

23

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.353/2003

New Delhi this the 18th Sept, 2005

HON'BLE SHRI SHANKER RAJU, MEMBER (J)
HON'BLE SHRI S.A.SINGH, MEMBER (A)

1. Shri Raj Narain Sharma
S/o Late Shri Jagdish Sharma
D-53/1, Mansarovar Garden,
New Delhi.
2. Shri M.S.Yadav
S/o Shri C.S.Yadav,
Type-III-12, Press Colony,
Mayapuri, Ring Road,
New Delhi-110064.
3. Shri Kirpa Mahto,
S/o Late Shri Sadhu Mahto
F-1/40, Budh Vihar-II,
Delhi-110041.

...Applicants.

(By Advocate: Shri V.K.Mehta)

Versus

1. Union of India
through Secretary,
Ministry of Urban Development &
Poverty Alleviation,
Nirman Bhavan,
New Delhi-110 011.
2. Union of India
through Secretary,
Ministry of Finance,
Department of Expenditure,
North Block, New Delhi-110 001.
3. The Director of Printing,
'B' Wing, Nirman Bhawan,
New Delhi-110 011.
4. Manager,
Govt. of India Press,
Mayapuri, Ring Road,
New Delhi-110064.

... Respondents.

By Advocate: Shri R.N.Singh for Shri R.V.Sinha)

ORDER

By Shri S.A.Singh, Member (A)

The applicants are Head Clerks in the Government of India Press, Mayapuri, New Delhi, under the administrative control of Directorate of Printing in the Ministry of Urban

Development and Poverty Alleviation and are aggrieved by the impugned order dated 25.9.2002 where the respondents have declined to upgrade the pay scale of Head Clerk (Junior) from Rs. 4500-7000 to Rs. 5000-8000/-.

2. The applicants seek quashing of impugned order dated 25.9.2002. They pray that it be held and declared that they are entitled to revised pay scale of Rs.5000-150-8000 mentioned in column-4 of part-B to the first schedule to the CCS (Revised Pay) Rules, 1997 and grant all consequential benefits from their respective dates of initial appointment as Head Clerks.

3. The applicants had earlier filed an OA 3207/2001, which was disposed of with the following order:

"4 ... Respondents shall consider the claims submitted by the applicants for being granted revised pay scale of Rs.5000-8000 w.e.f. 1.1.1996, as per the decision of the Government in terms of the recommendations of the Vth Central Pay Commission as expeditiously as possible and in any case within three months from the date of receipt of a copy of this order, under intimation to the applicants. They shall also keep in view the facts and ground taken by the applicants in the present OA as we are not dealing with the matter on merits."

4. The applicants pleaded that the respondents have accepted 5th CPC recommendations and notified in the Gazette on 30.9.1997 the CCS (Revised pay) rules 1997. As per Part 'B' of the First Schedule of the said schedule the pre revised pay scales of Head Clerks in the scale of Rs.1350-2200/- to Rs.1400 - 2300/- have been merged into an uniform revised pay scale of Rs.5000 - 8000/- and the same has been adopted. By not granting to the applicants the revised pay scale of Rs. 5000 - 8000/- after its acceptance by the Government, the respondents have shown hostile discrimination as other common category of the staff have been granted revised pay scale of Rs.5000-8000/- without any distinction. Further, vide OM dated 5.10.2001 the revised pay scale of Rs. 5000 - 8000/- has been accorded to Store keeping staff who were in the pay scale of Rs.1350-2200 and 1400 -2300/- both of which have been merged into the revised pay scale of Rs.5000 - 8000/-. Therefore, there is no reason for not according same treatment to the Head Clerks whose pre revised pay scales were same as that of Store clerks. The distinction being made by the respondents between Head Clerk (Senior) and Head clerk (Junior) is not tenable because in the CCS (Revised Pay) Rules

L

(3)

(3)

the distinction between Head Clerk (Senior) and Head clerk (Junior) has been done away with.

5. Moreover, Delhi High Court in CWP 706/2002 decided on 31.1.2002 has held that for posts for which separate pay scales have been provided in part B of the revised pay scales the standard pay scales have no application. Once recommendations of 5th CPC are accepted the scales referred to in part B shall be automatically applicable. The Government is under legal duty to grant the revised pay scales.

6. The applicants also relied upon the judgement of this Tribunal's Ernakulam Bench in OA No.997/2001 in the case of CNG Pillai and Anr. Vs. UOI & Others. The Tribunal set aside the impugned order in the said OA and directed the respondents to consider up gradation of the pay scales of the Accountants working in the Govt. of India Press Koratty to Rs.500-9000/- w.e.f. issue of appropriate orders.

7. The respondents vehemently contested the averments of the applicants stating that there are two categories of Head Clerks in the Govt. of India Presses: Head Clerk (Senior) and Head clerk (Junior). The post of Head Clerk (Senior) with pre-revised scale of Rs.1400-2300 has been granted scale of Rs.5000-8000/- and the post of Head Clerk (Junior) in the pre-revised scale of Rs.1350-2200/- the pay scale of Rs.45000-7000/-.

8. As per Recruitment Rules in Government of India Presses, UDCs are promoted as Head Clerk (Junior) or Head Computer and from these two posts they become eligible for promotion to Head Clerk (Senior). It is incorrect on the part of the applicants that the distinction between Head Clerk (Senior) and Head Clerk (Junior) had been done away with. Head clerk (Senior) is a promotional post of Head Clerk (Junior). In view of this if the pay of the Head Clerk (Junior) is upgraded to that of Head clerk (Senior) then there will be total imbalance with the structural set up. Because UDC in the pay scale of Rs. 4000 -6000/- will be directly promoted to the post Head Clerk (Senior) in the scale of Rs.5000-8000/-. The Accountants and Head Computer who were equal to Head Clerk (Junior) in the pay sale of Rs.4500 - 7000/- will now be in the lower scale. Head Clerk (Junior); according to the handbook of the Govt. of India Press assist Accountants. Accountants also supervise the work of the Head Clerk (Junior); therefore placing Head Clerk (Junior) in the pay scale of Rs.5000-8000/- will lead to a situation when supervisory staff will belong to a lower stage than persons to be supervised.

h

26

(4)

9. The recommendations contained in Para 46:10 and part 'B' of the 5th CPC were accepted vide Gazette notification dated 20.9.97 were, however, subject to fulfilment of certain conditions. The pay sales of Head Clerks with pre-revised pay scales of Rs.1400-2300 and 1350-2200/- were merged in to a single scale of Rs.5000-8000/-. The 5th CPC had made this recommendation on the basis of merger of Head Clerk with that of Assistant. The grade of Head Clerk was immediately below that of Assistant. This situation does not operate in Government of India Presses. There is no post of Assistants in Govt. Presses. Head Clerks are only eligible for promotion to Senior Head Clerks. For the foregoing reason only the post of Senior Head Clerk can be taken as analogous to that of Head Clerk mentioned by the 5th CPC and accorded the higher pay scale of Rs. 5000-8000. In view of this, re-structuring of the cadre is not feasible. The 5th CPC did not specifically recommend any higher scale to Head Clerk (Junior) in Government of India Presses. Moreover, as held by the apex court in UOI & Ors. Vs. P. V. Hariharan the fixation of pay is not the function of the Tribunal and it is the function of the Government as change in the pay scale of a category has a cascading effect. Unless there is a clear case of hostile discrimination is made out there is no justification in interfering with cases of fixation of pay scale. The respondents also relied upon apex court judgments in UOI Vs. Makhan Chand Roy published in AIR 1997 SC 2391, State of West Bengal Vs. Hari Narayan Bohwal (1994 (4) SCC 78), K. Basudevan Nair Vs UOI (AIR 1990 SC 2295) and Sher Singh Vs UOI 1995(6) SCC 575).

10. Further, the respondents pleaded that there is a functional difference between Head clerk (Senior) and Head Clerk (Junior) and the merger of the Head Clerk (Junior) and Head Clerk (Senior) is not practicable.

11. We have heard the counsel for the counsel and gone through the documents brought on record.

12. The averments of the applicants are that the respondents after having accepted the 5th CPC recommendations vide their Gazette Notification dated 30.9.1997 and notifying the CCS (Revised Pay) Rules 1997 are duty bound to grant them the revised pay scales of Rs.5000-8000 according to schedule B. The respondents have contended that the recommendations of the 5th CPC as accepted by the Government are subject to fulfilling of certain conditions. Further, the recommendations in Para 46.10 of the 5th CPC report

L

(32)

(5)

pertain to organizations where cadre of Assistant existed. In such cadres the post of Head Clerk in scale Rs. 2000-3200 were merged in the cadre of Assistant. In the case of Government of India Presses the cadre of Assistant did not exist and the recommendations could not be directly applied. The situation in the Government of India Presses under the control of the Directorate of Printing are distinguishable and as such the Government has taken a decision in the totality of the circumstances keeping in view the administrative feasibility for up gradation of the pay scale of Head Clerk (Junior) from Rs. 4500-7000 to Rs. 5000-8000. The respondents have also pleaded that the matter of granting of pay scale as prayed for by the applicant was examined in consultation with the nodal Ministry and it is submitted that if the pay scale of Head Clerk (Junior) is upgraded to Rs.5000-8000 it would upset the existing relativity vis-à-vis the post of Head Computer and Accountant. It would also have the effect of placing the feeder grade and promotion grade in identical scale resulting into a very analogous situation. In the prevailing hierarchal structure of the Government Presses only the post of Head Clerk (Senior) can be taken as analogous to that of Head Clerk mentioned in the 5th CPC for according higher scale of Rs.5000-8000.

13. It is not in dispute that Schedule-3 to the CCS (Revised Pay) Rules, 1997 lays down revised scale of pay mentioned in column-4 for the posts mentioned in column-2 and these have been approved by the Government. According to the Schedule, Head Clerks have been placed in the scale of Rs.5000-8000 by merging of the pay scale of 1400-2300 and 1350-2200. However, Schedule-B refers to Para 46.10 of the 5th CPC report and, therefore, one has to refer to this Para to understand the basis of the recommendations. Para 46.10 is reproduced below:

"46.10 the posts of Head Clerk (Rs 1400-2300) and Office Superintendent Level II (Rs1400-2300/Rs.1400-2600) also exist in all the Non Secretariat organizations. It is felt that none of these posts has any supervisory functions with the name. It will be appropriate if the two grades are merged with the cadre of Assistants. Their pay scales and designations will also be modified accordingly."

From reading of the Para, it is apparent that the question of Head Clerk in the scale of Rs.1400-2300 and Assistant were taken into consideration and the two grades were merged. To further clarify the situation Para 46.4 of the report is relevant and reproduced below:



(38)

(67)

"Ministerial posts next above the level of UDCs are known by different designations Assistant, Head Clerk, Office Superintendent level II etc. and placed either in the pay scale of Rs.1400-2300 or Rs.1400-2600. Different designations and pay scales have been adopted by different departments as per their functional requirements. The designations of Head clerk and Office Superintendent level II suggest that they may be supervisory posts but we have been informed that the nature of duties and responsibilities of these employees are generally non supervisory in nature and even if some supervisory duties are assigned, these are of a very routine type."

14. It is apparent that the 5th CPC was dealing with the question of office staff of non Secretariat Organisation and observed that the ministerial post above the level of UDCs are known by different designation having pay scales of Rs.1400-2300 and Rs.1400-2600. From the conjunct reading of both these paras, it is apparent that Head Clerk referred to in Schedule-B is a post of Head Clerk, which was either in the scale of 1400-2300 or 1400-2600. It is true that Schedule-B notified in the Gazette does mention the pay scale of Rs.1350-2200 for replacement by 5000-8000 against the post of Head Clerk but this would have to be interpreted keeping the larger picture in view.

14. Schedule-B specifies that in certain cases the scale of pay mentioned in Column-4 are subject to fulfilment of specific conditions. It will be necessary for the Ministry to decide upon such issue suggested by the pay commission and agreed to by the government.

15. The recommendations of the 5th CPC are for ministerial post in the Non Secretariat Organization on the logic indicated in para 46.12 which is reproduced below:

"46.12 To sum the discussion so far, the cadre of ministerial posts in Non-Secretarial organizations should be organised in the following manner:

LDC	Rs.950-1500
UDC	Rs.1200-2040
Assistant	Rs.1600-2660
Office Superintendent	Rs.1640-2900

From the foregoing it is clear that the recommendations of the 5th CPC were with regard to the Organization, which could be restructured into the hierarchal structure of LDC, UDC, Assistant and Office Superintendent. The hierarchal structure of the Government of India Presses under the control of the Directorate of Printing is different as shown by the respondents in the impugned order. In fact, the hierarchal structure given by the respondents in the impugned order, as Annexure A-1 is LDC is promoted to UDC and then it is splits into the three streams of Accountant, Head Clerk (Junior) and Head Computer. Head Clerk (Junior) and Head Computer are then promoted to Head Clerk

d

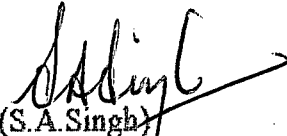
(32)

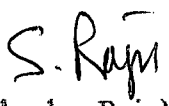
(7)

(Senior) in the scale of 1400-2300. Head Clerk (Senior) and Accountant are the feeder grades for Assistant Manager (Administration).

15. From the above the contention of the respondents that only Head Clerk (Senior) can be considered analogous to the Head Clerk mentioned in Para 46.10 of the 5th CPC report cannot, on the face of it, be faulted. The matter has been examined and the respondents have taken a decision on the totality of the circumstances prevailing in the Government of India Presses. As laid down by the Apex Court in the case of UOI vs. P.V.Hariharan (supra) it is not for the Tribunal to interfere in the fixation of pay scale unless there is hostile discrimination. The applicants have not been able to show any hostile discrimination.

16. In view of above, we find no merit in the OA and is accordingly dismissed. No costs.


(S.A. Singh)
Member (A)


(Shanker Raju)
Member (J)

/kdr/