

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00365/2011

Jabalpur, this Wednesday, the 23rd day of January, 2019

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

1. S.N. Ganguly,
 S/o Late K.N. Ganguly,
 Date of Birth 4.1.1954
 R/o III/4 T&A Colony,
 Theater Road, Jabalpur Cantt. 482001

2. P.N. Ahirwal,
 S/o Late G.P. Ahirwal
 Date of Birth 9.5.1970
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 New Panna Naka Chhatarpur 471001

-Applicants

(By Advocate –**Shri Vijay Tripathi**)

V e r s u s

1. Union of India,
 Ministry of Communication & Information Technology
 Sanchar Bhawan New Delhi-11001

2. The Secretary Department of Expenditure
 Ministry of Finance North Block
 New Delhi 110001

3. The Chairman-cum-Managing Director
 Bharat Sanchar Nigam Ltd.
 Corporate Office,
 BSNL Harishchandra Mathur Lane
 New Delhi 110001

- Respondents

(By Advocate –**Shri S.P. Singh**)
(Date of reserving the order: 16.08.2018)

ORDER**By Ramesh Singh Thakur, JM:-**

This Original Application has been filed by the applicant challenging the question of legality, validity and propriety of the order dated 03.02.2011 (Annexure A/1) by the respondent No.3 in pursuance to the order passed by this Tribunal in O.A. No.1042/2010.

2. The applicant in this Original Application has sought for the following reliefs:-

“8(i) Summon the entire relevant record from the respondents for its kind perusal.

8(ii) Set aside the order dt.03.02.2011 (Annexure A-I and command the respondents to extend the benefits of the judgment passed in O.A. No.1764/2009 decided on 07.01.2010 in favour of the applicants.

8(iii) Command the respondents to extend the benefit of replaced pay scale of Rs.7500-12500/- CDA in the corresponding pay scale of Rs.11875-17225/- IDA with effect from 1.1.1996 notionally and actual benefits in the higher pay-scale being made with effect from 11.2.2003

8(iv) Consequently, command the respondents to allow all consequential benefits arising thereto with interest on delayed payment.

8(v) Any other order/orders, which this Hon'ble Court deems fit proper.

8(vi) Award cost of the litigation in favour of the applicant.”

3. The case of the applicants are that the applicant No.1 is presently holding the post of Assistant Director (Official

Language) [for short AD (OL)] (officiating) on 01.01.1996 in the pay scale of Rs.6500-10500/-. The substantive post held by applicant No.1 as on 01.01.1996 was Hindi Translator Grade-II in the pay scale of Rs.4500-7000/-. However, the applicant No.1 was promoted by due process of law as AD(OL) on officiating basis.

4. The applicant No.2 is also presently holding the post of AD(OL) on officiating basis and is posted in the office of Telecom District Manager (Chhatarpur). The applicant No.2 was holding the post of Hindi Translator Grade-III in the pay scale of Rs.4000-6000/- on 01.01.1996. However, subsequently he was also promoted to the post AD (OL) on officiating basis in the pay scale of Rs.9850-14600/- IDA and corresponding pay scale of Rs.6500-10500/- CDA. So, the post held by both the applicants as on 01.12.2003 was of AD(OL) on officiating basis in the pay scale of Rs.9850-14600/- IDA and corresponding pay scale of Rs.6500-10500/- CDA.

5. The grievances of the applicants are that they are being meted with hostile discrimination qua their counter parts working in other ministries. The Department of Official Language in the Ministry of Home Affairs has considered the issue of upward revision and replacement of pay scale of 65 Assistant Director of Central Secretariat Office Language and the same was acceded to

in their office order dated 26.02.2003 after due consultation with the concerned Ministries and Department of Expenditure. Accordingly, the earlier pay scale granted to AD(OL) of the said Ministries has been replaced with the pay scale of Rs.7500-250-12000/- and was given effect to from 1.12.2003. Further a clarification was issued by the Department of Official Language in consultation with the Department of Expenditure giving clarification that the replaced higher pay-scale would actually be paid from 11.02.2003 but the same would be applicable on notional basis w.e.f.01.01.1996 (the date from which 5th CPC's scales are applied). Thus, the applicants are similarly situated employees and are meted with hostile discrimination and are being given less pay than their counter parts serving in other Ministries.

6. The applicants have preferred series of representations (Annexure A/6) seeking the benefits of the judgment passed by the various Benches of this Tribunal by which the case of the applicants are covered. The applicants have approached this Tribunal by filing O.A. No.1042/2010 which was disposed of by directing the respondents to pass a reasoned and speaking order. Ultimately, the respondent-department has passed the order dated 03.02.2011 and rejected the case of the applicants.

7. The respondent No.3 has filed the reply. It has been specifically submitted by the replying respondents that the reasoned order has been passed with the consultation of the Department of Telecommunication and with the Department of Expenditure to consider the case of the applicants and not agreed to grant upgraded pay scale. It has been specifically submitted by the replying respondents/officials including Jr. Hindi Translator/AD(OL) working in the Department of Telecommunications (DoT) were absorbed on permanent basis in BSNL based on the option exercised by them. As the applicants willfully took absorption in BSNL w.e.f.01.10.2000 their replacement IDA scales drawn by them earlier in the Department of Telecommunications were given as per Department of Public Enterprise (DPE) Instruction, like other employees of different cadres. Subsequently these pay scales stand revised w.e.f.01.01.2007 as per DPE/DoT revision of pay/allowances in respect of PSU employees. Accordingly, it is not feasible to accept the demand for upgradation of scales in respect of Hindi Translator and Rajbhasha Adhikari (AD(OL)] of Official Language cadres absorbed in BSNL at par with the Official Language cadres of Government of India as BSNL follows the IDA Scales recommended by the 2nd Pay Revision Committee whereas the

CDA scales are approved by the Government based on 6th Central Pay Commission report and are applicable only for the official language cadre officers working in Union Establishment. It has been further submitted by the replying respondents that the matter regarding the upgradation of scales in respect of various grades of official language cadre absorbed in BSNL was taken up by the Department of Telecommunications with the Department of Expenditure who considered the same and did not agree to grant ungraded pay scales to the officials of official language cadres of department of Telecommunications absorbed in BSNL on the ground that the pay scale of Rs.7500-12000/- has been approved by the Government specifically for the post of AD(OL) belonging to CSOLS only and this scale is not applicable to any similarly designated post outside the CSOLS. It has been further submitted by the replying respondents that the present applicants are working on officiating basis on the post of AD (OL) and they are not a regular appointee on the said post. It has been further submitted by the respondents that the respondent has already granted the higher pay scale to the applicants and the IDA pay is applicable to them. It is further submitted that the applicants are not similarly situated employee who are working as on AD (OL) in other department, hence no discrimination was made against them. It has been

specifically submitted by the replying respondents that the applicants are holding the post of AD (OL) on officiating basis and they are not appointed and are absorbed in the regular recruitment process hence they are not entitled for the pay scale of AD(OL) in which other employees are working on regular basis. Hence, they cannot claim the pay parity in other department because the service conditions are not similar in nature, hence the Principle of Equal Pay for Equal Work is not applicable.

8. We have heard both the parties and have gone through the documents attached with the pleadings.

9. From the pleadings it is not disputed by both the parties that the applicant No.1 is working as AD(OL) officiating w.e.f.01.01.1996. It is also not disputed that the applicant No.2 was earlier holding the post of Hindi Translator Grade III and subsequently he was also promoted to the post of AD(OL) on officiating basis. So, from the pleadings it is also clear that as on 01.12.2003 both the applicants were working as AD(OL) on officiating basis.

10. The main thrust of the argument made by the counsel for the applicant is that the Ministry of Home Affairs has issued the office order dated 26.02.2003 after due consultation with the concerned Ministry/Department of Expenditure and has granted the scale of

Rs.7522-250-12000/- to AD(OL) w.e.f.01.12.2003 and further by clarification the Department of Official Language in consultation with the Department of Expenditure has replaced higher pay-scale to actually be paid w.e.f.11.02.2003 but the same would be applicable on notional basis w.e.f.01.01.1996 (the date from which 5th CPC scales are applied).

11. From the reply it is submitted by the replying respondents that the applicants were earlier under the Department of Telecommunication and were absorbed on permanent basis in BSNL willfully w.e.f.01.10.2000. It has been further submitted by the replying respondents that though the matter was taken up with the department of Telecommunications and Department of Expenditure qua the category of applicants. But the said proposal was not agreed to grant upgraded pay scale, which is reflected in impugned order dated 03.02.2011 (Annexure A/1).

12. The applicants have relied upon the judgment passed by the Principal Bench of this Tribunal in O.A. No.1764/2009 (***Shri S.S. Sharma vs. Union of India and others***) decided on 07.01.2010 (Annexure A/2), whereby the O.A. was allowed and the respondent-department of telecommunication were directed to pay replaced higher scale actually be paid w.e.f. 11.02.2003 and on notional basis w.e.f.01.01.1996 (the date from which the 5th CPC

applied). The applicant also raised the question of hostile discrimination by the respondent-BSNL, whereby the respondent BSNL has allowed the pay scale for staff belonging to the Organised Accounts Departments vide Annexure A/7 dated 01.04.2003 which has been approved by the Department of Telecommunication, Ministry of Finance and also Department of Expenditure. Similarly as per Annexure A/8 dated 25.02.2005 respondent-BSNL has also approved the IDA pay scales for the JAO/AAOs absorbed in BSNL with the approval of Government of India, Department of Expenditure and department of Telecommunication. The applicant has specifically submitted that as per Annexure A/7 and A/8 the said benefit of higher pay scale has given in the 5th CPC, has been implemented by the BSNL with the approval of Department of Telecommunication, Department of Expenditure but the case of category of the applicant i.e. AD(OL), the respondent-department BSNL has intimated to the fact that the case of AD(OL) has been put forth before the Central Government but the proposal was not agreed upon by the Department of Expenditure. So, the applicants have specifically submitted that this amounts to hostile discrimination.

13. As per judgment passed by the Principal Bench of this Tribunal in O.A. No.1764/2009 (supra) the Tribunal has

specifically dealt with this issue and allowed the O.A. the relevant para of the said order is as under:-

“7. It is an admitted fact that the Department of Official Language in the Ministry of Home Affairs has considered the issue of upward revision and replacement of pay scales of 65 Assistant Directors of Central Secretariat Official Language and the same was acceded to in their Office Order No.12/2/97-OL(Services) dated 26.02.2003 after due consultation with the concerned line Ministries and Department of Expenditure. Earlier pay scale of Rs.6500-200-10500 for the ADOL was replaced with the pay scale of Rs.7500-250-12000 and the same was given effect to from 11.02.2003. It is also admitted fact that subsequently the Department of Official Language issued another Office Order dated 2.4.2004 in consultation with the Department of Expenditure giving clarification that though the replaced higher scale would actually be paid from 11.2.2003 but the same would be applicable on notional basis w.e.f. 1.1.1996 (the date from which the 5th CPC pay scales apply). Thus, the Government of India has recognized the replaced pay scale of the ADOL who are working in the Central Secretariat Official Language cadre to get the pay scale of Rs.7500-250-12000 in the 5th Central Pay Commission.

8. Admittedly, the Government of India having accepted the recommendations of the 6th CPC passed the OM dated 24.11.2008, which reads as under:-

“Subject: Revised pay scales for Official Language posts in various subordinate offices of the Central Government.

Consequent upon the implementation of the recommendations of Sixth Central Pay Commission, this Department has received queries from many Ministries/Departments regarding the revised pay structure applicable in the case of Official Language posts existing in subordinate offices of the Central Government. In this connection, it is clarified that in accordance with the recommendations of the Sixth Central Pay Commission as accepted by the Government, similarly designated posts existing outside the Central Secretariat Official Language

Service (CSOLS) cadre in various subordinate offices of the Central Government have been granted the same pay scales as those granted to CSOLS. The Government has notified the following revised pay structure for the Official language cadre belonging to CSOLS:-

<i>Designation</i>	<i>Recommended Pay Scale</i>	<i>Corresponding Pay Bank</i>	<i>& Grade Pay</i>
<i>Pay</i>	<i>Grade</i>		
<i>Band</i>	<i>Pay</i>		
<i>Jr. Translator</i>			
<i>Sr. Translator</i>			
<i>Asstt.Director(OL)</i>			
<i>Dy.Director (OL)</i>			
<i>Jt.Director (OL)</i>			
<i>Director (OL)</i>	<i>6500-10500</i>		
	<i>7450-11500</i>		
	<i>8000-13500</i>		
	<i>10000-13500</i>		
	<i>12000-16500</i>		
<i>14300-18300</i>	<i>PB-2</i>	<i>4200</i>	
<i>PB-2</i>	<i>4600</i>		
<i>PB-3</i>	<i>5400</i>		
<i>PB-3</i>	<i>6600</i>		
<i>PB-3</i>	<i>7600</i>		
<i>PB-4</i>	<i>8700</i>		

2. *Accordingly, w.e.f. 1.1.2006, all Ministries/ Departments etc., are required to grant the revised pay scales approved for various posts in the CSOLS to similarly designated Official Language posts existing in their subordinate offices.*

[Ministry of Finance (Department of Expenditure) O.M. No. 1/1/2008-IC, dated 24.11.2008].

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12. We have been guided by the ratio and judicial dicta of the Hon'ble Supreme Court of India. In the present OA, we find 4 reasons have been given by the Respondents in the

impugned order, while rejecting the claim pay parity. All those grounds do not have sound logic. We note that the ADOL in the Department of Telecommunication and ADOL in the Department of Atomic Energy and ADOL of Central Secretariat Official Language Cadre of the Departments in the Government of India perform the same functions and works. This aspect has also been recognized by the 6th CPC while extending the pay scales of official language cadre in the Central Secretariat to all other official language officers working in the comparable relevant positions in the Ministries and outside the Central Secretariat Official Language department. In view of this we come to the considered conclusion that the Applicant working as ADOL in the Department of Telecommunication discharges the same function as that of the ADOL of Central Secretariat Official Language cadre. The Respondents were given an opportunity to properly appreciate the position of the Applicant and take a decision. On the other hand, the Respondents have not considered Applicant's claim properly and rejected his claim. We are of the considered opinion that such a stands of the Respondent is neither rational nor legal.

13. Therefore, we quash and set aside the impugned order of the Respondents dated 27.08.2008 and issue a direction to the Respondents to reconsider the Applicant's claim for grant of the pay scale of ADOL to him as per the Office Orders of the Department of Official Language dated 26.02.2003 and 2.4.2004. The Respondents are directed to take into account our observations within to decide the issue. Resultantly, the matter is remanded back to the Respondents to take decision within a period of 8 weeks from the date of receipt of a copy of this order. The Original Application is disposed off with above directions. No costs.

14. The instant case is also of the same nature and is covered by the order passed by the Principal Bench in O.A. No.1764/2009. In addition to above, the applicant has also succeeds in proving the hostile discrimination qua the applicants particularly in view of the Annexure A/7 and A/8. In the impugned order dated 03.02.2011

(Annexure A/1) the reason for rejection for granting the upgraded grade pay scale to the Official Language cadre of Department of Telecommunication absorbed BSNL on the ground that the department of expenditure has not agreed upon is discriminatory in nature specially when the same benefit has been granted to other category and absorbed in BSNL later.

15. On the other side, as per Annexure A/7 and A/8, when the matter was put before the department of Telecommunication, department of Expenditure, the proposal for upgradation of pay scale on the similar line as proposed for the category of the applicant has not been agreed upon. It is a settled law that the welfare state could not set two standards for its employee to the fact that the one category of employee the same type of proposal has been agreed upon and for the other type of employees the same proposal has not been agreed upon. Resultantly, there is a hostile discrimination for the category of the applicants.

16. In view of the above discussion, the action of the respondent-department by way of impugned order dated 03.02.2011 (Annexure A/1) is illegal.

17. Resultantly, this Original Application is allowed. Impugned order dated 03.02.2011 is quashed and set aside. Respondents are directed to extend the benefits of replaced pay-scale of Rs.7500-

12500/- CDA in the corresponding pay-scale of Rs.11875-17225/- IDA with effect from 01.01.1996 notionally and actual benefits in the higher pay scale being made w.e.f.11.02.2003, within a period of 60 days after receiving the order of this Tribunal. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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