

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00379/2018

DATED THIS THE 01ST DAY OF FEBRUARY, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

Intikhab Jafar
S/o. Shri Syed Husain,
Aged about 57 years,
Working as Junior Hindi Translator
National Sample Survey Organization,
(Field Operations Division)
E&F Wing, 5th Floor,
Kendriya Sadan,
Koramangala, Bengaluru – 560 034.

Residing at No. 246, Block No 23,

CPWD Quarters,

Koramangala, Bengaluru – 560 034

.....Applicant

(By Advocate Shri A.R. Holla)

Vs.

1. The Union of India,
By Secretary,
Ministry of Statistics & Programme
Implementation of India,
Sardar Patel Bhavan,
Sansad Marg,
New Delhi – 110 001.

2. The Additional Director General,
National Sample Survey Organization,
(Field Operations Division)
Level 6 & 7, C.G.O. Complex,
R.K. Puram,
New Delhi – 110 066.

3. The Director,
National Sample Survey Organization,
(Field Operations Division)
E & F Wing, 5th floor,
Kendriya Sadan,
Koramangala,
Bengaluru – 560 034.

....Respondents

(By Shri N. Amaresh, Counsel for Respondent No.1)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J))

This matter seems to be covered by our orders in Annexure-A4 and
A5 which we quote herewith:

Annexure-A4

*"Heard. This matter is covered by a plethora of judgments
which finally went up to the Hon'ble Apex Court in SLP No.
17419/2009 alongwith several other cases dated 25.07.2013 and*

another connected SLPs. This having attained a finality, the department of expenditure had issued an order for implementing it and the CBDT vide order dated 03.08.2015 implemented it.

2. The learned counsel for the respondents pointed out that there is one lacunae in implementation at this stage. They would say that the Hon'ble Apex Court had held time and again that those who sleep-over their rights cannot be expected to have the benefit of a right in rem. But once Hon'ble Apex Court has upheld a principle in law and made the benefits applicable under it, the only question which will remain is the date from which the order can be implemented.

3. It is pointed out by the learned counsel for the applicant that the date must be construed from atleast 03.08.2015 when the CBDT passed the order for implementation but we think that that may not be an appropriate measure as the applicant has placed a claim slightly earlier to it. We therefore deem that it will be in the interest of justice to allow the applicant to gain his notional benefits from the earlier point of date which is allowable to notional benefit and actual benefits from the date of filing the OA, i.e., 17.03.2015. All the benefits to be made available within 3 months next.

4. OA is allowed to this extent. No order as to costs."

Annexure-A5

"Heard and decided on circulation. The matter is very simple. When the matter was originally taken up for hearing, the learned counsel for the applicant submitted that at least from 03.08.2015, when CBDT passed the order for implementation, the benefits must be made available. After we had examined the matter we found that from the date of filing of the OA, i.e., 17.03.2015 onwards the benefits to be made available, that is to say, we had given him a benefit much more than what he had asked for.

2. But he relies on a circular dated 03.08.2015 wherein notional benefit of similarly situated people had been apparently granted from 01.01.1996 and benefit seems to be granted from 11.02.2003. But then the Hon'ble Apex Court had clarified these kind of matters. The doctrine of sit back will operate in such cases. Even if the applicant had the right to contend, since he had sat on his rights and allowed time to pass, he cannot have that benefit at all. Twelve years delay we are not inclined to condone and there is no reason for condonation of such delay. If the department had passed such order either deliberately or out of ignorance we have no answer for it and we do not need to answer it also. That will be examined by the Controller

and Auditor General at the time when he examines these aspects. For this purpose, a copy of this order and the original order to be forwarded to the CAG as well. We are not inclined to condone twelve years delay therefore we hold that the benefits will be available only from 17.03.2015 which is the date of filing of the OA. RA is dismissed. No order as to costs. But if the benefits as aforesaid were granted to equivalently situated as a matter of policy, then it may be extended to the applicant as well.”

2. Apparently we had granted an order in Annexure-A6 which we quote herewith:

“The applicants have filed the present OAs seeking the following reliefs:

- (i) *To quash orders (a) No.CSB-63(12)/2007-ES.II dated 26.06.2015, issued by the respondent No.3 to the applicants No.1 to 4 and (b) No.CSB-63(12)/2007-ES.II dated 11.09.2015 issued by the respondent No.3 to the applicant No5,collectively produced as Annexure-A12,*
- (ii) *To direct the respondents to extend the pay scale of Rs.5500-175-9000 to the applicants No.1 to 5 with effect from 01.01.1996 and Rs.6500-200-10500/- to the applicants No.1 to 4 from the date of their promotion as Senior Translator (Hindi) with the actual payment from 11.02.2003 in pursuance of their representations, dated 28.01.2015, 10.03.2015, 15.05.2015, 22.05.2015 and 07.07.2015, Annexure – A11, with consequential benefits and*

2. *The applicants were appointed as Junior Translators (Hindi) in the Respondent's Organization vide order dated 10.08.1990, 06.06.1991, 21.01.1994, 20.12.1991 and 24.01.1994 respectively (Annexure A1). The scale of Junior Translator (Hindi) was revised to Rs.5000-8000/- w.e.f 01.01.1996. Subsequently, Applicant No.1 to 4 were promoted as Senior Translator (Hindi) vide order dated 25.11.1997, 25.11.1997, 03.06.2004 and 09.07.1998 respectively (Annexure A2). The pay scale of Senior Translator (Hindi) was revised to 5500-9000 wef 01.01.1996. The Applicant No.5 continues to be in the post of Junior Translator (Hindi). The pay scale of Junior and Senior (Hindi) Translators in the Central Secretariat Official Language Service (CSOLS) were upgraded to 5500-9000 and 6500-10500 respectively w.e.f. 11.02.2003 (Annexure A3). Subsequently, vide order dated 14.07.2003 (Annexure A4), the Government extended the benefit of upgraded scales w.e.f. 01.01.1996 with actual payment from 11.02.2003. Some of the applicants approached the respondents with a request to extend the similar benefit to them. However the same was rejected in terms of the order dated*

14.09.2004 (Annexure A5).

3. According to the applicants, many departments like Atomic Energy, Air force, Employees Provident Fund organization extended the benefit to the Junior and Senior (Hindi) Translators on par with the CSLOS (Annexure A6). Thereafter, in terms of the 6th Pay Commission recommendations, the Junior Translators (Hindi) were granted pay scale of Rs.6500-10500/- corresponding to PB 2 with grade pay of Rs.4200/- and Senior Translator (Hindi) were given in the scale of Rs.7450-11500/- corresponding to grade pay of Rs.4200/- w.e.f. 01.01.2006. The Translators in CSLOS as well as all other offices were given the same pay scale w.e.f. 01.01.2006 without any discrimination. Office Memorandum dated 24.11.2008 and 27.11.2008 issued in this regard are at Annexure A7.

4. In regard to the anomaly in the pay scale prior to 01.01.2006, some of the aggrieved Translators had approached the Hon'ble High Court of Karnataka in W.P No.47942/2004 wherein vide order dated 14.11.2011 (Annexure A8) Hon'ble High Court held that Junior Translator and Senior Translator (Hindi) are entitled to pay scale at par with those in CSLOS. The matter was also agitated before Hon'ble Supreme Court in SLP No.17419/2009 wherein vide order dated 25.07.2013 (Annexure A9) Hon'ble Apex Court held that Translators (Hindi) working in the subordinate offices are entitled to the same salary on par with those working in CSOLS prior to 01.01.2006 as the functional requirements of these posts are the same. Thereafter, the applicants again submitted the representations to the Respondent No.2 in 2015 demanding the pay at par with Translators (Hindi) working in CSOLS w.e.f 01.01.1996 (Annexure 11). The respondents vide order dated 26.06.2015 and 11.09.2015 held that Hon'ble Apex Court order is not applicable to the employees of other departments unless and until the Government passes specific order giving effect to the said order of the Hon'ble Apex Court (Annexure-A12). Hence, the present application.

5. The respondents have filed their reply statement, in which they have contended that the OA is barred by limitation. When their representation was rejected by the respondents vide order dated 14.09.2004 in terms of the instructions of the Ministry of Textiles, the applicants have accepted the same, and did not challenge the order. The applicants were also given benefits in terms of the 6th Pay Commission recommendations. Still they did not agitate the matter. Thereafter, only because of the representations were submitted in the year 2015 and the same was rejected it cannot be said that OA is not barred by limitation.

6. The respondents have further contended that the Departmental OM dated 08.11.2000 revised the pay scales w.e.f 01.01.1996 with the approval of the Ministry of Finance. The pay scales of Rs.1400-2300/-, Rs.1400-2600/-, Rs.1600-2600/- was given in the pay scale of Rs.5000-8000/- while the pay scale Rs.1640-2900/- was given in pay scale of Rs.5500-9000/-. Pursuant to the OM dated 08.11.2000 (Annexure R1) issued by Government of India, the respondents issued an order giving benefits to the applicants (Annexure R2). It is a fact that the Department of Official Language vide OM dated 13.02.2003 upgraded the pay scales in respect of Junior Translator and Senior Translator (Hindi) of CSOLS

w.e.f 11.02.2003. However, it was limited to CSOLS only and did not have a general applicability. When the applicants represented that the benefits be extended to them also, the Central Silk Board sent a proposal to the Ministry on 25.04.2003 (Annexure R3) for consideration. The matter was examined by the Ministry i.e. Respondent No.1 in consultation of the Home affairs and it was clarified that the upgraded pay scale approved for CSOLS are specific to them and cannot be extended to the similarly designated posts in the Central Silk Board (Annexure R4). The decision was accordingly communicated to the applicants on 14.09.2004 (Annexure R5). It is also stated that pay scales attached to the post of Assistant Director in Central Silk Board was higher as compared to the CSOLS.

7. Referring to the contention of the applicants that several other departments had extended and granted the pay scale at par with CSOLS, the respondents submitted that Central Silk Board is a specified body under Ministry of Textiles and they have to go by the decision of the Government in this regard. Since the Government did not agree to the higher pay scale allowed to CSOLS it cannot be considered. They have submitted the following 6th Pay Commission recommendations the pay scales of the Junior and Senior (Hindi) Translators were further revised to PB 2 with grade pay of Rs.4200/- and PB 2 with grade pay of Rs.4600/-. The applicants have been given benefits accordingly. In regard to the order passed by the Hon'ble Apex Court as highlighted by the applicants, they have mentioned that the order passed by the Hon'ble Apex Court in those cases would not be applicable to the employees of other departments unless and until Government pass a specific orders giving effect to the said court orders in respect of employees of other departments including Central Silk Board. Accordingly, the case of the applicants could not be considered by the respondents.

8. Heard the learned counsel for the parties. The learned counsel for the applicant submitted prior to the 5th Pay Commission recommendation i.e. 01.01.1996 and also subsequent to 6th Pay Commission recommendations i.e. 01.01.2006, the Junior Translator (Hindi) in the Respondent's organization are getting pay scales at par with those in CSOLS. Even on implementation of 5th Pay Commission recommendations the pay scales of both the organizations were initially the same. Only when the order granting higher pay scale to Junior Translator and Senior Translator (Hindi) of CSOLS w.e.f. 11.02.2003 was issued, the anomaly started. Moreover, there is no functional difference between the Junior Translator working with respondents and the CSOLS. When the pay scales are same earlier and later also and the nature of work performed by persons in both organizations are same, there is no justification for not allowing the benefits allowed to the Junior Translator and Senior Translator (Hindi) of CSOLS vide order dated 19.02.2003. He also referred to the order of the Hon'ble Apex Court in Civil Appeal No.1119/2009 which pertains to Junior Hindi Translator working in the office of the Director General of the Commercial Intelligence & Statistics, in the Commerce Ministry and also some applicants in Ministry of Defence and Commission of Central Excise. It was held that no material

was placed about the functional distinction between the translators working between the two different organizations, and hence the order of the Tribunal granting relief and which was upheld by the Hon'ble High Court of Delhi cannot be faulted here. Therefore, on the same analogy the applicants are entitled to get the benefits as made available to Translators working in the CSOLS.

9. The learned counsel for the respondents on the other hand reiterated the submission made in the reply statement and submitted that the Central Silk Board is a autonomous organization under Ministry of Textiles and extension of any benefits has to be in accordance with the decision taken by the Ministry in consultation with the Ministry of Finance. When initially the applicants had raised the issue, the matter was referred to the Ministry and after consultation with the Ministry of Finance, they have informed that the benefits have been granted specially to the CSOLS and cannot be automatically extended to the organization. He also submitted that the Hon'ble Apex Court order is applicable to the specific departments only and cannot have a general applicability. However, when a query was made as to whether there is any functional distinction between the works performed by the Translators in Central Silk Board and those working in the CSOLS, he could not place any facts to that effect.

10. We have carefully considered the facts of the case and the submissions made by either side. From the available records and the submissions made, it is clearly evident that the pay scale granted to the Junior and Senior (Hindi) Translators in the respondent's organization to which the applicants belong and also CSOLS were identical all along i.e. at the time of grant of pay scale following 5th Pay Commission recommendation and prior to that also. Identical pay scales were also granted to employees in both organizations following 6th Pay Commission recommendation. The only period for which there was no parity was when the Junior and Senior Translators in the CSOLS was allowed a higher pay scale pursuant to the order passed by the Government dated 19.02.2003. The respondents could not place any facts before us as to whether there is any functional difference between the Translators working in the Central Silk Board and CSOLS which would justify a differential treatment. It is also noted that all pay commissions had granted the pay scales at par to all the Junior and Senior Translators (Hindi) whether working in CSOLS or whether working in other organization. But for the Government decision to grant higher pay scales to the translators working in CSOLS for the limited period i.e. from 01.01.1996 to 2006 with actual financial benefits flowing from 2003, there has been no difference in their pay scale and entitlement. Therefore, no justified ground has been made out by the respondents as to why the benefits granted to Junior and Senior Translators in the CSOLS vide OM dated 19.02.2003 cannot be made available to the applicants except for stating that no order has been issued by the Government to that effect following the Hon'ble Apex Court's judgment.

11. The Hon'ble Supreme Court in *Union of India & Others v/s Rajesh Kumar Gond* in Civil Appeal No.17419/2009 and *Union of India v/s.*

Dhananjay Singh & others in Civil Appeal No.1119/2013 and other connected cases vide its order dated 25.07.2013 held as follows:

4. The respondents is a Junior Hindi Translator working in the Office of Director General of Commercial Intelligence & Statistics under the Commerce Ministry and he sought parity of pay with the Junior Translators who were working in the central Secretariat Official Language Service (CSOLS). The Home Ministry had issued office Memorandum dated 9.2.2003, upgrading the pay-scales of Junior Hindi Translators from Rs.5000-1050-8000 to Rs.5500-175-9000, which were made applicable from 11.2.2003. The respondent sought the same pay-scale but it was denied to him. It is, therefore, that he filed an application in the Central Administrative Tribunal on the basis of 'equal pay for equal work'. The application filed by the respondents was opposed by the petitioners by filing a counter, wherein amongst other things, in paragraph 9 they stated that the Fifth Central Pay Commission had recommended that the pay-scales of Junior Hindi Translators for the Central Secretariat (CSOLS) may be applied to all subordinate offices subject to their functional requirement. However, no material whatsoever was placed before the Tribunal to show as to how the functional requirement of the concerned job in the Commerce Ministry was different from that in the Central Secretariat. Both the posts required the work of translation to be done and, therefore, the Tribunal came to the conclusion that there was no reason to deny parity in pay. The Tribunal relied upon the judgment of a Bench of three Judges of this Court in *Randhir Singh vs. Union of India and Ors.* (1982) 1 SCC 618, which is a judgment granting equal pay to the drivers in Delhi Police Force as available to those in the Central Government and Delhi Administration. The petitioners herein challenged the order of the Tribunal by approaching the Calcutta High Court which dismissed the writ petition and therefore, this special leave petition.

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 every one 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....."

12. It is also noted that in a similar case belonging to Postal Department, the Hon'ble High Court of Karnataka in Writ Petition No.47942/2004 (S-CAT) vide its order dated 14.07.2011 had also taken a similar view and relying upon the judgment of the Hon'ble High Court of Calcutta (Dhananjoy Singh & Others v/s. Union of India) which was upheld by the Hon'ble Apex Court later and directed the respondents to consider the case for similar benefit and grant the benefit in accordance with the law.

13. It therefore clearly emerges that the pay scales of the Junior and Senior Translators (Hindi) to which the applicant belong and that of the CSOLS were identical all along except for the period whether they have granted higher pay scale in terms of Government of India decision vide order dated 19.02.2003. No records have been placed before us indicating any functional distinction between the translators working with the respondent's organization and CSOLS which would result in denying similar benefits to the applicants. The Hon'ble Apex Court have clearly upheld the order of the Tribunal granting benefits to the applicants therein on exactly similar logic. Therefore the ratio of the judgement in this case shall be squarely applicable in this case. Many other departments under the Government of India have also extended similar benefit to the Translators working with them on par with the CSOLS either Suo-motu or based on Courts order. Therefore, we do not find any justification on the part of the respondents for not granting similar benefits to the applicants, more so when no specific grounds were made

out for such a distinction.

14. We also note that orders dated 26.06.2015 and 11.09.2015 at Annexure A12 series which are challenged in the present OA refers to grant of 1st and 2nd financial upgradation and grant of revised pay w.e.f 01.01.2006. Only a passing reference has been made to Hon'ble Apex Court judgement in SLP No.17419/2009 saying that unless Government pass a specific order it will not be applicable to the other departments including autonomous body. The said orders does not address the main issue of correcting disparity in the pay scale of the Junior and Senior Translators (Hindi) between 01.01.1996 and 31.12.2005 on account of higher pay scale being granted to Junior and Senior (Hindi) Translators in CSOLS as highlighted in the representations of the applicants

15. The respondents have also raised the issue of delay. Learned counsel for the applicant, however submitted during the hearing that following judgment of the Hon'ble Apex Court upholding the order granting similar benefits to similarly placed employees in other departments, the matter was further agitated by the applicants with the authority again. We have considered the issue of delay and condoned the same and hence the matter is taken up on merit.

16. On detailed consideration of the matter and in the light of the judgement of the Hon'ble Apex Court in Civil Appeal No.17419/2009 and connected matters the fact that the respondents have not brought out any functional distinction between the Junior and Senior (Hindi) Translators working under them and the Junior (Hindi) Translators working in CSOLS and also taking note of the facts that grant of similar benefits to Junior and Senior (Hindi) translators have been allowed in several other departments either Suo-motu or based on courts order, we hold that the applicants are justified in their claim for grant of benefits as allowed to the Junior and Senior (Hindi) Translators in CSOLS by virtue of the OM issued by the Government of India dated 19.02.2003 and 14.07.2003. Therefore, we set aside the orders at Annexure A12 dated 26.06.2015 and 11.09.2015 and direct the respondent No.2 to consider the matter afresh in light of the observations made above and grant relief in accordance with law. This will be done within a period of three months from the date of receipt of a copy of this order.

16. The OAs are accordingly allowed in terms of the aforesaid directions. No order as to costs."

3. In this order, we have said that if the benefit is granted as a result of a policy taken and it has been granted to equivalently situated people, then there is no rhyme or reason to denying it to another equivalently situated for the sole reason that he had not asked for it at the correct, appropriate time.

Therefore, based on this judgment, applicant seems to have approached by representation to the respondents which they did not agree to. Therefore, we had queried both counsels as to what is the distinguishing feature in this matter which would indicate that as a result of a policy decision this benefit had been granted to equivalently situated others and whereby applicant will acquire right through Article 14 of the Constitution of India. The reply is in the negative. There is no such distinction available in this case. No benefit had been granted to others equivalently situated on the basis of any policy decision as we have said in Annexure-A6 judgment. Therefore, Annexure-A4 and A5 judgment will remain in operation. This OA, therefore, fails.

4. The OA is dismissed. No order as to costs.

(C.V. SANKAR)

MEMBER (A)

(DR.K.B.SURESH)

MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00379/2018

Annexure-A1: Copy of the order dated 29.12.1994

Annexure-A2: Copy of the order dated 07.03.2001

Annexure-A3: Copy of the OM dated 14.07.2003

Annexure-A4: Copy of the order dated 15.10.2015 in O.A. No. 198/2015

Annexure-A5: Copy of the order dated 06.02.2017 in R.A. No. 29/2016

Annexure-A6: Copy of the order dated 08.09.2016 in O.A. No. 177-181/2016

Annexure-A7: Copy of the order dated 15.12.2016

Annexure-A8: Copy of the applicant's representation dated 22.03.2017

Annexure-A9: Copy of the order dated 16.02.2018

Annexures with reply statement

Nil

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