

Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.3911/2013
M.A. No.2965/2013

Wednesday, this the 10th day of April 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

1. Gourang Charan Parida
Sr. Deputy Account General
Resident of Sarvodaya Nagar, Puri
Economy Sector II, Orissa
2. All India Railway Accounts Staff Association
Through its General Secretary
Mr. M S Unnikrishnan
Having its Head Office at Church Gate, Mumbai
3. Confederation of Audit and Accounts Employees and
Officers Organization
Through its Secretary General
Ahi Bhushan Sen
Having its office at 15/1093, Vasundhra
Dist. Ghaziabad, UP
4. R C P Singh
Senior Auditor (Retd.)
Defence Accounts
Resident of 9/59, Judge Colony
Sector 9, Vaishali
PO Vasundhara 201012
Dist. Ghaziabad, UP
5. S N Bhardwaj
Sr. Accountant (Retd.)
Department of Telecommunication
Resident of H-17, Telecom Wireless Colony
Rajiv Chowk, Sohna Bypass Road
Gurgaon

...Applicants

(Ms. Sumita Hazarika, Advocate)

Versus

1. The Union of India, represented by
The Comptroller & Auditor General of India

9, Deen Dayal Upadhyay Marg
New Delhi – 110 124

2. The Comptroller & Auditor General of India
9, Deen Dayal Upadhyay Marg
New Delhi – 110 124
3. The Secretary to the Govt. of India
Ministry of Finance
Department of Expenditure
New Delhi – 110 001
4. The Secretary to the Govt. of India
Ministry of Railways
Rail Bhawan, New Delhi – 110 001
5. Comptroller General of Defence Accounts (CGDA)
Ministry of Defence
Ulan Batar Road, Palam
Delhi Cantt. 110 010
6. Union Ministry of Telecommunication
Through the Secretary
Sanchar Bhawan
20, Ashoka Road
New Delhi – 110 001

...Respondents

(Mr. Nayan Pandey, Advocate for Mr. Gaurang Kanth, Advocate for respondent Nos. 1, 2, 3 & 5 – Mr. S M Zulfiqar Alam, Advocate for respondent No.6 – *Nemo* for respondent No.4)

O R D E R (ORAL)

Justice L. Narasimha Reddy:

The applicants are Accountants and Senior Accountants in the Indian Audit & Accounts Department (IAAD) and Railways. The re-organization of the IAAD was undertaken in the year 1993 on the basis of a plan prepared by the Comptroller & Auditor General of India. For the post of Auditors (since re-designated as Accountant / Senior Accountant in the year 1987 in IAAD), it was

decided that the appointment shall be made by direct recruitment and pay shall be at ₹425-800. The applicants state that they hold the post of Auditor and the pay scale of ₹425-800 was equivalent to the pay scale of the post of Assistants in Central Secretariat Service (CSS). It is further stated that consequent on the implementation of recommendations of 4th Central Pay Commission (CPC), disparity existed between the pay scales of Auditors on the one hand and Assistants in CSS on the other, and at the instance of the concerned associations, the matter was referred to the Board of Arbitration (JCM). It is stated that an Award was passed by the Arbitrators on 24.08.2004, directing that the pay scale attached to the post of Assistant in CSS, namely, ₹1640-2900 (₹5500-9000 w.e.f. 01.01.1996) shall be extended to all Senior Auditors / Senior Accountants in IAAD and Railways, w.e.f. 01.01.1986 notionally and actually from 12.11.2001.

2. The grievance of the applicants is that the Award was not implemented by the respondents so far. They contend that once the right of the applicants to claim parity of salary with Assistants in CSS was recognized, the dispute was referred to the Board of Arbitration, and an Award was passed on 24.08.2004, there is no option for the respondents, except to implement the same. It is also pleaded that the scheme evolved by the Government contemplates rejection of the Award only by the Parliament and such a step has not taken place in the instant case.

3. The respondent Nos. 1, 2, 3 & 5 and respondent No.6 filed their separate counter affidavits. It is stated that after the Award was received, the matter was considered at length by the concerned Ministry, and ultimately, the Cabinet has rejected the same, duly placing the matter before the Lok Sabha and Rajya Sabha. They further pleaded that the Hon'ble Supreme Court in **Union of India & others v. Hiranmoy Sen & others** (Civil Appeal No.7232/2003) decided on 12.10.2007, has taken a view that the Accountants and Senior Auditors cannot claim parity with the Assistants in CSS, and there are no merits in the O.A.

4. We heard Ms. Sumita Hazarika, learned counsel for applicants, Mr. Nayan Pandey for Mr. Gaurang Kanth, learned counsel for respondent Nos. 1, 2, 3 & 5 and Mr. S M Zulfiqar Alam, learned counsel for respondent No.6. There is no representation on behalf of respondent No.4.

5. The only prayer made in the O.A. is in the form of direction to the respondents to implement the Award passed by the Arbitrators on 24.08.2004. The Award reads as under:-

“Having carefully considered the materials on record and the merits of the case and having taken into account all the facts having bearing on the matter in issue and after hearing the submission of the parties at length and having given our anxious consideration thereto, we give the following award.

The government is directed to grant upgraded pay-scales, same as to the Assistants of Central Secretariat Service of Rs.1640 – 2900 (Rs.5500 – 9000 w.e.f. 01.01.96) to all Senior Auditors / Senior Accountants and

Account Assistants (Railways) w.e.f. 01.01.86 notionally and actual payment from 12.11.2001, the date of Reference of Arbitration of the Board.”

6. It appears that a mechanism of Joint Consultation & Compulsory Arbitration for Central Government employees was evolved sometime in the year 1984, on the lines of Whitely Machinery functioning in the United Kingdom. We, however, do not find any statutory force or backing the scheme. Be that as it may, a reference was made to the Board of Arbitrators to examine the claim made by the Accountants and Senior Auditors, as regards parity of pay scale for Assistants in CSS. The Award, as mentioned above, was passed.

7. Keeping aside the legal sanctity of the scheme for arbitration, it becomes necessary to take note of the manner of implementation of orders or Awards passed therein. In O.M. dated 07.10.1985, it was mentioned as under:-

“4. On the receipt of the recommendations by the Administrative Ministry / Department concerned, expeditious action may also be taken to examine the implications of the recommendations in consultation, with this Department, and the Ministry of Finance if necessary, to decide whether the recommendation could be implemented straight away or rejected / modified as required under Article 21 of the JCM Scheme. If it is decided to reject/modify the recommendation of the Board of Arbitration, Cabinet approval must be taken after going through the procedure of consulting this Department (JCM Division) or Ministry of Finance (if necessary) and taking suitable steps to obtain Parliament’s specific directions on the suggested rejection / modification. This action should be initiated within four

weeks or so of the receipt of the recommendation of the Board of Arbitration.”

8. From the above, it is clear that the power to implement or reject the Award is reserved to the Government. The respondents have categorically stated that the Award was rejected by the Cabinet. A copy of the Office Note, in relation to that, is enclosed. The last paragraph thereof reads as under:-

“The Ministry of Finance vide letter dated 06.09.2013 has informed that after obtaining the approval of the Cabinet, a statement for rejection of the Award has been laid in the Lok Sabha on 30.04.2010 and Rajya Sabha on 27.04.2010. Notices for passing in the current session of the Parliament have been issued on 05.08.2013. The Rajya Sabha and Lok Sabha Secretariat have admitted the Notice/resolution and requested the Ministry of Parliamentary Affairs to include the same in the lists of Business on a day convenient to the Government during the current session of the Parliament.

It is submitted that the Cabinet had decided to reject the award of Board of Arbitration given on 24.08.2004 in CA Reference 3/2001. Copies of all the references mentioned above have been placed alongside for information and preparation of counter affidavit.”

9. The applicants filed this O.A. obviously not being aware of the rejection of the Award by the Government. Once the Award is rejected, the question of implementation thereof does not arise.

10. Though several contentions are urged by the applicants stating that the rejection of Award is improper and that the only

authority, that can reject the Award, is Parliament, we do not find any pleading to that effect, much less the prayer in the O.A.

11. The Hon'ble Supreme Court in **Union of India & others v. Hiranmoy Sen & others** (supra) held that the particular category of employees cannot claim parity with another and it is always for the employer or the Government to fix the pay scales.

12. We, therefore, dismiss the O.A. as devoid of any merit.

M.A. No.2965/2013 shall stand disposed of.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

April 10, 2019
/sunil/