

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.1933/2015

Reserved on 22.08.2019
Pronounced on: 28.08.2019

Hon'ble Mr. S.N.Terdal, Member (J)
Hon'ble Mr. Pradeep Kumar, Member (A)

1. Jawahar Navodaya Vidyalaya Catering Assistant & Mess Staff Welfare Association, Bihar Patna through its President,
Sh. Bijay Kumar, Catering Assistant (Age-52)
Jawahar Navodaya Vidyalaya, Supaul,
Bihar.
 2. Bhuvnesh Kumar, Age-50,
S/o Sh. Kshtrapal Singh,
Catering Assistant, Jawahar Navodaya Vidyalaya,
Agsauli, District-Hathras, U.P.
 3. Sanjeet Kumar Singh, Age-47,
S/o Late Sh. J.Singh,
Catering Assistant, Jawahar Navodaya Vidyalaya,
Khairthal, Distt. Alwar.
 4. K.M.Sharma, Age-45
S/o Shri R.S. Sharma,
Catering Assistant, Jawahar Navodaya Vidyalaya,
Naulhta, Pani Pal, Haryana.
- ... Applicants

(By Advocate: Mr. Kumar Rajesh Singh)

VERSUS

1. Union of India
Through the Secretary,
Ministry of Human Resources Development,
Department of School Education & Literacy,
Shastri Bhawan, New Delhi.
2. The Chairman,
Navodaya Vidyalaya Samiti,
Ministry of Human Resources Development,
Department of School Education & Literacy,
Shastri Bhawan, New Delhi.

3. The Commissioner,
Navodaya Vidyalaya Samiti,
B-15, Institutional Area, Sec-62,
NOIDA-101307 (U.P.)
4. The Secretary,
Ministry of Finance, Govt. of India,
New Delhi.

... Respondents

(By Advocate Mr. S.Rajappa)

ORDER

(Hon'ble Mr.S.N.Terdal, Member (J):

We have heard Mr. Kumar Rajesh Singh, counsel for applicants and Mr. S.Rajappa, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

- “(A) Direct the Respondents to carry out appropriate amendments in the Recruitment Rules of Catering Assistants in JNVs and NVs and accordingly revise the Grade Pay of the Catering Assistant from Rs.2400/- to Rs.4200/- in PB-II;
- (B) Quash the order dated 01.11.2013 passed by Respondent No.1.
- (C) Pass any other appropriate order or relief which this Hon'ble Tribunal deems fit and proper.”

3. The relevant facts of the case are that the applicants had filed OA No. 389/2009 before the Ernakulum Bench and they had also filed another OA No.1032/2010 before the Principal Bench. Both the above Benches disposed of the respective OAs with certain directions which were complied with to the extent possible. The applicants had also filed WP (C) No. 2673/2013 before the Hon'ble High Court of Delhi which was disposed of vide order dated 20.05.2013. In the said Writ Petition, the relief prayed for was precisely regarding amendment to

the Recruitment Rules to the post of Catering Assistants. The Hon'ble High Court directed the respondents to take decision regarding the said amendment within four months vide order dated 20.05.2013. The relevant portion of the said order of the Hon'ble High Court is extracted below:

- "7. The decision by the Central Government with respect to the proposal received from respondent no. 2 pertaining to amendment of the Recruitment Rules would be taken positively within four months from today and communicated to respondent no. 2."

In compliance with the order passed by the Hon'ble High Court, the impugned order dated 1.11.2013 is passed by the respondents. In the impugned order, the respondents have taken every aspects into consideration regarding the feasibility of amending the RRs; they have taken functional requirements of the Catering Assistants and the Nursing Staff, they have stated that both of them fall under totally different categories with different nature of work; they have taken into account the educational qualification and the requirements of the duties the two categories of employees are expected to perform and other aspects. After considering every aspect the respondents have come to the conclusion that the amendment prayed for is not possible. The relevant portion of the reasoning of the respondents is extracted below:

- "5. As far as the amendment of educational and other qualifications is concerned it has only been stated that the pay scale should be equal to that of staff nurse. However, no functional requirements have been indicated justifying enhanced pay scales. Moreover, the post of Catering Assistants and Staff Nurse fall in totally different categories with different nature of duties. It is not logical to say that the Catering Assistants should also

have the same pay scale as drawn by Staff Nurse. The educational qualifications have to match the requirements of the duties that an employee is expected to perform. The NVS also has never raised an issue that with the presently prescribed educational criteria, they are unable to recruit suitable set of persons or the already recruited persons are unable to perform their duties properly.

6. In the light of the above it has not been found possible to accede to the proposal for the amendment of the Recruitment Rules (RRs) for the post of Catering Assistant. The applicants in W.P 2673/2013 in Delhi High Court may also be informed accordingly in implementation of the order dated 20.05.2013 of the Delhi High Court."

4. The respondents have also narrated the entire background of the case in their counter affidavit which is extracted below:

"3. Catering Assistants filed an OA No. 389/2009 dated 17/06/2009, before Ernakulum Bench, Ernakulum demanding therein, 1) higher pay scale 2) special allowance at par with the technical staff, 3) fixation of working hour 4) evolving a scheme for better career prospects. In the meantime, they also filed another OA No. 1032/2010 before CAT Principal Bench, New Delhi Demanding therein, to change the educational qualification in Recruitment Rules (RRs) and grant of the revised pay scale Rs. 9,300-34,800/- with Grade Pay of Rs.4200/- w.e.f. 01.01.2006. Hon'ble CAT Ernakulam Bench, Ernakulam decided the case by directing the Ist respondent i.e. Secretary, Ministry of HRD, Deptt. Of School Education and Literacy to call a meeting of the Governing Body of Jawahar Navodaya Samiti, deliberate and consider the following issues as early as possible at any rate within 3 months from the date of receipt of this order:-

- i) To grant higher pay scale w.e.f. 01.01.2006
- ii) To grant special allowance @ 10% of pay
- iii) To evolve a scheme for promotion as in the case of Drivers/Teachers etc.
- iv) To fix the working hours.

4. This Hon'ble Tribunal disposed of the OA in terms of decision passed by the CAT Ernakulam Bench. However, CAT further directed to the respondent that-

".....they may consider the claim of the applicant with regard to amendment of the Recruitment Rules in terms of modifying the educational qualification from minimum Class X +3 years diploma to class XII + 3 years diploma. The needful should be done within a period of six months."

5. That in Compliance of the above order of this Hon'ble Tribunal, demands of the catering Assistants in respect of 1) higher pay scale 2) special allowance at par with the technical staff, 3) fixation of working hour 4) evolving a scheme for better career prospects were examined by Ministry of HRD at length by way of fair comparison between similarly situated persons in sister organizations, viz. Sainik School & Oak Grove Schools and not acceded to vide order dated 26-10-2012. Further, in respect of demands of the Catering Assistant for amendment of the Recruitment Rules (RRs) of Catering Assistant, Ministry of HRD vide its letter dated 01.11.2013 communicated its decision by categorically mentioning that revision of pay scale or up-gradation of pay scale is not a function within the purview of revision/amendment of RRs, therefore, it has not been found feasible to accede to the proposal for the amendment of Recruitment Rules. However, the applicants have filed the instant OA seeking directions to carry out appropriate amendments in the Recruitment Rules of Catering Assistant for revision of Grade Pay from Rs.2400/- to 4200/- in PB-II and quashing the order dated 1.11.2013 passed by Respondent No.1 i.e. MHRD. It is relevant to mention here that in compliance of the order of Hon'ble Tribunal dated 4-4-2011 and Hon'ble High Court order dated 20-5-2013, the claims of the Catering Staff Association were properly examined by MHRD by way of adopting the method of fair comparison amongst the similarly situated employees of residential institutions viz Sainik School and Oak Grove School, and found that they are getting either similar or lesser pay & allowances in comparison to catering Assistants of JNVs. The instant OA has been filed by the Catering Assistant and mess staff welfare Association on the same cause of action. In compliance of Hon'ble Tribunal's order dated 4-4-2011 and Hon'ble High Court Delhi order dated 20-5-2013 and decisions to the Ministry have been communicated to the Catering Assistants vide letter dated 26-9-2011, 26-10-2012 and 1-11-2013."

5. In this case amendment to Recruitment Rules is sought with respect to pay without showing any hostile discrimination in the RRs already existing and under which the applicants have been appointed. In this regard in the case of **Union of India Vs. P.K.Dev** (JT 2000 (Suppl.2 SC 449), Hon'ble Supreme Court viewed that Court should normally leave the issue of pay parity to the wisdom of administration except in proven cases of hostile discrimination. Para 39 of the judgment reads as under:-

"It is an indisputable fact that the pay scales now claimed by the respondent (P.K.Dey) are those prescribed for the post of Assistant Sub-Inspector. As already noticed above, it is once again a promotional post for a Naik. Acceding to the claim made by the respondent would not merely result in change in the pay scales but may also lead to alternation of the pattern of hierarchy requiring re-orientation and restructuring of the other posts above and below the post of respondent. Added to this, such consequences are likely to be felt in the various other Central Police Establishments as well. All these which are likely to have a chain reaction may require further consideration afresh by expert body like the Pay Commission or the Government itself at an appropriate time in an appropriate manner. Courts should normally leave such matters for the wisdom of administration except the proven cases of hostile discrimination. But in the case on hand, having regard to the facts and circumstances of the case and the position of law stated above, the Division Bench of the High Court was not right in granting the relief itself, straightaway to the respondent, that too, without examining the implications and impact of giving such directions on other cadres. However, we make it clear that the rejection of the claim of the respondent need not be taken as an issue closed once and for all. It is always open to the Government to consider the issue either by making reference to the Pay Commission or itself once again as to the grant of pay scales to the respondent. It is open to the respondent to make further and detailed representation."

Further in the case of **Union of India Vs. Tarit Ranjan Das** (JT 2003(8) SCC 352), Hon'ble Supreme Court viewed as under:-

"6. This Court in *Union of India v. Pradip Kumar Dey* (2000(8) SCC 580): 2001(1) SCT 462 (SC) after referring to various decisions dealing with the similar question in para 8 has held thus: (SCC p. 584)

"8. In our considered view, the Division Bench of the High Court was not right and justified in straight away giving direction to grant pay scale to the respondent when there was no material placed before the Court for comparison to order to apply the principle of 'equal pay for equal work' between the Radio Operators of CRPF and the Radio Operators working in civil side in the Central Water Commission and the Directorate of Police Wireless. In the absence of material relating to other comparable employees as to the qualifications, method of recruitment, degree of skill, experience involved in performance of job, training required, responsibilities undertaken and other facilities in addition to pay scales, the learned Single Judge was right when he stated in the order that in the absence of such material it would not possible to grant relief to the respondent. No doubt, the Directorate of CRPF made recommendations to the Pay Commission for giving higher pay scales on the basis of which claim is made by the respondent for grant of pay scale. The factual statements contained in the recommendation of a particular department alone cannot be considered per se proof of such things or they cannot by themselves vouch for the correctness of the same. The said recommendation could not be taken as a recommendation made by the Government. Even otherwise a mere recommendation did not confer any right on the respondent to make such a claim for writ of mandamus."

7. Yet, in another decision in *State Bank of India v. M.R. Ganesh Babu* (2002(4) SCC 556) : 2002(2) SCT 749 (SC) a Bench of three learned Judges of this Court, while dealing with the same principle, in para 16 has expressed that: (SCC p. 563)

"16. The principle of equal pay for equal work has been considered and applied in many reported decisions of this Court. The principle has been adequately explained and crystallized and sufficiently reiterated in a catena of decisions of this Court. It is well settled that equal pay must depend upon the nature of work done. It cannot be judged by the mere volume of work; there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities made a difference. One cannot deny that often the difference is a matter of degree and that there

is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. The principle is not always easy to apply as there are inherent difficulties in comparing and evaluating the work done by different persons in different organizations, or even in the same organization. Differentiation in pay scales of persons holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. The judgment of administrative authorities concerning the responsibilities which attach to the post, and the degree of reliability expected to an incumbent, would be a value judgment of the authorities concerned which, if arrived at bona fide, reasonably and rationally, was not open to interference by the court."

(Also see State of Haryana and Anr. v. Tilak Raj and Ors. (2003(6) SCC 123) and Orissa University of Agriculture & Technology and Anr. v Manoj K. Mohannty (2003(5) SCC 188): 2003(2) SCT 971 (SC)).

8. 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 officers outside the secretariat and in the secretariat notwithstanding the fact that some petitioners 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 organisations 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."

9. 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, confidentially involved, functional need and requirements commensurate with the position in the hierarchy, the qualifications required which are equally relevant.

10. In *State of W.B. and Ors. v. Hari Narayan Bhowal and Ors.* (1994(4) SCC 78): 1994(3) SCT 707 (SC), it was observed:

"This Court in the case of *Delhi Veterinary Ass. v. 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 employees 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 relativity with other jobs in the same service or outside are also relevant factors."

11. In the case of State of U.P. v. 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 ordinate 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 reiterated in the case of State of M.P. v. Pramod Bhartiya (1993(1) SCC 539): 1993(1) SCT 138 (SC) by a three-Judge Bench of this Court. In the case of Shyam Babu Verma v. Union of India (1994(2) SCC 521) : 1994(2) SCT 296 (SC) 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."

5. In view of the facts and circumstances narrated above and in view of the reasoning given by the respondents in the impugned order dated 1.11.2013 which has been extracted above and in view of the law laid down by the Hon'ble Supreme Court in the case of Union of India Vs. P.K.Dev and Union of India Vs. Tarit Ranjan Das (supra), we are of the view that the relief prayed for by the applicants cannot be granted.

6. Accordingly, OA is dismissed. No order as to costs.

(Pradeep Kumar)
Member (A)

(S.N.Terdal)
Member (J)

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