

CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH

O.A.No.061/01389/2017

Orders pronounced on :10.01.2019
(Orders reserved: 28.11.2018)

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

1. Roshan Lal Raina, age about 60 years, (Group B Gazetted), Ex-SPS to MG-IC-Adm, HQ Northern Command (Retd.) r/o H.No. 55, Ward No. 17, Shankar Nagar Sailen Tallab, Udhampur-182101 (Jammu)
2. Bharat Bhushan Gupta, age about 58 years, Group B gazette, SPS to MG-IC-Adm, HQ Northern Command, Pin-908545 C/o 56 APO
3. Mrs. Surinder Kaur, age about 54 years, Group B gazette, PS to MG Arty, HQ Northern Command, Pin-908545 C/o 56 APO.
4. Mrs. Shashi S Oberoi, age about 51 years, Group B gazette, PS to Brig MED, HQ Northern Command, PIN 908545,C/o 56 APO.

Applicants

(BY: MR. S.S. BAINS, ADVOCATE)

Versus

1. Union of India through Secretary to Government of India, Ministry of Defence, South Block, New Delhi-110011.
2. Union of India through Secretary, Department of Personnel & Training (DoPT), Ministry of Personnel, Public Grievances & Pension, Government of India, North Block, New Delhi-10011.
3. The Chief of Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ PO New Delhi-110011.
4. The Adjutant General, Integrated Headquarters of Ministry of Defence (Army), DHQ PO New Delhi-11001.
5. The Director General of Staff Duties (SD-7), Integrated Headquarters of Ministry of Defence (Army), DHQ PO New Delhi-110011.

(BY : MR. K.K.THAKUR, ADVOCATE)

Respondents

*(O.A.No. 061/01389/2017
Roshan Lal Raina Vs. UOI etc.)*

O R D E R
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicants have filed this Original Application (O.A) under section 19 of the Administrative Tribunals Act, 1985, inter-alia, for quashing of order dated 27.3.2015 (Annexure A-1) and Decision of Anomaly Committee dated Nil (Annexure A-2), their claim for grant of higher pay scale has been declined and direction is sought to be issued to the respondents to grant them benefit of higher pay scale at par with their counter parts working in the Central Secretariat Service/Army Headquarters / Armed Forces Headquarters Office at Delhi.

2. The bare minimum facts which lead to filing of the O.A. are that applicants were / are working as Private Secretaries in the Headquarters Northern Command/Lower Formations / Subordinate Offices. They submit that after 6th Central Pay Commission recommendations, Stenographer cadre working in the Subordinate Offices is being paid less pay scale than their counter parts in AFHQ, New Delhi, thereby creating disparity, though their nature and character of work is same. They filed O.A. No. 1500-JK-2012 claiming parity of pay scales with indicated category. O.A. was disposed of on 16.5.2014, with direction to the respondent no.1 to place the matter before Anomaly Committee. The Private Secretaries working in Headquarters office, New Delhi, have been granted further higher pay scales whereas applicants are in lower pay scale i.e. grade pay of Rs.4200/- only whereas their counter parts were given Rs.4800 and then on completion of 4 years of service grade pay of Rs.5400 etc. They claim it to be discriminatory and arbitrary. They submit that some other cadres like Section Officers, Junior Translators, Hindi Translators working in subordinate offices have been granted

higher pay scales at par with their counterparts at Delhi. Thus, they are also entitled to similar parity. Reference has been given to decision of certain benches of the Tribunal to claim that they are entitled to similar pay scale. However, their claim has been rejected vide impugned orders, Annexures A-1 and A-2 hence the O.A.

3. The respondents have filed reply opposing the O.A. They submit that parity of pay scale has been extended to office staff in the Secretariat Services and those organization / services, which have had a historical parity with CSS/CSSS such as AFHQSS/AFHQSSS/RBSS and Ministerial/Secretariat posts in Ministries / Department organizations like MEA, etc. and Headquarter Northern Command is non-secretariat organization and as such PSs of this command have been duly placed in grade pay of Rs.4600, as per recommendation of 6th CPC in para 3.1.14 of its report. Thus, they are not entitled to any relief.

4. The applicants have filed a replication.

5. We have heard the learned counsel for the applicants and respondents and perused the material on file.

6. A perusal of the record would indicate that in fact there are two set of staff with two set of pay scales. The staff (PSs) working in Headquarter Northern Command (a non – secretariat office) has been placed in grade pay of Rs.4600 whereas the staff working in Army Headquarters / AFHQs has been placed in grade pay of Rs.5400 on the ground that both cannot be compared in terms of duties and responsibilities. Moreover, it is the job of the expert bodies and in this case even Anomaly Committee has considered the issue, on direction of this Court, and has then rejected the claim of the applicants by carrying out a classification that the applicants cannot be compared with their counter parts in Army Headquarters / AFHQs and higher pay scale has

been allowed only to those offices/ departments, who have historical parity with the CSS/CSSS cadre. The office where applicants were/are working is subordinate office only and as such they cannot be granted higher pay scale. It is mentioned that stenographic assistance is allowed for offices at the level of Secretary / Special Secretary / Additional Secretary in the Central Secretariat and nature of functions and the intensity of Stenographic assistance in furtherance of functions of officers are quite different in secretariat and non secretariat office which testifies that there is no basis for one to one parity between applicants and those working in headquarters.

7. While Article 14 forbids class legislation, it does not forbid reasonable classification of persons, objects, and transactions by the legislature for the purpose of achieving specific ends. But classification must not be "arbitrary, artificial or evasive". It must always rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislation. Classification to be reasonable must fulfill the two conditions namely, the classification must be founded on the intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and secondly the differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are two distinct things. What is necessary is that there must be nexus between the basis of classification and the object of the Act. It is only when there is no reasonable basis for a classification that legislation making such classification may be declared discriminatory. Considering this principle, we do not find that the classification carried out by the respondents is

arbitrary or does not further the object sought to be achieved by them in maintaining two categories.

8. In any case, the issue as raised in this case has already been set at rest a long time back in the case of **UNION OF INDIA VS TARIT RANJAN DAS**, 2003 Supp(4) SCR 339, while examining decision of Tribunal and High Court granting higher pay scale on parity with headquarters office. The Court has held in clear terms that grant of lower pay scale on classification basis is permissible. The observations of Hon'ble Court are reproduced as under :-

"9. In this case, the Tribunal and High Court seem to have completely lost sight of the fact that the Fifth Pay Commission specifically considered the question and held that there is no question of any equivalence. The Commission observed as follows:

"46.34. We have given our careful consideration to the suggestions made by Associations representing Stenographers in Offices outside the Secretariat in the light of observations made by the Third CPC. The Commission had observed that as a general statement, it was correct to say that the basis nature of a Stenographer's work remained by and large the same whether he was working with an officer in the Secretariat or with an officer in a subordinate office. The Commission was of the considered view that the size of the Stenographer's job was very much dependent upon the nature of work entrusted to that officer and that it would not be correct, therefore, to go merely by the status in disregard of the functional requirement. By the very nature of work in the secretariat, the volume of dictation and typing work was expected to be heavier than in a subordinate office, the requirement of secrecy even in civil offices of the secretariat could be very stringent. Considering the differences in the hierarchical structures and in the type of work transacted the Commission was not in favour of adopting a uniform pattern in respect of matter listed in the preceding paragraph. To our mind, the observations of the Third CPC are as relevant today as they were at that point of time and we are not inclined to overlook them totally. In view of the abovementioned distinguishable feature, we do not concede the demand for absolute parity in regard to pay scales between stenographers in offices outside the secretariat and in the secretariat notwithstanding the fact that some petitioner stenographers Grade II have got other benefit of parity in pay scale through courts. However, pursuing the policy enunciated by the Second CPC that disparity in the pay scale prescribed for stenographers in the Secretariat and the non- secretariat organizations should be reduced as far as possible, we are of the view that Stenographers Grade II should be placed in the existing pay scale of Rs. 1600-2660 instead of Rs. 1400-2300/ Rs. 1400-2600".

10. Strangely, the Tribunal in the review petition came to hold that the Commission had not based its conclusion on any data. It is trite law that it is not open for any Court to sit in judgment as on appeal over the conclusion of the Commission. Further the Tribunal and the High Court proceeded as if it was the employer who was to show that there was no equality in the work. On the contrary the person who asserts that there is equality has to prove it. The equality is not based on designation or the nature of work alone. There are several other factors like, responsibilities, reliabilities, experience, confidentiality involved, functional need and

requirements commensurate with the position in the hierarchy, the qualification required which are equally relevant.

11. In *State of W.B. and others vs. Hari Narayan Bhowal and others* 1994 (4) SCC 78) it was observed:

"This Court in the case of *Delhi Veterinary Assn. vs. Union of India* (1984) (3) SCC 1) said that in addition to the principle of 'equal pay for equal work', the pay structure of the employee of the Government should reflect many other social values. It was said:

"The degree of skill, strain of work, experience involved, training required, responsibility undertaken, mental and physical requirements, disagreeableness of the task, hazard attendant on work and fatigue involved are, according to the Third Pay Commission, some of the relevant factors which should be taken into consideration in fixing pay scales. The method of recruitment, the level of which the initial recruitment is made in the hierarchy of service or cadre, minimum educational and technical qualifications prescribed for the post, the nature of dealings with the public, avenues, of promotion available and horizontal and vertical relatively with other jobs in the same service or outside are also relevant factors."

12. In the case of *State of U.P. vs. J.P. Chaurasia* 1989 (1) SCC 121) it was pointed out that whether two posts are equal or should carry the equal pay, depends on several factors. It does not depend just upon either the nature of work or the volume of work done. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts by the Competent Authorities constituted for the purpose and Courts cannot ordinarily substitute themselves in the place of those authorities. The quantity of work may be the same but the quality may be different. That cannot be determined by relying upon averments in affidavits of interested parties. It must be determined by expert bodies like Pay Commission and the Government, who would be the best judges, to evaluate the nature of duty, responsibility and all relevant factors. The same view was reiterated in the case of *State of M.P. vs. Pramod Bhartiya* 1993 (1) SCC 539) by a three-Judge Bench of this Court. In the case of *Shyam Babu Verma vs. Union of India* 1994 (2) SCC 521) a claim for equal pay by a group of Pharmacists was rejected saying that the classification made by a body of experts after full study and analysis of the work, should not be disturbed except for strong reasons which indicate that the classification made was unreasonable.

13. These aspects have been completely lost sight of by the Tribunal and the High Court.

14. The Tribunal passed the impugned order by reviewing the earlier order. A bare reading of the two orders shows that the order in view application was in complete variation and disregard of the earlier order and the strong as well as sound reasons contained therein whereby the original application was rejected. The scope for review is rather limited and it is not permissible for the forum hearing the review application to act as an appellate authority in respect of the original order by a fresh and rehearing of the matter to facilitate a change of opinion on merits. The Tribunal seems to have transgressed its jurisdiction in dealing with the review petition as if it was hearing original application. This aspect has also not been noticed by the High Court."

9. In the wake of aforesaid prismatic reason and discussion, this O.A. turns out to be devoid of any merit and is dismissed. However, the parties are left to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(P. GOPINATH)
MEMBER (A)

Place: Chandigarh.
Dated: 10.01.2019

HC*

