits without any order as to costs.

(R. Vijaykumar)
Member (A)

(Arvind. J. Rohee)
Member (J)

Ram.