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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.1258/2003

This the 15th day of January, 2004

HON'BLE SHRI JUSTICE V.S.AGGARWAL, CHAIRMAN

HON'BLE SHRI S.K.NAIK, MEMBER (A)

Vijay Kumar Sambhor S/O Ram Dass,
Asstt. Controller of Stationery, on leave
R/O Block 65/4C, Kalibari Marg,
New Delhi.

... Applicant

(By Shri C. B. Pillai, Advocate)

-versus-

1. Union of India through
Secretary, Government of India,
Ministry of Urban Development and
Poverty Alleviation, Nirman Bhawan,
New Delhi.
2. Controller of Publication,
Deptt. of Publication, Civil Lines,
Delhi-110054.
3. Controller of Stationery,
Government of India, Stationery Office,
3 Church Lane,
Kolkata-700001.
4. Secretary to Govt. of India,
Ministry of Finance, North Block,
New Delhi-110011.

... Respondents

(By Shri B.K.Aggarwal, Advocate through Proxy Shri
Rajeev Bansal)

O R D E R

Hon'ble Shri Justice V.S.Aggarwal :

Applicant, Vijay Kumar Sambhor, joined as Assistant Controller of Publication in the Department of Publication under the Ministry of Urban Development and Poverty Alleviation in 1986. At that time, there were five posts of Assistant Controllers of Publication. The scale was Rs.2000-3500. Two posts of these five were abolished in 1994. The remaining three posts continued

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to be in the scale referred to above. In the Office of Chief Controller of Printing and Stationery, these posts were designated as Assistant Manager of Publication. They were re-designated as Assistant Controller of Publication and Assistant Manager of Administration.

2. The Fifth Central Pay Commission (5th CPC) in its Report had pointed out that out of three posts of Assistant Controllers of Publication, two should continue in the scale of Rs.2000-3500 and one of the posts should be upgraded to the scale of Rs.2500-4000. The applicant contends that the 5th CPC was referring to these three posts of Assistant Controllers of Publication in the Department of Publication. The Ministry of Finance had accepted the recommendations of the Pay Commission and had notified the revised scale of Rs.7500-12000 for the post with the old designation of Assistant Manager of Publication.

3. The grievance of the applicant is that he is the seniormost Assistant Controller of Publication including the Assistant Managers of Administration. By virtue of holding the post and being the seniormost in the grade, the applicant should have been upgraded from 1.1.1996 and should have been so appointed in the scale of Rs.7500-12000. There was no requirement of revising the recruitment rules to the post with higher replacement scale. The same has been denied to the applicant who is stated to have been thereafter promoted/posted to another scale. By virtue of the present application, therefore,

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he claims that he should be granted the upgraded scale of Rs.7500-12000 from 1.1.1996 with consequential benefits.

4. Needless to state that in the reply filed, the respondents have contested the application. The respondents contend that after re-organisation of the erstwhile Office of the Chief Controller of Printing and Stationery, three departments, namely, Directorate of Printing, Department of Publication, and Government of India Stationery Office, were created in 1973. Although these are separate offices, still they are inter-dependent in matters of recruitment rules, posting etc.

5. The post of Assistant Manager available in the Government of India Press under the Directorate of Printing and the post of Assistant Controller of Publication in the Department of Publication are common cadre posts. They are in the scale of Rs.6500-10500. These posts have common seniority and are inter-changeable. There are no separate recruitment rules or separate cadre for the post of Assistant Controller of Publication. As per the existing recruitment rules, the post of Assistant Controller of Stationery is in the pay scale of Rs.7450-11500. This is a promotion post for Assistant Manager/Assistant Controller of Publication. The post of Assistant Controller of Stationery is a feeder post for the post of Deputy Controller of Publication. The 5th CPC had recommended that out of these posts of Assistant Controllers, one may be upgraded in the scale of

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Rs.7500-12000. Since the post of Assistant Controller of Stationery is a promotional post for Assistant Controller of Publication, therefore, the post of Assistant Controller of Stationery could not be in a lower scale of Rs.7450-11500. A proposal was sent to the Ministry of Finance for consideration of the upgradation of one of the posts of Assistant Controllers in the said scale of Rs.7500-12000. This proposal had not been accepted. They had stated that the 5th CPC had recommended placement of one of the posts of Assistant Controller of Publication from the scale of Rs.6500-10500 to that of the Assistant Controller of Publication Grade-I in the higher scale under the impression that the next promotional post in the hierarchy is existing in the scale of Rs.10000-15200. Thus, it is claimed that the contention of the applicant in this regard cannot be accepted.

6. We have heard the parties' counsel.

7. The principle of law is not in dispute. We refer with advantage to the decision of the Supreme Court in the case of *Shiba Kumar Dutta & Ors. v. Union of India & Ors.*, (1997) 3 SCC 545. Therein, the Government had decided to abolish two different categories, i.e., Fitters and Jig Borers. The petitioners before the Supreme Court were Fitters. They were aggrieved by the decision because according to them, they were earlier enjoying the higher scale than Fitters. The Supreme Court held that the Courts will not interfere unless

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there is invidious discrimination between the similarly situated persons. The findings of the Supreme Court are:

"3.Thereafter, admittedly, Expert Classification Committee and Anomalies Removal Committee had also gone into the matter and made distinction between them. Subsequently, nomenclature of all of them were removed and fused into one category, namely, Fitter. Nomenclature and fitment is one of executive policy of the Government. Unless the action is arbitrary or there is invidious discrimination between persons similarly situated, doing same type of work, as is pointed out, it would be difficult for the courts to go into the question of equation of posts or fitment into a particular scale of pay. They must be left to be decided by the Expert Committees and Government. The courts cannot go into them and evaluate the job criteria and scales of pay prescribed for each category. Under those circumstances, the Tribunal is justified in refusing to go into the question."

Similarly, in the case of **Union of India & Anr. v. P.V. Hariharan & Anr.**, (1997) 3 SCC 568, the Supreme Court came heavily on this Tribunal with respect to interference in the pay scales. It was held that ordinarily it should be left to the administrative Ministries/Government of India. The findings are :

"5. Before parting with this appeal, we feel impelled to make a few observations. Over the past few weeks, we have come across several matters decided by the Administrative Tribunals on the question of pay scales. We notice that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claim on the basis of such change. The Tribunal should realise that interfering with the prescribed pay

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scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is also being misunderstood and misapplied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales. We have come across orders passed by Single Members and that too quite often Administrative Members, allowing such claims. These orders have a serious effect on public exchequer too....."

Identical was the view point expressed in the case of Union of India & Ors. v. Makhan Chandra Roy, AIR 1997 SC 2391, wherein the Supreme Court held :

"2.More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the Court should normally accept it. The Court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration."

8. From the aforesaid it is clear that though it is for the administrative Ministries to decide about the scales that are applicable and what scales have to be granted keeping in view the totality of facts and circumstances, but if the order so passed is patently

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illegal and contrary to law, in that event, this Tribunal will be well within its rights to interfere.

9. With this backdrop, we can revert back to the basic facts in the present case. The 5th CPC in its Report (paragraph 89.57) had looked into the scales pertaining to the Assistant Controllers of Publication and Assistant Managers of Publication. The relevant extract of the same is :

"89.57. We have examined the pay scales and cadre structure of the employees and officers under the Controllers of Stationery and Publications in the light of their recruitment qualifications and our general recommendations on comparable categories of staff. We make the following recommendations :....."

"Assistant Controller of Publications/	2000-3500(2)	These will be called Asstt. Cont- roller Gr- Grade II
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Assistant Managers of Publication, Admn and Forms Stores (Total posts 3 in scale of Rs.2000-3500)	2500-4000(1)	These will be called Asstt. Cont- roller Grade I"
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Vide notification issued on 30.9.1997, it is patent that the said recommendations had been accepted.

10. On the strength of this fact, learned counsel for the applicant argued that once the recommendations have been accepted, the applicant should have been given the said scale and denial of the same is contrary to the notification that has been issued.

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11. We do not dispute the proposition that ordinarily the feeder post should be in a lower scale; *at* worst, it could be in the same scale in certain exigencies. Therefore, while construing the said controversy, we cannot leave the common sense in cold storage and proceed to examine the whole matter simply on the premise that some notification has been issued.

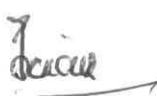
12. The applicant admittedly had been promoted to the post of Assistant Controller of Stationery in the scale of Rs.7450-11500 in the Regional Stationery Depot, Chennai vide orders of May 15, 2002. This is so because from the feeder post he had to be promoted to the said post. He contends that in fact he was already entitled in view of the 5th CPC recommendations to the post in the scale of Rs.7500-12000 and this is a deliberate attempt to uproot him and his family on the pretext of promotion.

13. Not only the applicant has accepted the promotion, but he has even joined at that post. Once the promotion post is in the scale which we have referred to above, which is a little lower than the scale which the applicant claims that he is entitled to by virtue of upgradation only, the whole edifice built by the applicant falls to the ground. This is for the reason that anomalous situation cannot be created and in fact necessarily the department has avoided it. Once the applicant has already been promoted to another post, he cannot claim that his feeder cadre by virtue of upgradation should be in the higher scale. Keeping in view this fact, we have no hesitation in rejecting the

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argument so much thought of by the learned counsel for the applicant.

14. For the foregoing reasons, we find that the present application is without merit and it must fail. Resultantly, the same is dismissed. No costs.


(S. K. Naik)
Member (A)


(V. S. Aggarwal)
Chairman

/as/