

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

OA NO.1163/2003

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

This the 6th day of August, 2004

1. Armed Forces Headquarters Stenographers
Association represented through
Shri Vijay Pal Sharma,
General Secretary,
House No.170, Kirari, Nangloi,
Delhi-110041.
2. Shri Rajni Kani,
Private Secretary in
The Military Secretary's Branch,
South Block, New Delhi-110011.

... Applicants

(By Shri R.D.Makhija, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Defence,
South Block, New Delhi-110011.
2. Union of India through
Secretary, Ministry of Personnel,
Public Grievances & Pensions
(Department of Personnel & Training),
North Block, New Delhi.-110011.
3. The Joint Secretary (Training) and
Chief Administrative Officer,
Ministry of Defence,
E Block Hutments, New Delhi-110011.

... Respondents

(By Shri M. M. Sudan, Advocate)

ORDER (ORAL)

Hon'ble Shri V.K.Majotra, VC (A) :

This application has been made alleging discrimination at the hands of the respondents in the matter of implementation of the recommendations of the Fifth Central Pay Commission (V-CPC) by rejection of their claim for continuation of eligibility of Private Secretaries (PSs) belonging to the Armed Forces Head Quarters Stenographers Service (AFHQSS) for promotion to the post of Deputy Director in the Armed Forces Head Quarters Civil Service (AFHQCS).

2. The AFHQSS was constituted on 1.3.1968 on the pattern of the Central Secretariat Stenographers Service (CSSS). It is stated that apart from AFHQSS, two other Stenographers Services, namely, the Indian Foreign Service (Group-B) Stenographers Service [IFS(B)SS] and the Railway Board Secretariat Stenographers Service (RBSSS) also follow the CSSS pattern. It is claimed that AFHQSS/IFS(B)SS/RBSSS have been treated at par with CSSS and all amendments/improvements made in the service rules applicable to CSSS have been duly extended to the members of the AFHQSS/IFS(B)SS/RBSSS. The source of recruitment, scheme of examination, pay scales, grade structure and charter of duties and responsibilities of the incumbents serving in all above named four Stenographers Services are identical/common.

3. The learned counsel of the applicant pointed out that the V-CPC after considering the service conditions, among others, of the AFHQ Stenographers, made the following recommendations :"

"45.38. Since the Railway Board Stenographers Service, Armed Forces Headquarters Service and Indian Foreign Service (Group B) Stenographers Service are structured on the lines of CSSS, we recommend that the benefits of our recommendations made in sub-paras (I) to (vi) above should be extended to the members of these services.



Armed Forces Headquarters Stenographers Service

- 46.49. We have considered the suggestions sympathetically. We have been informed by the nodal Ministry that the demand raised by the AFHQ Stenographers Service has been conceded and action is being taken by the office of CAO to amend the recruitment rules. Since the AFHQ Stenographers Service is structured on the lines of CSSS, the improvements suggested in case of CSSS would equally apply to AFHQ Stenographers Service including our recommendations relating to raising of educational qualification to graduation for direct recruitment to Grade C, allowing only graduate stenographers Grade C to appear in the LDCE for Section Officer's grade (ACSO) and stoppage of lateral entry in the grade of CSO (US). As regards maintenance of common seniority roster, the suggestion is not feasible of acceptance in view of our recommendation to stop lateral entry of Private Secretaries in the grade of Under Secretary (CSO)."

The learned counsel maintained that ^{or}by these recommendations respondents were required to impart an equal treatment to the AFHQSS vis-à-vis the three other Stenographers Services.

4. The V-CPC had made the following recommendations for CSSS :

- (i) Upgradation of 65 posts of Private Secretaries to the level of Principal Private Secretary.
- (ii) Placement of 25% of posts of Private Secretary in the pay scale of Rs.2500-4000 to be known as Senior Private Secretaries.
- (iii) Upgradation of 58 posts (approximately 37% of Principal Private Secretaries) to the pay scale of Rs.3700-5000 to be designated as Senior Principal Private Secretaries.
- (iv) Lateral entry of Private Secretaries to the grade of Under Secretary should be discontinued.
- (v) As regards entry of Stenographers Grade 'C' at the level of Section Officer, recognizing that merit should be encouraged, we recommend that only those Grade 'C' Stenographers who are graduates should be allowed to participate in the departmental examination for the Section Officer's grade."

5. The learned counsel placed before us the position with regard to implementation of the V-CPC in the AFHQSS and other comparable Services as follows :

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Recommendation in respect of CSSS	Position regarding its implementation in other Comparable Services	AFHQ
Upgradation of 65 posts of Private Secretary to the level of Principal Private Secretary	Implemented	Implemented
Placement of 25% of posts of Private Secretary in the pay scale of Rs.25000-4000 to be known as Senior Private Secretaries.	Government decided in respect of CSSS against operation of the Grade. Not implemented in other two Services	Not implemented
Upgradation of 58 posts (approximately 37% of Principal Private Secretaries) to the pay scale of Rs.3700-5000 to be designated as Senior Private Secretaries.	Implemented in full by upgrading posts by the prescribed ratio, i.e., 37%.	Implemented in part, as only 7 posts were upgraded against 19 posts due for such Upgradation. The Respondents have now informed that the case for Upgradation of remaining 12 posts is being considered.
Lateral entry of Private Secretaries to the grade of Under Secretary should be discontinued.	Government decided to reject the recommendation in respect of CSSS. Other two Services followed suit.	Implemented in toto resulting in discrimination vis-à-vis other comparable Services.
Only those Grade 'C' Stenographers who are graduates should be allowed to participate in the departmental examination for the Section Officer's grade.	Government decided to reject the recommendation in respect of CSSS. Other two Services followed suit.	Not implemented.

6. Thus, the learned counsel maintained that the recommendations of the V-CPC to stop lateral induction of PSs in Under Secretary (US) grade has not been accepted in respect of CSSS/IFS(B)SS/RBSSS. Accordingly, PSs of CSSS remained eligible for promotion to US grade along with

Section Officers (SOs). Ministry of External Affairs and Ministry of Railways have also decided against acceptance of V-CPC's recommendation for stopping lateral induction of PSs in US grade. However, the relevant recommendation of the Commission for stopping lateral induction of PSs in US grade was implemented in AFHQ by discontinuing lateral entry of AFHQSS to the Deputy Director's grade resulting in discrimination vis-à-vis other comparable Services. He further pointed out that ~~while~~ recommendation relating to upgradation of 37% of the posts of PSs to the grade of PPS was not fully implemented in AFHQ as only seven posts were upgraded against the requisite 19. In this manner, applicants have been discriminated against in respect of recommendations at Sl. Nos. 3 and 4 of the above chart.

7. In support of the claims of the applicants, the learned counsel relied upon the following :

- (1) AIR 1994 SC 268 : **Supreme Court Advocates-on-Record Association v. Union of India;**
- (2) AIR 1988 129 SC : **Federation of All India Customs and Central Excise Stenographers (Recognized) & Ors. v. Union of India.**

On the basis of the first case, the learned counsel maintained that though the policy decision of the Government is not normally open to judicial review, however, the Courts have a right to review the same judicially in the event the Government have caused offence to the provisions of Article 14 of the Constitution while implementing the policy decisions. He asserted that while the respondents have implemented the recommendations of the V-CPC in a particular manner in respect of the comparable Services of the applicants, they have been denied similar benefits. In the latter case, it was held that differentiation in

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implementing the award of the recommendations of the Pay Commission without rationale amounts to discrimination.

8. The learned counsel further contended that AFHQSS has been closely patterned on the lines of CSSS. Respondents have always brought about parity between the AFHQSS and CSSS in all respects. However, now arbitrarily, respondents have treated them differently in the implementation of the recommendations of the V-CPC. In support of his contentions, the learned counsel brought to our attention Lok Sabha Unstarred Questions 1037 and 5425 ^{and their answers to} (Annexures-B and C respectively) which are reproduced below :

“LOK SABHA

TO BE ANSWERED ON THE 26TH FEBRUARY, 1982

1037. SHRI RAM SINGH SHAKYA :

Will the Minister of DEFENCE (Raksha Mantri) be pleased to lay a statement on the Table of the House Indicating :

- (a) the necessity of bringing about the ratio of promotion of stenographers between the CSSS and AFHQSS when they are two different Services and more so when the ratio of promotion through Deptt. Exam. of SO is not taken into account in which Stenographers of CSSS appear in the matter of implementing the Ministry of Home Affairs OM of 12th November, 1975;
- (b) does the stagnation still persist even after introducing the selection grade in AFHQ for Stenographers based on the lines existing in CSSS; was the same created in AFHQ as a result of the 3rd Pay Commission's recommendations or otherwise;
- (c) how is it that the OM giving selection grade issued by Ministry of Home Affairs has been extended to AFHQ when the other OM's have not been; and
- (d) will the errors be rectified; if not, reasons thereof?

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A N S W E R



THE MINISTER OF DEFENCE (SHRI R. VENKATARAMAN)

- (a) While upgrading certain posts of stenographers Grade 'C' to Grade 'B' in the AFHQSS, promotion prospects of their counterparts in CSSS were taken into consideration and parity was brought about in the ratio of posts in the higher to lower grades.
- (b) Selection Grade posts in Grade 'C' of the AFHQSS were sanctioned on the basis of instructions issued by the Ministry of Finance. However, stagnation in this Grade still persists.
- (c) Government orders on service matters issued by the Ministry of Home Affairs which are of general applicability to all Central Government employees are extended to Civilian employees of the AFHQ and IS Organisations.
- (d) Does not arise."

"LOK SABHA

UNSTARRED QUESTION NO.5425

TO BE ANSWERED ON THE 10TH APRIL, 1989

AMENDMENT TO AFHQ STENOGRAPHERS SERVICE RULES

5425. SHRI RAM SAMUJHAWAN :

Will the Minister of DEFENCE (Raksha Mantri) be pleased to refer to the reply given on 27 February, 1989 to Unstarred Question No.760 regarding Recruitment Rules for Armed Forces Headquarters Stenographers Service and state the details of steps taken to amend the above said rules with details of the amendments taken up and when are these expected to be carried out?

A N S W E R

THE MINISTER OF STATE IN THE DEPARTMENT :
(SHRI CHINTAMANI PANIGRAHI) OF DEFENCE
PRODUCTION & SUPPLIES IN THE MINISTRY OF
DEFENCE

During 1987, the Ministry of Defence forwarded a comprehensive proposal to the Department of Personnel and Training to restructure the Armed Forces Headquarters Stenographers Service (AFHQSS). The proposal was not to amend the existing Armed Forces Headquarters Stenographers Service Rules, 1970, but to replace it with a new set of Rules. The Department of Personnel & Training



initially advised the Ministry of Defence to await the restructuring of the Central Secretariat Stenographers Service (CSSS). Subsequently, on a further reference, they suggested that the Ministry of Defence may consider delinking the restructuring of AFHQSS from that of CSSS. Since the AFHQSS is closely patterned on the CSSS, it is not considered prudent to delink the restructuring of the AFHQSS from that of CSSS. Hence, it is not possible to indicate when the restructuring of AFHQSS will be done."

As is clear from replies to the two Unstarred Questions cited above, respondents have been treating the AFHQSS on the same footing as CSSS but now suddenly without any rational basis, have implemented the recommendations of the V-CPC differently to these two Services.

9. On the other hand, the learned counsel of the respondents stated that AFHQSS initially comprised the following grades :

- "a) Steno Grade 'A' (Group B)
- b) Steno Grade 'B' (Group B)
- c) Steno Grade 'C' (Group C)
- d) Steno Grade 'D' (Group C)"

As the Stenographers did not have any further avenues of promotion, a provision was made in the AFHQ Civil Services Rules, 1968 to the effect that every 25th vacancy in the grade of Civilian Staff Officer (Deputy Director) would be filled up by promotion of Stenographer Grade 'A'. He further stated that in implementation of the V-CPC recommendations the provision relating to the lateral induction of PSs in every 25th vacancy in the grade of Deputy Director has been deleted. V-CPC also recommended the stoppage of lateral entry of its members (PSs) in the grade of CSO (US). This recommendation was accepted in consultation with the Department of Personnel & Training (DOPT) and the Union Public Service Commission (UPSC). The learned counsel further stated that though these services are patterned similarly, yet they are not identical in all respects, each having its own peculiarities,

service conditions and variations due to requirements of the respective organizations and the role of each service. The learned counsel relied on **P.U.Joshi v. Accountant General, Ahmedabad & Ors.**, 2003 (2) SCC 632 to the effect that questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service pertain to the field of policy which is within the exclusive discretion and jurisdiction of the State, and that the statutory tribunals cannot impose themselves by substituting their views for that of the State.

10. In the end, the learned counsel contended that respondents have not defaulted in any manner in considering the case of the applicants and discontinuing their promotions to the post of Deputy Director in the AFHQCS.

11. We have considered the contentions raised from both sides.

12. Basically, the respondents' stance is that they are within their powers to taking different views on the recommendations of the Pay Commission in respect of the applicants and other comparable Services. They have taken the plea that they have taken a different policy decision in respect of the applicants in regard to the recommendations of the V-CPC in consultation with the DOPT and the UPSC. Respondents have also stated that they have resorted to such differentiation as the applicants' and other Services though patterned similarly, are not identical in all respects and have different service conditions as per their respective requirements. The contention of the respondents is a vague statement which is not supported by any detailed facts. The V-CPC had considered the service conditions, duties and responsibilities etc. of the



AFHQ Stenographers vis-à-vis those of CSSS and recommended that since the RBSSS, AFHQSS and IFS(B)SS are structured on the lines of CSSS, they should be accorded the benefits of recommendations of V-CPC made in respect of CSSS. Now while the respondents have not come up with any dissimilar features of AFHQSS vis-à-vis CSSS, there is no rational basis for the respondents to take different policy decisions on identical recommendations of the V-CPC relating to the four sister Stenographers Services. Relevant paragraph 504 of the decision of the Apex Court in **Advocates-on-Record** (supra) is reproduced below :

“504. This is also in accord with the public interest of excluding these appointments and transfers from litigative debate, to avoid any erosion in the credibility of the decisions, and to ensure a free and frank expression of honest opinion by all the constitutional functionaries, which is essential for effective consultation and for taking the right decision. The growing tendency of needless intrusion by strangers and busy-bodies in the functioning of the judiciary under the garb of public interest litigation, in spite of the caution in S.P.Gupta (AIR 1982 SC 149) while expanding the concept of *locus standi*, was adverted to recently by a Constitution Bench in Raj Kanwar, Advocates v. Union of India (1992) 4 SCC 605. It is, therefore, necessary to spell out clearly the limited scope of judicial review in such matters, to avoid similar situations in future. Except on the ground of want of consultation with the named constitutional functionaries of lack of any condition of eligibility in the case of an appointment, or of a transfer being made without the recommendation of the Chief Justice of India, these matters are not justiciable on any other ground, including that of bias, which in any case is excluded by the element of plurality in the process of decision making.”

It does support the opinion of the learned counsel of the applicants that although the Courts have a limited jurisdiction to look into the policy decisions, they are open to judicial review if they are arbitrary or bereft of any discernible principle. Here is a case in which respondents have taken different policy decisions in respect of sister Services although the V-CPC, which is an expert body, after considering all relevant facts and



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aspects of theirs, had made identical recommendations for them. Recommendations of the V-CPC as pointed out on behalf of the applicants have been implemented differently for AFHQSS vis-à-vis the comparable Service, and as such, they have been discriminated against without any rational basis. Such arbitrariness cannot sustain and certainly warrants judicial review in a restricted manner. We draw support for this opinion from the case of **Federation of All India Customs & Central Excise Stenographers** (supra) wherein it was held that differentiation in implementing the recommendations of the Pay Commission without rational basis amounts to discrimination. There is no gainsaying the fact that the field of policy is within the exclusive discretion and jurisdiction of the State as held in the case of **P.U.Joshi** (supra), however, the facts of that case were entirely different and distinguishable. In that case, supervisors in Accountant General (Accounts & Entitlement) who had not passed SO grade examination, though getting pay scale similar to the SOs, were not treated on par with SOs. It was held that even before bifurcation on 1.3.1984 the posts of Supervisors, Selection Grade Supervisors, as well as SOs and Selection Grade SOs existed separately. SOs were considered senior to Supervisors and promotion to higher posts of Accounts Officer (AO) was open to SOs only and not to Supervisors. After bifurcation, since there was no cadre of Supervisors in the Audit Office, the question of accommodating them in the Audit Office as Supervisors did not arise. In the instant case, there has been no bifurcation of any cadre. There are four sister Civil Services incumbents of which have identical qualifications and nature of duties and responsibilities.


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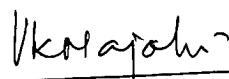
Even the size of AFHQSS is no small; it has a sanctioned strength of 1292. Identical recommendations were made for all these Services by V-CPC. However, in implementation, the present applicants have been discriminated against vis-à-vis the incumbents of the sister Civil Services. Government which as a model employer ought to have taken an identical policy decision in respect of these services in implementation of the recommendations of the V-CPC. That has not been done and in an arbitrary manner, the applicants have been discriminated against. Such discrimination requires correction through this limited judicial review warranted in the facts and circumstances of the instant case.

13. Having regard to the facts and circumstances as discussed above, we find that action of the respondents in making PSs ineligible for promotion to the post of CSO (now Deputy Director) in the AFHQSS is violative of Articles 14 and 16 of the Constitution. As the incumbents of AFHQSS have the same qualifications, functions, duties and responsibilities as those of other Stenographers Services, they have to be treated at par with the other three Stenographers Services, namely, CSSS, RBSSS and IFS(B)SS in all respects. Accordingly, respondents are directed to re-consider implementation of the recommendations of the V-CPC with regard to AFHQSS in the light of the above observations and justification for parity with CSSS, RBSSS and IFS(B)SS. Respondents shall also consider bringing about a provision for promotion of PSs of the AFHQSS to the post of CSO (DD) in the same manner as prevalent in the other three Services mentioned above. Respondents are further directed to take a decision in the light of the

above observations/directions expeditiously and preferably within a period of three months from the date of communication of these orders. In the event of positive decision at the hands of the respondents, the applicants shall have consequential benefits with effect from the date of issue of gazette notification dated 26.5.2001.

14. The OA is allowed in the above terms. No costs.


(Shanker Raju)
Member (J)


(V. K. Majotra) 6.8.04
Vice-Chairman (A)

/as/